

CJEU ? C-112/20 Belgian State (Retour du parent d'un mineur), 11 March 2021

Country of Applicant:

Unknown

Date of Decision:

11-03-2021

Citation:

C-112/20 M.A. v État belge, 11 March 2021

Additional Citation:

ECLI:EU:C:2021:197

Court Name:

European Court of Justice (Tenth Chamber)

Keywords:[Best interest of the child](#) [1][Child Specific Considerations](#) [2][Residence document](#) [3][Return](#) [4]**Relevant Legislative Provisions:**

International Law

International Law > UN Convention on the Rights of the Child

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 24](#) [6] > [Art 24.3](#) [7]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 27](#) [8]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [9] > [Recital \(22\)](#) [10]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [9] > [Recital \(24\)](#) [11]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [9] > [Article 5](#) [12]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [9] > [Article 7](#) [13]European Union Law > [EN - Returns Directive, Directive 2008/115/EC of 16 December 2008](#) [9] > [Article 13](#) [14]

Headnote:

Member States are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.

Facts:

The applicant, M.A., is a third-country national that has a partner of Belgian nationality and their daughter was born in Belgium. In 2018, he was subject to an order to leave Belgian territory on account of the commission of offences that created a threat to public order. After his action against the orders were dismissed by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings - CCE), M.A. appealed before the referring court.

In his appeal, he stated that the CCE had wrongly dismissed his action under Article 23 of the Charter of Fundamental Rights of the EU (CFREU) on the ground that he had not indicated that he was acting on behalf of his minor child. M.A. claimed that the proceedings were not directed against the child and, in any case, it is not necessary for him to act on behalf of the child to invoke the best interests of the child protection. Moreover, for their enjoyment of family life the child will have to leave the EU and will not be able to enjoy her rights as a Union citizen.

The referring court decided to refer a question to the CJEU on the interpretation of Articles 5 and 13 of Directive 2008/115 (the Return Directive ? RD) and whether Articles 24 and 47 of the CFREU require that the best interests of the child are taken into account even if the decision is taken with regard to the child?s parent alone.

Decision & Reasoning:

The Court did not look into M.A.?'s request on whether he was required to bring action on behalf of his child in order to ensure that the best interests of the child are taken into account, considering that this is a question of locus standi and is not the subject of the present reference. [20-23]

The Court first started by noting that, while M.A.?'s stay in Belgium was illegal, his daughter is a minor of Belgian nationality. In such a case, M.A. could be entitled to permission to reside in Belgium on the basis of Article 20 TFEU, if the absence of a residence permit the daughter would have to follow the father outside the EU such as in the case [C-836/18](#) [16]. The Court reiterated its principles on the assessment of such cases but decided that the present reference did not include a question on the validity of M.A.?'s stay. [25-28]

Assessing the case on the premiss that M.A.?'s stay is illegal, the Court noted that the RD is applicable, including Article 5 (a) on the consideration of best interests of the child in that Directive?'s implementation. This article ?constitutes a general rule binding on Member States as soon as they implement that directive?, including where action to return is taken against a person who is the father of a minor residing legally in the EU. The Court has previously held that the best interests of the child cannot be excluded where return decisions are issued against the parents of a minor. [29-33]

To exclude adult-related decisions from best interests of the child considerations would also

contravene the objective of Article 5 and the Directive itself, which is to ensure returns are conducted in compliance with fundamental human rights. This guarantee, in combination with the broadly defined Article 24 CFREU and Article 3 (1) of the Convention on the Rights of the Child, should apply to cases that ?indirectly? affect children and not only where direct consequences are expected. Lastly, where the EU legislature wanted considerations to only relate to the person against whom action is taken, it has indicated so, such as in Article 5 (c) RD. Consequently, EU law should not be interpreted as precluding the consideration of the child?s best interests if action is taken only with regard to an adult parent?s return. [34-42]

Outcome:

Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Article 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that Member States are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.

Case Law Cited:

CJEU - C-82/16 K. A. e.a. (Regroupement familial en Belgique), 8 may 2018

[CJEU - Case C?129/18, SM \(Enfant placé sous kafala algérienne\), 26 March 2019](#) [17]

[CJEU ? Case C-181/16 Gnandi, 19 June 2018](#) [18]

CJEU - C-133/15 Chavez-Vilchez and Others, 10 May 2017

CJEU - C-106/16 Polbud-Wykonawstwo, 25 October 2017

Attachment(s):



[CURIA - Documents C 112 20.pdf](#)[19]

Authentic Language:

English

Country of preliminary reference:

Belgium

National / Other Legislative Provisions:

Article 74/13 of the loi du 15 décembre 1980 sur l'accès au territoire l'établissement

le séjour et l'éloignement des étrangers (Law of 15 December 1980 on entry into the territory residence

establishment and removal of foreign nationals)

Links:

[1] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A17

- [2] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A237
- [3] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2489
- [4] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490
- [5] <https://m.asylumlawdatabase.eu/node/453>
- [6] https://m.asylumlawdatabase.eu/node/453#toc_108
- [7] https://m.asylumlawdatabase.eu/node/453#toc_112
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- [10] https://m.asylumlawdatabase.eu/node/1306#toc_30
- [11] https://m.asylumlawdatabase.eu/node/1306#toc_32
- [12] https://m.asylumlawdatabase.eu/node/1306#toc_77
- [13] https://m.asylumlawdatabase.eu/node/1306#toc_94
- [14] https://m.asylumlawdatabase.eu/node/1306#toc_145
- [15] https://m.asylumlawdatabase.eu/node/1306#toc_151
- [16] <https://www.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-c-83618-rh-27-february-2020#content>
- [17] <https://m.asylumlawdatabase.eu/en/content/cjeu-case-c%E2%80%939112918-sm-enfant-plac%C3%A9-sous-kafala-alg%C3%A9rienne-26-march-2019>
- [18] <https://m.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-case-c-18116-gnandi-19-june-2018>
- [19] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/CURIA%20-%20Documents%20C%20112%202020.pdf>