



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

26 April 2012 \*

(Failure of a Member State to fulfil obligations — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Application for long-term resident status — Application for a residence permit in a second Member State made by a third-country national who has already acquired long-term resident status in a first Member State or by a member of his family — Amount of the charges levied by the competent authorities — Disproportionate charges — Obstacle to the exercise of the right of residence)

In Case C-508/10,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 25 October 2010,

**European Commission**, represented by M. Condou-Durande and R. Troosters, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Kingdom of the Netherlands**, represented by C. Wissels and J. Langer, acting as Agents,

defendant,

supported by:

**Hellenic Republic**, represented by T. Papadopoulou, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Löhmus, A. Rosas, A. Ó Caoimh (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2012,

\* Language of the case: Dutch.

gives the following

### Judgment

- 1 By its application, the European Commission requests the Court to declare that, by requiring third-country nationals and their family members applying for long-term resident status to pay high and unfair fees, the Kingdom of the Netherlands has failed to fulfil its obligations under 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) and, therefore, its obligations under Article 258 TFEU.

### Legal context

#### *European Union legislation*

Directive 2003/109

- 2 Recitals 2, 3, 6, 9, 10 and 18 in the preamble to Directive 2003/109, which was adopted on the basis of Article 63(3) and (4) EC, are worded as follows:

‘(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States’ nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

(3) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.

...

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. ...

...

(9) Economic considerations should not be a ground for refusing to grant long-term resident status and shall not be considered as interfering with the relevant conditions.

(10) A set of rules governing the procedures for the examination of application for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States’ administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.

...

(18) Establishing the conditions subject to which the right to reside in another Member State may be acquired by third-country nationals who are long-term residents should contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured. It could also constitute a major factor of mobility, notably on the Union’s employment market.’

3 It is apparent from Article 1 of Directive 2003/109 that the directive lays down:

‘ ...

- (a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and
- (b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.’

4 Chapter II of Directive 2003/109 concerns the acquisition of long-term resident status in a Member State.

5 Pursuant to Article 4(1) of the directive, which comes under Chapter II, a Member State is to grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

6 Article 5 of the directive lays down the conditions concerning the acquisition of long-term resident status. Pursuant to Article 5(1)(a) and (b), Member States are to require third-country nationals to provide evidence that they have, for themselves and for dependent family members, firstly, 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, and secondly, sickness insurance in respect of all risks normally covered for their own nationals in the Member State concerned.

7 Article 5(2) provides that Member States may also require third-country nationals to comply with integration conditions, in accordance with national law.

8 Pursuant to Article 7(1) of Directive 2003/109, in order to acquire long-term resident status, the third-country national concerned must lodge with the competent authorities of the Member State in which he/she resides an application, accompanied by documentary evidence, to be determined by national law, that he/she meets the conditions set out in Articles 4 and 5 of the directive.

9 Article 8 of the directive, entitled ‘Long-term resident’s EC residence permit’, provides in paragraph 2 thereof:

‘Member States shall issue a long-term resident’s EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.’

10 Chapter III of Directive 2003/109 concerns the right of a third-country national, with long-term residence status, to reside within the territory of a Member State other than the one which granted that status, and the right of the members of his/her family to reside in that other Member State.

11 Article 14(2) of the directive, which comes under Chapter III, provides:

‘A long-term resident may reside in a second Member State on the following grounds:

- (a) exercise of an economic activity in an employed or self-employed capacity;
- (b) pursuit of studies or vocational training;
- (c) other purposes.’

- 12 Article 15(1) of the directive, which concerns the conditions for residence in a second Member State, provides that, as soon as possible and no later than three months after entering the territory of that Member State, the long-term resident is to apply to the competent authorities of that Member State for a residence permit.
- 13 Article 16 of Directive 2003/109 sets out the conditions concerning the residence of family members of the long-term resident who are authorised to accompany or to join him/her in a second Member State. It draws a distinction between families which are already constituted in the first Member State that granted long-term resident status and which fall within the scope of Article 16(1) and (2) of the directive, and families which are not constituted in the first Member State. In the latter case, pursuant to Article 16(5), Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) applies.
- 14 Article 19 of Directive 2003/109, entitled ‘Examination of applications and issue of a residence permit’, provides at paragraphs 2 and 3 thereof:
- ‘2. If the conditions provided for in Articles 14, 15 and 16 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 17 and 18, the second Member State shall issue the long-term resident with a renewable residence permit. ...
3. The second Member State shall issue members of the long-term resident’s family with renewable residence permits valid for the same period as the permit issued to the long-term resident.’

