Court of Justice of the European Union
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Press and Information

Judgment in Case C-82/16
K.A. and Others v Belgian State (Family reunification in Belgium)

Requests for family reunification must be examined even if the national of a non-EU country, who is a family member of an EU citizen who has never exercised his right of freedom of movement, is subject to an entry ban

Whether there is a relationship of dependency between the national of a non-EU country and the EU citizen and whether public policy grounds justify the entry ban must be assessed on a case-by-case basis

A number of nationals of non-EU countries (Armenia, Russia, Uganda, Kenya, Nigeria, Albania, Guinea), residing in Belgium, were ordered to return to their respective countries, and also banned from entering Belgium. With respect to a number of those persons, the return decision was taken on grounds of a threat to public policy. Subsequently, the individuals concerned submitted, in Belgium, an application for a residence permit, on the basis of their status as either a dependent relative in the descending line of a Belgian citizen, the parent of a minor Belgian child, or a lawfully cohabiting partner in a stable relationship with a Belgian citizen. Those applications were not examined by the competent Belgian authorities on the ground that the individuals concerned were persons who were subject to an entry ban that remained in force. Once an entry ban has become final it cannot, under national law, as a general rule, be extinguished or temporarily suspended unless there is lodged, outside Belgium, an application for its withdrawal or suspension.

Proceedings having been brought before it, the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium) decided to refer questions for a preliminary ruling to the Court of Justice. The referring court states that, in accordance with a national practice, the applications for residence for the purposes of family reunification were not examined, and were therefore not examined on their merits, on the ground that the nationals of non-EU countries concerned were individuals who were each subject to an entry ban. The referring court also states that the various EU citizens concerned do not travel regularly to another Member State as workers or service providers, and that those EU citizens have not developed or strengthened a family life with the nationals of non-EU countries during a genuine period of residence in a Member State other than Belgium. The question arises therefore whether either the EU directive on illegal staying or Article 20 TFEU (EU citizenship) are applicable in those situations[1].

In today's judgment, the Court recalls its case-law on EU citizenship, according to which there are very specific situations in which, despite the fact that the EU citizen concerned has not made use of his freedom of movement, a right of residence must nevertheless be granted to a national of a non-EU country who is a family member of that EU citizen. That holds true where, as a consequence of refusal of such a right, that citizen would be obliged in practice to leave the territory of the EU as a whole, thus depriving him of the genuine enjoyment of the substance of the rights conferred by that status.

The imposition of an obligation on a national of a non-EU country to leave the territory of the EU in order to request the withdrawal or suspension of the entry ban to which he is subject is therefore liable to undermine the effectiveness of EU citizenship. That is the case if compliance with that obligation has the consequence that, because of the existence of a family

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

relationship of dependency between that national of a non-EU country and an EU citizen, the EU citizen is, in practice, compelled to accompany the national of a non-EU country and, therefore, to leave, also, the territory of the EU for a period of time that, as stated by the referring court, is indefinite.

Next, the Court explains the circumstances in which a relationship of dependency, capable of justifying a derived right of residence for a family member of an EU citizen who has never exercised his right of freedom of movement may come into being. **The Court emphasises that, unlike minors (and in particular young children), an adult is, as a general rule, capable of living an independent existence apart from the members of his family. For an adult, a derived right of residence is therefore conceivable only in exceptional cases, where, having regard to all the relevant circumstances, there could be no form of separation of the individual concerned from the member of his family on whom he is dependent.** On the other hand, where the EU citizen is a minor, the assessment of the existence of such a relationship of dependency with a national of a non-EU country must be based on consideration, in the best interests of the child, of all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties to each of his parents, and the risks which separation from the parent who is a national of a non-EU country might entail for that child's equilibrium. In order to establish such a relationship of dependency, the existence of a family link with that national of a non-EU country, whether natural or legal, is not sufficient, and cohabitation with that national of a non-EU country is not necessary, though the latter is a relevant factor to be taken into account.

Further, the Court states that it is immaterial that the relationship of dependency relied on by a national of a non-EU country comes into being after the imposition on him of an entry ban.

Likewise, it is immaterial that the entry ban imposed on the national of a non-EU country has become final at the time when he submits his application for residence for the purposes of family reunification.

It is also immaterial that the entry ban may be justified by non-compliance with an obligation to return. Where **such a ban is justified on public policy grounds, such grounds cannot automatically lead to a refusal to grant the national of a non-EU country a derived right of residence**. A derived right of residence can be refused to a national of a non-EU country on public policy grounds only if it is apparent from a specific assessment of all the circumstances of the individual case, in the light of the principle of proportionality, a child's best interests and fundamental rights, that the national of a non-EU country represents a genuine, present, and sufficiently serious threat to public policy.

Last, Directive 2008/115[2] precludes a national practice pursuant to which a return decision can be adopted with respect to a national of a non-EU country, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life (in particular the interests of a minor child of that national) referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.

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.

The full text of the judgment is published on the CURIA website on the day of delivery.

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[2] Article 5.