JUDGMENT OF THE COURT (Third Chamber)
7 November 2018 (*)
(Reference for a preliminary ruling — Directive 2003/86/EC — Right to family reunification — Article 15 — Refusal to grant an autonomous residence permit — National legislation providing for a requirement to pass a civic integration examination)

In Case C-484/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 4 August 2017, received at the Court on 10 August 2017, in the proceedings

K

v

Staatssecretaris van Veiligheid en Justitie,

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský, L. Bay Larsen (Rapporteur), M. Safjan and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

the Netherlands Government, by M.K. Bulterman and M.H.S. Gijzen, acting as Agents,

the European Commission, by C. Cattabriga and G. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

This request for a preliminary ruling concerns the interpretation of Article 15(1) and (4) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

The request has been made in proceedings between K, a third country national, and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) ('the State Secretary') concerning the State Secretary's rejection of K's application to change her fixed-term residence permit and the withdrawal of her fixed-term residence permit.

Legal context

European Union law

Article 15 of Directive 2003/86 states:

'1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

…

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.'

Netherlands law

Article 3.51 of the Vreemdelingenbesluit 2000 (Decree on foreign nationals 2000) provides:

'1. [A] fixed-term residence permit … subject to a restriction relating to non-temporary humanitarian grounds may be issued to a foreign national who:

has resided for five years in the Netherlands as the holder of a residence permit subject to the restriction provided for in point 1º, …:

residence as the family member of a person holding a permanent right of residence;

…

5. Article 3.80a shall apply to the foreign nationals referred to in paragraph 1(a)(1) ...'

Article 3.80a of that decree provides as follows:

'1. An application to change [a] residence permit … into a residence permit subject to a restriction relating to non-temporary humanitarian grounds shall be rejected where the application has been made by a foreign national within the meaning of Article 3.51(1)(a)(1) who has not passed the examination provided for in Article 7(2)(a) of the Law on Civic Integration or has not obtained a diploma, certificate or another document within the meaning of Article 5(1)(c) of that law.

2. [Paragraph 1] shall not apply if the foreign national:

…

has been exempted from the civic integration requirement …

4. In addition, the Minister may decide not to apply paragraph 1 if he considers that the application of that provision leads to manifest situations of serious injustice.'

Article 6(1) of the Wet inburgering (Law on Civic Integration) states:

'The Minister shall exempt a person subject to the civic integration requirement from that requirement where:

that person has shown that, owing to a psychological or physical disability or a mental deficiency, he is permanently incapable of passing the civic integration examination;

on the basis of the demonstrable efforts of the person subject to the civic integration requirement, the Minister comes to the view that that person cannot reasonably satisfy the civic integration requirement.'

Article 7(1) and (2) of that law is worded as follows:

'1. A person subject to the civic integration requirement must acquire spoken and written knowledge of the Dutch language at least to level A2 of the Common European Framework of Reference for Languages and knowledge of Dutch society within three years.

2. A person subject to the civic integration requirement shall be deemed to have fulfilled that requirement if:

he has passed the test laid down by decree of the Minister, or;

he has obtained a diploma, certificate or other document within the meaning of Article 5(1)(c).'

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

From 17 March 1995 to 25 July 2015, K held a residence permit to reside with her spouse, a third country national. On 21 July 2015, K lodged an application to change that permit into an extended residence permit.

On 1 July 2016, the State Secretary rejected that application on the ground that K had not proved that she had passed, was not subject to, or had been exempted from, the civil integration requirement. He also withdrew K's residence permit to reside with a spouse with retroactive effect to 19 August 2011 on the ground that, from that date, she was no longer living at the same address as her spouse.

Following a complaint lodged by K, by decision of 21 December 2016, the State Secretary reaffirmed his initial decision.

K brought an action against that decision before the rechtbank den Haag zittingsplaats Middelburg (District Court, The Hague, sitting at Middelburg, Netherlands). By judgment of 4 April 2017, that court dismissed the action.

