

## CJEU - Case C-550/16 A and S, 12 April 2018

**Country of Applicant:**

Eritrea

**Date of Decision:**

12-04-2018

**Citation:**

Court of Justice of the European Union (CJEU), Case C-550/16 A and S, 12 April 2018

**Court Name:**

Court of Justice of the European Union (Second Chamber)

**Keywords:**[Assessment of facts and circumstances](#) [1][Best interest of the child](#) [2][Family member](#) [3][Family reunification](#) [4][Family unity \(right to\)](#) [5][Unaccompanied minor](#) [6]**Relevant Legislative Provisions:**European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(2\)](#) [9]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(4\)](#) [10]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(6\)](#) [11]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(8\)](#) [12]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(9\)](#) [13]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Recital \(10\)](#) [14]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Article 2](#) [15]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Article 3](#) [16]European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#)

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European Union Law > [EN - Family Reunification Directive, Directive 2003/86/EC of 22 September 2003](#) [8] > [Article 5](#) [18]

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#### **Headnote:**

An asylum applicant 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 still be regarded as a ?minor? for the purposes of that provision.

#### **Facts:**

The main proceedings concern an Eritrean girl who applied for asylum in the Netherlands in February 2014 and who attained the age of majority less than four months later. In October 2014, she was granted refugee status and received a residence permit with effect from the date on which her application was submitted. She applied for family reunification with her parents and her three minor brothers, which was rejected on the ground that she was no longer a minor at the date on which the application for family reunification was submitted. On appeal, the District Court of the Hague considered, on the basis of Article 2(f) of the Family Reunification Directive, that, in principle, the status of an unaccompanied minor must be determined by reference to the moment of *entry* of the person concerned into the territory of the Member State. Prior to this decision, the

Dutch Council of State [had held](#) [34], instead, that attaining the age of majority (?ageing out?) after arrival may be taken into account for assessing if a child can be considered an ?unaccompanied child? under the relevant Directive. In view of the lack of a consistent interpretation at the national level, the District Court of the Hague decided to submit the following question to the CJEU for a preliminary ruling:

*?In matters relating to family reunification for refugees, must the term ?unaccompanied minor?, within the meaning of Article 2(f) of [Directive 2003/86] also cover a third-country national or stateless person below the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible by law or custom and who:*

*? applies for asylum,*

*? during the asylum procedure, attains the age of 18 on the territory of the Member State,*

*? is granted asylum with retroactive effect to the date of the application, and*

*? subsequently applies for family reunification??*

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### **Decision & Reasoning:**

In essence, this case concerned the decisive date on which to consider a refugee?s age and, thus, whether he or she can be regarded as an unaccompanied minor within the meaning of the Family Reunification Directive. The referring court, the European Commission, the Netherlands and Poland all proposed the CJEU to answer this question in distinct directions. The referring court submitted that the reference date should be that of the entry of the person concerned into the territory of the Member State. The Dutch government submitted that this was up to Member States? discretion. The European Commission referred to the day of submission of the application for family reunification, while the Polish Government argued that the date of the decision on that application should be decisive.

Firstly, the CJEU recognised that from the outset Article 2(f) of the Family Reunification Directive does not specify the moment at which the condition of being ?below the age of 18? must be satisfied. However, it recalled that, in principle, in such cases an autonomous and uniform interpretation throughout the European Union must take into account, inter alia, the context of the provision and the objective pursued by the legislation in question. It follows, therefore, that it is not for each Member State to determine which moment it wishes to choose for the purposes of assessing the condition of being ?below the age of 18?.

Secondly, the CJEU reiterated that the Family Reunification Directive pursues not only the general objective of promoting family reunification and granting protection to third-country national, in particular minors, but seeks specifically to guarantee an additional protection for those refugees who are unaccompanied minors. This is clear under its Article 10(3)(a), which the CJEU finds to impose on the Member States a precise positive obligation, to which a clearly defined right corresponds. In other words, it lays down a right to family reunification for refugees who are unaccompanied minors which is not subject to a margin of discretion on the part of the Member States.

