Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-483/20
Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)

According to Advocate General Pikamäe, EU law precludes a Member State from declaring an application for international protection automatically inadmissible when the applicant already has refugee status granted in another Member State

The fundamental right to respect for family life, assessed in conjunction with the obligation to take into consideration the best interests of the child, can justify the admissibility of such an application and the examination of its substance

After obtaining refugee status in Austria, a Syrian national travelled to Belgium to join his two daughters, one of whom was a minor and both of whom have subsidiary protection status, and submitted a new application for international protection there. That application was declared inadmissible on the ground that he had already been granted refugee status in the first Member State under the Belgian legislation resulting from the transposition of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. [1]

That decision to reject the application for international protection without examining its substance was challenged by that national before the Belgian courts, namely the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) followed by the Conseil d'État (Council of State, Belgium), the latter of which submitted a request for a preliminary ruling to the Court of Justice.

The Conseil d'État (Council of State, Belgium) asks the Court, in essence, to clarify whether Directive 2013/32 and Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, [2] read in the light of the Charter of Fundamental Rights of the European Union ('the Charter') [3] preclude, in a situation such as that of the Syrian national in question, national legislation allowing an application for international protection to be declared inadmissible on the ground that such protection has already been granted by another Member State.

In his Opinion delivered today, Advocate General Prit Pikamäe takes the view that EU law precludes a Member State from finding that an application for refugee status is inadmissible on the ground that the applicant has previously been granted such status by another Member State when that applicant runs a serious risk of being subjected, in the event of his or her return to that other Member State, to treatment incompatible with the right to respect for family life, provided for in Article 7 of the Charter, read in conjunction with the obligation to take into consideration the best interests of the child, enshrined in Article 24 thereof, as well as in all the legal instruments that make up the Common European Asylum System.

Accordingly, it is for the Member State to which the new application for international protection is made to assess whether there is in fact such a risk, by first of all giving the applicant the

[1] OJ 2013 L 180, p. 60.
[2] OJ 2011 L 337, p. 9.
[3] Articles 7, 18 and 24 of the Charter.

opportunity to present, during the personal interview on the admissibility of the application, all the factors, in particular those of a personal nature, capable of confirming that such a risk exists.

As regards, next, the assessment of whether there is a serious risk of infringement of that fundamental right to respect for family life, an assessment which is to be carried out in conjunction with the obligation to take into consideration the best interests of the child, two factors must be taken into account: the legal status of the applicant for international protection in the Member State in which he or she resides with the family member who is the beneficiary of that protection, on the one hand, and the nature of the relationship between the person concerned and that family member, on the other.

In the event that the person concerned does not have a permit which guarantees him or her security and stability as regards his or her residence in the host Member State and, accordingly, family unity, the competent national authority must assess the family situation in question in the light of all the relevant aspects of the case, including in particular the age of the child, his or her situation in the country in question and the degree of dependence of the child on his or her parent, taking into account, in that regard, the child's physical and emotional development and the extent of the child's emotional ties to his or her parent, all of which are indicative of the risks which separation from the parent might entail for the parent-child relationship and for the child's equilibrium.

The Advocate General states that, in the event that a Member State is faced with a situation preventing it from exercising the option to find that a new application for international protection is inadmissible, because there is a serious risk of infringement of the fundamental right to respect for family life, the competent national authority must examine the substance of that application in order to verify that the conditions that third-country nationals or stateless persons must meet in order to qualify as beneficiaries of international protection are satisfied.

He clarifies that an application for international protection based solely on the need for family unity in the host Member State with a beneficiary of such protection, irrespective of any claim of a risk of persecution or serious threats to the applicant, cannot be granted. He also recalls that EU law does not provide for the automatic recognition of a family member of a beneficiary of international protection as having refugee status as a derived right.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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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