JUDGMENT OF THE COURT (Second Chamber)

4 March 2010 (*)

(Right to family reunification – Directive 2003/86/EC – Concept of 'recourse to the social assistance system' – Concept of 'family reunification' – Family formation)

In Case C-578/08,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Raad van State (Netherlands), made by decision of 23 December 2008, received at the Court on 29 December 2008, in the proceedings

Rhimou Chakroun

v

Minister van Buitenlandse Zaken,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Rosas (Rapporteur), U. Lõhmus, A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 21 October 2009,

after considering the observations submitted on behalf of:

– Mrs Chakroun, by R. Veerkamp, advocaat,

– the Netherlands Government, by C.M. Wissels and Y. de Vries, acting as Agents,

– the Greek Government, by T. Papadopoulou, G. Kanellopoulos and Z. Chatzipavlou, acting as Agents,

– the Commission of the European Communities, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 December 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(d) and 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12; 'the Directive').

2 The reference has been made in the course of proceedings between Mrs Chakroun and the Minister van Buitenlandse Zaken (Netherlands Minister for Foreign Affairs; 'the Minister') concerning the refusal to issue a provisional residence permit to Mrs Chakroun.

Legal context

European Union law

3 The Directive lays down the conditions for the exercise of the right to family reunification by third-country nationals who are lawfully resident in the territory of the Member States.

4 Recitals 2, 4 and 6 in the preamble to the Directive state as follows:

'(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 European Convention for the Protection of Human Rights and Fundamental Freedoms [signed at Rome on 4 November 1950; "the ECHR"] and in the Charter of Fundamental Rights of the European Union [proclaimed at Nice on 7 December 2000 (OJ 2000 C 364, p. 1; "the Charter")].

…

(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'.

5 Article 2(a) to (d) of the Directive sets out the following definitions:

'For the purposes of this Directive:

(a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) "refugee" means any third-country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) “sponsor” means a third-country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) “family reunification” means the entry into and residence in a Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident’s entry’.

6 Article 4(1)(a) of the Directive provides:

‘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:

(a) the sponsor’s spouse’.

7 Article 7(1) of the Directive provides:

‘When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.’

8 Article 9(1) and (2) of the Directive provides:

‘1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.’

9 Article 17 of the Directive is worded as follows:

‘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.’

10 Pursuant to its Article 20, the Directive was to be transposed by the Member States into their respective national laws by no later than 3 October 2005.

National law

11 Article 16(1)(c) of the Law on Aliens 2000 (Vreemdelingenwet 2000; 'the Vw 2000') provides:

'An application for a fixed-period residence permit may be refused if:

…

(c) the alien does not have independent, lasting and sufficient means of support, or the person with whom the alien wishes to reside does not have independent, lasting and sufficient means of support'.

12 Most of the provisions relevant to the main proceedings in the present case are to be found in the Decree on Aliens of 2000 (Vreemdelingenbesluit 2000; 'the Vb 2000'). That Decree was amended by Royal Decree of 29 September 2004 (*Staatsblad* 2004, p. 496) with a view to transposing the Directive.

13 Article 1.1(r) of the Vb 2000 defines family formation as 'family reunification of the spouses … in so far as the family relationship arose at a time when the principal place of residence of the principal person was the Netherlands'.

14 Article 3.13(1) of the Vb 2000 provides, so far as is relevant to the dispute in the main proceedings:

'A fixed-period residence permit … shall be granted, under the conditions for family reunification or family formation, to the member of the family … of the principal person …, if there is compliance with all the conditions laid down in Articles 3.16 to 3.22 inclusive.'

15 Article 3.22 of the Vb 2000 states as follows:

'1. The residence permit referred to in Article 3.13(1) shall be granted if the principal person:

(a) has a lasting and independent net income as defined in Article 3.74(a) …

…

2. In the case of family formation, the residence permit shall be granted, by derogation from Article 3.13(1), if the reference person has a lasting and independent net income which is equal to at least 120% of the minimum wage referred to in Article 8(1)(a) and Article 14 of the Law on the minimum wage and minimum holiday allowance [Wet minimumloon en minimumvakantiebijslag], including the holiday allowance referred to in Article 15 of that law.'

