



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

17 November 2022\*

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Directive 2003/86/EC – Article 2(f) – Article 10(3)(a) – Concept of ‘unaccompanied minor’ – Right to family reunification – Refugee minor who is married at the time of her entry into the territory of a Member State – Child marriage not recognised in that Member State – Cohabitation with the spouse lawfully residing in that Member State)

In Case C-230/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium), made by decision of 6 April 2021, received at the Court on 9 April 2021, in the proceedings

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

v

**Belgische Staat**

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra, N. Jääskinen (Rapporteur) and M. Gavalec, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 31 March 2022,

after considering the observations submitted on behalf of:

- X, acting in her own name and as legal representative of her minor children, Y and Z, by J. Schellemans, K. Verhaegen and K. Verstrepen, advocaten,
- the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by D. Matray, S. Matray, avocats, and by S. Van Rompaey, advocaat,
- the European Commission, by C. Cattabriga and S. Noë, acting as Agents,

\* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 16 June 2022,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(f) and Article 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).
- 2 The request has been made in proceedings between X, acting in her own name and as legal representative of her minor children, Y and Z, and the Belgische Staat (Belgian State), concerning the rejection of her application for a visa for the purpose of family reunification with her daughter and the rejection of her applications for humanitarian visas for Y and Z.

### **Legal context**

#### *Directive 2003/86*

- 3 Recitals 2 and 8 of Directive 2003/86 state:

‘(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 European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

...

(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.’

- 4 Article 1 of that directive is worded as follows:

‘The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.’

- 5 Article 2(f) of that directive defines ‘unaccompanied minor’ as follows:

‘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.’

6 Article 4(1), (2) and (5) of that directive states:

‘1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

- (a) the sponsor’s spouse;
- (b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- (c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- (d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. 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;

...

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.’

7 Article 5(5) of Directive 2003/86 provides:

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

8 Article 10(3)(a) of that directive provides:

‘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)’.

***The Dublin III Regulation***

9 Article 2(g) of 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 (OJ 2013 L 180, p. 31; ‘the Dublin III Regulation’), includes the following definition:

‘For the purposes of this Regulation:

...

- (g) “family members” means, in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present on the territory of the Member States:

...

- when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present’.

10 Article 8(1) of that regulation provides:

‘Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.’

11 Article 9 of that regulation provides:

‘Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

12 X, who states that she is of Palestinian origin, has a daughter born on 2 February 2001. On 8 December 2016, that daughter, who was then 15 years old, married Y.B. in Lebanon.

- 13 On 28 August 2017, X's daughter arrived in Belgium to join Y.B., who held a valid residence permit in that Member State.
- 14 On 29 August 2017, the guardianship service of the FOD Justitie (Federal Public Service for Justice, Belgium) deemed X's daughter to be an unaccompanied foreign minor and assigned her a guardian.
- 15 On 20 September 2017, X's daughter lodged an application for international protection with the Belgian authorities.
- 16 On the same day, the Dienst Vreemdelingenzaken (Office for asylum and immigration, Belgium) refused to recognise the marriage certificate of X's daughter on the ground that it was a child marriage, which was incompatible with public policy, pursuant to the relevant provisions of the Belgian Private International Law Code.
- 17 On 26 September 2018, X's daughter was recognised as a refugee.
- 18 On 18 December 2018, X applied to the Belgian Embassy in Lebanon, first, for a visa for the purpose of family reunification with her daughter and, second, for humanitarian visas for her underage sons, Y and Z.
- 19 By three decisions of 21 June 2019, the 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, Belgium) ('the Minister') rejected the visa applications submitted by X on 18 December 2018. Those decisions were annulled by the referring court in a judgment of 7 November 2019.
- 20 Following that annulment, on 17 March 2020 the Minister adopted three new decisions refusing those visas. In those decisions, the Minister found, in essence, that, in the light of the Belgian legislation on foreign nationals, certain provisions of which transpose Directive 2003/86, the nuclear family consists of spouses and unmarried minor children. Consequently, X's daughter, following a marriage, valid in the country in which it was contracted, is no longer a member of her parents' nuclear family.
- 21 On 10 August 2020, X brought an action against those decisions before the referring court.
- 22 In support of her action, X claims that neither the Belgian legislation on foreign nationals nor Directive 2003/86 requires that a refugee be unmarried in order to be able to enjoy the right to family reunification with his or her parents. Furthermore, since her daughter's marriage certificate was not recognised in Belgium, it has no legal effect in that Member State. She claims that her daughter must satisfy only two conditions in order to benefit from the right to family reunification with her parents and that those conditions are met since her daughter is, first, a minor and, second, unaccompanied, within the meaning of Article 2(f) of Directive 2003/86.
- 23 The referring court finds that X's daughter's situation appears to fall within the concept of 'unaccompanied minor' within the meaning of Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) thereof. In that regard, it notes that that directive makes no mention of the marital status of the unaccompanied minor. However, that court observes that

account should also be taken of Article 9 of the Dublin III Regulation, which requires a refugee minor to be unmarried in order for the Member State in which he or she resides to be responsible for processing his or her parents' application for international protection.

