Provisional text

JUDGMENT OF THE COURT (Third Chamber)

1 August 2022 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Right to family reunification – Directive 2003/86/EC – Article 10(3)(a) – Article 16(1)(b) – Concept of 'minor child' – Concept of 'real family relationship' – Adult applying for family reunification with a minor who has obtained refugee status – Relevant date for assessing status as a minor)

In Joined Cases C-273/20 and C-355/20,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decisions of 23 April 2020, received at the Court on 22 June 2020 and 30 July 2020 respectively, in the proceedings

Bundesrepublik Deutschland

v

SW (C-273/20),

BL,

BC (C-355/20),

joined parties:

Stadt Darmstadt (C-273/20),

Stadt Chemnitz (C-355/20),

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SW, by H. Mohrmann, Rechtsanwalt,

– the Netherlands Government, by M.K. Bulterman, A. Hanje and J. Langer, acting as Agents,

– the European Commission, by C. Cattabriga and D. Schaffrin, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2(f), Article 10(3)(a) and Article 16(1)(a) and (b) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The requests have been made in proceedings between the Bundesrepublik Deutschland (Federal Republic of Germany) and, on the one hand, SW and, on the other, BL and BC, all Syrian nationals, concerning their applications for the issue of a national visa for the purpose of family reunification with their respective sons who have obtained refugee status in Germany.

Legal context

European Union law

3 Recitals 2, 4, 6, 8 and 9 of Directive 2003/86 state:

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

…

(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.

…

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

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

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 Pursuant to Article 2(f) of that directive:

‘For the purposes of this Directive:

…

(f) “unaccompanied minor” means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.’

6 Article 4 of Directive 2003/86 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:

…

(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;

…

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.

…

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

…’

7 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.

…

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

8 Article 10(3) of Directive 2003/86 states:

‘If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

…’

9 According to Article 13(1) and (2) of that directive:

‘1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year’s duration. This residence permit shall be renewable.’

10 Article 15 of Directive 2003/86 provides:

‘1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

…

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.’

11 Article 16(1) of that directive is worded as follows:

‘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.

…

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship.’

12 Under Article 17 of Directive 2003/86:

‘Member States shall take due account of the nature and solidity of the person’s family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.’

German law

13 The Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, gainful employment and integration of foreign nationals in federal territory), of 25 February 2008 (*BGBl*. 2008 I, p. 162), in the version applicable to the disputes in the main proceedings (‘the AufenthG’), provides in Paragraph 6(3):

‘For longer stays, a visa for the federal territory (national visa) is required, which is granted before entry. It shall be issued on the basis of the provisions applicable to a temporary residence permit, EU Blue Card, Intra-Corporate Transfer (ICT) Card, permanent settlement permit or EU long-term residence permit. …’

14 Paragraph 25 of that law, entitled ‘Residence on humanitarian grounds’, provides in subparagraph 2:

‘A foreign national shall be granted a temporary residence permit if the Bundesamt für Migration und Flüchtlinge [(Federal Office for Migration and Refugees)] has granted him or her refugee status within the meaning of Paragraph 3(1) of the Asylgesetz [(Law on asylum)] or subsidiary protection within the meaning of Paragraph 4(1) of the Law on asylum. …’

15 Paragraph 36 of the AufenthG, entitled ‘Subsequent immigration of parents and other family members’, provides:

‘1. In derogation from Paragraph 5(1)(1) and Paragraph 29(1)(2), a temporary residence permit shall be issued to the parents of a foreign national who is a minor and possesses a temporary residence permit pursuant to Paragraph 23(4), Paragraph 25(1) or the first alternative of the first sentence of Paragraph 25(2), a permanent settlement permit pursuant to Paragraph 26(3), or, after being granted a temporary residence permit pursuant to the second alternative of the first sentence of Paragraph 25(2), a permanent settlement permit pursuant to Paragraph 26(4), if no parent possessing the right of care and custody is resident in federal territory.

2. Other family members of a foreign national may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreign national if necessary in order to avoid unusual hardship. Paragraph 30(3) and Paragraph 31 shall be applied *mutatis mutandis* to adult family members and Paragraph 34 shall be applied *mutatis mutandis* to minor family members.’