Directive 2004/38/EC

- 15 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28) — which was adopted on the basis of Articles 12 EC, 18 EC, 40 EC, 44 EC and 52 EC — provides, at Article 25(2), that all documents mentioned in Article 25(1), namely a certificate of registration, a document certifying permanent residence, a certificate attesting submission of an application for a family member residence card, a residence card or a permanent residence card, ‘shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents’.

*National legislation*

- 16 Article 24(2) of the Law of 23 November 2000 providing for a comprehensive review of the Law on Foreign Nationals (Wet tot algehele herziening van de Vreemdelingenwet, Stb. 2000, n° 495, ‘the VW’) provides as follows:
- ‘In the cases determined by [the] Minister and in accordance with the rules which he lays down, a foreign national shall be liable to pay a charge for the processing of an application. To that end, [the] Minister may also provide that a foreign national is liable to pay a charge for the issue of a document evidencing his lawful residence. If payment is not made, the application shall not be considered or the document not issued.’
- 17 Article 24(2) of the VW was implemented by Articles 3.34 to 3.34i of the 2000 Regulation on Foreign Nationals (Voorschrift Vreemdelingen 2000, ‘the VV’).

- 18 Articles 3.34 to 3.34i of the VV set the charges payable by third-country nationals, with the exception of Turkish nationals applying for a residence permit, as follows:

Application type	Amount in EUR	Legal Provision
Long-term resident status	201	Article 3.34g(1) of the VV
Residence permit for work or study	433	Article 3.34(2)(a) of the VV
Residence permit for other reasons	331	Article 3.34(2) of the VV
Residence permit for accompanying family members	188	Article 3.34(1) of the VV
Residence permit for non-accompanying family members	830	Article 3.34(2)(b) of the VV

- 19 Article 3.34f of the VV provides for a possible waiver of payment of charges in so far as it is justified under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. Subparagraph 3 of that provision of the VV is worded as follows:

‘By way of derogation from Article 3.34c(b), a non-EU national is not liable for the charges for the processing of a request for variation of a residence permit, in the context of a residence permit as provided for in Article 14 of the [VW], for a purpose of residence referred to in Article 3.4(1)(a) of the [VV], if he/she requests an exemption therefrom, it is justified in the light of Article 8 [of that convention] and if he/she demonstrates that he/she does not have sufficient resources to pay the charges.’

### **Pre-litigation procedure**

- 20 Having received complaints from third-country nationals regarding the levying of charges provided for by the Netherlands legislation concerning the issue of residence permits to such nationals, the Commission, by letter of 30 November 2007, asked for clarification from the Dutch authorities.
- 21 The Dutch authorities set out their interpretation of the applicable legislation in a letter dated 7 February 2008. They did not contest the amount of the charges imposed on those nationals, but asserted that, since Directive 2003/109 does not set the amount of such charges, competence in that respect lies with Member States.
- 22 In those circumstances, the Commission, on 27 June 2008, sent a letter of formal notice to the Kingdom of the Netherlands, in which it stated that the charges imposed on third-country nationals who are beneficiaries of the rights conferred by Directive 2003/109 must be fair. Those charges should in no way discourage nationals who satisfy the conditions laid down by Directive 2003/109 from asserting the rights which they derive from that directive. Even if the actual cost of processing the applications of those nationals exceeds that of the processing of applications of Union citizens, the amount of the charges imposed by the Kingdom of the Netherlands is disproportionate.
- 23 As it was not satisfied with the reply sent by the Kingdom of the Netherlands to its letter of formal notice, on 23 March 2009, the Commission sent a reasoned opinion inviting that Member State to take the necessary measures to comply with that opinion within two months of its receipt.
- 24 By letter dated 25 May 2009, the Kingdom of the Netherlands replied to that reasoned opinion, reiterating its view that the Member States were competent to levy charges in the context of the implementation of Directive 2003/109, provided, however, that such a levy does not render the exercise of the rights conferred by the directive impossible or excessively difficult. According to that

Member State, the amount of the charges imposed by the Netherlands legislation, calculated on the basis of the actual cost of the formalities, does not hinder the exercise of their rights by the third-country nationals concerned.

