Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 26 October 2017[1]

Case C-550/16

A,
S
v
Staatssecretaris van Veiligheid en Justitie

(Request for a preliminary ruling
from the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands))

(Reference for a preliminary ruling — Border control, asylum and immigration — Immigration policy — Right to family reunification — Concept of 'unaccompanied minor' — Right of a refugee to family reunification with his parents — Temporary residence permit — Refugee aged under 18 at the time of arrival and at the time of application for asylum and over 18 at the time of application for family reunification — Relevant date for assessing unaccompanied minor status)

I. Introduction

1. What is the relevant date for assessing unaccompanied minor status? Is a third country national who arrives on the territory of a Member State as a minor and who is granted asylum only after attaining the age of majority, entitled to family reunification as an unaccompanied minor? These are, in essence, the questions which the Court is requested to answer.

2. This case will give the Court the opportunity to rule on the protection to be afforded to persons who arrive as minors in the European Union, obtain refugee status when they have attained the age of majority during consideration of their application for protection, and, after obtaining that status, initiate a family reunification procedure.

3. It will be necessary to weight the procedural stages which mark the path of those asylum seekers against the possible administrative delays and the inexorable passage of time in the life of a person who becomes an adult during examination of his asylum application and who applies for family reunification for his parents after obtaining refugee status.

4. At the end of my analysis, I shall propose that the Court adopt the interpretation which affords the greatest protection by holding that a third country national or stateless person under the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible for him by law or custom, who applies for asylum, then, during the procedure, attains the age of majority before being

1 Original language: French.

granted asylum, with retroactive effect to the date of the application, and subsequently applies for family reunification as granted to unaccompanied minor refugees under Article 10(3) of that directive, may be considered to be an unaccompanied minor, within the meaning of Article 2(f) of Directive 2003/86/EC. [2]

II. Legal context

A. EU law

5. Directive 2003/86 lays down the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

6. Recitals 2, 4, 6 and 8 to 10 of that directive are worded as follows:

'(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the [Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 ('the ECHR'),] and in the Charter of Fundamental Rights of the European Union. [3]

…

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

…

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

…

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children ...'

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

3 'The Charter'.

7. Article 2 of the directive sets out the following definitions:

'For the purposes of this Directive:

(a) "third country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) [EC, now Article 20(1) TFEU];

(b) "refugee" means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

…

(f) "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.'

8. Article 3 of Directive 2003/86 provides:

'1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

…

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.'

9. Article 4(2)(a) of that directive provides:

'The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin'.

10. Article 5 of that directive states:

'1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

…

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

…

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.'

11. Articles 9 to 12 in Chapter V of Directive 2003/86 specifically govern family reunification of refugees. Article 9(1) and (2) provides:

'1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.'

12. Article 10 of that directive states:

'1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.'

13. Article 11 of that directive provides:

'1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.'

14. Article 12 of Directive 2003/86 provides:

'1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.'

15. Pursuant to Article 20 thereof, the directive was to be transposed by the Member States into their respective national laws by no later than 3 October 2005.

B. Netherlands law

16. Pursuant to Article 29(2)(c) of the Vreemdelingenwet 2000 (Law on foreign nationals 2000) of 23 November 2000, a temporary residence permit for persons granted asylum, as referred to in Article 28 of that law, can be issued to the parents of a foreign national who is an unaccompanied minor within the meaning of Article 2(f) of the directive, where the parents, at the time of the arrival of the foreign national, were members of his or her family and travelled to the Netherlands with him or her or joined him within three months following the issue to that foreign national of a temporary residence permit pursuant to Article 28.

III. Facts of the main proceedings and the question referred for a preliminary ruling

17. The daughter of A and S, an Eritrean national, arrived in the Netherlands, alone, when she was a minor. She lodged an application for asylum in the territory of that Member State on 26 February 2014. During the examination of her application for asylum and when no final decision had yet been taken, the person concerned attained the age of majority. By a decision of 21 October 2014, the competent authorities of the Kingdom of the Netherlands granted her a residence permit for persons granted asylum, valid for five years, with retroactive effect to the date on which her application was lodged.

18. On 23 December 2014, VluchtelingenWerk Midden-Nederland, acting on behalf of the daughter of A and S, lodged an application for temporary residence permits for her parents and her three minor brothers for the purposes of family reunification.

