Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

23 November 2023 *

(Reference for a preliminary ruling – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Mother of minor refugee children in Belgium – Mother who is a 'family member' within the meaning of Article 2(j) of that directive – Application for the grant of international protection, as a derived right, submitted by that mother – Rejection – No obligation on Member States to recognise the right of the person concerned to obtain that protection if she does not individually qualify for it – Article 20 and Article 23(2) of that directive – Inapplicability)

In Case C-614/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 13 September 2022, received at the Court on 24 September 2022, in the proceedings

XXX

v

Commissaire général aux réfugiés et aux apatrides

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– XXX, by S. Janssens, avocate,

– the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by S. Matray, avocate,

* Language of the case: French.

– the European Commission, by A. Azéma and J. Hottiaux, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20 and 23 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between XXX, a Guinean national, residing in Belgium, and the Commissaire général aux réfugiés et aux apatrides (Commissioner-General for Refugees and Stateless Persons, Belgium), concerning the latter's decision to reject the application for international protection lodged by XXX in that Member State.

Legal context

3 Article 2 of Directive 2011/95, entitled 'Definitions', provides in paragraph (j) thereof:

'For the purposes of this Directive the following definitions shall apply:

…

(j) "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

– the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

– the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

– the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried'.

4 Article 3 of that directive, entitled 'More favourable standards', provides:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

5 Article 20 of Directive 2011/95, entitled 'General rules', provides:

'1. This Chapter shall be without prejudice to the rights laid down in the [Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 and entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, done at New York on 31 January 1967 and which entered into force on 4 October 1967].

2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

…

5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.'

6 Article 23 of Directive 2011/95, entitled 'Maintaining family unity', provides:

'1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.'

7 The benefits listed in Articles 24 to 35 of Directive 2011/95 relate to the right of residence, travel documents, access to employment, access to education and procedures for recognition of qualifications, social welfare, healthcare, unaccompanied minors, access to accommodation, freedom of movement within the Member State, access to integration facilities and, lastly, repatriation.

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

8 XXX, a Guinean national, arrived in Belgium with three of her children in 2018. She lodged an application for international protection on 8 August 2018, which was rejected.

9 It is apparent from the documents before the Court that one of those three children was granted refugee status. The file also shows that the family already existed in Guinea.

10 Following the rejection of her application for international protection, XXX brought an action before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), which dismissed it by decision of 8 June 2020.

11 The referring court, hearing an appeal on a point of law against that decision, notes that XXX, who is a 'family member', within the meaning of Article 2(j) of Directive 2011/95, submits that since Article 23 of that directive has not been validly transposed into Belgian law, that article would have direct effect, meaning that the Kingdom of Belgium is under an obligation to grant her international protection.

12 Although the referring court has doubts concerning the merits of that claim, since Article 23 refers only to the grant of the benefits referred to in Articles 24 to 35 of that directive and that grant is the maximum likely to result from any direct effect of Article 23, that court considers that, as it is called upon to rule at last instance in the present case, it is required to make a reference to the Court in that regard. Those considerations lead the referring court to refer the first and second questions for a preliminary ruling. The referring court states, moreover, that it considers it appropriate to refer to the Court a third question, the wording of which was suggested to it by the applicant in the main proceedings.

13 Although the referring court again has doubts concerning the merits of the applicant's argument – according to which the best interests of the child, referred to in Article 20 of Directive 2011/95, and respect for family life necessitate that, under Article 23 of that directive, international protection be granted to the mother of children who are recognised as refugees in Belgium and who have arrived there accompanied by her, even if she does not qualify for such protection – since the stakes in question appear to be capable of being met by the grant of a residence permit enabling the mother to live lawfully in Belgium, the referring court also considers itself bound to make a reference to the Court in that regard, given that it is ruling at last instance. In those circumstances, the referring court decided to refer the fourth question to the Court of Justice for a preliminary ruling, the wording of which had also been suggested to it by the applicant in the main proceedings.

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

'(1) Can Article 23 of [Directive 2011/95], which has not been transposed into Belgian law to provide for the granting of a residence permit or international protection to the mother of a child who was recognised as a refugee in Belgium and who arrived there accompanied by her mother, have direct effect?

(2) If so, does Article 23 of [Directive 2011/95] confer, in the absence of transposition, on the mother of a child who was recognised as a refugee in Belgium and who arrived there accompanied by her mother, the right to claim the benefits referred to in Articles 24 to 35 [of that directive], including a residence permit allowing her to reside legally in Belgium with her family, or the right to obtain international protection even if the mother does not individually qualify for such protection?

(3) Does the effectiveness of Article 23 of [Directive 2011/95], read in the light of Articles 7, 18 and 24 of the Charter of Fundamental Rights of the European Union, require Member States that have not amended their national laws so that family members [, within the meaning of Article 2(j) of that directive,] of the beneficiary of such a status may, if they do not individually qualify for such status, claim certain benefits, to grant those family members the right to derivative refugee status so that they may claim those benefits in order to maintain family unity?

