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Case Law Database

Luxembourg - Administrative Court, judgement no. 46806C

The applicants' request for family reunification was upheld by the Administrative Court of Appeal in Luxembourg. The Court ruled that the appeal was well-founded and that the disputed refusal decision of the Court of first instance must be annulled. The Administrative Court of Appeal underlined that, by rejecting the family reunification application, the Ministry of Immigration and Asylum disproportionately infringed the child's right to respect for her private and family life in violation of Article 8 of the ECHR and disregarded the best interests of the child, protected by Article 24 of the Charter and Article 5 of Directive 2003/86/EC.

Case name (in original language) : GRAND-DUCHE DE LUXEMBOURG COUR ADMINISTRATIVE Numéro du rôle: 46806C ECLI:LU:CADM:2022:46806 Inscrit le 20 décembre 2021
Case status: Decided
Case number: 46806C
Citation: Luxembourg, Administrative Court, judgement no. 46806C (ECLI:LU:CADM:2022:46806)
Date of decision: 21/04/2022
State: Luxembourg
Court / UN Treaty Body: Luxembourg Administrative Court
Language(s) the decision is available in: French
Applicant's country of residence: Luxembourg
Key aspects: Family reunification, Respect for private and family life
Relevant Legislative Provisions:

International

- 1951 Refugee Convention
- European Convention on Human Rights
- Council Directive 2003/86/EC of 22 September 2003 on family reunification

- Charter of Fundamental Rights of the European Union

Domestic

- Modified Law of 29 August 2008, on the Free Movement of Persons and Immigration
- Constitution of the Grand Duchy of Luxembourg

Facts

The applicants allege that they are of Palestinian origin and were born in Syria but never obtained Syrian nationality and were registered as Palestinian refugees. They claim to have lived with their children in a camp for Palestinian refugees in Syria and faced significant challenged when the civil war in Syria started so they decided to send their children abroad. The brother and minor sister (also applicants in this case) travelled to Europe and were relocated to Luxembourg.

The brother and his minor sister filed an application for international protection in Luxembourg and in 2018 the Minister of Immigration and Asylum granted them the refugee status as well as a residence permit valid until 2023. in 2018, the minor sister then filed an application primarily for family reunification and secondarily for residence permits for private reasons for her parents.

Additional documents were requested by the Ministry to prove that the parents were dependent on their daughter, given that, according to the Ministry, she could not be considered an unaccompanied minor, as her brother was appointed as her guardian and moved to Luxembourg with her when they both applied for international protection. The Ministry also requested the proof that the parents are deprived of family support in their country of origin and that they cannot support themselves by their own means in Syria. The minor child disagreed with the Ministry and stated that she should be considered as an unaccompanied minor, and did not submit the requested evidence. The Ministry maintained their affirmation.

The Ministry rejected the application for family reunification in 2019, arguing that the minor was not an unaccompanied minor, it did not appear from the application that the parents are dependent on their children, that they are deprived of family support in their country of origin (Syria) or that they cannot support themselves by their own means. The Ministry raised that any document concerning these conditions was not provided by the applicant despite several reminders. Moreover,

according to the Ministry, the parents did not meet the conditions to obtain a residence permit for a stay for more than 3 months under private reasons.

In 2020, the children and their parents filed an action for annulment of this ministerial decision before the Administrative Court in Luxembourg, which delivered a judgement in 2021 declaring the appeal unjustified on the merits, and therefore dismissed the applicants, who were also ordered to pay the costs of the proceedings. The minor child and her parents filed an appeal against this judgment in 2021.

Legal arguments by the applicant

The applicants argued that the Administrative Court of First Instance wrongfully applied Luxembourgish law. They claimed that it was wrong not to consider the minor applicant as an unaccompanied minor. The applicants dispute that the brother could be considered as an adult responsible for her as neither the Syrian law nor the custom would allow to consider the elder brother as being responsible for his minor sister. They specify that they do not have Syrian nationality but are recognised as stateless by Luxembourgish authorities.

They also criticised the court for not having referred the question relating to the notion of unaccompanied minor for a preliminary ruling to the Court of Justice.

They claimed a violation of Article 24(2) of the Charter of Fundamental Rights of the European Union. They argued that the Ministry of Immigration disregarded the best interests of the child, not considering the major distress deriving from distance from her parents. Finally, they alleged the substantial infringement of Article 8 of the European Convention on Human Rights, as refusing to allow the minor applicant to reunite with her parents constituted an unjustified interference with her right to respect for her private and family life.

Legal arguments by the opposing party

The State argued that the appeal should be rejected and the judgment should be confirmed (as per the ministerial decision of rejecting the application). The application for family reunification was therefore rightly examined by the Minister under the correct provision of the law, as the minor was not unaccompanied and did not have any sufficient resources for family reunification.

Decision & Reasoning

The Administrative Court of Appeal found that the minor child had applied for family reunification with her parents within three months of being granted international protection so that, based on Luxembourgish law, she does not need to prove stable, regular and sufficient resources, housing and health insurance coverage, nor does she have to prove that her direct relatives in the ascending line are dependent on her and that they are deprived of the necessary family support in their country of origin.

The Court further analysed the notion of unaccompanied minor. Luxembourgish law implementing the Directive on family reunification defined it as 'any third-country national or stateless person under the age of eighteen who enters the territory unaccompanied by an adult responsible for him or her by law or custom, until such time as he or she is effectively taken into the care of such a person, or any minor who is left unaccompanied after having entered the territory'. The Court recalled the CJEU A and S judgment in which the CJEU held that it is the date of the application for international protection that determines whether a refugee can be recognised as an unaccompanied minor. As for the notion of 'unaccompanied', the CJEU held that although the directive refers to the time of entry into the territory of the Member State, certain circumstances must be taken into account, for example a minor unaccompanied at the time of entry who is subsequently taken into the care of an adult responsible for the child is not considered unaccompanied. The Administrative Court of Appeal therefore finds that in this case the minor was not unaccompanied, given that her brother was appointed as her guardian.

With regard to the violation of Article 8 of the ECHR, the Administrative Court of Appeal notes that the minor applicant arrived in Luxembourg at the age of 15, accompanied by her older brother, both young and fleeing the civil war in Syria.

The Court observes that the State did not seem to question the family life in Syria between the child and her parents and that, conversely, the separation from her parents has been difficult. The issue should have been indeed questioned considering the sensitive context (namely the young age of the applicant child, her vulnerability as a refugee and the circumstances that led her to flee her country of origin and prevented her from leading a normal family life, as well as her psychological distress since her separation from her parents). All these elements should have been taken into account by the Ministry and then by the Administrative Court of first instance.

In so doing, the Administrative Court of Appeal found that the Ministry of Immigration and Asylum disproportionately infringed the applicant child's right to respect for her private and family life in violation of Article 8 of the ECHR and disregarded the best interests of the child, protected by Article 24 of the Charter and Article 5 of Directive 2003/86/EC on family reunification. This to justify the annulment of the contested refusal decision.

Decision documents

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Outcome

The Administrative Court of Appeal finds the appeal admissible and declares it justified on the merits. Consequently, by reversal of the judgment of the Administrative Court of first instance, annuls the refusal decision of the Ministry of Immigration and Asylum of 2019.

The court refers the case back to the Ministry of Immigration and Asylum for further proceedings and orders the State to pay the costs of both proceedings.

Caselaw cited

A. and S. Staatssecretaris van Veiligheid en Justitie of the CJEU of 12 April 2018 (Case C-550/16)