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Press and Information

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Judgment of the Court of Justice in Case C-540/03

European Parliament v Council of the European Union

THE COURT DISMISSES THE ACTION CHALLENGING THE DIRECTIVE ON THE RIGHT TO FAMILY REUNIFICATION OF NATIONALS OF NON-MEMBER STATES

The Community legislature did not exceed the limits imposed by fundamental rights in permitting Member States which had, or wished to adopt, specific legislation to adjust certain aspects of the right to reunification

On 22 September 2003 the Council adopted a directive[1] which determines the conditions for the exercise of the right to family reunification by nationals of non-member States residing lawfully in the territory of the Member States[2]. The directive provides in particular that a national of a non-member State lawfully living in the European Community is in principle entitled to the grant of authorisation by the host Member State allowing his/her children to join him/her by way of family reunification. The directive nevertheless allows Member States in certain circumstances to apply national legislation derogating from the rules that apply in principle.

Thus, 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, verify whether he or she meets an integration condition provided for by its existing legislation on the date of

[1] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

[2] The 17th and 18th recitals in the preamble to the directive explain that, in accordance with (i) the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of this Protocol, and (ii) the Protocol on the position of Denmark annexed to those Treaties, these Member States did not participate in the adoption of the directive and are not bound by or subject to its application.

implementation of the directive. In addition, Member States may require applications for family reunification in respect of minor children to be submitted before the age of 15, as provided for by their existing legislation on the date of the implementation of the directive.

The directive also provides that a Member State may require the sponsor to have stayed lawfully in its territory for a period not exceeding two years, before having his/her family members join him/her. Finally a Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members where its legislation on the date of adoption of the directive takes into account its reception capacity.

Since the European Parliament took the view that these provisions are contrary to fundamental rights, in particular the right to respect for family life and the right to non-discrimination, it brought this action for annulment before the Court of Justice of the European Communities.

The Court held today that the **possibility for Member States to verify whether a child aged 12**, who arrives independently from the rest of his/her family, **meets an integration condition** cannot be regarded as running counter to the fundamental right to respect for family life, to the obligation to have regard to the best interests of children or to the principle of non-discrimination on grounds of age.

It pointed out, first of all, that the right to respect for family life within the meaning of the European Convention on Human Rights is among the fundamental rights which are protected in Community law and that the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union also recognise the principle of respect for family life. These various instruments stress the importance to a child of family life and recommend that States have regard to the child's interests but they do not **create** for the members of a family an individual right to be allowed to enter the territory of a State and cannot be interpreted as denying Member States a certain margin of appreciation when they examine applications for family reunification.

Here, in the context of a directive imposing precise positive obligations on the Member States, the effect of the possibility for Member States to verify whether a child aged 12, who arrives independently from the rest of his/her family, meets an integration condition is to preserve a limited margin of discretion for those States which is no different from that accorded to them by the European Court of Human Rights – in its case-law relating to the right to respect for family life – for weighing, in each factual situation, the competing interests.

The Court noted that, under the directive, the Member States must when weighing those interests have due regard to the best interests of minor children, and to the nature and solidity of the family relationships of the person in question, the duration of his/her residence in the Member State and the existence of family, cultural and social ties with his/her country of origin. Finally, a child's age and the fact that a child arrives independently from his/her family are also factors taken into consideration by the European Court of Human Rights.

Lastly, the choice of the age of 12 years does not appear to amount to a criterion that would infringe the principle of non-discrimination on grounds of age, since the criterion corresponds to a stage in the life of a minor child when the latter has already lived for a relatively long period in a non-member State without the members of his or her family, so that integration in another environment is liable to give rise to more difficulties. The fact that a spouse and a child over 12 years of age are not treated in the same way cannot be regarded as unjustified discrimination against the minor child. The very objective of marriage is long-lasting married life together, whereas children over 12 years of age will not necessarily remain for a long time with their parents.

Similarly, the Court held **that the possibility for Member States to apply** the conditions for family reunification which are prescribed by the directive **to applications in respect of children only if they are submitted before the children have reached 15 years of age** cannot be regarded as running counter to the right to respect for family life, to the obligation to have regard to the best interests of children or to the principle of non-discrimination on grounds of age.

The Court explained that this provision cannot be interpreted as prohibiting the Member States from taking account of an application relating to a child over 15 years of age or as authorising them not to do so. While the provision has the effect of authorising a Member State not to apply the general conditions of the directive to applications submitted by minor children over 15 years of age, the Member State is still obliged to examine the application in the interests of the child and with a view to promoting family life.

The Court held, next, that the power **of the Member States to defer family reunification for two or, as the case may be, three years** permits them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a sufficiently long period for it to be assumed that the family members will settle down well and display a certain level of integration. The power does not run counter to the right of respect for family life. In this context, the reception capacity of the Member States may be one of the factors taken into account when considering an application but cannot be treated as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. When considering applications, the Member States must also have due regard to the best interests of minor children.

Consequently, the directive cannot be regarded as running counter to the fundamental right to respect for family life, to the obligation to have regard to the best interests of children or to the principle of non-discrimination on grounds of age, either in itself or in that it expressly or impliedly authorises the Member States to act in such a way.

The Court therefore dismissed the action.

For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731