25 Accordingly, the Commission decided to bring the present action.

26 By order of the President of the Court of 12 April 2011, the Hellenic Republic was granted leave to intervene in support of the form of order sought by the Kingdom of the Netherlands.

## **The action**

### *Admissibility of the action*

#### Arguments of the parties

27 The Kingdom of the Netherlands claims that the action must be rejected as inadmissible.

28 The Kingdom of the Netherlands claims, firstly, that the Commission's application does not refer to a breach of any specific provision of Directive 2003/109. Recital 10 in the preamble to that directive, upon which the Commission principally bases its action, has no binding legal force and does not establish independent obligations. While it is true that the Commission also refers to the obligation of loyal cooperation laid down in Article 10 EC, now Article 4(3) TEU, it does not further specify to what extent its complaints against the administrative charges are based on that provision.

29 The Kingdom of the Netherlands further submits that at no time during the pre-litigation phase did the Commission allege that the Netherlands legislation is contrary to the system, scheme or spirit of Directive 2003/109. In that respect, even if it were found that the Commission had the right to introduce such an allegation at an advanced stage of the infringement proceedings, that Member State claims that, unlike the judgment in Case C-202/99 *Commission v Italy* [2001] ECR I-9319, in which the Court upheld such a complaint, no mandatory provision of EU law is referred to in the present action.

30 Secondly, the Kingdom of the Netherlands contests the scope of the action brought by the Commission in so far as the latter, according to that Member State, limited the form of order sought in its application to the administrative charges which third-country nationals are required to pay to obtain the long-term resident status provided for in Chapter II of Directive 2003/109. The present proceedings cannot therefore relate to the charges imposed for applications made under Chapter III of the directive.

31 In those circumstances, that Member State considers that the Commission's action must be declared inadmissible.

32 The Commission contests the plea of inadmissibility raised by the Kingdom of the Netherlands. It submits that, firstly, an action seeking to establish that the Netherlands legislation is contrary to the system, scheme or spirit of the directive is indeed admissible, as was held by the Court in *Commission v Italy*. Moreover, the Commission claims that, despite the summary presentation of its objections in respect of the Netherlands legislation in the form of order set out in its application, the Kingdom of the Netherlands could precisely determine the scope of the action. The fact that the latter could provide detailed explanations and present its defence in respect of all the elements put forward by the Commission during the pre-litigation procedure demonstrates that this argument is well founded.