19. By a decision of 27 May 2015, the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) dismissed that application on the ground that, at the time of the application for family reunification, the person concerned was an adult and therefore could not claim unaccompanied minor status enabling her to enjoy a preferential right to family reunification. The objection lodged in respect of that decision was dismissed on 13 August 2015.

20. On 3 September 2015, A and S brought an appeal against that decision before the referring court, the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands), claiming, inter alia, that it is apparent from Article 2(f) of Directive 2003/86 that, in order to determine whether a person qualifies as an 'unaccompanied minor', it is the date on which the person concerned entered the Member State at issue which is decisive. However, the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice) considers that it is the date on which the application for family reunification is lodged which is relevant in that regard.

21. The referring court points out that the Raad van State (Council of State, Netherlands) has held, in two judgments of 23 November 2015,[4] that the fact that a foreign national has attained the age of majority after arriving on the national territory may be taken into account for determining whether he falls within the scope of Article 2(f) of Directive 2003/86 and whether he may be regarded as an 'unaccompanied minor'.

22. However, according to the national court, that provision should be interpreted as meaning that the concept of 'unaccompanied minor' is assessed at the time of the arrival of the person concerned on national territory, owing to the use of the term 'arrive' and that only two exceptions to that principle are listed in Article 2(f) of Directive 2003/86, namely the situation of a minor originally accompanied and then left alone and, on the other hand, the situation of a minor who is unaccompanied when he arrives and is subsequently taken into the care of a responsible adult. The referring court states that neither of those exceptions to the right of unaccompanied minors to family reunification obtains in the case before it and that those exceptions must be interpreted strictly.

4 See judgments No 201501042/1/V1 and No 201502485/1/V1. The referring court challenges before the Court of Justice an interpretation with which it should normally abide, even though it does not come from the proper interpreter of the EU rules at issue in the main proceedings. According to the referring court, the Raad van State (Council of State) misinterpreted the provisions of Directive 2003/86 when they were not clear and should have given rise to an authoritative interpretation by the Court of Justice. Without wishing to engage in the dispute, I would nevertheless point out that there may be a legal controversy in this case, at least at national level.

23. In those circumstances, the Rechtbank Den Haag zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In matters relating to family reunification for refugees, must the term "unaccompanied minor", within the meaning of Article 2(f) of Directive 2003/86 on the right to family reunification, also cover a third-country national or stateless person below the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible by law or custom and who:

– applies for asylum,

– during the asylum procedure, attains the age of 18 on the territory of the Member State,

– is granted asylum with retroactive effect to the date of the application, and

– subsequently applies for family reunification?'

IV. My assessment

24. The Court is asked to answer, in essence, the question of which date is to be taken into consideration for deciding whether a third country national may be regarded as an unaccompanied minor and assert his right to family reunification, when he entered the territory of a Member State as a minor, applied for asylum, obtained that international protection after attaining the age of majority and then asserted his right to family reunification as an unaccompanied minor.

25. In that respect, the Court has at least three options, namely to consider that it is (i) the date on which the person concerned entered the territory of the Member State or (ii) the date on which he lodged the application for asylum or, (iii) the date on which he lodged the application for family reunification which will be relevant for assessing the right of the person concerned to benefit, as an unaccompanied minor, from the provisions of Directive 2003/86.

26. It follows from Article 2(f), in conjunction with Article 10(3) of Directive 2003/86, that the relevant date in that regard must be prior to that of the grant of international protection. Therefore, that date can only be the date on which the application for asylum was lodged given, (i) the use of the term 'arrive' in Article 2(f) of that directive, (ii) the fact that recognition of that status is retroactive, in that it takes effect from the date on which the application was lodged and, (iii) that that date is the most precise available to the authority for determining with certainty the age of the person concerned.

27. Indeed, in the order for reference, the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) points out that it is clear from the very wording of Article 2(f) of that directive that that provision is to be understood to mean that the relevant date for determining whether the applicant is to be regarded as an unaccompanied minor must be the date on which the residence permit is granted by the competent authority and not that on which the application for family reunification is lodged. Since the grant of refugee status is a declaratory act and has retroactive effect, it is therefore definitely the date of the application for a residence permit which will be relevant for assessing whether the applicant falls within the definition of unaccompanied minor.

