ECLI:EU:C:2020:577

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

16 July 2020 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Immigration policy — Right to family reunification — Directive 2003/86/EC — Article 4(1) — Concept of a 'minor child' — Article 24(2) of the Charter of Fundamental Rights of the European Union — Best interests of the child — Article 47 of the Charter of Fundamental Rights — Right to an effective remedy — Children of the sponsor who have reached majority during the decision-making procedure or court proceedings against the decision refusing the family reunification application)

In Joined Cases C-133/19, C-136/19 and C-137/19,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decisions of 31 January 2019, received at the Court on 19 February 2019 (C-133/19), and 20 February 2019 (C-136/19 and C-137/19), in the proceedings

B. M. M. (C-133/19 and C-136/19),

B. S. (C-133/19),

B. M. (C-136/19),

B. M. O. (C-137/19)

v

État belge,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, L. S. Rossi (Rapporteur), J. Malenovský, F. Biltgen and N. Wahl, Judges,

Advocate General: G. Hogan,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 30 January 2020,

after considering the observations submitted on behalf of

– B. M. M., B. S., B. M. and B. M. O., by A. Van Vyve, avocate,

– the Belgian Government, by P. Cottin, C. Pochet and C. Van Lul, acting as Agents, and E. Derriks, G. van Witzenburg and M. de Sousa Marques E Silva, avocats,

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

– the Austrian Government, by J. Schmoll, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by C. Cattabriga and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 March 2020,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The requests have been made in proceedings between B. M. M. (C-133/19 and C-136/19), B. S. (C-133/19), B. M. (C-136/19) and B. M. O. (C-137/19), Guinean nationals, and the État belge (Belgian State) concerning the rejection of applications for a visa for the purpose of family reunification.

Legal context

European Union law

3 Recitals 2, 4, 6, 9 and 13 of Directive 2003/86 read as follows:

‘(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 European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950] and in the [Charter].

…

(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.

…

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

…

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned.'

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 Article 4 of that directive provides:

'1. 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:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(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;

(d) the minor children including adopted children of the spouse where the spouse 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.

…'

6 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.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)’ travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

…

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was submitted.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

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

7 According to Article 16(1) and (2) of that directive:

‘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:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

…

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member’s residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

…’

8 Under Article 18 of Directive 2003/86:

‘The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.’

Belgian law

9 The first subparagraph of Article 10(1) of the loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers (Law of 15 December 1980 on the entry to Belgian territory, stay, residence and removal of foreign nationals) (*Moniteur belge* of 31 December 1980, p. 14584), in the version applicable to the facts of the main proceedings, (‘the Law of 15 December 1980’) provides:

‘Subject to Articles 9 and 12, the following persons shall be granted leave to reside in the Kingdom for more than three months as of right:

…

4° the following family members of a foreign national who, for at least 12 months, has been admitted or granted leave to reside in the Kingdom for an unlimited period, or who, for at least 12 months, has been granted leave to become established there. This 12-month period shall be waived if the marital relationship or the registered partnership existed before the arrival of the foreign national who is being joined in the Kingdom or if they have a common minor child, or if the persons concerned are family members of a foreign national recognised as a refugee or a beneficiary of subsidiary protection status:

– his foreign spouse or the foreign national with whom he or she is in a registered partnership considered to be equivalent to marriage in Belgium, who is coming to live with him or her, provided that both parties concerned are over the age of 21 years. This minimum age shall be reduced to 18 years, however, where the marital relationship or the registered partnership, as the case may be, existed before the arrival in the Kingdom of the foreign national who is being joined;

– their children, who are coming to live with them before they have reached the age of 18 years and are unmarried;

– the children of the foreign national who is being joined, his or her spouse or the registered partner referred to in the first indent, who are coming to live with them before they have reached the age of 18 years and are unmarried, provided that the foreign national who is being joined, his or her spouse or that registered partner has the right of custody and control of those children and, in the event of shared custody, on condition that the other person sharing custody has given his or her agreement;

…’

10 Article 10*ter*(3)of that law provides as follows:

‘The Minister or his or her delegate may decide to reject an application for a residence permit for more than three months, … either where the foreign national … has used false or misleading

information or false or falsified documents or has resorted to fraud or other illegal means, of a decisive nature, in order to obtain such a permit …'

11 Article 12*bis* of that law provides:

'1 A foreign national who declares that he or she is in one of the cases referred to in Article 10 must submit his or her application to the competent Belgian diplomatic or consular representative for the place of his or her residence or stay abroad.

