

Judgment of the Court (Grand Chamber) of 8 May 2018 (request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen — Belgium) — K.A. and Others v Belgische Staat

(Case C-82/16) ⁽¹⁾

(Reference for a preliminary ruling — Border control, asylum, immigration — Article 20 TFEU — Charter of Fundamental Rights of the European Union — Articles 7 and 24 — Directive 2008/115/EC — Articles 5 and 11 — Third-country national subject to an entry ban — Application for residence for the purposes of family reunification with a Union citizen who has not exercised freedom of movement — Refusal to examine the application)

(2018/C 231/03)

Language of the case: Dutch

Referring court

Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicants: K.A., M.Z., M.J., N.N.N., O.I.O., R.I., B.A.

Defendant: Belgische Staat

Operative part of the judgment

1. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 5 and 11 thereof, must be interpreted as not precluding a practice of a Member State that consists in not examining an application for residence for the purposes of family reunification, submitted on its territory by a third-country national family member of a Union citizen who is a national of that Member State and who has never exercised his or her right to freedom of movement, solely on the ground that that third-country national is the subject of a ban on entering the territory of that Member State.

2. Article 20 TFEU must be interpreted as meaning that:-

- a practice of a Member State that consists in not examining such an application solely on the ground stated above, without any examination of whether there exists a relationship of dependency between that Union citizen and that third-country national of such a nature that, in the event of a refusal to grant a derived right of residence to the third-country national, the Union citizen would, in practice, be compelled to leave the territory of the European Union as a whole and thereby be deprived of the genuine enjoyment of the substance of the rights conferred by that status, is precluded;
- where the Union citizen is an adult, a relationship of dependency, capable of justifying the grant, to the third-country national concerned, of a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, in the light of all the relevant circumstances, any form of separation of the individual concerned from the member of his family on whom he is dependent is not possible;
- where the Union citizen is a minor, the assessment of the existence of such a relationship of dependency must be based on consideration, in the best interests of the child, of all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties to each of his parents, and the risks which separation from the third-country national parent might entail for that child's equilibrium; the existence of a family link with that third-country national, whether natural or legal, is not sufficient, and cohabitation with that third-country national is not necessary in order to establish such a relationship of dependency;

- it is immaterial that the relationship of dependency relied on by a third-country national in support of his application for residence for the purposes of family reunification comes into being after the imposition on him of an entry ban;
 - it is immaterial that the entry ban imposed on the third-country national has become final at the time when he submits his application for residence for the purposes of family reunification; and
 - it is immaterial that an entry ban, imposed on a third-country national who has submitted an application for residence for the purposes of family reunification, may be justified by non-compliance with an obligation to return; where such a ban is justified on public policy grounds, such grounds may permit a refusal to grant that third-country national a derived right of residence under Article 20 TFEU only if it is apparent from a specific assessment of all the circumstances of the individual case, in the light of the principle of proportionality, the best interests of any child or children concerned and fundamental rights, that the person concerned represents a genuine, present, and sufficiently serious threat to public policy.
3. Article 5 of Directive 2008/115 must be interpreted as precluding a national practice pursuant to which a return decision is adopted with respect to a third-country national, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life, and in particular the interests of a minor child of that third-country national, referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.

⁽¹⁾ OJ C 145, 25.4.2016.

Judgment of the Court (Grand Chamber) of 2 May 2018 (requests for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen — Netherlands, Belgium) — K. v Staatssecretaris van Veiligheid en Justitie (C-331/16), H.F v Belgische Staat (C-366/16).

(Joined Cases C-331/16 and C-366/16) ⁽¹⁾

(Reference for a preliminary ruling — Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Directive 2004/38/EC — Second subparagraph of Article 27(2) — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health — Expulsion on grounds of public policy or public security — Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society — Person whose asylum application has been refused for reasons within the scope of Article 1F of the Geneva Convention or Article 12(2) of Directive 2011/95/EU — Article 28(1) — Article 28(3)(a) — Protection against expulsion — Residence in the host Member State for the previous ten years — Imperative grounds of public security — Meaning)

(2018/C 231/04)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Middelburg, Raad voor Vreemdelingenbetwistingen

Parties to the main proceedings

Applicants: K. (C-331/16), H.F. (C-366/16)

Defendants: Staatssecretaris van Veiligheid en Justitie (C-331/16), Belgische Staat (C-366/16).