



Press and Information

Court of Justice of the European Union
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Judgment in Case C-91/20
Bundesrepublik Deutschland

The Common European Asylum System does not, in principle, preclude a Member State from automatically extending, as a derived right and for the purposes of maintaining family unity, refugee status to the minor child of a parent who has been granted that status

The applicant in the main proceedings, LW, a Tunisian national, was born in Germany in 2017 to a Tunisian mother, whose application for asylum was unsuccessful, and a Syrian father, who was granted refugee status in 2015. The asylum application submitted on behalf of LW was rejected by decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany).

Having been unsuccessful before the court hearing an appeal against that decision, LW brought an *Appeal* on a point of law against the judgment of that court before the referring court, the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

The referring court states that LW cannot claim refugee status in her own right. She could enjoy effective protection in Tunisia, a country of which she is a national. However, LW fulfils the conditions laid down by national law¹ for recognition, as a derived right and for the purposes of maintaining family unity in the context of asylum, of refugee status as a minor child of a parent who has been granted refugee status. Under that legislation, refugee status should also be granted to a child who was born in Germany and has, by his or her other parent, the nationality of a third country in whose territory he or she is not persecuted.

Uncertain whether such an interpretation of German law is compatible with **Directive 2011/95**,² the referring court stayed proceedings in order to seek a ruling from the Court on the interpretation of Article 3³ and Article 23(2)⁴ of that directive. By its judgment, the Court, sitting as the Grand Chamber, replies that those provisions **do not preclude a Member State from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor unmarried child of a third-country national who has been recognised as having that status, including in the case where that child was born in the territory of that Member State and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution. The compatibility** of such national provisions with Directive 2011/95 **presupposes, however, that the**

¹ In the present case, Paragraph 26(2) and (5) of the Asylgesetz (Law on asylum), in the version applicable to the dispute in the main proceedings. Those combined provisions provide for the recognition, on request, of the minor unmarried child of a refugee as being entitled to international protection where the status acquired by his or her parent is final.

² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

³ The provision makes it possible for Member States to introduce more favourable standards for determining who qualifies as a refugee and for determining the content of international protection, in so far as those standards are compatible with the directive.

⁴ That provision, the purpose of which is to ensure that the family unity of the beneficiary of international protection is maintained where the members of his or her family do not individually fulfil the conditions necessary to qualify for such protection, provides for the extension to those family members of some of the benefits granted to the beneficiary.

child is not caught by a ground for exclusion referred to in that directive and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that Member State than that resulting from the grant of refugee status.

Findings of the Court of Justice

In the first place, the Court finds that a child in a situation such as the one in the main proceedings does not satisfy the conditions for being granted refugee status on an individual basis under the system established by Directive 2011/95.

It follows from that directive that, the status of refugee requires the fulfilment of two conditions which relate, on the one hand, to the fear of persecution and, on the other, to the lack of protection from acts of persecution by third countries of which the person concerned is a national. LW could enjoy effective protection in Tunisia. The Court points out, in that context, that, under the system established by Directive 2011/95, an application for international protection cannot be granted, on an individual basis, solely on the ground that a member of the applicant's family has a well-founded fear of persecution or faces a real risk of serious harm, where it is established that, despite his or her relation to that family member and the particular vulnerability which ensues, the applicant is not personally exposed to the threat of persecution or serious harm.⁵

In the second place, the Court notes that Directive 2011/95 does not provide for the extension, as a derived right, of refugee status to the family members of a refugee who do not individually satisfy the conditions for granting that status. Article 23 of that directive merely requires the Member States to amend their national law so that those family members are entitled, in so far as that is compatible with their personal legal status, to certain advantages which include a residence permit or access to employment, which are intended to maintain family unity. Moreover, the obligation on the Member States to provide access to those advantages does not extend to the children of a beneficiary of international protection who were born in the host Member State to a family based in that State.

In the third place, in order to determine whether a Member State may nevertheless grant, as a derived right and for the purpose of maintaining family unity, refugee status to a child in a situation such as LW's, the Court points out that Article 3 of Directive 2011/95 allows Member States to introduce more favourable standards for determining who qualifies as a refugee, in so far as those standards are compatible with that directive.

In particular, such standards are incompatible with the directive if they are intended to grant refugee status to third country nationals in situations which have no connection with the rationale of international protection.⁶ However, the automatic extension, as a derived right, of refugee status to the minor child of a person to whom that status was granted, irrespective of whether or not that child individually satisfies the conditions for granting refugee status and including where that child was born in the host Member State, provided for by the national provision at issue in the main proceedings in order to maintain the family unity of refugees, is consistent with the rationale of international protection.

The Court notes, however, that there may be situations in which the automatic extension, as a derived right and for the purpose of maintaining family unity, of refugee status to a refugee's minor child would, despite the existence of that connection, be incompatible with Directive 2011/95.

Thus, first, the reservation in Article 3 of that directive precludes a Member State from introducing provisions granting refugee status to a person who is excluded from it pursuant to Article 12(2) of that directive. The national legislation at issue in the main proceedings excludes such persons from benefiting from the extension of refugee status.

⁵ See judgment of 4 October 2018, Ahmedbekova, [C-652/16](#).

⁶ See judgment of 4 October 2018, Ahmedbekova, [C-652/16](#).

Secondly, the reservation set out in Article 23(2) of Directive 2011/95 excludes advantages granted to a beneficiary of international protection from being extended to a family member of that beneficiary where that would be incompatible with the personal legal status of the family member concerned. The Court clarifies the scope of that reservation, which must also be respected where a Member State applies more favourable rules adopted pursuant to Article 3 of that directive, under which the status granted to a beneficiary of international protection is automatically extended to members of his or her family, irrespective of whether the conditions for granting that status are satisfied.

In that regard, it would be incompatible with the personal legal status of the child of a beneficiary of international protection who does not individually satisfy the conditions for obtaining that protection to extend to that child the advantages referred to in Article 23(2) of Directive 2011/95 or the status granted to that beneficiary, where that child has the nationality of the host Member State or another nationality which gives him or her, having regard to all the elements of his or her personal legal status, the right to better treatment in that Member State than that resulting from such an extension. That interpretation of the reservation in Article 23(2) of Directive 2011/95 takes account of the best interests of the child, in the light of which that provision must be interpreted and applied.

In the present case, it does not appear that LW, through her Tunisian nationality or any other element characterising her personal legal status, is entitled to better treatment in Germany than that resulting from the extension, as a derived right, of the refugee status granted to her father.

Finally, the Court states that the compatibility with Directive 2011/95 of the application of more favourable national provisions, such as those at issue, to a situation such as LW's, does not depend on whether it is possible for LW and her parents to settle in Tunisia. Since Article 23 of that directive is intended to enable a refugee to enjoy the rights which that status confers while maintaining the unity of his or her family in the host Member State, the fact that it is possible for LW's family to move to Tunisia cannot justify the reservation in paragraph 2 of that provision being understood as precluding her from being granted refugee status, since such an interpretation would involve her father waiving the right to asylum conferred on him in Germany.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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