16 Article 3.74(a) and (d) of the Vb 2000 provides:

‘The means of support… are sufficient if the net income is equal to:

(a) the statutory assistance criteria, including holiday pay, referred to in Article 21 of the Law on work and assistance (Wet werk en bijstand; “the Wwb”) for the relevant categories of single people, single parents or married couples and families …

…

(d) in the case of family formation: 120% of the minimum wage referred to in Article 8(1)(a) and Article 14 of the Law on the minimum wage and minimum holiday allowance, including the holiday allowance referred to in Article 15 of that law.’

17 It is apparent from the information provided by the Raad van State that, at the time taken into account for the purposes of the dispute in the main proceedings, the statutory assistance criterion determined in accordance with Article 21(c) of the Wwb for persons over 21 years of age and less than 65 years of age, in the case where both spouses were aged under 65, was EUR 1 207.91 per month, while, in the case of family formation, the means of support were considered sufficient if the net income was equal to EUR 1 441.44 per month, including holiday allowance.

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

18 Mr Chakroun, who is of Moroccan nationality, was born on 1 July 1944. He has resided in the Netherlands since 21 December 1970 and there holds a residence permit for an indefinite period. Since 12 July 2005 he has been in receipt of unemployment benefit under the Law of 6 November 1986 on the insurance of workers against the financial consequences of unemployment (Wet tot verzekering van werknemers tegen geldelijke gevolgen van werkloosheid) which, if circumstances remain unchanged, will continue until 12 July 2010.

19 Mrs Chakroun, who also has Moroccan nationality, was born on 18 July 1948 and has been married to Mr Chakroun since 31 July 1972.

20 On 10 March 2006, Mrs Chakroun applied to the Netherlands Embassy in Rabat (Morocco) for a provisional residence permit in order to live with her husband.

21 By decision of 17 July 2006, the Minister refused that application on the ground that Mr Chakroun was not in receipt of sufficient income within the meaning of the Vb 2000. Mr Chakroun’s unemployment benefit amounted to only EUR 1 322.73 net per month, inclusive of holiday allowance, and was therefore below the applicable income standard for family formation, which was EUR 1 441.44 per month.

22 By decision dated 21 February 2007, the Minister declared the objection lodged by Mrs Chakroun against that decision to be unfounded.

23 By a decision of 15 October 2007, the Rechtbank ’s-Gravenhage (District Court, The Hague) declared unfounded the appeal which Mrs Chakroun then brought against that decision of 21 February 2007. Mrs Chakroun subsequently brought an appeal against that decision before the Raad van State.

24 Before the Raad van State, Mrs Chakroun primarily raises the question whether Article 7(1)(c) of the Directive has been correctly implemented in Article 3.74(d) and Article 3.22(2) of the Vb 2000, inasmuch as those provisions require the sponsor, in cases of family formation, to have resources equivalent to 120% of the minimum wage.

25 The Raad van State explains that the minimum wage is an essential reference criterion in the Wwb, the objective of which is to guarantee a minimum standard of living for all Netherlands nationals residing in the Netherlands and for all aliens residing in the Netherlands and equated with Netherlands nationals whose circumstances are, or threaten to become, such that they do not have the resources to meet essential living costs (Article 11 of the Wwb). Application of that law falls within the powers of the local authorities.

26 The Wwb provides for two categories of assistance. In the first place, there is general assistance, by which is meant assistance in meeting essential living costs (Article 5(b) of the Wwb). In the second place, the Law provides for special assistance, to which the persons concerned are entitled in so far as they do not have at their disposal sufficient resources to cover essential living expenses arising from exceptional circumstances and in so far as, in the opinion of the local authority, those expenses cannot be met by other available means (Article 35(1) of the Wwb).