24 It is in those circumstances that the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should European Union law, in particular Article 2(f) read in conjunction with Article 10(3)(a) of [Directive 2003/86] 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?

(2) 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]?'

### **The questions referred for a preliminary ruling**

#### ***The first question***

25 By its first question, the referring court asks, in essence, whether Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) of that directive, must be interpreted as meaning that, in order to acquire the status of sponsor for the purposes of family reunification with his or her first-degree relatives in the direct ascending line, an unaccompanied refugee minor residing in a Member State must be unmarried.

26 It should be recalled at the outset that it follows from the settled case-law of the Court that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 20 June 2022, *London Steam-Ship Owners' Mutual Insurance Association*, C-700/20, EU:C:2022:488, paragraph 55).

27 In the first place, it is apparent from the wording of Article 10(3)(a) of Directive 2003/86 that, if the refugee is an unaccompanied minor within the meaning of Article 2(f) of that directive, the Member States '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)'.

28 Thus, Article 10(3)(a) of Directive 2003/86 imposes on the Member States a specific positive obligation to authorise, in the situation set out in that provision, the family reunification of first-degree relatives of the sponsor in the direct ascending line. The right to family reunification thus granted to unaccompanied refugee minors is not subject to a margin of discretion on the part of the Member States nor to conditions laid down in Article 4(2)(a) of that directive (see, to that effect, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 34).

- 29 Article 10(3)(a) of Directive 2003/86 does not specifically provide that a refugee minor must be unmarried for the entry and residence of his or her first-degree relatives in the direct ascending line to be authorised for the purposes of family reunification.
- 30 Furthermore, pursuant to the wording of Article 2(f) of Directive 2003/86, an unaccompanied minor is defined as ‘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’.
- 31 The Court has already held that that definition lays down two conditions, namely that the person concerned is a ‘minor’ and he or she is ‘unaccompanied’ (judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 37).
- 32 As the Advocate General observed in point 28 of his Opinion, that definition does not in any way refer to the marital status of the minor and does not require the minor to be unmarried in order to be regarded as an unaccompanied minor.
- 33 As regards, in the second place, the context of Article 10(3)(a) of Directive 2003/86, it must be pointed out that that directive contains provisions which expressly refer to situations in which the marital status of the minor is taken into account.
- 34 In particular, Article 4(1) of that directive, which determines which of the sponsor’s family members are able to enjoy the right to family reunification, provides that ‘the minor children referred to in this Article must ... not be married’. Thus, under that provision, the minor children of the parent sponsor may enter and reside in the European Union on the basis of family reunification only if they are unmarried.
- 35 The fact that the EU legislature laid down such a condition as regards the marital status of the minor children of a parent sponsor, but not for the unaccompanied refugee minor sponsor, appears to demonstrate its intention not to restrict the benefit of Article 10(3)(a) of Directive 2003/86 only to unmarried unaccompanied refugee minors.
- 36 Moreover, contrary to what is claimed by the Belgian Government, that interpretation of the context of Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) of that directive, does not give rise to unequal treatment between the situation of a married minor who applies for family reunification with his or her relative sponsor in the ascending line, referred to in Article 4(1) of Directive 2003/86, and that of a married unaccompanied refugee minor sponsor whose first-degree relative in the direct ascending line applies for family reunification, as provided for in Article 10(3) of that directive, since those two situations are not comparable.
- 37 An unaccompanied refugee minor residing alone in the territory of a State other than his or her State of origin is in a particularly vulnerable position which justifies the promotion of family reunification with his or her first-degree relatives in the direct ascending line outside the European Union. That difference in situation justifies the latter’s right to family reunification not being subject to the conditions laid down in Article 4(2)(a) of Directive 2003/86, but to those laid down in Article 10(3)(a) thereof, which seeks specifically to ensure increased protection for refugees who are unaccompanied minors (see, to that effect, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 44).

