



Press and Information

Court of Justice of the European Union

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Judgment in Case C-483/20

Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)

## **A Member State may exercise its option to declare an application for international protection inadmissible on the ground that the applicant has already been granted refugee status by another Member State**

*However, family unity must be maintained where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State*

After being granted refugee status in Austria in 2015, the appellant moved to Belgium at the beginning of 2016 to join his two daughters – one of whom was a minor – where the latter were granted subsidiary protection in December of that year. In 2018, the appellant submitted an application for international protection in Belgium, without having a right of residence there.

That application was declared inadmissible under the Belgian law transposing the Procedures Directive,<sup>1</sup> on the ground that the appellant had already been granted international protection by another Member State.<sup>2</sup> The appellant challenged the decision refusing his application before the Belgian courts, claiming that respect for family life and the need to take into account the best interests of the child, enshrined in Article 7 and Article 24(2) of the Charter of Fundamental Rights of the European Union ('the Charter') respectively prevent Belgium from exercising its option to declare the application for international protection inadmissible.

In that context, the Conseil d'État (Council of State, Belgium) decided to refer questions to the Court of Justice asking whether there were any exceptions to that option.

The Court, sitting as a Grand Chamber, found that **the Procedures Directive,<sup>3</sup> read in the light of Article 7 and Article 24(2) of the Charter, does not preclude a Member State from exercising that option on the ground that the applicant has already been granted refugee status by another Member State, where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State, without prejudice, nevertheless, to the application of Article 23(2) of the Qualification Directive,<sup>4</sup> which concerns maintaining family unity.**

### **Findings of the Court**

In that regard, **the Court notes that Member States are not obliged to verify whether the applicant fulfils the conditions to be satisfied in order to claim international protection under the Qualification Directive where such protection is already provided in another Member State.** In such circumstances, they must refrain from exercising the option provided for in the Procedures Directive<sup>5</sup> to declare an application for international protection inadmissible only if,

<sup>1</sup> 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 (OJ 2013 L 180, p. 60; 'the Procedures Directive').

<sup>2</sup> Under Article 33(2)(a) of the Procedures Directive, Member States may consider an application for international protection as inadmissible if, inter alia, another Member State has granted international protection.

<sup>3</sup> Article 33(2)(a) of the Procedures Directive.

<sup>4</sup> 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 (OJ 2011 L 337, p. 9; 'the Qualification Directive').

<sup>5</sup> Article 33(2)(a) of the Procedures Directive.

due to deficiencies, which may be systematic or generalised, or which may affect certain groups of people in that other Member State, the living conditions that that applicant could be expected to encounter there as the beneficiary of international protection would expose him or her to a substantial risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

In the light of the importance of the principle of mutual trust for the Common European Asylum System, infringement of a provision of EU law conferring a substantive right on beneficiaries of international protection which does not result in an infringement of Article 4 of the Charter does not prevent the Member States from exercising that option. Unlike the right to protection against any inhuman or degrading treatment, the rights guaranteed by Article 7 and Article 24 of the Charter are not absolute in nature and may therefore be subject to restrictions under the conditions set out in the Charter.<sup>6</sup>

Moreover, the Court specifies that **the Qualification Directive<sup>7</sup> requires Member States to ensure that family unity is maintained, by establishing a certain number of benefits in favour of family members of a beneficiary of international protection.** The grant of those benefits,<sup>8</sup> which include, inter alia, a right of residence, nevertheless requires three conditions to be satisfied, namely, first, that the person is a family member within the meaning of that directive,<sup>9</sup> second, that that family member does not individually qualify for international protection and, third, that it is compatible with the personal legal status of the family member concerned.

First, the fact that a parent and his or her minor child have had different migration paths before reuniting in the Member State in which the child has international protection does not prevent the parent from being regarded as a member of the family of that beneficiary, provided that that parent was present in the territory of that Member State before a decision was taken on the application for international protection of his or her child.

Second, a third-country national whose application for international protection is inadmissible and has been refused in the Member State in which his or her minor child benefits from international protection owing to that national's refugee status in another Member State does not individually qualify for international protection in the first Member State.

Third, as concerns the compatibility of a grant of benefits as provided for in the Qualification Directive with the legal status of the national concerned, it is appropriate to verify whether he or she already has a right, in the Member State which granted international protection to a member of his or her family, to better treatment than that resulting from those benefits. Subject to verification by the referring court, that does not appear to be the case in the present instance since the grant of refugee status in a Member State does not result in the person benefiting from that international protection receiving better treatment, in another Member State, than the treatment resulting from such benefits in that other Member State.

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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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<sup>6</sup> Article 52(1) of the Charter.

<sup>7</sup> Article 23(2) of the Qualification Directive.

<sup>8</sup> Those benefits are provided for in Articles 24 to 35 of the Qualification Directive.

<sup>9</sup> Article 2(j) of the Qualification Directive.