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

16 SW, and BL and BC, all Syrian nationals, seek national visas for the purpose of family reunification with their respective sons who have recognised refugee status.

17 SW’s son and BL and BC’s son, who were born on 18 January 1999 and 1 January 1999 respectively, arrived in the Federal Republic of Germany in 2015. In response to their applications for asylum submitted on 10 December 2015 and 5 October 2015 respectively, the Federal Office for Migration and Refugees granted them refugee status on 15 July 2016 and 10 December 2015. On 15 August 2016 and 26 May 2016 respectively, the competent authority in matters of foreign nationals granted them a temporary residence permit valid for three years.

18 On 4 October 2016 and 9 November 2016 respectively, SW and BL and BC applied to the Embassy of the Federal Republic of Germany in Beirut for national visas for the purpose of family reunification with their respective sons, for themselves and for other children who are siblings of their sons living in Germany. As is apparent from the order for reference in Case C-355/20, BL and BC’s sons had already submitted, by email of 29 January 2016, an application for family reunification with their parents to that same embassy.

19 By decisions of 2 March 2017 and 28 March 2017, the embassy rejected those visa applications on the ground that SW’s son and BL and BC’s son had in the meantime come of age on 18 January 2017 and 1 January 2017, respectively.

20 The Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), by judgments of 1 February 2019 and 30 January 2019, ordered the Federal Republic of Germany to issue to SW and to BL and BC, respectively, national visas for the purpose of family reunification, pursuant to the second sentence of Paragraph 6(3), in conjunction with Paragraph 36(1) of the AufenthG, on the ground that their sons had to

be considered minors, in accordance with the case-law established by the Court, in particular the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248).

21 The Federal Republic of Germany brought an appeal on a point of law against the judgments of the Verwaltungsgericht Berlin (Administrative Court, Berlin) before the Bundesverwaltungsgericht (Federal Administrative Court, Germany), alleging infringement of Paragraph 36(1) of the AufenthG. It submits, in essence, that, in accordance with the case-law of the Bundesverwaltungsgericht (Federal Administrative Court), on the relevant date of the decision of the last court ruling on the substance, SW's son and BL and BC's son were not minor refugees. According to the Federal Republic of Germany, the case-law resulting from the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248) cannot be applied to the present case, since, in the case which gave rise to that judgment, a final decision had been taken only as regards compliance with the requirement that the refugee concerned be a minor, referred to in Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) thereof. It states that, in that case, no ruling was made on whether an entry and residence visa must be granted to the parents of a refugee who has attained the age of majority where, under national law, they do not enjoy a right of residence independent of the minor refugee and must leave the territory of the Member State concerned immediately.

22 According to the referring court, on the basis of national law, SW, and BL and BC, are not entitled to the issue of a visa for the purpose of family reunification with their respective sons.

23 In particular, that court considers that the conditions laid down in Paragraph 36(1) of the AufenthG are not met in the present case. According to the settled case-law of the Bundesverwaltungsgericht (Federal Administrative Court), the parents of a minor refugee have a right to family reunification with that refugee, under that provision, only where the child is still a minor at the time when the decision concerning the application for family reunification was taken, whether by means of an administrative decision or a decision of the court adjudicating on the substance. On that point, family reunification of parents differs from family reunification of children, which is not limited in time, since the temporary residence permit issued to a child is converted, at the age of majority, into an autonomous right of residence, independent of family reunification. By contrast, German law does not grant the parents of a minor refugee who have benefited from family reunification with that refugee such an autonomous right of residence on the child concerned's attaining the age of majority, since the national legislature has not made use of the optional power provided for that purpose in Article 15(2) of Directive 2003/86.

24 In addition, the referring court is unsure as to the criteria for assessing whether the requirement of a real family relationship, to which Article16(1)(b) of that directive makes the right to family reunification subject, is satisfied.