## Findings of the Court

- 33 It should be noted at the outset that, in the context of an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself properly against the objections formulated by the Commission (see Case C-340/02 *Commission v France* [2004] ECR I-9845, paragraph 25)
- 34 The subject-matter of proceedings under Article 258 TFEU is therefore delimited by the pre-litigation procedure prescribed by that provision. The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty not only in order to protect the rights of the Member State concerned, but also in order to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter (see Case C-1/00 *Commission v France* [2001] ECR I-9989, paragraph 53, and Case C-160/08 *Commission v Germany* [2010] ECR I-3713, paragraph 42).
- 35 By virtue of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 38(1)(c) of its Rules of Procedure, the Commission must, in any application made under Article 258 TFEU, indicate the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based (see, to that effect, Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28; Case C-456/03 *Commission v Italy* [2005] ECR I-5335, paragraph 23).
- 36 It follows that the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the treaties.
- 37 It must be held that the present action contains a clear statement of the legal and factual particulars on which it is based. It is apparent from both the pre-litigation procedure, in particular, the reasoned opinion sent by the Commission to the Kingdom of the Netherlands, and the Commission's application that that institution essentially claims that the disproportionate amount of charges imposed on third-country nationals by that Member State in implementing Directive 2003/109 undermines the objective pursued by that directive and hinders the exercise of the rights conferred on those nationals by that directive.
- 38 Admittedly, it is not disputed that, in its application, the Commission has not sought to show a breach of any specific provision of Directive 2003/109 by the Kingdom of the Netherlands, but, on the contrary, claimed, in the light of the recitals to that directive, that that Member State has infringed the system, scheme, spirit, and, therefore, the effectiveness of that directive.
- 39 However, the Court has already held that, if the Commission claims that national legislation is contrary to the system, scheme or spirit of a directive, without relating the resultant breach of EU law to any specific provisions of that directive, its application cannot, on that ground alone, be held to be inadmissible (see *Commission v Italy*, paragraph 23).
- 40 As the Advocate General has observed in point 38 of his Opinion, the reference by the Commission, in its reply, to the judgment cited in the preceding paragraph aimed to address the plea of inadmissibility raised by the Kingdom of the Netherlands in its defence and did not constitute an alteration of the subject-matter of the alleged breach, contrary to the requirements of Article 258 TFEU.
- 41 It must also be noted that, in the present case, that Member State was able to present an effective defence against the Commission's complaints, despite the succinct wording of the form of order sought in the latter's application.

- 42 The Commission expressly referred, in its letter of formal notice, in the reasoned opinion and in its application, not only to the situation of third-country nationals seeking the grant of long-term resident status, which comes under Chapter II of Directive 2003/109, but also to that of third-country nationals who have already acquired that status in another Member State and are seeking a residence permit for themselves and for the members of their family in the Netherlands, a situation which falls within Chapter III of that directive. Furthermore, the scope of the action is very clear from the conclusions in the Commission's reasoned opinion, from which it is apparent that, by citing Articles 7, 8, 15 and 16 of that directive, the Commission intended to refer to the charges levied in respect of applications for residence permits under both Chapter II and Chapter III of that directive.
- 43 The fact that the form of order sought in the application refers only to the '[requirement that] third-country nationals and their family members applying for long-term resident status pay high and unfair fees' cannot be regarded as limiting the scope of the action to only applications of third-country nationals falling within Chapter II of Directive 2003/109, for which the sum of EUR 201 is claimed by the competent Dutch authorities, when it is apparent from the form of order sought in the application, read in the light of its statement of reasons, that the application also covers the amount of the charges imposed on third-country nationals and their family members under Chapter III of the same directive.
- 44 It follows from the foregoing that the Commission's action against the Kingdom of the Netherlands for failing to fulfil an obligation must be declared admissible and, as to the remainder, in so far as the Kingdom of the Netherlands' arguments seek to contest the existence of the alleged failure, it is necessary to consider the merits of those arguments when considering the substance of the present dispute.

### *Substance*

#### Arguments of the parties

- 45 It must be noted that the arguments of the parties focus on three elements, namely the existence or not of an obstacle to the exercise of the rights conferred by Directive 2003/109, the disproportionate nature of the charges imposed on third-country nationals and the comparison between those nationals and Union citizens and, thus, between Directive 2003/109 and Directive 2004/38 as regards the amount of those charges.
- 46 The Commission does not contest either the principle of levying administrative charges for the issue of residence permits as provided for in Directive 2003/109 or the margin of discretion which the Member States have in the absence of a specific provision in that directive regulating the amount of such charges. However, it is of the opinion that, in the light of recital 10 to that directive, those charges must be reasonable and fair and they must not discourage third-country nationals who satisfy the conditions laid down by that directive from exercising the right of residence conferred on them by that directive.
- 47 In the Netherlands, the amounts paid by third-country nationals seeking long-term residence status or applying for a residence permit in that Member State having obtained that status in another Member State are 7 to 27 times greater than those imposed on Union citizens for the processing of their applications for residence permits. According to the Commission, those high amounts, which hinder the exercise of the rights enshrined in Directive 2003/109, harm the effectiveness of that directive.
- 48 Relying on recital 2 to Directive 2003/109, the Commission claims that the amount of the administrative charges required under that directive must be 'comparable' to that of the charges which Union citizens exercising their right to freedom of movement must pay to obtain similar documents. In that respect, the Commission recognises that the legal situation of third-country nationals and that of Union citizens is not identical and that they do not enjoy the same rights. However, since the purpose of that directive is analogous to that of Directive 2004/38, the Commission is of the opinion that it is disproportionate