28. The retroactivity of a measure cannot be accompanied by a redistribution of its effects. The fact that the Netherlands legislation protectively provides that the grant of refugee status has retroactive effect to the date on which the application was lodged necessarily means that the status thus conferred comprises a series of derivative effects from the date of the application for international protection, and therefore including a right to family reunification, as is apparent from Directive 2003/86 when, as in the present case, refugee status is granted to a person who submitted her

application when she was a minor. Moreover, the consequence of the protective aspect of that national measure is to do away with inequalities of treatment which would result from varying durations of treatment of asylum applications. Furthermore, not to grant all the rights conferred by refugee status, retroactively, as provided for in Netherlands law, would clearly be contrary to the best interests of the child who submitted an application for asylum before becoming an adult.

29. Moreover, family reunification may be applied for, or take place, only when a final decision has been taken on the application for a residence permit by the competent national authorities [5] in accordance with Article 3(1) of Directive 2003/86. Since recognition of refugee status is one of the conditions for lodging an application for family reunification, it would be contrary to the objectives pursued by that directive, and by the EU and international instruments which protect refugees, to give effect to that preferential right only for persons who are still minors when they obtain international protection, even though this is declaratory and has retroactive effect to the date on which the application was lodged.

30. It should be noted that, by this reading favouring family reunification, the Court would avoid a formalistic interpretation of Article 2(f) of Directive 2003/86, which would hinder the attainment of the directive's objectives. However, it is not a question here of allowing every minor who arrives on the territory of the Member States to benefit from the right to family reunification. It is nevertheless possible to confer the right on persons who arrive as minors on the territory of the Member States and who obtain refugee status, even after attaining the age of majority, that is to say at the time family reunification becomes possible, because we must remember that, under Article 3(1) of that directive, a person seeking to benefit from the provisions relating to family reunification must have a residence permit, preferably one which is long-term or has a very real possibility of becoming a permanent right of residence. [6]

31. That is why, in the present case, in order to submit an application for family reunification, the daughter of A and S was entitled to wait until she had right of asylum, for five years, in accordance with Article 9(1) of Directive 2003/86. She refrained from submitting an application for family reunification before she had that right of residence; that, (i), would have been contrary to the provisions of Article 3(2)(a) and Article 9(1) of that directive, (ii) would have rendered the outcome of the family reunification procedure uncertain and, (iii) would have had the effect of clogging the national authorities with an application for family reunification which might not have succeeded because the applicant did not have a residence permit. The relevant date for assessing unaccompanied minor status must therefore be the date from which family reunification becomes possible, that is to say, when the competent authority accepts the application for a residence permit. [7] In the case in the main proceedings, in view of the declaratory and retroactive nature of the grant of refugee status, that is the date on which the asylum application was lodged.

32. In short, the respectful attitude, by the person concerned in the present case to the procedures and their sequence adopted should not be to her detriment and should even be commended.

33. Indeed, in the particular circumstances of the present case, account should be taken of the lengthy processing of asylum claims and the inexorable passage of time which made the person concerned an adult on the day on which she was granted asylum and could, therefore, submit an application for her parents, one of whom was in Ethiopia and the other in Israel, to join her in the Netherlands in order to resume the family relationships and private life to which every third country national is entitled under Article 8 of the ECHR and Article 7 of the Charter, as interpreted both by the Court of Justice and by the European Court of Human Rights.

5 See, *a contrario*, the opinion of Advocate General Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, points 34 to 36).

6 See, to that effect, my Opinion in *O and Others* (C-356/11 and C-357/11, EU:C:2012:595, point 56).

7 See, by analogy, the Opinion of Advocate Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, points 34 and 36).

34. In that regard, recital 6 of Directive 2003/86 seeks to protect the family and to preserve family life. That means that that text is to be interpreted in accordance with Article 8 of the ECHR and Article 7 of the Charter, in a non-restrictive manner, so as not to deprive that directive of its effectiveness or disregard its objective, which is to promote family reunification. [8]

35. Moreover, the Court has already had occasion to point out that it is apparent from recital 2 of that directive that measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law.