25 In those circumstances the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions, which are worded identically in Cases C-273/20 and C-355/20, to the Court of Justice for a preliminary ruling:

'(1) (a) In the case of subsequent immigration in order to join an unaccompanied minor refugee in accordance with Article 10(3)(a) and Article 2(f) of [Directive 2003/86], can the continued existence of the refugee's minority be a "condition" within the meaning of Article 16(1)(a) of [that directive]? Is legislation of a Member State under which parents who immigrated subsequently to join an unaccompanied minor refugee for the purposes of Article 2(f) of Directive 2003/86 are granted a (derived) right of residence in the Member State only for as long as the refugee is actually still a minor compatible with the aforesaid provisions?

(b) If the questions in 1(a) are answered in the affirmative: Is Article 16(1)(a), read in conjunction with Article 10(3)(a) and Article 2(f), of Directive 2003/86 to be interpreted as meaning that a Member State under whose legislation the parents' (derived) right of residence is limited to the period up until when the child comes of age is allowed to reject an application for entry and residence for the purpose of family reunification submitted by parents still resident in a third country if the refugee has come of age before the adoption of a final decision, in administrative

or court proceedings, on an application lodged within three months of recognition of the child's refugee status?

(2) If the answer to Question 1 is that it is not permissible to refuse family reunification:

What requirements are to be imposed in terms of a real family relationship within the meaning of Article 16(1)(b) of Directive 2003/86 in cases of subsequent immigration of parents to join a refugee who comes of age before a decision is adopted on the application for entry and residence for the purpose of family reunification? In particular:

(a) Does a first-degree relationship in the direct ascending line suffice (Article 10(3)(a) of Directive 2003/86/EC) or is a real family life also necessary?

(b) If a real family life is also necessary:

How close must it be? For example, do occasional or regular visits suffice, must the family cohabit in a single household or must they also be part of a support unit whose members are reliant upon one another?

(c) For the subsequent immigration of parents who are still in a third country and who have submitted an application for family reunification to join a child with recognised refugee status who has since come of age, must there be the expectation that, following their entry, family life will be (re-)established in the Member State in the manner required in Question 2(b)?'

Procedure before the Court

26 By decision of 3 August 2020, the President of the Court asked the referring court in Case C-273/20 whether it wished to maintain its request for a preliminary ruling in the light of the judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577). By decision of 20 August 2020, received at the Court Registry on 27 August 2020, the referring court informed the Court that it wished to maintain that request, since it considered that that judgment did not sufficiently answer the questions raised in the present case, and stated that its position also applied to the request for a preliminary ruling in Case C-355/20.

27 By decision of the President of the Court of 10 September 2020, Cases C-273/20 and C-355/20 were joined for the purposes of the written and oral parts of the procedure, and of the judgment.

Consideration of the questions referred

The first question

28 By the first part of its first question, the referring court asks, in essence, whether Article 16(1)(a) of Directive 2003/86 must be interpreted as meaning that, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Article 10(3)(a) of that directive, read in conjunction with Article 2(f) thereof, the fact that that refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification, submitted by the sponsor's parents, constitutes a 'condition' within the meaning of Article 16(1)(a), failure to comply with which allows the Member States to reject such an application. That court also asks whether those provisions must be interpreted as not precluding national legislation under which, in such a situation, the right of residence of the parents concerned comes to an end as soon as the child reaches the age of majority.

29 In that regard, it should be noted at the outset that, as has been pointed out in paragraphs 17 to 19 above, on 15 July 2016 and 10 December 2015, respectively, the German authorities granted refugee status to SW's son and to BL and BC's son. On 4 October 2016, that is to say, within three months of recognition of

her child's refugee status, SW applied for a national visa for the purpose of family reunification with her son, while he was still a minor. Similarly, as regards BL and BC, although their application for a national visa was not submitted until 9 November 2016, according to the explanations provided by the referring court the application for family reunification had already been submitted by their son on 29 January 2016, that is, within three months of recognition of their minor son's refugee status. It was only by decisions of 2 March 2017 and 28 March 2017 that those applications were rejected on the ground that SW's son and BL and BC's son had in the meantime come of age on 18 January 2017 and 1 January 2017, respectively.

