ECLI:EU:C:2022:618

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

1 August 2022 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Right to family reunification – Directive 2003/86/EC – Article 4(1), first subparagraph, point (c) – Concept of 'minor child' – Article 16(1)(b) – Concept of 'real family relationship' – Child applying for family reunification with her father who has obtained refugee status – Relevant date for assessing status as a minor)

In Case C-279/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 23 April 2020, received at the Court on 26 June 2020, in the proceedings

**Bundesrepublik Deutschland**

v

**XC,**

joined party:

**Landkreis Cloppenburg,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by W. Ferrante, avvocato dello Stato,

– the European Commission, by C. Cattabriga and D. Schaffrin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2021,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 4(1), first subparagraph, point (c), and Article 16(1)(b) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The request has been made in proceedings between the Bundesrepublik Deutschland (Federal Republic of Germany) and XC, a Syrian national, concerning the rejection by the Federal Republic of Germany of XC's application for the issue of a national visa for the purpose of family reunification.

**Legal context**

***European Union law***

3 Recitals 2, 4, 6, 8 and 9 of Directive 2003/86 state:

'(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the [Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950] and in the Charter of Fundamental Rights of the European Union.

…

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

…

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

…

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.'

4 Article 1 of Directive 2003/86 is worded as follows:

'The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.'

5 Pursuant to Article 2(f) of that directive:

'For the purposes of this Directive:

…

(f) "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.'

6 Article 4(1) of Directive 2003/86 provides:

'The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

…

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

…

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

…'

7 Article 5 of that directive provides:

‘1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

…

5. When examining an application, the Member States shall have due regard to the best interests of minor children.’

8 Article 10(3) of Directive 2003/86 states:

‘If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

…’

9 Article 16(1) of that directive is worded as follows:

‘1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member’s residence permit, in the following circumstances:

…

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

…’

10 Under Article 17 of Directive 2003/86:

‘Member States shall take due account of the nature and solidity of the person’s family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.’

***German law***

11 The Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, gainful employment and integration of foreign nationals in federal territory), of 25 February 2008 (*BGBl.* 2008 I, p. 162), in the version applicable to the dispute in the main proceedings (‘the AufenthG’), provides in Paragraph 6(3):

‘For longer stays, a visa for the federal territory (national visa) is required, which is granted before entry. It shall be issued on the basis of the provisions applicable to a temporary residence permit, EU Blue Card, Intra-Corporate Transfer (ICT) Card, permanent settlement permit or EU long-term residence permit. …’

12 Paragraph 25 of that law, entitled ‘Residence on humanitarian grounds’, provides in subparagraph 2:

‘A foreign national shall be granted a temporary residence permit if the Bundesamt für Migration und Flüchtlinge [(Federal Office for Migration and Refugees)] has granted him or her refugee status within the meaning of Paragraph 3(1) of the Asylgesetz [(Law on asylum)] or subsidiary protection within the meaning of Paragraph 4(1) of the Law on asylum. …’

13 Paragraph 32 of the AufenthG, entitled ‘Subsequent immigration of children’, provides in subparagraph 1:

‘The minor, unmarried child of a foreigner is to be granted a temporary residence permit if the parents or the parent having the sole right of care and custody hold(s) one of the following residence titles:

…

2. a temporary residence permit in accordance with Paragraph 25(1) or (2), first sentence, first alternative;

…’

14 Paragraph 36 of the AufenthG, entitled ‘Subsequent immigration of parents and other family members’, provides:

‘1. In derogation from Paragraph 5(1)(1) and Paragraph 29(1)(2), a temporary residence permit shall be issued to the parents of a foreign national who is a minor and possesses a temporary residence permit pursuant to Paragraph 23(4), Paragraph 25(1) or the first alternative of the first sentence of Paragraph 25(2), a permanent settlement permit pursuant to Paragraph 26(3), or, after being granted a temporary residence permit pursuant to the second alternative of the first sentence of Paragraph 25(2), a permanent settlement permit pursuant to Paragraph 26(4), if no parent possessing the right of care and custody is resident in federal territory.

2. Other family members of a foreign national may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreign national if necessary in order to avoid unusual hardship. Paragraph 30(3) and Paragraph 31 shall be applied *mutatis mutandis* to adult family members and Paragraph 34 shall be applied *mutatis mutandis* to minor family members.’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

15 XC, who was born on 1 January 1999, applied, as a Syrian national living in Turkey for several years, for the issue of a national visa for the purpose of family reunification with her father, who obtained refugee status in Germany.