36. It should also be recalled that, according to the Court's case-law, the right to respect for private and family life guaranteed in Article 7 of the Charter must be read in conjunction with the obligation to have regard to the child's best interests, which is recognised in Article 24(2) of the Charter. In accordance with the requirements of the latter provision, the Member States must make the best interests of the child a 'paramount consideration' when, acting through public or private authorities, they issue a legislative act relating to children. That requirement is expressly recalled in Article 5(5) of Directive 2003/86. Moreover, the Court has held that the Member States must ensure that the child can maintain on a regular basis a personal relationship with both parents. [9]

37. Although it does not necessarily follow from the case-law of the European Court of Human rights that the right to family reunification may be applied to adult children, as part of the protection of private and family life, it is nevertheless apparent from its case-law that the ties between the child and his family are to be maintained and that only exceptional circumstances may lead to a severing of the family ties. It follows from that case-law that everything must be done to preserve personal relations and family unity or to 'rebuild' the family. [10]

38. In that respect, the European Court of Human Rights takes into consideration several individual circumstances connected to the child in order to best determine his interest and ensure his wellbeing. It has regard to, inter alia, his age, his maturity, and his degree of dependence on his parents, and takes due account, in that respect, of the presence or the absence of those parents. It also takes account of the environment in which he lives and the situation in his country of origin in order to assess the difficulties which he might encounter there. [11] It is by taking all those factors into consideration and weighing them against the general interest of the contracting States that the European Court of Human Rights assesses whether those States have, in their decisions, struck a fair balance and respected the provisions of Article 8 of the ECHR.

39. The Court of Justice has held that the competent national authorities must, when implementing Directive 2003/86 and examining applications for family reunification, make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned. [12]

8 See, to that effect, judgment of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraphs 43 and 44), and my Opinion in *O and Others* (C-356/11 and C-357/11, EU:C:2012:595, point 63).

9 See my Opinion in *O and Others* (C-356/11 and C-357/11, EU:C:2012:595, points 77 and 78 and the case-law cited), and judgment of 6 December 2012, *O and Others* (C-356/11 and C-357/11, EU:C:2012:776, paragraph. 76).

10 See my Opinion in *O and Others* (C-356/11 et C-357/11, EU:C:2012:595, point 73), and ECtHR of 6 July 2010, *Neulinger and Shuruk v. Switzerland* (CE:ECHR:2010:0706JUD004161507, § 136) and the case-law cited.

11 See my Opinion in *O and Others* (C-356/11 and C-357/11, EU:C:2012:595, point 74), and ECtHR of 21 December 2001, *Sen v. Netherlands* (CE:ECHR:2001:1221JUD003146596, § 37), and of 31 January 2006, *Rodrigues da Silva and Hoogkamer v. Netherlands*, (CE:ECHR:2006:0131JUD005043599, § 39). See also judgment of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 56).

12 See, to that effect, judgment of 6 December 2012, *O and Others* (C-356/11 and C-357/11, EU:C:2012:776, paragraph 81).

40. Accordingly, if that balanced assessment were made in the present case, it would have to be noted that the daughter of A and S arrived alone and a minor on the territory of the Kingdom of the Netherlands, that she comes from Eritrea and that giving her the right to family reunification would allow the whole family to be rebuilt. That would promote the right to respect for the private and family life of all its members, regardless of the fact that, on the day the competent authority of the Member State rules on the application for family reunification, the party concerned, who arrived as an unaccompanied minor on the territory of the Kingdom of the Netherlands, has become an adult and can no longer be regarded, strictly speaking, as a child.

41. Therefore, the possibility of granting the right to family reunification to a person, such as the daughter of the applicants in the main proceedings, who arrived as an unaccompanied minor on the territory of a Member State, but who obtained refugee status after attaining the age of majority and could therefore not claim the benefit of the provisions relating to the right to family reunification until after that event, in accordance with Article 3(2)(a) of Directive 2003/86, does not seem to go beyond the objectives set for the Member States.

42. Moreover, as the applicants in the main proceedings point out, the right to family reunification as provided for in Article 10(3) of that directive cannot depend on the speed with which the administration of the Member State can process claims for asylum, particularly where the persons concerned attain, within a few months, the age of majority, even though the Member States are regularly called upon, by the institutions, to give priority to claims for asylum from unaccompanied minors, in order to take account of their special vulnerability which requires specific protection. [13]

43. In the case in the main proceedings, the person concerned took eight months to obtain refugee status following her arrival on the territory of the Kingdom of the Netherlands, The case is therefore subject, fairly typically, to the habitual delays in handling asylum claims, even although Article 23(2) of Directive 2005/85/EC, [14] applicable at the time of the facts, provided that asylum claims were to be handled as soon as possible, within approximately six months, as the European Commission emphasises in its observations.