27 The minimum wage of a person aged 23 is used by the Wwb as a reference criterion to determine need and the amount to which a person is entitled in respect of general assistance. The amount corresponding to 120% of the minimum wage is, as the Netherlands Government points out in its observations, the amount above which a resident is no longer entitled to general or special assistance.

28 The Raad van State asks whether, when implementing Article 7(1)(c) of the Directive, the Member States may or must take account, whether or not at a fixed rate, of social benefits in the form of special assistance. Granted by the local authority after examination of the applicant's situation, special assistance may take a variety of forms, including a tax refund.

29 Secondly, Mrs Chakroun challenges the distinction drawn by Netherlands law between family reunification and family formation, a distinction based on whether the family relationship arose before or after the sponsor's entry into the Netherlands, even though no such distinction is drawn in Article 7(1) of the Directive. If the application at issue in the main proceedings had been treated as an application for family reunification within the meaning of the Netherlands legislation, the assistance standard referred to in Article 21(c) of the Wwb would have been taken into consideration, in accordance with Article 3.74(a) of the Vb 2000, with the result that Mr Chakroun's resources would have been greater than the required amount.

30 The Raad van State is unsure as to whether it is possible for Member States to distinguish in this way between family formation and family reunification, but states that it is possible that the Directive does not preclude legislation which draws a distinction on the basis of whether the family relationship arose before or after the date of the sponsor's entry into the host Member State. The Raad van State notes that that distinction is provided for in Article 9 of the Directive, which applies to refugees, and in Article 16(1) and (5) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

31 Having regard to the foregoing, the Raad van State decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Should the phrase “recourse to the social assistance system” in Article 7(1)(c) of [the Directive] be interpreted as permitting a Member State to make an arrangement in respect of family reunification which results in family reunification not being granted to a sponsor who has provided evidence of having stable and regular resources to meet general subsistence costs, but who, given the level of such resources, will nevertheless be entitled to claim special assistance to meet exceptional, individually determined, essential living costs, income-related remission of charges by municipal authorities, or income-support measures in the context of municipal minimum income policies [“minimabeleid”]?

2. Should [the Directive], in particular Article 2(d), be interpreted as precluding national legislation which, in applying the resource requirement pursuant to Article 7(1)(c), makes a distinction according to whether a family relationship arose before or after the entry of the resident into the Member State?’

The questions referred

The first question

32 By its first question, the Raad van State asks whether the phrase ‘recourse to the social assistance system’ in Article 7(1)(c) of the Directive is to be interpreted as permitting a Member State to adopt rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance to meet exceptional, individually determined, essential living expenses, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies (‘minimabeleid’).

Observations submitted by the parties

33 Mrs Chakroun submits that the ‘the social assistance system of the Member State concerned’, referred to in Article 7(1)(c) of the Directive, can refer only to rules at national level, whereas a number of the rules mentioned by the Raad van State are instituted at local level. She also submits that the reference in Article 7(1)(c) of the Directive to the level of minimum national wages and pensions means that that level constitutes an upper limit.

34 Mrs Chakroun, in the same way as the Commission of the European Communities, submits that the discretion left to the Member States in implementing the Directive must not adversely affect its objectives or effectiveness. She explains in particular that the standard of 120% of the minimum wage, as laid down, has the effect that young applicants will almost never be able to meet the criterion of means of support on the basis of full-time employment. The Law takes as its reference criterion the minimum wage of persons aged 23. The minimum wage of persons under 23 years of age is, however, only a fraction of that of persons who are 23, that is to say, for example, 72% for a person aged 21, with the result that a person of 21 years of age would have to earn 160% of the minimum wage for his age group in order to satisfy the criterion.

