

Anonymised version

Translation

C-720/20 – 1

Case C-720/20

Request for a preliminary ruling

Date lodged:

24 December 2020

Referring court:

Verwaltungsgericht Cottbus (Germany)

Date of the decision to refer:

14 December 2020

Applicant:

RO, legally represented

Defendant:

Federal Republic of Germany

[...]

VERWALTUNGSGERICHT COTTBUS (Administrative Court, Cottbus,
Germany)

DECISION

[...]

In the administrative court proceedings

RO, [legally] represented,

applicant,

[...]

Federal Republic of Germany, [...]

defendant,

concerning: Right to asylum

the 5th Chamber

on 14 December 2020

[...]

made the following order:

The proceedings are stayed.

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling under Article 267 TFEU: **[Or. 2]**

1. In the light of the objective of EU law to avoid secondary movements and of the principle of family unity expressed in that regulation, must Article 20(3) of Regulation (EU) No 604/2013 be applied by analogy in a situation where a minor child and its parents lodge applications for international protection in the same Member State, but the parents already enjoy international protection in another Member State, whereas the child was born in the Member State in which it lodged the application for international protection?
2. If the question is answered in the affirmative, should the minor child's application for asylum under Regulation (EU) No 604/2013 not be examined and should a transfer decision under Article 26 of the regulation be adopted, having regard to the fact that, for instance, the Member State in which that minor child's parents enjoy international protection is responsible for examining the minor child's application for international protection[?]
3. If the previous question is answered in the affirmative, is Article 20(3) of Regulation (EU) No 604/2013 also applicable by analogy in so far as, under the second sentence thereof, it is not necessary to initiate a procedure for taking charge of a child born subsequently, despite the fact that there is then a risk that the host Member State has no knowledge of the possible need to take charge of the minor child or that, in accordance with its administrative practice, it refuses to apply Article 20(3) of Regulation (EU) No 604/2013 by analogy and, consequently, there is a risk that the minor child will become a 'refugee in orbit' [...]
4. If Questions 2 and 3 are answered in the negative, can a decision on inadmissibility under Article 33(2)(a) of Directive 2013/32/EU be adopted by analogy in respect of a minor child who has lodged an application for international protection in a Member State even if it is not the child itself but

its parents who enjoy international protection in another Member State?
[Or. 3]

Reasons

The applicant was born in Germany on 21 December 2015. She is a national of the Russian Federation. The applicant's parents and her five siblings, some of whom are minors, are also nationals of the Russian Federation. The parents and the five siblings enjoy refugee protection in Poland. Protection in Poland was granted on 19 March 2012. In December 2012, the parents left Poland and travelled to Germany. They lodged applications for asylum there. The Polish authorities refused the [take charge] request of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) and referred to the refugee protection already granted [by Poland]. No final decision has been taken yet concerning the asylum applications of the applicant's parents and siblings in Germany. In 2016, the applicant submitted an application for asylum in Germany. There was no procedure for taking charge of the applicant under Regulation (EU) No 604/2013. By decision of 20 March 2019, the Federal Office for Migration and Refugees rejected the applicant's asylum application as inadmissible. It based its decision, in essence, on the fact that in accordance with Regulation No 604/2013 and, in particular, Articles 9, 10 and 20(3) thereof, another Member State was responsible for examining the asylum application.

The applicant [...] brought an action against that decision before the referring court.

Questions 1 to 3 are relevant to the decision because their answer will determine whether Germany is responsible for examining the applicant's application for international protection pursuant to the first subparagraph of Article 3(2) or the third subparagraph of Article 21(1) or Article 23(3) of Regulation (EU) No 6[0]4/2013, or whether the application is not to be examined in Germany and a transfer decision is to be taken pursuant to Article 26 of the regulation. Question 4 is relevant to the decision in so far as, if the answer is in the affirmative, the decision of the Federal Office for Migration and Refugees, which is contested in the present case, could also be understood, under national procedural law, as a decision on inadmissibility under Article 33(2)(a) of Directive 2013/32/EU.

[Or. 4]

[...]