44. Furthermore, I note, in that regard, that the Court has held that preference should be given to an interpretation which ensures that the success of applications for family reunification depends mainly on circumstances attributable to the applicant, not to the administration, such as the lengthy handling of the application. [15]

45. Those factors favour a broad interpretation of the combined provisions of Article 2(f) and Article 10(3) of Directive 2003/86, given the usual length of time taken to handle asylum claims and the possibility for the authorities to give priority to the cases of certain asylum applicants, particularly when they are close to the age of majority.

46. Moreover, the declaratory character of the grant of refugee status means that the Member States cannot try to avoid their obligations or to circumvent them to the point where they undermine the rules relating to the Common European Asylum System, by refusing to deal expediently with claims for asylum from minors who are unaccompanied on their territory, with the unspoken aim of not implementing the preferential right to family reunification of unaccompanied minor refugees. It is necessary to prevent a strict application of those rules which would have the effect of discouraging asylum seekers and further increasing the obstacles already faced by those persons and their families. [16]

13 See the declaration of Frans Timmermans, first Vice-President of the European Commission, of 30 November 2016, calling on the Member States to speed up the registration of unaccompanied minors and improve their protection.

14 Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13.

15 See, by analogy, judgment of 17 July 2014, *Noorzia* (C-338/13, EU:C:2014:2092, paragraph 17).

16 See, by analogy, my Opinion in *Danqua* (C-429/15, EU:C:2016:485, points 75 to 79). See also, to that effect, ECtHR, 10 July 2014, *Tanda-Muzinga v. France*, (CE:ECHR:2014:0710JUD000226010, § 75 and 76).

47. However, it is not a matter here of setting out a casuistic argument with the aim of establishing that, during a certain time, the preferential right of minors to obtain family reunification must be maintained even when they attain the age of majority. It is not a question of denying the legal effects of attaining the age of majority. Nevertheless, it is possible, in a situation such as that in the main proceedings, to grant very young adult refugees the benefit of the protective provisions of Directive 2003/86, given the sequence of the procedures, the approaching attainment of the age of majority and the opportunity to facilitate family reunification.

48. It must be considered that, in the particular circumstances of this case and, once again, in view of the declaratory and retroactive character of the grant of refugee status, which permits the submission of an application for family reunification, the fact of according the right to family reunification to a person who submitted a claim for asylum when she was a minor does not constitute an over broad interpretation of the provisions of that directive.

49. If the Court were not to accept my proposal, it would be necessary to point out, in the alternative, that, in the light of recitals 8 and 10 of that directive, the Member States must lay down more favourable conditions for refugees to exercise their right to family reunification and may authorise family reunification for relatives in the direct ascending line. The only effect of attaining the age of majority is to extinguish the preferential right and the more favourable rules enjoyed by the person concerned when he or she was a minor in respect of his or her right to family reunification.

50. There are also EU and international instruments which provide that applications for family reunification lodged by persons with refugee status must be examined by the States with particular expediency and understanding.[17]

51. Therefore, even if, in the present case, the daughter of A and S were not considered to be an unaccompanied minor, the provisions of Directive 2003/86 could not be interpreted as making it impossible for her to obtain family reunification for her relatives in the ascending line, in accordance with the provisions of Article 4(2)(a) of that directive, which provides that the Member States may authorise the entry and residence, for the purposes of family reunification, of the sponsor's first-degree relatives in the direct ascending line, where they are dependent on the sponsor and do not enjoy proper family support in their country of origin.

52. It is therefore for the referring court to determine whether national law provides for the possibility of granting an application for family reunification for a refugee's relatives in the ascending line and whether the present case fulfils the conditions for doing so.

53. However, to apply that interpretation to the present case would involve considering whether a person who has recently attained the age of majority is, on her own, able to assume responsibility for the needs of a whole family.

