

CJEU ? C-706/18 X v Belgium, 20 November 2019

Country of Applicant:

Afghanistan

Date of Decision:

20-11-2019

Citation:

C?706/18

Court Name:

Court of Justice of the European Union (Sixth Chamber)

Keywords:[Family member](#) [1][Family reunification](#) [2][Residence document](#) [3][Sponsor](#) [4][Visa](#) [5]**Relevant Legislative Provisions:**European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Recital \(6\)](#) [7]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 1](#) [8]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 2](#) [9]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 3](#) [10]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 4](#) [11]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 5](#) [12]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 11](#) [13]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [6] > [Article 13](#) [14]**Headnote:**

The principle of effectiveness and the objectives of the Family Reunification Directive preclude domestic legislation that foresees the automatic issue of an entry and residence permit for family reunification on the sole ground that the time limit to decide on the application has expired without having established the substantial requirements for obtaining such a permit, e.g. family links.

Facts:

In October 2013, X, an Afghan national, submitted an application for a family reunification visa to join her alleged spouse, an Afghan national with refugee status in Belgium. The request was rejected because the matrimonial link between X and F.S.M. had not been established. An appeal against that decision was dismissed in July 2016. Subsequently, the Council of State, before which X brought an annulment action, set aside the latter judgment and remitted the case to the referring Court for new examination finding that

The referring Court decided to request a preliminary ruling on the possibility, under Directive 86/2003 (Family Reunification Directive), for domestic legislation to foresee the automatic granting of a residence permit for family reunification in case of expiry of the time limit for the issuance of a decision on the application.

Decision & Reasoning:

The Court firstly noted that, according to Art. 1 of Directive 2003/86 (Family Reunification Directive) read in conjunction with Recital 6, the aim of this legal instrument is to lay down substantive conditions for the exercise of the right to family reunification by third-country nationals. The Court underlined that the Directive requires the application for family reunification to be accompanied by documentary evidence of the family relationship (Art. 5.2 paragraph 1); allows Member States to carry out interviews and other investigations that are deemed necessary (Art. 5.2 paragraph 2); and foresees the additional possibility to take into consideration informal types of evidence for refugees? family reunification (Art. 11.2).

From the aforementioned provisions, the Court inferred that the competent national authorities are required, before authorising family reunification under the Directive, to establish the existence of the relevant family links between the sponsor and the third-country national in respect of whom the application for family reunification is lodged.

Therefore, the Belgian legislation impairs the effectiveness of the Family Reunification Directive and is contrary to its objectives in so far as it allows the automatic issue of a residence permit on the sole ground of the expiry of the time limit for a decision without having established the substantial requirements for obtaining such a permit.

Outcome:

Council Directive 2003/86/EC of 22 September 2003 on family reunification must be interpreted as precluding national legislation under which, in the absence of a decision being adopted within six months of the date on which the application for family reunification was lodged, the competent national authorities must automatically issue a residence permit to the applicant, without necessarily having to establish in advance that the latter actually meets the requirements for residence in the host Member State in accordance with EU law.

Observations/Comments:

The judgment herein examined relates to another judgment delivered by the CJEU, [C-246/17 Diallo, 27 June 2018, EU:C:2018:499](#) [15], where the same point of law was examined with regard to family reunification with *EU citizens* under Directive 2004/38/EC. In the latter decision, in line with the opinion of the Advocate General, the Court remarked the declaratory nature of the residence permit for family members of EU citizens, which merely certifies that a right already exists. From this principle, the Court logically inferred that such permit cannot give rise to a right which would not otherwise be present due to the lack of its substantive requirements.

In view of the above-mentioned sentence, the referring Court in the judgment summarised herein highlighted that a different conclusion concerning the Directive 86/2003 would lead to a more favourable treatment of family members of third-country nationals residing lawfully in the EU compared to family members of EU citizens.

This summary was written by Pietro Derossi, Italian lawyer working as researcher, reporter and editor for Migrants Foundation on 'Vie di Fuga', a permanent observatory on refugees in Europe.

Case Law Cited:

[CJEU ? C-635/17, E. v Staatssecretaris van Veiligheid en Justitie](#) [16]

CJEU - C-246/17, Diallo

CJEU - C-540/03 Parliament v Council

Attachment(s):



[Case C 706-18 Judgment.pdf](#)[17]

Authentic Language:

English

Country of preliminary reference:

Belgium

National / Other Legislative Provisions:

Article 10

Article 12a(2) of the Wet betreffende de toegang tot het grondgebied

het verblijf

de vestiging en de verwijdering van vreemdelingen (Law of 15 December 1980 on entry to the territory

residence

establishment and removal of foreign nationals)

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<http://curia.europa.eu/juris/document/document.jsf?text=&docid=203405&pageIndex=0&do>

[16] <https://www.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-c-63517-e-v-staatssecretaris-van-veiligheid-en-justitie>

[17] <https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/Case%20C%20706-18%20Judgment.pdf>