CASE LAW COVER PAGE TEMPLATE

Name of the court [1]: **Supreme Administrative Court (Korkein Hallinto-Oikeus)**			
Date of the decision:	**22 September 2020**	**Case number:[2]**	**KHO:2020:98**
Parties to the case: **Applicant "A"** **Finnish Immigration Authorities (MIGRI)**			
Decision available on the internet? **YES** If yes, please provide the link: https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1600669273842.html			
Language(s) in which the decision is written: Finnish			
Official court translation available in any other languages? NO			
Countr(y)(ies) of origin of the applicant(s): Iraq			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Finland			
Any third country of relevance to the case:[3] no			
Is the country of asylum or habitual residence party to:			
The 1951 Convention relating to the Status of Refugees **YES**		*Relevant articles of the Convention on which the decision is based:*	
For EU member states: *please indicate which EU instruments are referred to in the decision* *European Convention on Human Rights* *Council Directive 2003/86 / EC* *Recast Definition Directive 2011/95 / EU* *Family Reunification Directive 2003/86 / EC*		Relevant articles of the EU instruments referred to in the decision: ECHR art. 8(1) Council Directive 2003/86 / EC art. 3(2)(c) and 10(3)(a) Directive 2011/95 / EU art. 23(1)	

Topics / Key terms: Family Reunification / Unaccompanied Minor

Key facts (max. 200 words)

"A" had arrived in Finland in 2015 at age 13 as an unaccompanied child and was granted subsidiary protection in 2016. A family reunification application for her parents was denied by MIGRI who held that no individual grounds were found that justify A's parents to send their child to Europe without them. MIGRI held that the parents sent A to Europe with the intention of obtaining residence permits in Finland for themselves, circumventing Finnish entry regulations. MIGRI further held that the best interest of the child does not require family reunification as family life was considered to have ended voluntarily when the parents sent their child to Europe. The parents submitted that they had sent their 5 children to Europe for their safety but could not afford the journey for themselves. Nevertheless, MIGRI has held that the parents acted against the best interest of their children in doing so. The Appeals Court upheld MIGRI's decision, holding that the best interests of the child do not necessitate her to be united with her parents in Finland considering she has other relatives in Finland. Against this background, "A" has appealed to the Supreme Administrative Court.

Key considerations of the court *(translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]*

The appellant has applied for international protection after arriving in Finland as an unaccompanied minor asylum seeker together with his siblings and his uncle and cousin. According to the decision of the Finnish Immigration Service concerning the international protection of the appellant, the appellant has not been exposed to such a special personal threat in Iraq, which is why she should have been sent to Finland. The grounds for granting subsidiary protection, namely the security situation in Anbar County, the appellant's home country, and the appellant's return there alone when the parents lived in Baghdad and subsequently in Turkey are not grounds for sending the appellant away from their parents in Baghdad or Turkey. Given the grounds of subsidiary protection afforded by the appellant, notwithstanding the issues raised by the appellant's parents concerning the security situation in Iraq, it cannot be considered that the parents' decision to send the appellant to Finland for international protection was a compelling reason for the appellant's life or health.

Given that, as stated above, there was no compelling reason to leave the appellant's parents and, in addition, given the appellant's mother's interview in the family reunification interview and the circumstances surrounding the appellant's departure, the Supreme Administrative Court considers that sends his 13-year-old daughter to Finland at that time to apply for residence permits later for themselves. The Finnish Immigration Service has thus been able to consider that the appellant's parents have sought to circumvent the provisions on entry within the meaning of section 36 (2) of the Aliens Act.

In deciding to send the appellant on a trip to Finland with his siblings, the parents have come to realize that it is uncertain whether to continue living together in Finland. The appellant, who has now reached the age of majority, has lived in Finland for almost five years, and he has been taken care of by the appellant's two adult siblings. The appellant and his parents have been in contact by telephone during this period. In view of the above, there can be no fixed family life between the applicants and the appellant. The applicants have lived all their lives outside Finland and two of their children live in Iraq. Due to these circumstances, there is no need to assess the matter differently on the basis of section 66a of the Aliens Act. Nor does the refusal of residence permits constitute an interference with the protection of family life, contrary to the European Convention on Human Rights.

Therefore, and otherwise taking into account the requirements set forth by the Supreme Administrative Court and the clarification received in the case, there are no grounds to change the outcome of the decision of the Administrative Court.

Dissenting opinion of Judge Heliskoski:

In view, in particular, of the subsidiary protection status granted to the appellant, the Finnish Immigration Service has not been able to assess that the appellant left his country of origin or residence without a compelling reason. It follows from the fact that a person has been deemed to be in need of international protection that his or her departure from the State against which he or she has been granted international protection cannot be considered to have taken place voluntarily. […]

I refer in this regard to the rules on refugees contained in Council Directive 2003/86 / EC on the right to family reunification. The eighth recital in the preamble to the Directive recognizes that the situation of refugees requires special attention for the reasons which have forced them to flee their country of origin and which prevent them from pursuing family life there. The directive therefore lays down more favorable conditions than usual for their right to family reunification. The Court has confirmed that, in a situation within the meaning of Article 10 (3) (a) of the Directive where a refugee is an unaccompanied minor, Member States are required to allow family reunification of first - degree relatives in the direct ascending line of the sponsor without any discretion. According to the Court, that provision is intended, in particular, to provide additional protection for unaccompanied minors.

I consider that the minor appellant's right to protection of family life and family reunification cannot depend on the conduct of his or her parents.

I also consider that, in the present case, it is irrelevant whether the appellant left for Finland directly from his home country, Iraq, or whether he may have previously resided in Turkey for a short period. It is also irrelevant the grounds on which the appellant was granted subsidiary protection status. The content of protection set out in the Definition Directive 2011/95 / EU is not affected by the grounds on which protection status is granted. The same applies to the right of persons granted refugee status to family reunification under the Family Reunification Directive 2003/86 / EC.

Other comments or references (*for example, links to other cases, does this decision replace a previous decision?***)**

KHO 2016:167 case concerned a family reunifier who had been granted subsidiary protection in Finland. The Supreme Administrative Court held that since the family reunifier had not been able to return to Iraq, family life between him and his parents should not be considered to have ended voluntarily.

KHO 2016: 204 family gatherers had been granted refugee status and asylum in Finland. The Supreme Administrative Court held that in these circumstances the difference between the family reunifier and his child had to be attributed to compelling reasons.

Mayeka and Mitunga v. Belgium, 12 October 2006, para 75 and paras. 84-85

Tanda-Muzinga v. France, 10 October 2014, para 75

Case C-550/16, A and S, 12 April 2018, paras 43-44

Case C-720/17, Mohammed Bilali, 23 May 2019, para 55

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.

2. Where applicable, please follow the court's official case reference system.

3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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