



Reports of Cases

Joined Cases C-356/11 and C-357/11

O and S
v
Maahanmuuttovirasto
and
Maahanmuuttovirasto
v
L

(Reference for a preliminary ruling from the Korkein hallinto-oikeus)

(Citizenship of the Union — Article 20 TFEU — Directive 2003/86/EC — Right to family reunification — Union citizens who are minor children living with their mothers, who are third country nationals, in the territory of the Member State of which the children are nationals — Permanent right of residence in that Member State of the mothers who have been granted sole custody of the Union citizens — Change in composition of the families following the mothers' remarriage to third country nationals and the birth of children of those marriages who are also third country nationals — Applications for family reunification in the Member State of origin of the Union citizens — Refusal of the right of residence to the new spouses on the ground of lack of sufficient resources — Right to respect for family life — Taking into consideration of the children's best interests)

Summary — Judgment of the Court (Second Chamber), 6 December 2012

1. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Beneficiaries — Family members of a Union citizen who are third country nationals — Condition — Union citizen having exercised his right of freedom of movement*
(European Parliament and Council Directive 2004/38, Art. 3(1))
2. *Citizenship of the Union — Provisions of the Treaty — Right to move and reside freely in the territory of the Member States — Refusal of a Member State to issue a residence permit to the new spouse of the parent of a Union citizen — Lawfulness — Conditions — Refusal not entailing for that citizen the denial of the genuine enjoyment of the substance of the rights conferred by the status of Union citizen*

(Art. 20 TFEU)

3. *Border controls, asylum and immigration — Immigration policy — Right to family reunification — Directive 2003/86 — Concept of sponsor — Third country national who is the parent of a child who is a Union citizen and of a child who is a third country national not having the status of Union citizen — Application for family reunification for the other parent of the reconstituted family who is himself a third country national — Included*

(Council Directive 2003/86, Art. 2(c))

4. *Border controls, asylum and immigration — Immigration policy — Right to family reunification — Directive 2003/86 — Respect for fundamental rights — Right to respect for family life — Obligation to take account of the child's best interests*

(Council Directive 2003/86, recital 2 and Arts 5(5) and 7(1)(c); Charter of Fundamental Rights of the European Union, Arts 7 and 24(2) and (3))

1. See the text of the decision.

(see paras 41, 42)

2. Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union.

To establish whether the refusal has that effect, it must be taken into account that the third country national who has sole custody of a child who is a Union citizen holds a permanent residence permit in the Member State in question, so that, in law, there is no obligation either for that person or for the dependent Union citizen to leave the territory of that Member State or of the European Union as a whole.

In the context of the assessment of reconstituted families, the effect which a decision by that person to leave the territory of the Member State of which the Union citizen is a national might have on family life is also relevant.

In this respect, however, the mere fact that it might appear desirable, for economic reasons or in order to preserve the family unit in the territory of the Union, for members of a family consisting of third country nationals and a Union citizen who is a minor to be able to reside with that citizen in the territory of the Union in the Member State of which he is a national is not sufficient in itself to support the view that the Union citizen would be forced to leave the territory of the Union if such a right of residence were not granted.

It is not a decisive factor in that assessment that the third country national for whom a right of residence is sought on the basis of family reunification lives or does not live together with the sponsor and the other family members, or that there is no biological relationship between that third country national and the Union citizen.

On the other hand, the fact that the third country national for whom a right of residence is sought is not a person on whom that citizen is legally, financially or emotionally dependent must be taken into consideration. It is the relationship of dependency between that citizen and the third country national that is liable to jeopardise the effectiveness of Union citizenship, since it is that dependency that would

lead to the Union citizen being obliged, in fact, to leave not only the territory of the Member State of which he is a national but also that of the European Union as a whole, as a consequence of such a refusal.

(see paras 49-56, 58, 82, operative part)

3. Applications for residence permits on the basis of family reunification for a third country national who sees to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, are covered by Directive 2003/86 on the right to family reunification.

In view of the purpose of that directive, which is to promote family reunification, and the protection it aims to give to third country nationals, in particular minors, the application of that directive cannot be excluded solely because one of the parents of a minor third country national is also the parent of a Union citizen, born of a previous marriage.

(see paras 68, 69, 82, operative part)

4. Article 7(1)(c) of Directive 2003/86 on the right to family reunification must be interpreted as meaning that, while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights of the European Union, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive.

Since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of Directive 2003/86 must be interpreted strictly. The margin which the Member States are recognised as having must not therefore be used by them in a manner which would undermine the objective and the effectiveness of that directive.

It is true that Articles 7 and 24 of the Charter, while emphasising the importance for children of family life, cannot be interpreted as depriving the Member States of their margin of appreciation when examining applications for family reunification. However, in the course of such an examination and when determining in particular whether the conditions laid down in Article 7(1) of Directive 2003/86 are satisfied, the provisions of that directive must be interpreted and applied in the light of Articles 7 and 24(2) and (3) of the Charter, as is moreover apparent from recital 2 in the preamble to and Article 5(5) of that directive, which require the Member States to examine the applications for reunification in question in the interests of the children concerned and with a view to promoting family life. It is therefore for the competent national authorities, when implementing Directive 2003/86 and examining applications for family reunification, to make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned.

(see paras 74, 79-82, operative part)