…

2. …

The filing date of the application is the date on which all these documents, in accordance with Article 30 of the Law of 16 July 2004 on the Code of Private International Law or international conventions on the same subject, are produced.

The decision regarding the residence permit shall be taken and notified as soon as possible and no later than six months following the date of submission of the application, as stipulated in the second paragraph. …

In exceptional cases related to the complexity of the application …, the Minister or his or her delegate may, on two occasions, extend the period of examination for three months by reasoned decision.

If no decision has been taken after the expiry of the nine-month period following the date on which the application was submitted, which may have been extended in accordance with paragraph 5, the residence permit must be issued.

…

7. In considering the application, due regard shall be given to the best interests of the child.'

12 The first paragraph of Article 39/56 of that law states:

'The actions referred to in Article 39/2 may be brought before the [Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium)] by a foreign national who is able to show an injury or an interest.'

The facts of the main proceedings and the questions referred for a preliminary ruling

13 It is apparent from the orders for reference that, on 20 March 2012, B. M. M., a third-country national enjoying refugee status in Belgium., submitted in the name of and on behalf of his minor children, B. S., B. M. and B. M. O., at the Belgian Embassy in Conakry (Guinea), applications for residence permits for the purposes of family reunification, based on the third indent of point 4 of the first subparagraph of Article 10(1) of the Law of 15 December 1980. Those applications were rejected on 2 July 2012.

14 On 9 December 2013, B. M. M. submitted, at the Belgian Embassy in Dakar (Senegal), in the name and on behalf of his minor children, B. S., B. M. and B. M. O, new applications for residence permits based on the same provisions of the Law of 15 December 1980.

15 By three decisions of 25 March 2014, the competent Belgian authorities rejected those applications for residence permits pursuant to Article 10*ter*(3) of the Law of 15 December 1980 on the ground that B. S., B. M. and B. M. O. had used false or misleading information or false or falsified documents, or had resorted to fraud or other unlawful means, in order to obtain the permits applied for. As regards B. S. and B. M. O., those authorities found that they had stated in their application for residence permits that they had been born on 16 March 1999 and 20 January 1996 respectively, whereas B. M. M. had stated in his asylum application that they had been born on 16 March 1997 and 20 January 1994 respectively. As far as B. M. O. is concerned, those authorities stressed that B. M. M had not declared the existence of that child in his asylum application.

16 On the date on which the decisions of 25 March 2014 rejecting the applications were taken, according to the statements of the applicants in the main proceedings, B. S. and B. M. were still minors, while B. M. O. had reached majority.

17 On 25 April 2014, B. M. M. and B. S. (Case C-133/19), B. M. M. and B. M. (Case C-136/19) and B. M. O. (Case C-137/19) brought actions for suspension and annulment of those rejection decisions before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings). By letters of 10 September 2015, 7 January 2016 and 24 October 2017, the persons concerned asked that court to rule on their actions.

18 In rulings of 31 January 2018, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) dismissed the actions as inadmissible on the ground that the applicants did not have an interest in bringing proceedings. After pointing out that, according to settled national case-law, an applicant's interest in bringing an action must exist at the time when the action is brought and continue until judgment is delivered, that court observed that, in the present case, if the decisions rejecting the applications at issue in the main proceedings were annulled and the competent Belgian authorities were required to re-examine the applications for residence permits, those applications could not, in any event, be granted, since, in the meantime, even taking into account the dates of birth set out in those applications, B. S., B. M. and B. M. O. had reached majority and therefore no longer satisfied the conditions laid down in the provisions governing the family reunification of minor children.