30 In order to answer the first part of the first question, it must be borne in mind that the purpose of Directive 2003/86 is, in the words of Article 1 thereof, to determine the conditions for exercising the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

31 In that regard, it is apparent from recital 8 thereof that, in relation to refugees, that directive lays down more favourable conditions for exercising that right to family reunification, since special attention must be paid to their situation on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there.

32 One of those more favourable conditions concerns family reunification with first-degree relatives in the direct ascending line of a refugee. As the Court has held, whereas under Article 4(2)(a) of Directive 2003/86 the possibility of such reunification is, in principle, left to the discretion of each Member State and subject, in particular, to the condition that first-degree relatives in the direct ascending line are dependent upon the sponsor and do not enjoy proper family support in the country of origin, Article 10(3)(a) of that directive lays down, by way of exception to that principle, that first-degree relatives in the direct ascending line have the right to such reunification with a refugee who is an unaccompanied minor, which is not subject to a margin of discretion on the part of the Member States nor to conditions laid down in Article 4(2)(a) (judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 33 and 34).

33 In that regard, the concept of 'unaccompanied minor' which, in the context of Directive 2003/86, is used only in Article 10(3)(a) of that directive, is defined in Article 2(f) thereof. Although Article 2(f) states that an 'unaccompanied minor' means third-country nationals or stateless persons who are, inter alia, below the age of 18, it does not specify the point in time to which reference must be made in order to assess whether that condition is met nor does it refer, in that regard, to the law of the Member States; the Court has, in those circumstances, already held that no discretion can be conferred on the Member States as to the determination of the point in time to which reference should be made in order to assess the age of the unaccompanied minor refugee for the purposes of Article 10(3)(a) of Directive 2003/86 (see, to that effect, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 39 to 45).

34 It must also be borne in mind 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 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraphs 29 and 30 and the case-law cited).

35 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 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 25 and the case-law cited).

36 In addition, under Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), when they are implementing EU law, Member States must respect the rights and observe the principles established by the Charter and promote the application thereof, in accordance with their respective powers and respecting the limits of the powers of the European Union as conferred on it in the Treaties.

37 In that regard, it must be borne in mind that, in accordance with settled case-law, 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 (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 33 and the case-law cited).

38 In particular, Article 7 of the Charter recognises the right to respect for private and family life. In accordance with settled case-law, 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) thereof, for a child to maintain on a regular basis a personal relationship with both his or her parents (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34 and the case-law cited).

39 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 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 35 and the case-law cited).

40 In the present case, it is apparent from the requests for a preliminary ruling that German law requires an unaccompanied minor refugee to be under the age of 18 not only when the first-degree relative in the ascending line submits his or her application for entry and residence for the purpose of family reunification, but also on the date on which the competent national authorities or the national courts that may be involved decide on such an application.

41 The Court has held that Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who was below the age of 18 at the moment of his or her entry into the territory of a Member State and of the submission 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 (judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 64).

42 In that context, it must be held, in the first place, that, in accordance with settled case-law, 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 purpose of family reunification as the date which must be referred to in order to assess the age of the applicant or, as the case may be, of the sponsor, for the purposes of applying Article 10(3)(a) of Directive 2003/86, would not be consistent with the objectives pursued by that directive or the requirements arising from Article 7 of the Charter, concerning respect for private and family life, 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 (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 36).

43 The competent national authorities and courts would not be prompted to treat applications submitted by the parents of minors as a matter of priority with the urgency necessary to take account of the vulnerability of those minors and could thus act in a way which would jeopardise the right to family life both of a parent with his or her minor child and of a minor child with a member of his or her family (see, by analogy, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraph 40 and the case-law cited).

44 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 brought against the decision rejecting such an application, and not on circumstances attributable to the applicant (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 42 and the case-law cited).

45 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 (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 43).

46 In those circumstances, it must be held that, in the case of family reunification of parents with an unaccompanied minor refugee, in terms of Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 2(f) thereof, the date of the decision on the application for entry and residence for the purpose of family reunification, submitted by the sponsor's parents, is not decisive for assessing whether the refugee concerned has the status of a minor.