17 See the judgment of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 57), which notes that Article 9(1) of the Convention on the Rights of the Child which was adopted by the General Assembly of the United Nations in its Resolution 44/25 of 20 November 1989 and came into force on 2 September 1990, provides that Member States are to ensure that a child shall not be separated from his or her parents against their will and that, according to Article 10(1) of the Convention, it follows from that obligation that applications from a child or his or her parents to enter or leave a Member State for the purpose of family reunification are to be dealt with by Member States in a positive, humane and expeditious manner. See also Article 22 of that Convention, which enshrines the right of every child to live with his or her parents. See, further, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons of 25 July 1951, and the judgment of the Court of Human Rights of 10 July 2014, *Tanda-Muzinga v. France*, (CE:ECHR:2014:0710JUD000226010, § 44 and 45 and also paragraphs 48 and 49, which also refer to Recommendation No R (99) 23 of the Committee of Ministers of the Council of Europe on family reunion for refugees and other persons in need of international protection, adopted on 15 December 1999, and also the Memorandum of 20 November 2008 by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to France from 21 to 23 May 2008).

54. I consider that it is necessary to afford the most extensive protection in order to respond, in so far as possible, to the particular vulnerability of unaccompanied minors arriving on the territory of the Member States, and of young adults who have refugee status [18] and whose degree of maturity remains to be assessed, and that this would be unlikely to jeopardise the objectives set by the Union legislature with regard to stemming migratory flows.

55. It will be noted that family reunification constitutes the rule [19] and that exceptions to that rule are to be interpreted strictly. Moreover, allowing family reunification through the child sponsor does not represent any particular danger for national policies, since parents may themselves apply for family reunification for their children, when these are minors and dependent.

56. That means that, in that type of family reunification, it is necessary to assess dependency as well as the sentimental and material ties. Therefore, it cannot be accepted, above all in our contemporary societies, that the relationship of dependency between parents and children ceases immediately upon the date on which the child attains the age of majority and can no longer be regarded as a minor child.

57. Moreover, Directive 2003/86 seeks to address the vulnerability of the persons concerned. To deny the vulnerability of persons who have arrived as minors from Eritrea on the territory of the Member States and have obtained refugee status, even if they have become adults in the meantime, would be contrary to the objectives pursued by the Union legislature.

58. It is apparent from all the foregoing that a person is to be regarded as an unaccompanied minor, within the meaning of Article 2(f) of that directive, if he or she is a third country national or stateless person under the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible for him or her by law or custom, who applies for asylum, then, during the procedure, attains the age of majority before being granted asylum, with retroactive effect to the date of the application, and subsequently applies for family reunification as granted to unaccompanied minor refugees under Article 10(3) of that directive.

59. If the Court were not to agree with that interpretation, it would be necessary to ponder the Union legislature's approach in adopting Directive 2003/86, without expressly stating the date to be taken into consideration for assessing unaccompanied minor status, within the meaning of Article 2(f) of that directive. By so doing, it either opted for full harmonisation, leaving the Member States no room to manœuvre, or it opted to allow the Member States a wide margin of discretion to determine, albeit in compliance with the principles of equivalence and effectiveness, the most appropriate moment for assessing a person's right to benefit from the provisions relating to family reunification, in accordance with Article 10(3) of that directive.

60. In that regard, contrary to the argument of the Kingdom of the Netherlands, the Republic of Poland and the Commission, these are not optional but mandatory provisions, in accordance with Article 10(3)(a) of Directive 2003/86. If the refugee is an unaccompanied minor, the Member States 'shall authorise' the entry and residence for the purposes of family reunification of his relatives in the

18 The Council of Europe's group of experts on Action against Trafficking in Human Beings, in its fifth and sixth general activity reports (covering the periods from 1 October 2014 to 31 December 2015 and from 1 January 2016 to 31 December 2016, available at the following internet addresses: https://rm.coe.int/168063093d and https://rm.coe.int/1680706a43), recommends that specific protection be afforded to migrant or asylum seeking children and adolescents, in light of the risk of human trafficking to which they are exposed. That said, that extensive protection must extend to any risk incurred by third country minors and young adults who are on the territory of the Member States. More particularly, that group of experts, in its statement of 28 July 2017, on the occasion of the 4th World Day against Trafficking in Persons, available at the following internet address: http://www.coe.int/fr/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/states-must-act-urgently-to-protect-refugee-children-from-trafficking?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Ffr%2Fweb%2Fportal%2Fnews-2017%3Fp_p_id%3D101_INSTANCE_StEVosr24HJ2%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1 inter alia criticised the restrictions on family reunification in many States.