19 The applicants in the main proceedings lodged an appeal on a point of law to the Conseil d'État (Council of State, Belgium). They submit, in essence, that the interpretation adopted by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings), first, infringes the principle of effectiveness of EU law, in so far as it prevents B. S., B. M. and B. M. O. from enjoying the right to family reunification guaranteed by Article 4 of Directive 2003/86 and, second, infringes the right to an effective remedy, by depriving them of the possibility of bringing an action against the decisions rejecting the applications at issue in the main proceedings, even though those decisions — concerning Cases C-133/19 and C-136/19 — had not only been adopted but also challenged when the applicants were still minors.

20 In that regard, the Conseil d'État (Council of State) notes that the Court held in its judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248) that Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) of that directive, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction 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 nonetheless be regarded as a 'minor' for the purposes of that provision.

21 However, the referring court points out that the dispute which gave rise to that judgment is distinct from the cases in the main proceedings, in so far as they do not concern a minor who was granted refugee status. Moreover, since Directive 2003/86 provides for a time limit for the adoption of a decision on an application for family reunification, the right to family reunification does not depend on the greater or lesser speed with which that application is processed. In any event, in the present case, the rejection decisions at issue in the main proceedings were adopted within the time limit laid down in Article 12*bis*(2) of the Law of 15 December 1980.

22 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

In Cases C-133/19 and C-136/19:

'1. In order to ensure the effectiveness of EU law and not to render it impossible to benefit from the right to family reunification which, in the … applicant's submission, is conferred on her by Article 4 of [Directive 2003/86], must that provision be interpreted as meaning that the sponsor's child may enjoy the right to family reunification when he attains his majority during the judicial proceedings against the decision which refuses him that right and which was taken when he was still a minor?

2. Must Article 47 of the [Charter] and Article 18 of [Directive 2003/86] be interpreted as precluding an action for annulment, brought against the refusal of a right to family reunification of a minor child, being held to be inadmissible on the ground that the child has attained his majority during the judicial proceedings, since he would be deprived of the possibility of securing a determination of his action against that decision and there would be a breach of his right to an effective remedy?'

In Case C-137/19:

'Must [point c of the first subparagraph of] Article 4(1) of [Directive 2003/86], read where appropriate with Article 16(1) of that directive, be interpreted as requiring that third country nationals, in order to be classified as "minor children" within the meaning of that provision, must be "minors" not only at the time of submitting the application for leave to reside but also at the time when the administration eventually determines that application?'

23 By order of the President of the Court of 12 March 2019, Cases C-133/19, C-136/19 and C-137/19 were joined for the purposes of the written and oral procedures and the judgment.

Consideration of the questions referred

The first question referred in Cases C-133/19 and C-136/19 and the question referred in Case C-137/19

24 By its first question in Cases C-133/19 and C-136/19 and by its question in Case C-137/19, 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 which should be referred to for the purpose of determining whether an unmarried third-country national or refugee is a 'minor child', within the meaning of that provision, is that of the submission of the application for entry and residence for the purpose of family reunification for minor children, or that of the decision on that application by the competent authorities of that Member State, as the case may be, after an action brought against a decision rejecting such an application.

25 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 13 March 2019, *E*, C-635/17, EU:C:2019:192, paragraph 45 and the case-law cited).

26 In that context, Article 4(1) of that directive imposes on the Member States precise positive obligations, with corresponding clearly defined individual 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 being left a margin of appreciation (judgment of 13 March 2019, *E*, C-635/17, EU:C:2019:192, paragraph 46 and the case-law cited).

27 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'.

28 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.

29 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.

30 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 26 July 2017, *Ouhrami*, C-225/16, EU:C:2017:590, paragraph 38 and the case-law cited).

31 As stated in paragraph 25 of the present judgment, the objective pursued by Directive 2003/86 is to promote family reunification. To that end, as specified in Article 1, that directive determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

32 Moreover, as is apparent from recital 2 of that directive, the directive respects the fundamental rights and observes the principles enshrined in the Charter.