47 Consequently, the fact that that refugee is still a minor on that date cannot constitute a 'condition', within the meaning of Article 16(1)(a) of that directive, failure to comply with which allows Member States to reject such an application, if the Court's interpretation of Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) thereof – referred to in paragraph 41 above – is not to be contradicted.

48 In that regard, it should be pointed out that, as the Court has already held, the age of the applicant or, as the case may be, of the sponsor, cannot be regarded as a material condition for exercising 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, which are concerned by Article 16(1)(a) thereof. 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 (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 46).

49 It follows that Article 16(1)(a) of Directive 2003/86 precludes national legislation which, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Article 10(3)(a) of that directive, read in conjunction with Article 2(f) thereof, requires that that refugee still be a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents.

50 As regards the question whether it is permissible to limit the right of residence of the parents concerned to the period during which the sponsor is still a minor, it should be noted that, in accordance with Article 13(2) of Directive 2003/86, read in conjunction with Article 13(1) thereof, the Member States are, where the application for family reunification has been accepted, required to grant the family members a first residence permit of at least one year's duration.

51 It follows from that provision that, where family reunification has been applied for by the parents of a minor refugee who has, in the meantime, come of age, those parents must, if their application is accepted, be granted a residence permit valid for at least one year, and the fact that the child benefiting from refugee status reaches the age of majority cannot lead to the duration of such a residence permit being shortened (see, by analogy, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709 paragraph 63). It is, therefore, contrary to that provision to grant, in such circumstances, a right of residence to the parents only for as long as that child is actually a minor.

52 In the light of the foregoing considerations, the answer to the first part of the first question is that Article 16(1)(a) of Directive 2003/86 must be interpreted as meaning that, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Article 10(3)(a) of that directive, read in conjunction with Article 2(f) thereof, the fact that that refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents does not constitute a 'condition', within the meaning of Article 16(1)(a), failure to comply with which allows the Member States to reject such an application. Furthermore, those provisions, read in the light of Article 13(2) of Directive 2003/86, must be interpreted as precluding national legislation under which, in such a situation, the right of residence of the parents concerned comes to an end as soon as the child reaches the age of majority.

53 In the light of the answer to the first part of the first question, there is no need to answer the second part of that question, since it was raised by the referring court only in the event that the first part of the first question were answered in the affirmative.

The second question

54 By its second question, the referring court seeks, in essence, to ascertain the requirements for finding that there is a real family relationship, within the meaning of Article 16(1)(b) of Directive 2003/86, in the case of family reunification of a parent with a minor child who has been granted refugee status, where that child has attained his or her majority before the decision on the application for entry and residence for the purpose of family reunification, submitted by that parent, was adopted.

55 In particular, the referring court asks the Court to clarify whether, to that end, a first-degree relationship in the direct ascending line is sufficient or whether a real family life is also necessary, and if so, how close it must be. The referring court also asks whether family reunification requires that, after the parent has entered the territory of the Member State concerned, family life be re-established in that State.

56 In that regard, it must be borne in mind that Article 16(1)(b) of Directive 2003/86 allows Member States to reject an application for family reunification, to withdraw the residence permit granted in that respect or to refuse to renew it, where the sponsor and his or her family members do not or no longer live in a real marital or family relationship. However, that provision does not lay down any criteria for assessing whether such a real family relationship exists, nor does it impose any specific requirement as regards the closeness of the family relationships concerned. Nor moreover does it refer on that point to the laws of the Member States.

57 As noted in paragraph 34 above, 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.

58 It should be noted that Directive 2003/86, in accordance with recital 6 thereof, seeks to protect the family and establish or preserve family life by means of family reunification. In addition, in accordance with recital 4 of that directive, family reunification is a necessary way of making family life possible and helps to create sociocultural stability.

59 Furthermore, as pointed out in paragraph 39 above, measures concerning family reunification, including those provided for in Article 16 of that directive, must respect fundamental rights, in particular the right to respect for private and family life guaranteed by Article 7 and Article 24(2) and (3) of the Charter, 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.