16 Her mother is deceased. Her father entered Germany in 2015 where he formally applied for asylum in April 2016. The Federal Office for Migration and Refugees granted refugee status to XC’s father in July 2017, further to a successful action brought by him. In September 2017, the office responsible for foreign nationals issued him with a three-year temporary residence permit pursuant to Paragraph 25(2) of the AufenthG.

17 On 10 August 2017, XC, who came of age on 1 January 2017, applied to the General Consulate of the Federal Republic of Germany in Istanbul (Turkey) for a national visa for the purpose of family reunification with her father living in Germany. The General Consulate ultimately refused to issue the visa applied for, by decision of 11 December 2017, rejecting a request for review. It considered that the conditions laid down in Paragraph 32 of the AufenthG were not met, since XC had reached the age of majority before her father had obtained the residence permit as a refugee. Furthermore, according to the General Consulate, in accordance with Paragraph 36(2) of the AufenthG, the family reunification of adult children requires the existence of unusual hardship, which was not the case here, since it was not apparent that XC could not lead an independent life in Turkey.

18 By judgment of 12 March 2019, the Verwaltungsgericht (Administrative Court, Germany) upheld the action brought by XC against that decision of the General Consulate and ordered the Federal Republic of Germany to issue XC with a visa for the purpose of family reunification. It justified its decision by stating that, according to the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248), concerning the family reunification of parents with an unaccompanied minor refugee – which could be applied to the reverse situation arising in the present case concerning the family reunification of a child with a parent who has been granted refugee status – the decisive date for the purposes of assessing XC's status as a minor is not the date of the application for a visa for the purpose of family reunification, but the date of the application for asylum submitted by her father. Consequently, point (b) of the first subparagraph of Article 4(1) of the Directive 2003/86 should be interpreted as meaning that a child of the sponsor must be regarded as a minor if he or she was a minor at the time the sponsor submitted the application for asylum. Furthermore, according to the Verwaltungsgericht (Administrative Court), also in the case of family reunification of children, the determination of the relevant date for the purposes of assessing whether the child concerned is a minor is not left to the discretion of the Member States, but must result from an autonomous interpretation of Directive 2003/86. That court stated that the effectiveness of the right to family reunification would be undermined and the principles of legal certainty and equal treatment infringed if, for the purposes of point (b) of the first subparagraph of Article 4(1) of that directive, the date chosen for assessing whether the child concerned was a minor was that on which the child's visa application was lodged. It noted that, in the present case, XC submitted her visa application within the period of three months from the day on which the person holding the original right of residence was granted refugee status, as required in accordance with the relevant case-law of the Court.

19 The Federal Republic of Germany brought an appeal on a point of law against that judgment before the Bundesverwaltungsgericht (Federal Administrative Court, Germany). In support of its appeal, it submits that the case that gave rise to the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248), concerned facts different from those at issue in the present case and the interpretation of a provision of Directive 2003/86 other than that at issue in this case. It submits that the Court's findings concerning the interpretation of Article 2(f) of Directive 2003/86 do not apply to the interpretation of point (c) of the first subparagraph of Article 4(1) of that directive, especially since that latter provision refers expressly to the law of the Member States.

20 The Bundesverwaltungsgericht (Federal Administrative Court) observes that XC is not entitled to the visa applied for on the basis of national law, given that, under that law, the fact that she had reached the age of majority before the date on which the visa application was submitted precluded this. Nevertheless, the Bundesverwaltungsgericht (Federal Administrative Court) is uncertain as to whether the national legislation complies with Directive 2003/86. The referring court raises the question, inter alia, whether it is possible to apply to the present case the approach adopted by the Court in the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248),

according to which a third-country national or a stateless person who is below the age of 18 years at the time of his or her entry into the territory of a Member State and of the submission of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' within the meaning of Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) thereof.

21 The referring court has doubts in that regard given that that judgment concerned the family reunification of parents with an unaccompanied minor refugee, in accordance with Article 2(f) of Directive 2003/86, in conjunction with Article 10(3)(a) thereof. By contrast, the case in the main proceedings concerns the interpretation of Article 4(1) of that directive, which governs the family reunification of children with adult third-country nationals, who have been granted refugee status and are, accordingly, authorised to reside in a Member State.