33 In that regard, it must be noted that 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 (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 34, and of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 78).

34 In particular, Article 7 of the Charter, which contains rights corresponding to those guaranteed by Article 8(1) of the European Convention for the Protection of Human Rights and

Fundamental Freedoms, recognises the right to respect for private and family life. 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), for a child to maintain on a regular basis a personal relationship with his or her parents (judgment of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 76).

35 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 13 March 2019, *E*, C-635/17, EU:C:2019:192, paragraph 56 and the case-law cited).

36 However, it must be held, in the first place, that to consider the date on which the competent authority of the Member State concerned decided on the application for entry and residence in the territory of that State for the purposes of family reunification as the date which must be referred to in order to assess the age of the applicant for the purposes of applying point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 would not be consistent with the objectives pursued by that directive or 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.

37 As the Advocate General noted, in essence, in paragraph 43 of his Opinion, the competent national authorities and courts would not be prompted to treat applications of minors as a matter of priority with the urgency necessary to take account of their vulnerability and could thus act in a way which would jeopardise the very rights of those minors to family reunification (see, by analogy, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 58).

38 In the present case, it is apparent from the orders for reference that, on 9 December 2013, B. M. M. submitted, in the name of and on behalf of his minor children B. S., B. M. and B. M. O., at the Belgian Embassy in Dakar, applications for residence permits for the purposes of family reunification, and that those applications were rejected on 25 March 2014 in accordance with the time limits laid down by Belgian law.

39 Although, on 25 April 2014, B. M. M. along with B. S., B. M. and B. M. O. brought actions for the suspension and annulment of those decisions before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) and, on several occasions between 2015 and 2017, asked that court to rule on their actions, it is common ground that it was only on 31 January 2018, that is to say three years and nine months after the action was brought, that the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) dismissed those actions on the ground of lack of interest in bringing proceedings, on the basis of the fact that on the date of the ruling, B. S., B. M. and B. M. O. had reached majority and no longer satisfied the conditions laid down in the provisions governing the family reunification of minor children.

40 In that regard, it must be pointed out that such processing times do not appear to be exceptional in Belgium since, as the Belgian Government pointed out at the hearing, the average period within which the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) rules on disputes relating to family reunification is three years. The Belgian Government also stated that the case of the applicants in the main proceedings had not been regarded as a priority by that court.

41 The circumstances referred to in the above paragraph thus illustrate the fact that an interpretation of point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 according to which the date on which the competent administration of the Member State concerned decides on the application for entry into and residence in the territory of that State is the date to be used as the basis for assessing the age of the applicant for the purposes of that provision would not make it possible to ensure that, in accordance with Article 24(2) of the Charter, the interests of the child remain, in all circumstances, a primary consideration for Member States in the context of the application of Directive 2003/86.

42 In the second place, nor would such an interpretation make it possible to guarantee, in accordance with the principles of equal treatment and legal certainty, 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 is processed or a decision is taken on an action against a 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 55 and 60).

43 Furthermore, that interpretation, in so far as it would have the effect of making the right to family reunification 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.

44 In those circumstances, only the taking into consideration, for the purposes of determining whether the age condition laid down in point (c) of the first subparagraph of Article 4(1) of Directive 2003/86 is satisfied, of the date of submission of the application for entry and residence for the purposes of family reunification 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 the application is decided directly following the submission of the application or after a decision rejecting it has been annulled.

45 That finding cannot be called into question by the argument raised by the Belgian and Polish Governments in their written observations, according to which, by virtue of Article 16(1)(a) of Directive 2003/86, where the conditions for granting a permit ‘are not or are no longer satisfied’, the Member States may refuse to authorise entry and residence for the purposes of family reunification. In essence, according to those Governments, in order for the application for family reunification to be accepted, the person being reunited must necessarily be a minor both on the date the application is submitted and on the date the decision on that application is taken.