35 At the hearing, Mrs Chakroun cited the report drawn up by the Wetenschappelijk Onderzoek- en Documentatiecentrum (Scientific Research and Documentation Centre) of the Netherlands Ministry of Justice evaluating the effect, on the migration of foreign spouses to the Netherlands, of the increase in income required for purposes of family reunification. In Mrs Chakroun's submission, the negative aspects described in that report demonstrate that the Netherlands rules run counter to the objective of the Directive.

36 The Commission states that the determining factor, according to the Directive, is whether the person concerned himself has sufficient resources to meet his basic needs without recourse to social assistance. The system laid down by the Directive should not be understood as allowing Member States to total up all the social benefits which the person concerned could claim in order to fix the threshold of required income on that basis.

37 The Commission points out in that regard that, as is stated in point 4.3.3 of its report of 8 October 2008 to the European Parliament and the Council on the application of Directive 2003/86 (COM(2008) 610), the amount required by the Netherlands authorities for evaluation of the sufficiency of resources is the highest of all the Member States of the European Union. In addition, it notes that if, in the main proceedings, the family relationship between the Chakrouns had existed before Mr Chakroun's entry into the territory of the Union, the amount of income taken into consideration for evaluation of the sufficiency of resources would have been lower than that applied in those proceedings under Article 3.74(d) of the Vb 2000. The view can therefore be taken that the amount required by the national rules in the case where the family relationship existed before the entry of the sponsor into the territory of the Union corresponds to the amount which is normally sufficient to meet the most basic needs in Netherlands society.

38 Finally, both Mrs Chakroun and the Commission consider that, in the main proceedings, the Netherlands authorities ought to have taken account of the long duration of the residence and of the marriage and that, by omitting to do so, they disregarded the requirement of individual examination of the application laid down in Article 17 of the Directive.

39 The Netherlands Government contends that the level of sufficient income, set at 120% of the statutory minimum wage, is the amount of income generally used by local authorities in the Netherlands as one of the criteria for identifying potential beneficiaries of a general or special measure of social assistance. However, certain local authorities opt for different levels of income, ranging from 110% to 130% of the statutory minimum wage. Since social assistance is granted on the basis of need, it is only after the event that statistics can be compiled which make it possible to determine the average ceiling of income at which that assistance has been granted.

40 The Netherlands Government thus submits that the level of income corresponding to 120% of the statutory minimum wage is in accordance with Article 7(1)(c) of the Directive, since it is the level of income above which, in principle, it is no longer possible to have recourse to a general or special measure of social assistance. It also argues that the level of minimum wage in the Netherlands enables only essential needs to be met; this can prove to be insufficient to meet exceptional individual expenses. Those factors, it argues, justify the taking into account of an income level equivalent to 120% of the statutory minimum wage.

The Court's answer

41 Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation (Case C-540/03 *Parliament* v *Council* [2006] ECR I-5769, paragraph 60).

42 However, that provision is subject to compliance with the conditions referred to, in particular, in Chapter IV of the Directive. Article 7(1)(c) of the Directive forms part of those conditions and allows Member States to require evidence that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system of the Member State concerned. That provision also states that Member States are to evaluate those resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

43 Since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

44 In that regard, it follows from recital 2 in the preamble to the Directive that 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. The Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the ECHR and in the Charter. It follows that the provisions of the Directive, particularly Article 7(1)(c) thereof, must be interpreted in the light of the fundamental rights and, more particularly, in the light of the right to respect for family life enshrined in both the ECHR and the Charter. It should be added that, under the first subparagraph of Article 6(1) TEU, the European Union recognises the rights, freedoms and principles set out in the Charter, as adapted at Strasbourg on 12 December 2007 (OJ 2007 C 303, p. 1), which has the same legal value as the Treaties.

45 As Mrs Chakroun pointed out at the hearing, the concept of 'social assistance system of the Member State' is a concept which has its own independent meaning in European Union law and cannot be defined by reference to concepts of national law. In the light, in particular, of the differences existing between the Member States in the management of social assistance, that concept must be understood as referring to social assistance granted by the public authorities, whether at national, regional or local level.