22 In addition, the referring court raises the question of the criteria by which it must assess whether the requirement of a real family relationship, to which Article 16(1)(b) of that directive makes the right to family reunification subject, is satisfied.

23 In those circumstances the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [point (c) of the first subparagraph of Article 4(1) of Directive 2003/86] to be interpreted as meaning that the child of a sponsor granted refugee status is a minor within the meaning of that provision even if the child was a minor at the time at which the asylum application was made by the sponsor but attained his or her majority before the sponsor was granted refugee status and before an application for family reunification was made?

(2) If Question 1 is answered in the affirmative:

What requirements are to be imposed in terms of a real family relationship within the meaning of Article 16(1)(b) of Directive 2003/86 in such a case?

(a) Does the legal parent/child relationship suffice or is a real family life necessary?

(b) If a real family life is necessary: How close must it be? For example, do occasional or regular visits suffice, must the family cohabit in a single household or must they also be part of a support unit whose members are reliant upon one another?

(c) For the purpose of his or her subsequent immigration, must a child still in a third country who has submitted an application for family reunification to join a parent with refugee status and who has since attained his or her majority be expected following entry to (re-)establish a family life in the Member State in the manner described in Question 2(b)?'

**Procedure before the Court**

24 By decision of 3 August 2020, the President of the Court asked the referring court whether it wished to maintain its request for a preliminary ruling in the light of the judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577).

25 By decision of 8 September 2020, received at the Court Registry on 9 September 2020, the referring court informed the Court that it wished to maintain that request, since it considered that that judgment did not sufficiently answer the questions raised in the present case.

26 On 12 May 2021, the Court put a question to the German Government, pursuant to Article 61(1) of the Rules of Procedure of the Court, in which it asked that government to define its position on the possible effect of the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248) for the purposes of answering the first question. On 21 June 2021, a reply to the question put by the Court was lodged by the German Government.

**Consideration of the questions referred**

***The first question***

27 By its first question, the referring court asks, in essence, whether point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 must be interpreted as meaning that the date to which reference must be made in order to determine whether the child of a sponsor who has been granted refugee status is a minor child, within the meaning of that provision, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted his or her asylum application with a view to obtaining refugee status.

28 As a preliminary point, it should be noted that that question arises from the particular circumstances of the case in the main proceedings, in which the child concerned was a minor when her father submitted his asylum application in April 2016, but reached the age of majority before her father obtained refugee status in July 2017 – the father's application having initially been rejected by the competent German authorities – and consequently before she had the opportunity to submit an application for entry and residence for the purpose of family reunification with her father, that latter application having being submitted on 10 August 2017.

29 The referring court considers, as is apparent from the reply to a question put by the Court, mentioned in paragraph 25 above, that the case in the main proceedings may be distinguished from those which gave rise to the judgment of 16 July, 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577), having regard, in particular, to the differences in the factual and legal contexts of the cases giving rise to that judgment and in the case in the main proceedings. In particular, the referring court notes that although in the aforementioned judgment the Court clarified that point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 must be interpreted as meaning that the date which should be referred to for the purpose of determining whether an unmarried third-country national or stateless person is a minor child is that of the submission of the application for entry and residence for the purpose of family reunification for minor children – and not that of the decision on that application by the competent authorities of the Member State concerned, as the case may be, after an action brought against a decision rejecting such an application – the Court did not answer the question whether, in the case of reunification of a child with a parent who has refugee status, it is possible to use a date earlier than that of the application for entry and residence for the purpose of family reunification, namely the date of the application for asylum submitted by that parent, since that question was not decisive for the purposes of the aforementioned cases.

30 The question thus arises whether, in the light of those particular circumstances it is possible, in the present case, to apply the approach adopted by the Court in the judgment of 12 April 2018, *A*

*and S* (C‑550/16, EU:C:2018:248), as regards the decisive date for assessing whether the child of an asylum seeker who has been granted refugee status is a minor.

31 Accordingly, the referring court takes the view that the judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C‑133/19, C‑136/19 and C‑137/19, EU:C:2020:577) does not settle the question whether it is possible to apply to the present case the approach adopted by the Court in the judgment of 12 April 2018, *A and S* (C‑550/16, EU:C:2018:248), as set out in paragraph 20 above.