46 In that regard, it should be pointed out that the age of the applicant cannot be regarded as a material condition for the exercise of the right to family reunification, within the meaning of recital 6 and Article 1 of Directive 2003/86, in the same way as those laid down in particular in Chapter IV of that directive. Unlike the latter provisions, the age requirement is a requirement in respect of the very eligibility of the application for family reunification, which is certainly and predictably going to change, and which can therefore be assessed only at the time of the submission of that application.

47 Consequently, the answer to the first question in Cases C-133/19 and C-136/19 and the question in Case C-137/19, is 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 refugee is a minor child, within the meaning of that provision, 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 that Member State, as the case may be, after an action brought against a decision rejecting such an application.

The second question in Cases C-133/19 and C-136/19

48 By the second question in Cases C-133/19 and C-136/19, the national court asks, in essence, whether Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter, must be interpreted as precluding an action brought against a decision rejecting an application for entry and residence for the purposes of family reunification for the benefit of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority in the course of the court proceedings.

49 In that regard, first, it is apparent from the case file before the Court that that question is based on the premiss that a minor child who has reached majority during court proceedings brought against a decision rejecting his or her application for family reunification no longer has an interest in the annulment of that decision, with the result that his or her action must necessarily be rejected by the court having jurisdiction.

50 However, as follows from the answer to the first question in Cases C-133/19 and C-136/19 and to the question in Case C-137/19, such a premiss is incorrect, with the result that, in the circumstances referred to in the above paragraph, such an application for family reunification cannot be rejected on the sole ground that the child concerned has reached majority during the court proceedings.

51 On the other hand, it should be pointed out that, although Article 5(4) of Directive 2003/86 lays down a time limit in principle of nine months within which the competent authorities of the Member State concerned are required to notify the person who lodged the application for family reunification of the decision concerning him or her, it does not, on the other hand, impose any time limit for giving a decision on the court seised of an action against a decision rejecting such an application.

52 However, Article 18 of that Directive obliges Member States to ensure that the sponsor or his or her family members have the right to mount a legal challenge against such a decision and requires those Member States to lay down the procedure and the competence according to which the right is exercised.

53 While that provision thus affords Member States some discretion, inter alia in the determination of rules for dealing with an action against a decision rejecting an application for family reunification, it is important to note that, notwithstanding such discretion, Member States are required, when implementing Directive 2003/86, to comply with Article 47 of the Charter, which enshrines the right to an effective remedy before a tribunal for everyone whose rights and freedoms guaranteed by EU law are infringed (judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 55).

54 However, as the Advocate General noted in essence in paragraphs 42 and 44 of his Opinion, Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter, requires that domestic actions enabling a sponsor and his or her family members to exercise their right to mount a legal challenge against decisions rejecting an application for family reunification be effective and real.

55 Consequently, such an action cannot be dismissed as inadmissible solely on the ground that the child concerned has reached majority in the course of the court proceedings.

56 Moreover, contrary to what has been argued by certain Member States which submitted observations, the dismissal as inadmissible of an action against a decision rejecting an application for family reunification could not be based on the finding, as in the present case, that the persons concerned no longer have an interest in obtaining a decision from the court seised.

57 It cannot be ruled out that a third-country national whose application for family reunification has been rejected may still have an interest, even after reaching majority, in the court hearing the action against that rejection giving a decision on the merits, in so far as, in certain Member States, such a judicial decision is necessary in order, in particular, to enable the applicant to bring an action for damages against the Member State in question.

58 In the light of the foregoing considerations, the answer to the second question in Cases C-133/19 and C-136/19 is that Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter, must be interpreted as precluding an action against the rejection of an application for family reunification of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority during the court proceedings.

Costs

59 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 which should be referred to for the purpose of determining whether an unmarried third-country national or refugee is a minor child, within the meaning of that provision, 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 that Member State, as the case may be, after an action brought against a decision rejecting such an application.**

2. **Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding an action against the rejection of an application for family reunification of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority during the court proceedings.**

[Signatures]

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* Language of the case: French.