46 The first sentence of Article 7(1)(c) of the Directive sets up, on the one hand, the concept of 'stable and regular resources which are sufficient to maintain [the applicant]' against, on the other, that of 'social assistance'. It follows from this contrast that the concept of 'social assistance' in the Directive refers to assistance granted by the public authorities, whether at national, regional or local level, which can be claimed by an individual, in this case the sponsor, who does not have stable and regular resources which are sufficient to maintain himself and the members of his family and who, by reason of that fact, is likely to become a burden on the social assistance system of the host Member State during his period of residence (see, by way of analogy, Case C-291/05 *Eind* [2007] ECR I-10719, paragraph 29).

47 The second sentence of Article 7(1)(c) of the Directive allows Member States to take into account the level of minimum national wages and pensions as well as the number of family members when evaluating the sponsor's resources. As has been pointed out in paragraph 43 of the present judgment, that faculty must be exercised in a manner which avoids undermining the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

48 Since the extent of needs can vary greatly depending on the individuals, that authorisation must, moreover, be interpreted as meaning that the Member States may indicate a certain sum as a reference amount, but not as meaning that they may impose a minimum income level below which all family reunifications will be refused, irrespective of an actual examination of the situation of each applicant. That interpretation is supported by Article 17 of the Directive, which requires individual examination of applications for family reunification.

49 To use as a reference amount a level of income equivalent to 120% of the minimum income of a worker aged 23, above which amount special assistance cannot, in principle, be claimed, does not appear to meet the objective of determining whether an individual has stable and regular resources which are sufficient for his own maintenance. The concept of 'social assistance' in Article 7(1)(c) of the Directive must be interpreted as referring to assistance which compensates for a lack of stable, regular and sufficient resources, and not as referring to assistance which enables exceptional or unforeseen needs to be addressed.

50 Furthermore, the figure of 120% used to set the amount required by the Vb 2000 is merely an average figure, determined when the statistics on special assistance granted by the local authorities in the Netherlands and the income criteria taken into account by them are drawn up. As was stated at the hearing, some local authorities use as their reference amount an income which is lower than that corresponding to 120% of the minimum wage, which contradicts the assertion that income corresponding to 120% of the minimum wage is essential.

51 Finally, it is not for the Court to determine whether the minimum income required by Netherlands legislation is sufficient to enable workers of that State to meet their everyday needs. However, it is sufficient to note, as has been rightly contended by the Commission, that if, in the main proceedings, the family relationship between the Chakrouns had existed before Mr Chakroun's entry into the territory of the Union, the amount of income taken into consideration in the examination of Mrs Chakroun's application would have been the minimum wage and not 120% thereof. The conclusion must therefore be that the minimum wage is regarded by the Netherlands authorities themselves as corresponding to resources which are sufficient for the purposes of Article 7(1)(c) of the Directive.

52 Having regard to those factors, the answer to the first question is that the phrase 'recourse to the social assistance system' in Article 7(1)(c) of the Directive must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-

support measures in the context of local-authority minimum-income policies (‘minimabeleid’).

The second question

53 By its second question, the national court asks whether the Directive, in particular Article 2(d) thereof, is to be interpreted as precluding national legislation which, in applying the income requirement pursuant to Article 7(1)(c) of the Directive, draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

Observations submitted by the parties

54 Mrs Chakroun explains that, immediately upon his arrival in the Netherlands in 1970, her husband worked for two years in that Member State in order to earn the money required for them to marry.

