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EMPLOYMENT & IMMIGRATION • HUMAN RIGHTS

Analysis: “The Effectiveness of Right to Family Reunification” (*Afrin*, C-1/23 PPU) by Giulia Raimondo

Introducing the Facts

On 18 April 2023, the Court of Justice delivered its ruling in the case [C-1/23 PPU \(*Afrin*\)](#). The Court was asked whether the legislation of a Member State that requires refugees’ family members to submit, exclusively in person, an application for family reunification is compatible with EU law.

The case concerned a married couple, Ms X and Mr Y, and their two minor children, all Syrian citizens. In 2019, Mr Y left Syria, while his wife and children remained in the city of Afrin, in north-western Syria, where they still reside. In August 2022, Mr Y received refugee status in Belgium. The following month, with an email to the Belgian Office des étrangers, his lawyer filed an application for family reunification in the name of Ms X and her children B so that they could join Mr Y in Belgium. In that email, the lawyer stated that Ms X and her children are in exceptional circumstances that effectively prevent them from reaching a Belgian embassy to submit an application for reunification. Because of this exceptional situation, the application was submitted by email. The Belgian Office des étrangers confirmed receipt of the email and replied that it is not possible to submit a visa application for family reunification by email, inviting the applicants to contact the competent Belgian embassy.

The applicants appealed against this decision before Brussel’s First Instance Court to obtain an order to register Ms X and her children’s visa application. In view of the circumstances of the case, the Belgian Court decided to refer the question to the Court of Justice for a preliminary ruling. Namely, the referring Court asked whether the legislation of a Member State that allows family members of a recognised refugee to submit an application for entry and residence exclusively at a diplomatic post of that State, even where these members are unable to travel to this post, is compatible with the requirements of the family reunification directive ([Directive 2003/86/EC](#)), read in light of its very object and purpose, the right to private and family life and the child’s best interests (for a comprehensive



Frasca and Carlier) as guaranteed in the [EU Charter of Fundamental Rights](#) (EU CFR), and the obligation to ensure the effectiveness of Union law.

The Law and the Court's Decision

The Court decision is based on two normative grounds to be read in conjunction. Namely, the family reunification directive ([Directive 2003/86/EC](#)) and the EU CFR. First, under Article 5 (1) of [Directive 2003/86/EC](#), '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'. The Directive does not make any distinction as to the person who should submit the application (the refugees or their family members), leaving the Member States with a certain margin of appreciation. However, as observed by the [Advocate General](#), the Court has already clarified that the same directive imposes on Member States 'precise positive obligations, with corresponding clearly defined rights' (para 37). In particular, States must authorise the family reunification of certain sponsor's family members, without having any discretion in that regard ([C-1/23 PPU](#) para 42; [C-279/20](#), para 34).

Second, Articles 7 and 24 of the [CFR](#), respectively, protect the right to private and family life and the rights of the child. [Directive 2003/86/EC](#) explicitly refers to the protection of fundamental rights and to the CFR. The Court, accordingly, explained that Member States should interpret their national law in conformity with EU law, but also guarantee that their interpretation of EU secondary law complies with the fundamental rights protected in the EU legal order ([C-1/23 PPU](#), para 44).

The Court found that the requirement to appear in person to apply for family reunification, with no exception that could take into account the specific situation of family members, impairs the effective exercise of the right to family reunification and undermines the objective pursued by the family reunification directive. In addition, the requirement of personal submission, even where this is impossible or extremely dangerous, constitutes a disproportionate interference with the right to respect for family unity in relation to the aim of combating fraud relating to family reunification ([C-1/23 PPU](#), para 57). Member States should ensure that applicants have effective and accessible means to exercise their right to family reunification. This involves a certain level of flexibility, including allowing the use of remote means of communication to submit an application ([C-1/23 PPU](#), para 51). The Court noted that Member States could require the physical presence of family members at a later stage of the family reunification procedure to assess family ties and identity. Nonetheless, Member States must facilitate such an appearance, notably by issuing consular documents or laissez-passers and reducing the number of appearances to the minimum ([C-1/23 PPU](#), para 60).

Concluding Observations

This decision follows the Court of Justice case law developing and reinforcing the subjective right to family reunification (see: [Groenendijk and Strik](#)). With particular regard to refugees' family unity, the Court of Justice requires Member States to be flexible to ensure that applicants can effectively submit their family reunification applications, in full compliance with their fundamental rights. Nevertheless, contrary to the Opinion of the Advocate General ([paras 38-39](#)), the Court does not discuss the nature of the rights that [Directive 2003/86/EC](#) confers upon Mr Y's wife and minor children

presumes the applicability of Articles 7 and 24 of the EU CFR to their situation, in particular where this requires Member States to issue travel documents to family members to reach (safely) the territory of EU Member States. In the Advocate General's Opinion ([para 39](#)) that the Court of Justice seems to espouse, the sponsor's family members are 'indirect beneficiaries' (rather than rights holders) of the right to family reunification. Despite this differentiation, as EU law applies to their situation, the EU CFR does too. The decision could have, however, benefitted from a clarification as to the nature and scope of the rights in question. That notwithstanding, this decision is a welcome development as it strengthens the protection of the fundamental rights of refugees' family members by requiring Member States not only to protect but also to promote their right to family reunification.

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