60 It must also be borne in mind that, according to recital 8 of Directive 2003/86, special attention must be paid to the situation of refugees on account of the reasons which obliged them to flee their country and

prevent them from leading a normal family life there. It is on that basis that that directive lays down more favourable conditions for refugees and their first-degree relatives in the direct ascending line for exercising their right to family reunification.

61 Lastly, the assessment of the requirements for finding that there is a real family relationship, within the meaning of Article 16(1)(b) of Directive 2003/86, requires an appraisal to be carried out on a case-by-case basis, as is indeed apparent from Article 17 of that directive, using all the relevant factors in each case and in the light of the objectives pursued by that directive.

62 For that purpose, a first-degree relationship in the direct ascending line is not sufficient on its own to establish a real family relationship. Although the relevant provisions of Directive 2003/86 and of the Charter protect the right to, and promote the preservation of, family life, they leave it to the holders of that right, provided that the persons concerned continue to lead a real family life, to decide how they wish to conduct their family life and do not impose, in particular, any requirement as to the closeness of their family relationship (see, by analogy, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraph 58).

63 In the present case, first, it is common ground that SW's child and BL and BC's child were still minors when those children were forced to leave their country of origin and that therefore the persons in question together constituted a nuclear family as referred to in recital 9 of Directive 2003/86, to which, according to that same recital, family reunification should 'in any case' apply. Subject to verification by the referring court, there appears to be nothing to suggest that the persons concerned no longer lived in a real family relationship during the period prior to the flight of the respective children.

64 Secondly, account must be taken of the fact that, in the present case, SW, and BL and BC, and their respective children, were unable to lead a real family life during their period of separation resulting, in particular, from the specific situation of their children as refugees, that circumstance alone therefore not being capable, as such, of giving grounds for finding that there was no real family relationship within the meaning of Article 16(1)(b) of Directive 2003/86. Nor can it be presumed that any family relationship between a parent and his or her child immediately ceases to exist as soon as the minor child reaches the age of majority.

65 However, in order for there to be a real family relationship, it must be established that there is actually a family relationship or the intention to establish or maintain such a relationship.

66 Thus, the fact that the persons concerned intend to pay occasional visits to each other, in so far as they are possible, and to have regular contact of any kind, taking into account in particular the material circumstances characterising the situation of the persons concerned, including the age of the child, may be sufficient to consider that they are reconstructing personal and emotional relationships and to establish the existence of a real family relationship.

67 Furthermore, as the Court has also held, the child sponsor and his or her parent cannot be required to support each other financially, since it is likely that they will not have the material means to do so (see, by analogy, judgment of 1 August 2022, *XC (Family reunification of a child who has reached the age of majority)*, C-279/20, EU:C:2022:XXX, paragraph 68).

68 In the light of all the foregoing considerations, the answer to the second question is that Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that, in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a parent with a minor child who has been granted refugee status, where that child has attained his or her majority before the decision on the application for entry and residence for the purpose of family reunification, submitted by that parent, was adopted, a first-degree relationship in the direct ascending line is not sufficient on its own. However, it is not necessary for the child sponsor and the parent concerned to cohabit in a single household or to live under the same roof in order for that parent to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to

consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the child sponsor and the parent concerned be required to support each other financially.

Costs

69 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. **Article 16(1)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Article 10(3)(a) of that directive, read in conjunction with Article 2(f) thereof, the fact that that refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents does not constitute a 'condition', within the meaning of Article 16(1)(a), failure to comply with which allows the Member States to reject such an application. Furthermore, those provisions, read in the light of Article 13(2) of that directive, must be interpreted as precluding national legislation under which, in such a situation, the right of residence of the parents concerned comes to an end as soon as the child reaches the age of majority.**

2. **Article 16(1)(b) of Directive 2003/86 must be interpreted as meaning that, in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a parent with a minor child who has been granted refugee status, where that child attained his or her majority before the decision on the application for entry and residence for the purpose of family reunification, submitted by that parent, was adopted, a first-degree relationship in the direct ascending line is not sufficient on its own. However, it is not necessary for the child sponsor and the parent concerned to cohabit in a single household or to live under the same roof in order for that parent to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the child sponsor and the parent concerned be required to support each other financially.**

[Signatures]

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* Language of the case: German.