32 It is in the light of those preliminary observations that the first question must be answered.

33 In that regard, it must be recalled that the objective pursued by Directive 2003/86 is to promote family reunification and that that directive also aims to give protection to third-country nationals, in particular minors (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C‑133/19, C‑136/19 and C‑137/19, EU:C:2020:577, paragraph 25 and the case-law cited).

34 In that context, Article 4(1) of that directive imposes on the Member States precise positive obligations, with corresponding clearly defined rights. It requires them, in the cases determined by that directive, to authorise the family reunification of certain members of the sponsor's family, without having a discretion in that regard (see, to that effect, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C‑133/19, C‑136/19 and C‑137/19, EU:C:2020:577, paragraph 26 and the case-law cited).

35 The family members of the sponsor for which the Member State concerned must authorise entry and residence include, in accordance with point (c) of the first subparagraph of Article 4(1) of Directive 2003/86, 'the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her'.

36 In that regard, while the second subparagraph of Article 4(1) of Directive 2003/86 states that minor children must be below the age of majority set by the law of the Member State concerned, it does not specify the point in time to be taken into account in order to assess whether that condition is satisfied, nor does it refer, in that regard, to the law of the Member States (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C‑133/19, C‑136/19 and C‑137/19, EU:C:2020:577, paragraph 28).

37 While, in accordance with that provision, it is left to the discretion of the Member States to determine the age of legal majority, they cannot, on the other hand, be given any discretion as to the determination of time which must serve as the point of reference for assessing the age of the applicant for the purposes of point (c) of the first subparagraph of Article 4(1) of Directive 2003/86. It must be recalled that, in accordance with the need for a uniform application of EU law and the principle of equality, a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account, inter alia, the context of the provision and the objective pursued by the legislation in question (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C‑133/19, C‑136/19 and C‑137/19, EU:C:2020:577, paragraphs 29 and 30 and the case-law cited).

38 As stated in paragraph 33 above, the objective pursued by Directive 2003/86 is to promote family reunification. To that end, as specified in Article 1 thereof, that directive determines the conditions for exercising the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

39 In addition, under Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), when they are implementing EU law, Member States must respect the rights and observe the principles established by the Charter and promote the application thereof, in accordance with their respective powers and respecting the limits of the powers of the European Union as conferred on it in the Treaties.

40 In accordance with settled case-law, the Member States, in particular their courts, must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the legal order of the European Union (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 33 and the case-law cited).

41 In particular, Article 7 of the Charter recognises the right to respect for private and family life. In accordance with settled case-law, that provision of the Charter must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3) thereof, for a child to maintain on a regular basis a personal relationship with both his or her parents (judgment of 16 July 2020, *État belge (Family reunification – Minor child*), C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34 and the case-law cited).

42 It follows that the provisions of Directive 2003/86 must be interpreted and applied in the light of Article 7 and Article 24(2) and (3) of the Charter, as is moreover apparent from recital 2 and Article 5(5) of that directive, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life (judgment of 16 July 2020, *État belge (Family reunification – Minor child*), C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 35 and the case-law cited).

43 In the present case, it is apparent from the request for a preliminary ruling that, although German law does not require a child to be a minor on the date on which the decision on his or her application for family reunification is adopted, that child must be a minor at the time when he or she submits his or her visa application and when his or her parent obtains the residence permit conferring entitlement to family reunification.

44 In that context, it is only if XC's status as a minor must be determined on the date on which her father applied for asylum that she could rely on point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 and thus obtain a favourable outcome in the proceedings before the referring court.

45 In that regard, it must be noted at the outset that the child of an asylum seeker may validly submit an application for family reunification on the basis of point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 only where the application for refugee status of the parent seeking asylum has already been the subject of a final positive decision. As the Court has already stated, that condition is easily explained by the fact that before the adoption of such a decision it is impossible to know with certainty whether the person concerned fulfils the conditions to be granted refugee status, which in turn conditions the right to obtain family reunification (see, to that effect, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 51 and 63).

46 In addition, it must be borne in mind that recognition of refugee status is a declaratory act and a refugee therefore has a right to be recognised as such as from the date of his or her application for

refugee status (see, to the effect, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 53 and 54).

