



PRESS RELEASE No 60/23

Luxembourg, 18 April 2023

Judgment of the Court in Case C-1/23 PPU | Afrin

Family reunification: European Union law precludes national legislation which requires, without exception, that an application for family reunification be submitted in person at a competent diplomatic post

The legislation may nevertheless provide for the possibility of requiring the applicants to appear in person at a later stage of the application procedure for family reunification

Ms X and Mr Y, Syrian nationals, were married in 2016 in Syria. They had two children, born in 2016 and 2018 respectively. In 2019, Mr Y left Syria to travel to Belgium while Ms X and their two children remained in the town of Afrin, located in north-west Syria, where they are still currently located. On 25 August 2022, the Belgian administration recognised Mr Y as a refugee in Belgium. In September 2022, the lawyer for Ms X and her children submitted, via email and letter, an application for entry and residence for the purposes of family reunification on their behalf so that they could join Mr Y in Belgium. According to their lawyer, Ms X and her children are in 'exceptional circumstances which prevent them in practice from travelling to a Belgian diplomatic post in order there to submit an application for family reunification', as required by Belgian law. On 29 September 2022, the Office des étrangers (Immigration Office) replied that, according to Belgian law, it was not possible to submit an application for entry and residence for the purpose of family reunification via email and invited Ms X and her children to contact the competent Belgian embassy.

On 9 November 2022, Ms X, Mr Y and their children brought an action against the État belge (Belgian State) before the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) to have their application for family reunification registered. In that regard, they argued that, given that it was not possible for Ms X and her children to travel to a competent Belgian diplomatic post, an application submitted to the Immigration Office should be accepted under EU law. That court asks the Court of Justice whether EU law precludes legislation such as the Belgian law at issue.

In today's judgment, the Court notes, first, that it is essential that the Member States show the necessary flexibility to enable the persons concerned to be able to submit their application for family reunification in good time, by facilitating the submission of that application and by permitting, in particular, the use of remote means of communication. In the absence of such flexibility, the requirement, without exception, to appear in person when an application is submitted does not make it possible to take account of any obstacles that might prevent that submission. The exercise of the right to family reunification could thus be made impossible, perpetuating the separation of the family and the precariousness of its situation. In particular, when family members are in a country where there is armed conflict, the possibilities of traveling to competent diplomatic or consular posts may be considerably limited, so that, in order to comply with the requirement to appear in person, those persons, who may, moreover, be minors, would be required to wait until the security situation allows them to travel, to avoid being exposed to inhuman or degrading treatment or even putting their lives at risk.

As regards the particular situation of refugees, the Court adds that the absence of any flexibility on the part of the Member State concerned may make it impossible to comply with the time limits laid down. Consequently, the family reunification of the persons concerned could be subject to additional conditions which are more difficult to fulfil, contrary to the aim of the directive on the right to family reunification **to pay special attention to the situation of refugees.**

The Court finds that **the requirement to appear in person** when an application for reunification is submitted, without allowing for derogations from that requirement in order to take account of the specific situation in which the sponsor's family members find themselves, results in the exercise of the right to family reunification becoming impossible in practice. Such a law, **applied without the necessary flexibility, undermines the objective pursued by EU law and deprives it of its effectiveness.**

The Court also notes that a national provision which requires, without exception, the sponsor's family members to appear in person in order to submit an application for family reunification, even where that is impossible or excessively difficult, infringes the right to respect for family unity. **Such an obligation constitutes a disproportionate interference with the right to respect for family unity in relation to the aim, which is nevertheless legitimate, of combating fraud relating to family reunification.**

In this regard, the Court points out that the procedure for applying for family reunification takes place in stages. Accordingly, the Member States may **require the sponsor's family members to appear in person at a later stage of that procedure**, in order, in particular, to check family ties and the identity of the persons concerned, without it being necessary to impose, for the purposes of processing the application for family reunification, the requirement for them to be there in person at the time when the application is submitted.

However, in order not to undermine the aim pursued by EU law of promoting family reunification and the fundamental rights which it seeks to protect, a Member State requiring the sponsor's family members to appear in person at a later stage of the procedure must facilitate such an appearance, in particular by issuing consular documents or *laissez-passeurs*, and reduce the number of appearances to the strict minimum. Accordingly, the Member State should provide for the possibility of carrying out checks on family ties and identity requiring the presence of those family members at the end of the procedure and, if possible, at the time when they are issued with the documents authorising entry into the territory of the Member State concerned, where applicable.

The Court concludes that **EU law precludes national legislation which requires, for the purposes of submitting an application for entry and residence with a view to family reunification, that the sponsor's family members, in particular those of a recognised refugee, appear in person at the competent diplomatic or consular post of a Member State**, including in a situation where it is impossible or excessively difficult for them to travel to that post, without prejudice to the possibility for that Member State to require that those members appear in person at a later stage of the application procedure for family reunification.

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](#) and the résumé of the judgment are published on the CURIA website on the day of delivery.

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