

Q6/2017/MDC- The practical application at the national level of the provisions in the Family Reunification Directive derogating from the requirement that refugees and family members seeking reunification provide evidence that the refugee is able to provide suitable accommodation for the family and has sickness insurance and sufficient stable and regular resources

Decision

Case Q6/2017/MDC - Opened on 23/11/2017 - Decision on 26/03/2018

During the European Network of Ombudsmen Conference that was held on **19-20 June 2017** , some Ombudsmen who took part in the Working Group on Migration expressed their concern about the practical application of a specific derogation, contained in Article 12(1) third subparagraph of the Family Reunification Directive ('the Directive') [1] .

Specifically, Member States may decide not to apply the derogation from the requirements [2] laid down for the exercise of the right to family reunification [3] if the application for family reunification is made after the expiry of a period of three months [4] from the granting of refugee status.

Following the Working Group's discussion, the Belgian Federal Ombudsman's services clarified in an e-mail of **18 October 2017** that Belgian law goes beyond the minimum period of three months provided for in the Directive [5] and applies a 12-month deadline for the applicability of the derogation.

However, the Belgian Federal Ombudsman noticed, from the complaints received, that family members of refugees in Belgium may face practical difficulties preventing them from lodging their application within the period of 12 months after the granting of refugee status to the sponsor. These difficulties were initially addressed in 2015 [6] . As a result, family members of refugees can lodge their application directly if they submit proof of their identity, fill the visa application form and, eventually, pay visa fees (their file can be completed afterwards).

Yet, according to the Belgian Federal Ombudsman, some difficulties were still encountered by and at the consular posts because, for instance:

(1) the consular posts do not always mention the relevant information on their website or on supporting documents for refugees.



(2) they do not always actively inform family members of refugees who contact the consular posts that it is possible for them to lodge their application directly.

(3) visa applicants sometimes experience long delays in obtaining an appointment with the Embassy (due to lack of administrative capacity which results in severe organizational constraints).

(4) the enforcement of favourable rules depends on the Embassy's awareness of those rules and organisational constraints.

(5) redressing situations where the expiry of the deadline is due to an Embassy's actions (or inaction) is difficult as the Ministry of Foreign Affairs and the Immigration Office have contradictory positions on the matter.

In order to tackle these problems, the Belgian Federal Ombudsman wanted to ask the Commission about a possible more favourable interpretation of the Directive.

Query

In the query forwarded by the European Ombudsman to the Commission, the institution was asked whether it could confirm that its (favourable) interpretation of the three-month deadline (envisaged in Article 12(1) third subparagraph of Directive 2003/86/EC) given in the Commission's 2014 Communication [7] providing guidelines to Member States on how to apply the Directive [8] still stands, given the aggravation of the refugee crisis since 2014 and the relatively small proportion of asylum seekers who appear to have been granted refugee status by Member States so far.

Commission's reply

On 20 December 2017, the Commission replied to the query.

The Commission confirmed that the statement made in its 2014 Communication on guidance for the application of the Directive was still applicable. It cited Section 6.1.3 of the Communication extensively.

The Commission added that, in its "European Agenda on Migration" of May 2015 [9], it underlined that, in response to the human tragedies in the migration crisis, Member States should use other legal avenues available to persons in need of protection, in parallel with resettlement. These include "*private/non-governmental sponsorships and humanitarian permits, and family reunification clauses*". The Commission concluded that the above-mentioned statement demonstrates that the Commission's position on the issues of family reunification of refugees has not changed as a consequence of the aggravation of the refugee crisis.



Finally, the Commission referred to a report on a recent EMN (European Migration Network) study, which provides an overview of the situation in different Member States as regards the timeframe within which applications for facilitated family reunification for refugees should be submitted [10] .

The Commission's reply was sent to the Belgian Federal Ombudsman on 9 January 2018.

Feedback

The Belgian Federal Ombudsman did not submit any observations to the Commission's reply.

Closing procedure

In view of the content of the reply (i.e. that the Commission confirmed the statement it had made in its 2014 Communication) and the fact that the Belgian Federal Ombudsman did not submit any observations, it was concluded that the issue raised in the query had been adequately addressed.

[1] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 03/10/2003 p. 12.

[2] Those requirements are: (i) suitable accommodation for the family, (ii) sickness insurance, and (iii) sufficient stable and regular resources.

[3] The relevant part of Article 12 (1) first subparagraph reads as follows: “ *By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7 .* ”

[4] The relevant part of Article 12 (1) third subparagraph reads as follows: “ *Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status* ” (emphasis added).

[5] Article 10, §2, fifth indent, Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals (Belgium).

[6] The Belgian Ombudsman listed the following practical inconsistencies that were addressed by the Ministry of Foreign Affairs and the Immigration Office in 2015: (1) Belgian Embassies require applicants to legalize all their document before applying for family reunification, which is time-consuming. (2) The Belgian Ombudsman has noticed that family members have had serious difficulties in obtaining all additional documents required by the Embassy to register the application.



[7] Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final.

[8] **COM (2014) 210, 6.1.3** : “ Article 12(1) third subparagraph allows MSs to require the refugee to meet the conditions of Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of refugee status. Refugees often face practical difficulties within this timeframe and these may constitute a practical obstacle to family reunification. Therefore, the Commission considers the fact that most MSs do not apply this limitation as the most appropriate solution.

Nevertheless, if MSs opt to apply this provision, the Commission considers that they should take into account objective practical obstacles the applicant faces as one of the factors when assessing an individual application. Furthermore, while MSs, in accordance with Article 11 and 5(1), are free to determine whether the application should be submitted either by the sponsor or by the family member, the specific situation of refugees and their family members may make this particularly difficult or impossible.

Therefore, the Commission considers that MSs, especially when applying a time limit, should allow for the possibility of the sponsor submitting the application in the territory of the MS to guarantee the effectiveness of the right to family reunification. Finally, if an applicant is faced with objective practical obstacles to meeting the three month deadline, the Commission considers that MSs should allow them to make a partial application, to be completed as soon as documents become available or tracing is successfully completed. The Commission also urges MSs to provide clear information on family reunification for refugees in a timely and understandable way (for instance, when their refugee status is granted). ”

[9] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration (COM(2015) 240).

[10] Report available at:

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_sr_final.pdf
[Link]

Facts and background

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