47 As the Advocate General observed in point 42 of his Opinion, it is also apparent from the judgments of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248), and of 16 July 2020, *État belge (Family reunification – Minor child*) (C-133/19, C-136/19 and C-137/19, EU:C:2020:577), that the right to family reunification in relation to a minor child cannot be eroded by the passage of time required to determine applications for international protection or family reunification.

48 However, it must be pointed out that to consider the date on which the competent authority of the Member State concerned decided on the asylum application submitted by the parent concerned or to consider the date subsequent to which the child concerned submitted his or her visa application for the purpose of family reunification as the date which must be referred to in order to assess status as a minor for the purposes of applying point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 would be inconsistent not only with the objectives pursued by that directive, seeking to promote family reunification and to grant special protection to refugees, but also with the requirements arising from Article 7 and Article 24(2) of the Charter, the latter provision requiring that in all actions relating to children, in particular those taken by Member States when applying that directive, the child's best interests must be a primary consideration (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 36).

49 The competent national authorities and courts would not be prompted to treat applications for international protection from the parents of minors as a matter of priority with the urgency necessary to take account of the vulnerability of those minors and could thus act in a way which would jeopardise the right to family life both of a parent with his or her minor child and of a minor child with a member of his or her family (see, by analogy, judgments of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 58 and the case-law cited, and of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraph 40 and the case-law cited).

50 In addition, such an interpretation would run counter to the principles of equal treatment and legal certainty in that it would not make it possible to guarantee identical and predictable treatment for all applicants who are chronologically in the same situation, in so far as it would lead to the success of the application for family reunification depending mainly on circumstances attributable to the national administration or courts, in particular to the greater or lesser speed with which the application for international protection is processed or a decision is taken on an action brought against the decision rejecting such an application, and not on circumstances attributable to the applicant (see, by analogy, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 56 and 60 and the case-law cited).

51 Furthermore, that interpretation, in so far as it would have the effect of making the right to family reunification of the minor child concerned dependent on random and unforeseeable circumstances, entirely attributable to the competent national authorities and courts of the Member State concerned, could lead to significant differences in the processing of applications for family reunification between Member States and within a single Member State (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 43).

52 It follows that, for reasons essentially similar to those relied on as a basis for the interpretation, in the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248), of

Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) thereof, it is necessary, in order to determine whether the child of a sponsor having refugee status is a minor within the meaning of point (c) of the first subparagraph of Article 4(1) of Directive 2003/86, where that child has reached the age of majority before the sponsor was granted refugee status and before the application for family reunification was submitted, to take into consideration the date on which that sponsor's asylum application was submitted. Only the taking into account of such a date is consistent with the purposes of that directive and with the fundamental rights protected by the EU legal order. In this respect, it is irrelevant whether that application is decided upon directly following the submission of the application or, as in the case in the main proceedings, after a decision rejecting it was annulled.

53 It must, however, be stated in that regard that, in such a situation, the application for family reunification on the basis of point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 must be made within a reasonable period, that is to say, within three months of the date on which refugee status was granted to the parent sponsor.

54 In the light of all the foregoing considerations, the answer to the first question is that point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 must be interpreted as meaning that the date to which reference must be made in order to determine whether the child of a sponsor who has been granted refugee status is a minor child, within the meaning of that provision, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted his or her asylum application with a view to obtaining refugee status, provided that an application for family reunification was submitted within three months of the recognition of the parent sponsor's refugee status.

***The second question***

55 By its second question, the referring court seeks, in essence, to ascertain the requirements for finding that there is a real family relationship, within the meaning of Article 16(1)(b) of Directive 2003/86, in the case of family reunification of a minor child with a parent who has been granted refugee status, where that child attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted.

56 In particular, the referring court asks the Court to clarify whether, to that end, the legal parent/child relationship is sufficient or whether a real family life is also necessary, and if so, how close it must be. The referring court also asks whether family reunification requires that, after the child has entered the territory of the Member State concerned, family life be re-established in that State.

57 In that regard, it must be borne in mind that Article 16(1)(b) of Directive 2003/86 allows Member States to reject an application for family reunification, to withdraw the residence permit granted in that respect or to refuse to renew it, where the sponsor and his or her family members do not or no longer live in a real marital or family relationship. However, that provision does not lay down any criteria for assessing whether such a real family relationship exists, nor does it impose any specific requirement as regards the closeness of the family relationships concerned. Nor moreover does it refer on that point to the laws of the Member States.