that, for comparable investigations pursuing similar aims, the amount of the charges imposed on third-country nationals is several times greater than that considered reasonable for Union citizens under Directive 2004/38. The maximum amount set by the latter directive must thus be regarded as an important indicator for determining a fair amount for the purposes of Directive 2003/109 and an amount not liable to discourage the persons concerned from applying for long-term resident status.

- 49 In order to highlight the disproportionate nature of the charges in issue in the present case, the Commission refers to paragraphs 74 and 75 in Case C-92/07 *Commission v Netherlands* [2010] ECR I-3683, in which the Court held that the Kingdom of the Netherlands, by imposing and maintaining, for the issue of residence permits to Turkish nationals, disproportionate charges as compared to those required from nationals of Member States, had failed to fulfil its obligations under EU law. In the present case, the Commission argues that the amount of the charges required by the Dutch authorities of the issue for the documents laid down by Directive 2003/109 must, a fortiori, also be found to be disproportionate.
- 50 The Kingdom of the Netherlands contests the relevance of Directive 2004/38 for the purposes of defining the scope of the concept of a 'fair' procedure contained in recital 10 to Directive 2003/109. According to the Kingdom of the Netherlands, Directive 2004/38 is more recent than Directive 2003/109 and concerns a different legal framework. Indeed, while the residence permit granted under Directive 2004/38 has only declaratory effect, given that the fundamental right of Union citizens to move and reside freely within the territory of the Member States stems from the FEU Treaty itself, the residence permit granted under Directive 2003/109 creates a right.
- 51 Similarly, that Member State contends that the Commission's action does not take the history of Directive 2003/109 into account. The EU legislature expressly decided not to lay down a provision relating to the levying of charges, since a proposal of the Commission to this effect had been rejected. It therefore chose to leave to the Member States the power to determine the amount of charges payable under that directive.
- 52 According to the Kingdom of the Netherlands, the judgment in *Commission v Netherlands* is not transposable to the present case. Firstly, although the Court has held that the charges in issue in the case which gave rise to that judgment were disproportionate, it did so in the light of the 'standstill' clause provided for by Association Council Decision No 1/80 of 19 September 1980, set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1977 L 361, p. 29), which precludes the introduction of new restrictions into the legal order of the Member State concerned. Secondly, while Article 59 of the Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60) requires a comparison between the amount of the charges levied on Turkish nationals and the amount of the charges sought from Union citizens, a requirement to compare the amount of the charges for Union citizens and those for third-country nationals does not appear in Directive 2003/109.
- 53 That Member State also asserts that the Commission has not shown that third-country nationals are, due to the amount of the charges levied, prevented from exercising the rights conferred by Directive 2003/109. The applications for the grant of long-term resident status submitted by those nationals increased rapidly between 2006 and 2009, which does not suggest that the amount of such administrative charges has a restrictive effect. Similarly, the mere fact that the charges in force for applications for long-term resident status are greater than those imposed on Union citizens applying for analogous documents is not in itself synonymous with an obstacle. Furthermore, the investigation to be carried out in the case of applications from third-country nationals is considerably more extensive than that in cases concerning Union citizens.

- 54 The Hellenic Republic, in its statement in intervention in support of the form of order sought by the Kingdom of the Netherlands, argues that Directive 2003/109 and Directive 2004/38 have different objectives and it also points out that there is a difference as regards the conditions and procedures laid down by those directives.
- 55 According to that Member State, in order to set the charges levied for the issue of a residence permit to third-country nationals who are long-term residents, account must be taken of the amount of the contribution which corresponds to the cost of the administrative services provided for the verification not only of the right of residence, but also of the integration of the persons concerned, as a necessary condition for the acquisition of long-term resident status, and, moreover, of the financial balance of the national system of immigration administration as a whole, for reasons in the public interest.