K appealed against that judgment before the referring court.

In the light of the transmission, enclosed in an annex to the application in the appeal proceedings, of a statement from the Dienst Uitvoering Onderwijs (Education Executive Agency, Netherlands) finding that K had attempted, at least four times, to pass the civic integration examination and that she was present at more than 600 hours of the civic integration course, the State Secretary granted K an autonomous residence permit as of 20 April 2017. Nevertheless, the State Secretary reaffirmed the withdrawal of K's residence permit to reside with a spouse with retroactive effect to 19 August 2011.

The referring court harbours doubts as to the compatibility of the civic integration requirement laid down in the Dutch legislation with Article 15 of Directive 2003/86.

In those circumstances, the Raad van State (Council of State, Netherlands) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 15(1) and (4) of [Directive 2003/86] be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which an application for an autonomous residence permit on the part of a foreign national who has resided lawfully for more than five years on the territory of a Member State for family-reunification purposes may be rejected because of non-compliance with conditions relating to integration laid down in national law?'

Consideration of the question referred

By its question, the referring court asks, in essence, whether Article 15(1) and (4) of Directive 2003/86 precludes national legislation, such as that at issue in the main proceedings, which permits an application for an autonomous residence permit, lodged by a third country national who has resided over five years in a Member State by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that Member State.

Article 15(1) of Directive 2003/86 provides that, not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority is to be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Article 15(4) of that directive states, for its part, that the conditions relating to the granting and duration of that residence permit are established by national law.

It follows from a combined reading of those two provisions that, although issuing an autonomous residence permit is, in principle, an entitlement arising from five years of residence in a Member State by virtue of family reunification, the EU legislature nevertheless authorised the Member States to subject the grant of such a permit to certain conditions, which it left to be defined by the Member States.

It follows from paragraphs 49 to 59 of today's judgment in *C and A* (C-257/17) that it cannot be ruled out that a Member State may subject the grant of an autonomous residence permit to passing a civic integration examination on the language and society of that Member State.

However, it is clear from paragraphs 60 to 63 of that judgment that the requirement to pass such an examination imposed by national legislation, such as that at issue in the main proceedings, cannot legitimately go beyond what is necessary to attain the objective of facilitating the integration of the third country nationals concerned, which is for the referring court to ascertain.

For that purpose, the referring court must ensure, in particular, that the knowledge required to pass the civic integration examination is at a basic level, that the condition imposed by the national legislation does not lead to

an autonomous residence permit not being granted to third country nationals who have demonstrated their willingness to pass the examination and have made every effort to achieve that objective, that due account is taken of specific individual circumstances and that the fees relating to that examination are not excessive (see, to that effect, judgment of 9 July 2015, *K and A*, C-153/14, EU:C:2015:453, paragraphs 54 to 70).

In that regard, it should be noted, in particular, that circumstances, such as the age, level of education, economic situation or health of a sponsor's relevant family members, must lead the competent authorities not to subject the grant of an autonomous residence permit to passing a civic integration examination, when, due to those circumstances, they are unable to take or pass that examination (see, to that effect, judgment of 9 July 2015, *K and A*, C-153/14, EU:C:2015:453, paragraph 58).

In the light of all the foregoing considerations, the answer to the question is that Article 15(1) and (4) of Directive 2003/86 does not preclude national legislation, such as that at issue in the main proceedings, which permits an application for an autonomous residence permit, lodged by a third country national who has resided over five years in a Member State by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that Member State provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals, which is for the referring court to ascertain.

Costs

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 (Third Chamber) hereby rules:

Article 15(1) and (4) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification does not preclude national legislation, such as that at issue in the main proceedings, which permits an application for an autonomous residence permit, lodged by a third country national who has resided over five years in a Member State by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that Member State provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals, which is for the referring court to ascertain.

[Signatures]

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* Language of the case: Dutch.