19 See, to that effect, the judgment of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraph 43), and my Opinion in *O and Others* (C-356/11 and C-357/11, EU:C:2012:595, point 59).

direct ascending line. That provision is worded in imperative form and imposes specific positive obligations on the Member States. The Member States therefore have no margin of discretion and, if there were such a discretion, it could not be used in a manner which would undermine the objective of that directive, which is to promote family reunification. [20]

61. Refugees who are unaccompanied minors have a right to the family reunification of their first-degree relatives in the direct ascending line. The Court has also held, in that regard, that Article 4(1) of Directive 2003/86 imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the directive, to authorise family reunification of certain members of the sponsor's family, without leaving them a margin of appreciation. [21]

62. The Court has also stated that, although the Member States nevertheless had a certain latitude, under Directive 2003/86, to lay down conditions for exercising the right to family reunification, that freedom must be interpreted strictly, since authorisation of family reunification is the general rule. [22]

63. Therefore, the fact that the Union legislature made no mention of the date for assessing the right to family reunification when the person requesting it is an unaccompanied minor, and those for whom it is requested are his relatives in the ascending line, cannot be seen as granting a latitude to the Member States to assess the conditions for benefiting from that principle of protection and that preferential right. It is only if the person concerned is no longer regarded as an unaccompanied minor that the Member States have a margin of appreciation for allowing family reunification.

64. Therefore, application of the principles of equivalence and effectiveness must be excluded in replying to the question referred to the Court for a preliminary ruling if the Court considers, as I propose, that a person who arrives as a minor on the territory of a Member State and obtains refugee status only after attaining the age of majority must nevertheless be regarded as an unaccompanied minor within the meaning of Article 2(f) of Directive 2003/86 and may therefore claim the preferential right to family reunification provided for in Article 10(3) of that directive.

65. If the Court does not agree with me regarding the mandatory character of the provisions at issue in the main proceedings and the possibility of regarding the person concerned as an unaccompanied minor, then it should be pointed out that taking Article 2(f) of Directive 2003/86 to mean that the date to be taken into consideration for deciding whether the applicant has a right to family reunification is that on which the application for reunification is lodged would not meet the requirement for effectiveness. Such a reading would hinder a person's ability to benefit from family reunification when, as has been stated, the objective of that directive is precisely to promote protection of the family, inter alia by recognising the right of refugees to family reunification. [23]

20 See, by analogy, the Opinion of Advocate General Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, points 25 and 61).

21 See judgments of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 60), and of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraph 41). See also, to that effect, the Opinion of Advocate General Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, point 23).

22 See judgments of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraph 43), and of 6 December 2012, *O and Others* (C-356/11 and C-357/11, EU:C:2012:776, paragraph 74), and the Opinion of Advocate General Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, point 24).

23 See judgment of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 88), in which the Court notes that, although the Member States have a margin of discretion, under certain provisions of Directive 2003/86, they are still required to examine applications for family reunification in the interests of the child and with a view to promoting family life.

66. It follows from all the foregoing that it is proposed that the Court rule that a third country national or stateless person under the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible for him by law or custom, who applies for asylum, then, during the procedure, attains the age of majority before being granted asylum, with retroactive effect to the date of the application, and subsequently applies for family reunification as granted to unaccompanied minor refugees under Article 10(3) of that directive, may be considered to be an unaccompanied minor, within the meaning of Article 2(f) of Directive 2003/86.

V. Conclusion

67. In the light of the foregoing considerations, I propose that the Court reply as follows to the question referred for a preliminary ruling by the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands):

A third country national or stateless person under the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible for him by law or custom, who applies for asylum, then, during the procedure, attains the age of majority before being granted asylum, with retroactive effect to the date of the application, and subsequently applies for family reunification as granted to unaccompanied minor refugees under Article 10(3) of Council Directive 2003/86/EC of 22 December 2003 on the right to family reunification, may be considered to be an unaccompanied minor, within the meaning of Article 2(f) of that directive.