#### Findings of the Court

- 56 As a preliminary point, it should be noted that the amount of the charges levied on third-country nationals by the Kingdom of the Netherlands which is the subject-matter of the present action varies from EUR 188 to EUR 830.
- 57 In reply to written questions from the Court, the Kingdom of the Netherlands explained to what those amounts correspond.
- 58 Accordingly, a sum of EUR 201 is levied for the long-term EC residence permit issued by the Kingdom of the Netherlands to a third-country national pursuant to Article 8(2) of Directive 2003/109, a provision which comes under Chapter II of that directive. That permit is issued to third-country nationals who have acquired long-term resident status in accordance with Articles 4, 5 and 7(2) of that directive.
- 59 The sum of EUR 433 corresponds to the charges levied on a third-country national who, having acquired long-term resident status in a first Member State, applies, under Article 14(1) of Directive 2003/109, for the right to reside in the Netherlands. Such an application for a residence permit covers the exercise of an economic activity in an employed or self-employed capacity or pursuit of studies or vocational training, in conformity with Article 14(2)(a) and (b) of that directive.
- 60 For applications for residence permits for 'other purposes', under Article 14(2)(c) of Directive 2003/109, a sum of EUR 331 is charged to third-country nationals.
- 61 As regards the amounts chargeable to family members of third-country nationals seeking residence permits in the Netherlands pursuant to Article 16 of Directive 2003/109, both that directive and the national legislation distinguish between applications lodged by family members of a long-term resident when his/her family is already constituted in the first Member State in which that resident had acquired his/her status and applications lodged by family members when that family is not constituted in the first Member State. While, in respect of the first category of residents, a sum of EUR 188 is claimed from each family member, in respect of the second category, a sum of EUR 830 is claimed from the first family member who makes an application pursuant to Article 16 and a sum of EUR 188 is claimed from each of the other family members.
- 62 In respect of the obligations of Member States under Directive 2003/109 regarding the charges levied on third-country nationals and on members of their family for the issue of residence permits, it should be noted, firstly, that no provision in that directive sets the amount of the charges that the Member States can claim for the issue of such documents.
- 63 As the Kingdom of the Netherlands argues, while the Commission's Proposal for a Directive provided for the issue of a residence permit free of charge or against payment of a sum not exceeding the charges required of nationals of the Member State concerned for the issue of identity cards, the EU legislature, by adopting Directive 2003/109, decided not to include such a provision in the directive.

- 64 It is thus undisputed, also by the Commission, that Member States may make the issue of the residence permits pursuant to Directive 2003/109 subject to the payment of charges and that, in fixing the amount of those charges, they enjoy a margin of discretion.
- 65 However, the discretion granted to Member States by Directive 2003/109 in that respect is not unlimited. They may not apply national rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness (see, to that effect, Case C-61/11 PPU *El Dridi* [2011] ECR I-3015, paragraph 55).
- 66 As is apparent from recitals 4, 6 and 12 to Directive 2003/109, the principal purpose of that directive is the integration of third-country nationals who are settled on a long-term basis in the Member States. The right of residence of long-term residents and members of their family in another Member State, provided for by Chapter III of that directive, also aims to contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured, as is apparent from recital 18 to that directive.
- 67 Directive 2003/109, in particular Articles 4, 5, 7 and 14 to 16, establishes — both for the first category of third-country nationals coming under Chapter II and for the second category, for which applications for residence permits for another Member State fall within Chapter III — the specific procedural and substantive conditions which must be respected before the Member States concerned are to issue the residence permits applied for. In essence, the applicants must provide evidence that they have sufficient resources and sickness insurance to avoid becoming a burden on the Member State concerned, and must submit an application together with the supporting documents to the competent authorities.
- 68 Having regard to the objective pursued by Directive 2003/109 and the system which it puts in place, it should be noted that, where the third-country nationals satisfy the conditions and comply with the procedures laid down in that directive, they have the right to obtain long-term resident status as well as the other rights which stem from the grant of that status.
- 69 Therefore, while it is open to the Kingdom of the Netherlands to make the issue of residence permits under Directive 2003/109 subject to the levying of charges, the level at which those charges are set must not have either the object or the effect of creating an obstacle to the obtaining of the long-term resident status conferred by that directive, otherwise both the objective and the spirit of that directive would be undermined.
- 70 Charges which have a significant financial impact on third-country nationals who satisfy the conditions laid down by Directive 2003/109 for the grant of those residence permits could prevent them from claiming the rights conferred by that directive, contrary to recital 10 to that directive.
- 71 As may be seen from that recital, the set of rules governing the procedures for examination of applications for the acquisition of long-term resident status should not constitute a means of hindering the exercise of the right of residence.
- 72 Given the close relationship between the rights granted to third-country nationals by Chapter II of Directive 2003/109 and those which fall within Chapter III of that directive, the same considerations apply in respect of the applications for residence permits made, in accordance with Articles 14 to 16 of that directive, by third-country nationals and by members of their families in a Member State other than the one which granted the long-term resident status.
- 73 It follows that, in so far as the high amount of the charges levied on third-country nationals by the Kingdom of the Netherlands is liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109, the Netherlands legislation undermines the objective pursued by that directive and deprives it of its effectiveness.

