



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 42/16

Luxembourg, 21 April 2016

Judgment in Case C-558/14

Mimoun Khachab v Subdelegación del Gobierno en Álava

The Member States may refuse an application for family reunification if it is apparent from a prospective assessment that the sponsor will not have stable and regular resources which are sufficient in the year following the date of submission of the application

That assessment may be based on the pattern of the sponsor's income in the six months preceding the date of submission of the application

The directive on family reunification¹ is intended to encourage reunification with family members who are not EU citizens. According to the directive, the Member States must authorise the entry and residence of, inter alia, the sponsor's spouse, subject to compliance with certain conditions (thus, the sponsor must provide evidence that he has accommodation, sickness insurance, and stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of the Member State concerned). The Member States may reject an application for family reunification or, where appropriate, withdraw or refuse to renew a family member's residence permit where the conditions laid down by the directive are not or are no longer satisfied.

The Spanish legislation states that a residence permit on grounds of reunification with non-EU family members must not be granted if it is determined beyond doubt that there is no likelihood of the sponsor's resources being retained in the year following the date of submission of the application for reunification. That likelihood is to be assessed by reference to the pattern of the sponsor's resources in the six months preceding the date of submission of the application.

In March 2012, a national of a non-EU country who is resident in Spain and holds a long-term residence permit in that Member State had his application for family reunification concerning his spouse refused, on the ground that he had not shown that he had resources which were sufficient to maintain his family once reunited. The actions against the decision refusing his application were dismissed on the ground, inter alia, that there was nothing to indicate that he would have resources which were sufficient in the year following the submission of the application for family reunification.

The Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country, Spain), before which the sponsor has lodged an appeal, has doubts as regards the compatibility of the Spanish legislation with the directive. The national court questions whether, in order to be able to qualify for family reunification, the sponsor must have stable and regular resources which are sufficient on the date of submission of the application for reunification, or whether account may be taken of the likelihood of his still having such resources in the year following that date.

By today's judgment, **the Court finds that the Spanish legislation is compatible with the directive.**

The Court points out, first of all, that the directive allows the Member States to demand proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, without him having to have recourse to the social assistance system of the Member State concerned.

¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Although **the directive** does not explicitly provide that the Member States may assess whether the stable and regular resources which are sufficient will be retained beyond the date of submission of the application for reunification, the Court considers that it **cannot be interpreted as precluding such a possibility**. Indeed, the directive explicitly provides that the Member States must evaluate the regularity of the sponsor's resources, which entails a periodic analysis of the pattern of those resources. The Court adds that, while the sponsor must provide evidence that he has **resources which are sufficient** at the time when his application for family reunification is being examined, those resources **must also be stable and regular**, which implies a **prospective assessment** of those resources by the competent national authority.

The Court emphasises that that interpretation is borne out by the fact that the personal scope of the directive is limited to sponsors who have obtained a residence permit for at least one year and who have reasonable prospects of obtaining the right of permanent residence. The assessment of whether such prospects exist necessarily requires an examination of future developments in the sponsor's situation in relation to obtaining that right of residence. Furthermore, the fact that it is possible to withdraw or refuse to renew a family member's residence permit where the conditions laid down by the directive are no longer met means that the Member States may require the sponsor to have stable and regular resources which are sufficient beyond the date of submission of the application for reunification. Lastly, that interpretation is confirmed by one of the objectives of the directive: evidence of the stability, regularity and sufficiency of resources enables a Member State to ensure that neither the sponsor nor the members of his family are likely to become a burden on its social assistance system during their period of residence.

The Court considers that **the period of one year** during which the sponsor must have resources which are sufficient **appears reasonable and proportionate**, given that that period corresponds to the minimum period of validity of the residence permit which the sponsor must have in order to be able to apply for family reunification.

Regarding the rule that the prospective assessment of the sponsor's resources must be carried out on the basis of the sponsor's resources in the six months preceding the date of submission of the application for reunification, the Court finds that the directive is silent on that point but that, in any event, **such a period is not capable of undermining the objective of the directive**.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355