(4) Does the effectiveness of Articles 20 and 23 of [Directive 2011/95], read in the light of Articles 7, 18 and 24 of the [Charter of Fundamental Rights], require Member States that have not amended their national laws, so that the parents of a refugee who is a minor can claim the benefits listed in Articles 24 to 35 of the directive, to [allow those parents to] enjoy derivative international protection in order to give primary consideration to the best interests of the child and to ensure the effectiveness of that child's refugee status?'

Consideration of the questions referred

15 As the Court has consistently held, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute. As is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraphs 43 to 45 and the case-law cited).

16 The Court has thus repeatedly held that it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 46 and the case-law cited).

17 It is apparent from the wording of the order for reference and from the documents before the Court that, in the main proceedings, the referring court is seised of an appeal relating to a decision refusing the applicant the international protection which she had sought. By contrast, it is in no way apparent from that decision or from the documents before the Court that that applicant actually sought one or more of the benefits listed in Articles 24 to 35 of Directive 2011/95 to which Article 23(2) of that directive refers or that the decision at issue in the main proceedings relates to a refusal of such benefits.

18 Rather than actually seeking a specific benefit from among those listed in Articles 24 to 35 of Directive 2011/95, by applying to the national authority that may grant or refuse that benefit to her and then challenging any refusal before the competent national courts, setting out the reasons why she considers that she is eligible for the benefit or benefits concerned under Directive 2011/95 – and, in particular, under Article 23 thereof – the applicant in the main proceedings chose to seek international protection by claiming that such a benefit would be the only one capable of remedying an alleged failure to transpose Article 23 correctly into national law.

19 It must be held that – as in essence the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) correctly found in its decision of 8 June 2020 challenged before the referring court – irrespective of whether or not Article 23 of Directive 2011/95 has been correctly transposed into national law, the applicant cannot in any event obtain international protection since she does not individually satisfy the conditions for granting such protection under EU law.

20 The Court of Justice has held that Directive 2011/95 does not provide for the extension, as a derived right, of refugee status or subsidiary protection status to the family members of a person to whom that status is granted and who, individually, do not satisfy the conditions for granting that status. It follows, in that regard, from Article 23 thereof that that directive merely requires the Member States to amend their national laws so that those family members are entitled, in accordance with national procedures and in so far as that is compatible with the personal legal status of those family members, to certain benefits which include, inter alia, a residence permit, access to employment or to education, which are intended to maintain family unity (judgments of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 68, and of 9 November 2021, *Bundesrepublik Deutschland (Maintaining family unity)*, C-91/20, EU:C:2021:898, paragraph 36). For the same reasons, Article 20 of Directive 2011/95, which sets out general rules and provides, in paragraph 3 thereof, for the obligation to take into account the specific situation of vulnerable persons, and, in paragraph 5 thereof, the obligation to make the best interests of the child a primary consideration, cannot be interpreted as imposing an obligation on Member States to grant refugee status to the parent of a minor child enjoying international protection.

21 Admittedly, EU law does not preclude a Member State, under more favourable national provisions, such as those referred to in Article 3 of Directive 2011/95, from granting, as a derived right and for the purpose of maintaining family unity, refugee status to the 'family members' of a beneficiary of such protection, provided, however, that that is compatible with that directive.

22 That remains, however, an option for the Member States, which, as is apparent from the request for a preliminary ruling and from the documents before the Court, the Belgian legislature has not exercised in respect of the family members of a beneficiary of international protection who do not individually qualify for such protection.

23 Moreover, it is apparent from paragraphs 12 and 13 above that the referring court itself has doubts whether a right to international protection such as that sought in the main proceedings can be based upon Articles 20 and 23 of Directive 2011/95, although, having being called upon in the present case to give judgment at last instance, it nonetheless considered itself bound to refer a question to the Court in that regard.

24 In those circumstances, and in the light of the case-law referred to in paragraphs 15 and 16 above and the subject matter of the dispute in the main proceedings, as set out in paragraphs 17 and 18 of the present judgment, it is necessary to answer the questions referred only in so far as they seek

to ascertain whether a person in the situation of the applicant in the main proceedings is entitled to international protection, with the request for a preliminary ruling being inadmissible as to the remainder.

25 In the light of all of the foregoing, and, in particular, the factors referred to in paragraphs 20 to 22 above, the answer to the questions referred is that Articles 20 and 23 of Directive 2011/95 must be interpreted as not requiring the Member States to grant the parent, and also 'family member' within the meaning of Article 2(j) of that directive, of a child who has refugee status in a Member State the right to international protection in that Member State.

Costs

26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

Articles 20 and 23 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted,

must be interpreted as not requiring the Member States to grant the parent, and also 'family member' within the meaning of Article 2(j) of that directive, of a child who has refugee status in a Member State the right to international protection in that Member State.

[Signatures]