Thirdly, the Court of Justice observed that Chapter V of the Family Reunification Directive, in which Article 10(3)(a) is situated, applies only to the family reunification of refugees recognised as such by the Member States. In other words, the possibility to submit a family reunification request is subject to a prior positive decision on the application for asylum. Yet, the CJEU says, it must be

recalled that recognition of refugee status is a declaratory act and that persons who fulfil the material conditions laid down in the recast Qualification Directive have a subjective right to be recognised as having refugee status, even before a formal decision is adopted.

In those circumstances, to make the right to family reunification dependent upon the moment at which the competent national authority formally reaches an asylum decision and, therefore, on how quickly or slowly the asylum application is processed, would call into question the effectiveness of the Family Reunification Directive.

This interpretation would also go against the principles of equal treatment as it would follow that two unaccompanied minors of the same age who submitted an asylum application at the same time could be treated differently as regards their right to family reunification in practice, since this would depend on the duration of the processing of their application on which they generally have no influence. The CJEU also recognised that, if this interpretation was to be adopted, the right to family reunification could be hindered due to political choices made by Member States as regards the available staff or the cases they wish to prioritise. The Court also observed that the time limits for the duration of asylum procedures are often exceeded, particularly in periods of substantial surges in asylum applications.

In addition, this interpretation would make it entirely unforeseeable for an unaccompanied minor who submitted an asylum application to know whether he or she will be entitled to the right to family reunification with his or her parents, which might undermine the principle of legal certainty.

In the CJEU's view, taking the **date on which the application for international protection was submitted** as that by reference which it is appropriate to assess the age of a refugee enables identical treatment, foreseeability and effectiveness of the Family Reunification provisions.

Fourthly, the CJEU agreed with the submission of the Dutch Government and the European Commission that in such cases an application for family reunification must be made within a reasonable time, which it considers, in principle, to be a period of three months of the date on which the minor concerned was declared to have refugee status.

Finally, the Court of Justice observed that the date of entry into the territory of a Member State cannot, in principle, be held to be determinative in that regard, owing to the intrinsic link that there is between the right to family reunification and refugee status, the recognition of which depends on an application for international protection being submitted.

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#### **Outcome:**

Article 2(f) of Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 10(3)(a) thereof, 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 be regarded as a 'minor' for the purposes of that provision.

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#### **Observations/Comments:**

This judgment is generally in line with the [opinion](#) [35] of Advocate General Bot, delivered in October 2017.

The Migration Law Clinic of VU Amsterdam submitted an [expert opinion](#) [36] to the CJEU on this case.

Relevant publications about this case include:

- S. Peers, Childhood's End? The Court of Justice upholds unaccompanied child refugees' right to family reunion, EU Law Analysis Blog, available [here](#) [37].
- K. Groenendijk & E. Guild, Children are entitled to Family Reunification with their Parents C-550/16 A & S Court of Justice of the European Union, EU Migration Law Blog, available [here](#) [38].
- K. Babická, CJEU Confirms That EU Law on Family Reunification Should Be Accessible and Effective for Unaccompanied Children, Opinio Juris, available [here](#) [39].
- S. Bartolini, The right of family reunification of unaccompanied minor asylum seekers before the Court of Justice of the EU, European Law blog, available [here](#) [40].

### Case Law Cited:

[CJEU - C-225/16, Ouhrami](#) [41]

H.T., 24 June 2015, C-373/13, ECLI:EU:C:2015:413,

[CJEU - Case C 338/13, Marjan Noorzia v Bundesministerin für Inneres](#) [42]

[CJEU - C-356/11 and C-357/11, O, S v Maahanmuuttovirasto, and Maahanmuuttovirasto v L](#) [43]

### Attachment(s):



[CJEU A and S.pdf](#)[44]

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### Authentic Language:

English

### Country of preliminary reference:

Netherlands

### National / Other Legislative Provisions:

Netherlands ? Aliens Act - Article 29(2)c

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### Links:

- [1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A10](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A10)
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- [36] <https://migrationlawclinic.files.wordpress.com/2017/03/expert-opinion-unaccompanied-minors-final-version.pdf>
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