Case C-230/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

9 April 2021

Referring court:

Raad voor Vreemdelingenbetwistingen (Belgium)

Date of the decision to refer:

6 April 2021

Applicant:

X, acting in her own name and as legal representative of her minor children, Y and Z

Defendant:

Belgische Staat

Subject of the action in the main proceedings

The applicant brought two actions before the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings), seeking annulment of the decisions of 17 March 2020 of the authorised representative of the minister van Sociale Zaken en Volksgezondheid, en van Asiel en Migratie (Minister for Social Affairs and Public Health, and of Asylum Policy and Migration) refusing to grant her a visa for family reunification with her daughter, who was recognised as a refugee in Belgium, and refusing to issue humanitarian visas for the applicant's two underage sons.

Subject and legal basis of the request for a preliminary ruling

Interpretation of the term 'unaccompanied minor' within the meaning of Article 2(f) read in conjunction with Article 10(3)(a) of Directive 2003/86.

Questions referred for a preliminary ruling

Should European Union law, in particular Article 2(f) read in conjunction with Article 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification be interpreted as meaning that a refugee who is an 'unaccompanied minor', and who resides in a Member State, must be 'unmarried' under national law in order to enjoy the right to family reunification with relatives in the direct ascending line?

If so, can a refugee minor whose marriage contracted abroad is not recognised for public policy reasons be regarded as an 'unaccompanied minor' within the meaning of Articles 2(f) and 10(3) of Directive 2003/86/EC?

Provisions of European Union law cited

Article 2(f), and Article 10(3) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Articles 7 and 24 of the Charter of Fundamental Rights of the European Union

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

Communication of 3 April 2014 from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification.

Provisions of national law cited

Article 9, Article 10(1)(1)(7), Article 13 and Article 61/14 of the wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals ('Law on foreign nationals'))

Articles 21, 27 and 35 of the Wetboek van internationaal privaatrecht (Code of private international law ('WIPR'))

Brief summary of the facts and the procedure in the main proceedings

1 The applicant's daughter (°02/02/2001) entered into a marriage as a minor in Lebanon in December 2016 with Y.B., who held a valid residence permit in Belgium.

2 She came to Belgium in August 2017. The Dienst Vreemdelingenzaken (Federal Public Service Foreign Affairs) did not recognise her marriage because it was a child marriage, which was considered incompatible with public policy. In September 2018, she was recognised as a refugee.

3 In December 2018, the applicant applied to the Belgian representation in Beirut (Lebanon) for a family reunification visa to join her daughter in Belgium, as well as two humanitarian visas for her minor sons.

4 In June 2019, the authorised representative of the minister van Sociale Zaken en Volksgezondheid, en van Asiel en Migratie ('the Minister') refused to issue a visa for family reunification and humanitarian visas for the applicant's sons. Those decisions were annulled in November 2019 by the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings).

5 In March 2020, the Minister's authorised representative took new decisions by which the aforementioned applications were again refused. In essence, it took the view that, in the light of Article 27 WIPR, the daughter's marriage was in fact a legally valid marriage in the country of origin and that, consequently, it was undeniable that she had already built up her own family unit in her country of origin and that therefore, even before her arrival in Belgium, she no longer belonged to her parents' family nucleus. It would be discriminatory and contradictory to claim that she still belonged to the family nucleus and could therefore bring her parents to Belgium.

Main submissions of the parties to the main proceedings

6 According to the Minister's authorised representative, the applicant does not fulfil the requirements of Article 10(1)(7) of the vreemdelingenwet (or Article 10(3)(a) of Directive 2003/86) because, even before her arrival in Belgium, her daughter no longer belonged to her parents' family nucleus by virtue of her marriage, which had been legally entered into in the country of origin. Pursuant to Article 10(1)(4) of the vreemdelingenwet and Article 4(1) of Directive 2003/86, the nuclear family consists of spouses and minor unmarried children.

7 The applicant submits, in essence, that neither the vreemdelingenwet nor Directive 2003/86 requires her daughter to be unmarried. Moreover, her daughter's marriage was not recognised in Belgium. According to the applicant, in order to have the right to family reunification with her parents, her daughter must merely be a minor and single within the meaning of Article 2(f) of Directive 2003/86, which is the case in this instance.

Brief summary of the reasons for the referral

8 The referring court takes the view, in essence, that, as far as it is aware, the Court of Justice has not yet had to rule on the question whether the refugee (minor) must be 'unmarried'.

9 According to the referring court, it is clear from the case-law of the Court of Justice (judgment of 13 November 1990, *Marleasing*, C-106/89, paragraph 8) that the terms relating to family reunification in the Belgian vreemdelingenwet must, as far as possible, be interpreted in the light of Directive 2003/86.

10 It takes the view that the situation of the applicant's daughter appears to correspond to that of an 'unaccompanied minor' within the meaning of Article 10(3)(a) read in conjunction with Article 2(f) of Directive 2003/86, since that directive does not mention anything about the marital status of the person concerned if the refugee reference person is an 'unaccompanied minor'. Although the daughter did indeed marry her current 'partner' in Lebanon in 2016, that (child) marriage was not recognised by the Belgian authorities.

11 The referring court observes that, according to the defendant, the 'minor children' referred to in Article 4 of Directive 2003/86 must be unmarried in order to be eligible for family reunification with a reference person residing in a Member State and that it is therefore discriminatory and contradictory for recognised refugees who are married minors to be allowed to bring their parents to join them.

12 The referring court therefore wishes to ascertain from the Court of Justice whether the term 'unaccompanied minor' refugee implies that that person must be 'unmarried' in order for his relatives in the direct ascending line to have the right to family reunification, although this is not stated as such in the definition in Directive 2003/86, and what the implication of an unrecognised foreign marriage is for the definition of 'unaccompanied minor'.