



## **An unaccompanied minor who attains the age of majority during the asylum procedure retains their right to family unification**

*Such an application for family reunification must however be made within a reasonable time, in principle within three months of the date on which the minor concerned is recognised as having refugee status*

A minor of Eritrean nationality, who had arrived unaccompanied in the Netherlands, lodged an application for asylum on 26 February 2014. On 2 June 2014, she attained her majority. On 21 October 2014, the State Secretary for Security and Justice, Netherlands, granted her a residence permit for persons granted asylum, valid for five years, with effect from the date on which her application for asylum was submitted. On 23 December 2014, an organisation in the Netherlands that works on behalf of refugees (VluchtelingenWerk Midden-Nederland), submitted an application for temporary residence permits for the parents (A and S) of the person concerned and her three minor brothers for the purposes of family reunification with an unaccompanied minor. By decision of 27 May 2015, the State Secretary rejected that application on the ground that, at the date on which it was submitted, the daughter of A and S had reached the age of majority.

A and S contested that refusal. According to them, it is the date of entry into the Member State concerned which is decisive in order to determine whether a person may qualify as an unaccompanied minor within the meaning of the EU Directive on family reunification.<sup>1</sup> Conversely, the State Secretary considers that it is the date on which the application for family reunification is submitted that is determinative in that regard.

The rechtbank Den Haag (District Court, The Hague, Netherlands), which must decide the case, referred a question to the Court of Justice for a preliminary ruling.

In its judgment handed down today, the Court qualifies as ‘minors’ nationals of non-EU countries and stateless persons who are **below the age of 18 at the moment of their entry into the territory of a Member State and of the introduction of their asylum application in that state** and who, in the course of the asylum procedure, attain the age of majority and thereafter are recognised as having refugee status.

The Court recalls, in that regard, that the Directive provides more favourable conditions for refugees for the exercise of their right to family reunification on account of the reasons that obliged them to flee their country and prevent them from leading a normal family life. More specifically, refugees who are unaccompanied minors have a right to such reunification which is not subject to a margin of discretion on the part of Member States.

In addition, even if the directive does not explicitly determine the moment until which a refugee must be a minor in order to be able to benefit from the right to family reunification,<sup>2</sup> the Court finds that the determination of that moment cannot be left to each Member State.

<sup>1</sup> Council Directive 2003/86/EC of 22 September 2003 (OJ 2003 L 251, p. 12).

<sup>2</sup> Article 10(3)(a) of the directive.

As regards, more precisely, the question as to what is the specific moment by reference to which the age of a refugee must be assessed in order for him or her to be regarded as a minor and be able therefore to benefit from the specific right to family reunification, the Court considered the wording, general scheme and objective of the directive, taking into account the regulatory context in which it is found and the general principles of EU law.

According to the Court, to make the right to family reunification depend upon the moment at which the competent national authority formally adopts the decision recognising the refugee status of the person concerned and, therefore, how quickly or slowly the application for international protection is processed by that authority, would call into question the effectiveness of the right to family reunification. That would go against not only the aim of the directive, which is to promote family reunification and to grant in that regard a specific protection to refugees (in particular unaccompanied minors) but also the principles of equal treatment and legal certainty. Such an interpretation would have the consequence that two unaccompanied minors of the same age who have each submitted, at the same time, an application for international protection could be treated differently as a result of the duration of the processing of those applications. In addition, such an interpretation would have the consequence of making it entirely unforeseeable for an unaccompanied minor who submitted an application for international protection to know whether he or she will be entitled to the right to family reunification with his or her parents, which might undermine legal certainty.

Conversely, taking the date on which the application for international protection was submitted enables identical treatment and foreseeability to be guaranteed for all applicants who are in the same situation, by ensuring that the success of the application for family reunification depends principally on facts attributable to the applicant and not to the administration (such as the time taken to process the application for international protection or the application for family reunification).

The Court clarifies, nevertheless, that in such a situation **the application for family reunification must be made within a reasonable time, namely in principle within three months of the date on which the minor concerned was recognised as having refugee status.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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