55 In the view of Mrs Chakroun and the Commission, the Directive provides no basis for a distinction between preserving a family and establishing one. It is apparent from, inter alia, a Council Presidency document (Council Document 5682/01 of 31 January 2001, p. 3) that there was broad agreement that family reunification should cover both formation and preservation of the family unit. That interpretation, it is submitted, is supported by recital 6 in the preamble to the Directive and by Article 2(d) thereof. As regards the exception introduced by Article 9(2) of the Directive, it is argued that this is a provision specific to the situation of refugees obliged to flee their country. In addition, Mrs Chakroun cites the report published on 11 March 2009 by the Council of Europe Commissioner for Human Rights on his visit to the Netherlands between 21 and 25 September 2008, in which the Commissioner expresses surprise at certain provisions in the Netherlands legislation concerning family reunification.

56 The Commission also asks how a distinction based on the time at which the family relationship arose can have the slightest connection with the requirement to meet the substantive conditions relating to basic needs.

57 The Netherlands Government asserts that the distinction which the national legislation draws between establishment of a family and family reunification is not prohibited by the Directive and is one way in which account may be taken of the nature and solidity of family ties, as required by Article 17 of the Directive. The Netherlands Government argues that it is possible to imagine that the interests at stake will be greater in the case where the family relationship already existed before the principal person became resident in the Netherlands. In the case of family formation, the two partners assume the risk that it may not be possible, temporarily, for their family life to take place in the Netherlands. As a general rule, the family relationship is less intense in such cases than in those which subsequently give rise to applications for family reunification. It is precisely in order to protect the family that the Kingdom of the Netherlands has set, as the level of sufficient income, an amount lower than the general norm of 120% of the minimum wage in respect of applications for family reunification.

58 For the sake of completeness, the Netherlands Government observes that, even where the family relationship arose after the arrival of the principal person in the Netherlands, and

the income condition is not met, residence of the family members will nevertheless be permitted if Article 8 of the ECHR so requires.

The Court's answer

59 Article 2(d) of the Directive defines family reunification without drawing any distinction based on the time of marriage of the spouses, since it states that that reunification must be understood as meaning the entry into and residence in the host Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, 'whether the family relationship arose before or after the resident's entry'.

60 Only Article 9(2) of the Directive, which applies to refugees, provides that 'Member States may confine the application of [the provisions of Chapter V of the Directive] to refugees whose family relationships predate their entry'. That provision is explained by the more favourable treatment granted to refugees on their arrival in the territory.

61 It follows that the rules contained in the Directive, with the exception of Article 9(2) thereof, apply both to what the Netherlands legislation refers to as family reunification and to what it defines as family formation.

62 That interpretation is supported by recital 6 in the preamble to the Directive, which seeks to 'protect the family and establish or preserve family life'. It is also supported by the *travaux préparatoires* cited by Mrs Chakroun, from which it is apparent that there was broad agreement that family reunification should cover both family formation and preservation of the family unit.

63 Furthermore, that interpretation is consistent with Article 8 of the ECHR and Article 7 of the Charter, which do not draw any distinction based on the circumstances in and time at which a family is constituted.

64 Having regard to that lack of distinction, intended by the European Union legislature, based on the time at which the family is constituted, and taking account of the necessity of not interpreting the provisions of the Directive restrictively and not depriving them of their effectiveness, the Member States did not have discretion to reintroduce that distinction in their national legislation transposing the Directive (see, by way of analogy, Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraph 93). Furthermore, the capacity of a sponsor to have regular resources which are sufficient to maintain himself and the members of his family within the meaning of Article 7(1)(c) of the Directive cannot in any way depend on the point in time at which he constitutes his family.

65 Finally, with regard to the Netherlands Government's argument that authorisation should be granted if so required by Article 8 of the ECHR, suffice it to note that, as emerged at the hearing, Mrs Chakroun has still not been authorised to join her husband, to whom she has been married for 37 years.

66 Accordingly, the answer to the second question referred is that the Directive, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c) of the Directive, draws a

distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

Costs

67 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 (Second Chamber) hereby rules:

1. **The phrase 'recourse to the social assistance system' in Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies ('minimabeleid').**

2. **Directive 2003/86, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c) of Directive 2003/86, draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.**

[Signatures]

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* Language of the case: Dutch.