58 As noted in paragraph 37 above, in accordance with the need for a uniform application of EU law and the principle of equality, a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be

given an autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account, inter alia, the context of the provision and the objective pursued by the legislation in question.

59 It should be noted that Directive 2003/86, in accordance with recital 6 thereof, seeks to protect the family and establish or preserve family life by means of family reunification. In addition, in accordance with recital 4 of that directive, family reunification is a necessary way of making family life possible and helps to create sociocultural stability.

60 Furthermore, as pointed out in paragraph 42 above, measures concerning family reunification, including those provided for in Article 16 of that directive, must respect fundamental rights, in particular the right to respect for private and family life guaranteed by Article 7 and Article 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life.

61 It must also be borne in mind that, according to recital 8 of Directive 2003/86, special attention must be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. It is on that basis that that directive lays down more favourable conditions for refugees for exercising their right to family reunification.

62 Lastly, the assessment of the requirements for finding that there is a real family relationship, within the meaning of Article 16(1)(b) of Directive 2003/86, requires an appraisal to be carried out on a case-by-case basis, as is indeed apparent from Article 17 of that directive, using all the relevant factors in each case and in the light of the objectives pursued by that directive.

63 For that purpose, the legal parent/child relationship is not sufficient on its own to establish a real family relationship. Although the relevant provisions of Directive 2003/86 and of the Charter protect the right to, and promote the preservation of, family life, they leave it to the holders of that right, provided that the persons concerned continue to lead a real family life, to decide how they wish to conduct their family life and do not impose, in particular, any requirement as to the closeness of their family relationship (see, by analogy, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraph 58).

64 In the present case, first, it is common ground that XC was still a minor when her father was forced to leave his country of origin and therefore formed part of his nuclear family, in terms of recital 9 of Directive 2003/86, to which, according to that same recital, family reunification should ‘in any case’ apply. Subject to verification by the referring court, there appears to be nothing to suggest that the persons concerned no longer lived in a real family relationship during the period prior to the father’s flight.

65 Secondly, account must be taken of the fact that, in the present case, XC and her father were unable to lead a real family life during their period of separation resulting, in particular, from the father’s specific situation as a refugee, that circumstance alone therefore not being capable, as such, of giving grounds for finding that there was no real family relationship within the meaning of Article 16(1)(b) of Directive 2003/86. Nor can it be presumed that any family relationship between a parent and his or her child immediately ceases to exist as soon as the minor child reaches the age of majority.

66 However, in order for there to be a real family relationship, it must be established that there is actually a family relationship or the intention to establish or maintain such a relationship.

67 Thus, the fact that the persons concerned intend to pay occasional visits to each other, in so far as they are possible, and to have regular contact of any kind, taking into account in particular the material circumstances characterising the situation of the persons concerned, including the age of the child, may be sufficient to consider that they are reconstructing personal and emotional relationships and to establish the existence of a real family relationship.

68 Furthermore, the parent sponsor and his or her child cannot be required to support each other financially, since it is likely that they will not have the material means to do so.

69 In the light of all the foregoing considerations, the answer to the second question is that Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that, in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a minor child with a parent who has been granted refugee status, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, the legal parent/child relationship is not sufficient on its own. However, it is not necessary for the parent sponsor and the child concerned to cohabit in a single household or to live under the same roof in order for that child to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the parent sponsor and his or her child be required to support each other financially.

**Costs**

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Point (c) of the first subparagraph of Article 4(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that the date to which reference must be made in order to determine whether the child of a sponsor who has been granted refugee status is a minor child, within the meaning of that provision, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted his or her asylum application with a view to obtaining refugee status, provided that an application for family reunification was submitted within three months of the recognition of the parent sponsor's refugee status.**

2. **Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a minor child with a parent who has been granted refugee status, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, the legal parent/child relationship is not sufficient on its own. However, it is not necessary for the parent sponsor and the child concerned to cohabit in a single household or to live under the same roof in order for that child to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence**

**of a real family relationship. Furthermore, nor can the parent sponsor and his or her child be required to support each other financially.**

[Signatures]

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* Language of the case: German.