- 74 It should also be observed that, as noted in paragraph 65 of the present judgment, the discretion enjoyed by the Kingdom of the Netherlands in setting the amount of the charges that may be levied on third-country nationals for the issue of residence permits under Chapters II and III of Directive 2003/109 is not unlimited and does not therefore permit the levying of charges which would be excessive in the light of their significant financial impact on those nationals.
- 75 In accordance with the principle of proportionality, which is one of the general principles of EU law, the measures taken by national legislation transposing Directive 2003/109 must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them.
- 76 Admittedly, it cannot be excluded that the amount of the charges applicable to third-country nationals falling within the scope of Directive 2003/109 may vary depending on the type of residence applied for and the verifications which the Member State is required to carry out in that respect. As is apparent from paragraph 61 of the present judgment, the directive itself makes a distinction, in Article 16, concerning the issue of a residence permit to family members of a third-country national according to whether or not that family had been constituted in the Member State which granted that national his or her long-term resident status.
- 77 However, it should be noted that, in the present case, the amounts of the charges claimed by the Kingdom of the Netherlands vary within a range in which the lowest amount is about seven times higher than the amount to be paid to obtain a national identity card. Even if Dutch citizens and third-country nationals and the members of their families to whom Directive 2003/109 relates are not in identical situations, such a variation illustrates the disproportionate nature of the charges claimed pursuant to the national legislation in issue in the present case.
- 78 Since the charges levied by the Kingdom of the Netherlands pursuant to national legislation implementing Directive 2003/109 are per se disproportionate and liable to create an obstacle to the exercise of the rights conferred by that directive, it is not necessary to examine the Commission's additional argument that the charges levied on third-country nationals and their family members under that directive and those levied on Union citizens for the issue of similar documents pursuant to Directive 2004/38 should be compared.
- 79 Consequently, it must be held that, by applying (i) to third-country nationals seeking long-term resident status in the Netherlands, (ii) to those who, having acquired that status in a Member State other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that Member State, and (iii) to members of their families seeking authorisation to accompany or join them, excessive and disproportionate charges which are liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.

### **Costs**

- 80 Under the first subparagraph of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the first subparagraph of Article 69(4), the Member States which have intervened in the proceedings are to bear their own costs.
- 81 Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs. The Hellenic Republic, which has intervened in the proceedings, is to bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Declares that, by applying (i) to third-country nationals seeking long-term resident status in the Netherlands, (ii) to those who, having acquired that status in a Member State other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that Member State, and (iii) to members of their families seeking authorisation to accompany or join them, excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;**
2. **Orders the Kingdom of the Netherlands to pay the costs;**
3. **Orders the Hellenic Republic to bear its own costs.**

[Signatures]