- 38 That protection is all the more necessary since the Member States may, in accordance with Article 4(5) of that directive, impose, for the purposes of family reunification of spouses, a minimum age requirement on the sponsor and his or her spouse before the latter can join the former. In such a situation, an interpretation of Article 10(3)(a) of that directive which would refuse to grant reunification with first-degree relatives in the direct ascending line, where the unaccompanied refugee minor sponsor is married, would place that minor in a particularly vulnerable situation since, in the absence of his or her spouse and his or her relatives in the ascending line, he or she would be deprived of any family network in the Member State in which he or she is located.
- 39 The Belgian Government submits that Article 9 and the last indent of Article 2(g) of the Dublin III Regulation require that the refugee minor should not be married and that the family already existed in the country of origin in order for the Member State in which that refugee resides to be responsible for processing the application for international protection of his or her mother or father. However, that regulation does not concern the conditions governing the right to family reunification of unaccompanied refugee minors, but the determination of the Member State responsible for examining an asylum application lodged in one of the Member States. That regulation is therefore not relevant for the purposes of the dispute in the main proceedings.
- 40 In the third place, it must be recalled that, according to Article 1 thereof, the purpose of Directive 2003/86 is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.
- 41 In that regard, recital 8 of that directive states that it provides more favourable conditions for refugees for the exercise of their right to family reunification, since their situation requires special attention on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. In accordance with that objective, that directive seeks to facilitate the family reunification of an unaccompanied refugee minor with his or her first-degree relatives in the direct ascending line.
- 42 Under Article 4(2)(a) of Directive 2003/86, the possibility of such reunification is, in principle, left to the discretion of each Member State and subject, inter alia, to the condition that the first-degree relatives in the direct ascending line are dependent on the sponsor and that they are deprived of the necessary family support in the country of origin. By contrast, as has been pointed out in paragraph 28 of the present judgment, Article 10(3)(a) of that directive derogates from that principle.
- 43 Moreover, as recalled in paragraph 37 of the present judgment, Directive 2003/86 not only pursues, in a general way, the objective of promoting family reunification and granting protection to third-country nationals, in particular minors, but by Article 10(3)(a) thereof, seeks specifically to guarantee an additional protection for those refugees who are unaccompanied minors (judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 44 and the case-law cited).
- 44 In the light of that context, an interpretation of Article 10(3)(a) of Directive 2003/86 which restricts the benefit of the right to family reunification with their first-degree relatives in the direct ascending line only to unmarried unaccompanied refugee minors would run counter to that objective of special protection.



- 45 As the Advocate General stated in point 46 of his Opinion, such an interpretation would have the consequence that a married unaccompanied refugee minor whose spouse resides in the territory of the European Union would not enjoy the enhanced protection conferred on him or her by Directive 2003/86, even though the particular vulnerability of minors is not mitigated as a result of marriage. On the contrary, the fact that a minor is married may point, specifically in the case of minor girls, to exposure to the serious form of violence that is child marriage and forced marriage.
- 46 In addition, it should be noted that the marital status of an unaccompanied refugee minor may often be difficult to establish, particularly in the case of refugees from countries which are unable to issue reliable official documents. Thus, the interpretation according to which Article 10(3)(a) of Directive 2003/86 does not restrict the benefit of family reunification with first-degree relatives in the direct ascending line only to unmarried unaccompanied refugee minors is also consistent with the principles of equal treatment and legal certainty, since it ensures that the right to family reunification does not depend on the administrative capabilities of the country of origin of the person concerned.
- 47 Lastly, the provisions of that directive must be interpreted and applied in the light of Article 7 and Article 24(2) and (3) of the Charter of Fundamental Rights of the European Union ('the Charter'), as is moreover apparent from recital 2 and Article 5(5) of that directive, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 35 and the case-law cited).
- 48 In that regard, it should be noted, first of all, that Article 7 of the Charter recognises the right to respect for private or family life. That provision of the Charter must, next, be read in conjunction with the obligation to take account of the child's best interests, enshrined in Article 24(2) of the Charter, that provision also applying to decisions which are not necessarily addressed to that minor but have significant consequences for him or her (see, to that effect, judgment of 11 March 2021, *Belgian State (Return of the parent of a minor)*, C-112/20, EU:C:2021:197, paragraph 36). Lastly, account must be taken of the need for a child, as expressed in Article 24(3) of the Charter, to maintain on a regular basis a personal relationship with his or her parents (see, to that effect, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34 and the case-law cited).
- 49 In the light of the foregoing, the answer to the first question is that Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) of that directive, must be interpreted as meaning that an unaccompanied refugee minor residing in a Member State does not have to be unmarried in order to acquire the status of sponsor for the purposes of family reunification with his or her first-degree relatives in the direct ascending line.

### ***The second question***

- 50 In view of the answer given to the first question, there is no need to examine the second question.

## Costs

- 51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 2(f) of that directive,**

**must be interpreted as meaning that an unaccompanied refugee minor residing in a Member State does not have to be unmarried in order to acquire the status of sponsor for the purposes of family reunification with his or her first-degree relatives in the direct ascending line.**

[Signatures]