Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 30 April 2014 [1]

Case C-338/13

Marjan Noorzia

(Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria))

(Right to family reunification — Directive 2003/86/EC — Article 4(5) — Provision of national law under which the sponsor and his/her spouse must have reached the age of 21 before submitting an application for family reunification)

1. According to Article 16(2) of the Universal Declaration of Human Rights, [2] '[m]arriage shall be entered into only with the free and full consent of the intending spouses'.

2. By this reference for a preliminary ruling, made by the Austrian Verwaltungsgerichtshof (Administrative Court), the Court is called on for the first time to state its position on a provision contained in Directive 2003/86/EC [3] on the right to family reunification, whose specific objective is to prevent forced marriages, that is to say, marriages in which at least one of the two spouses is married without giving his or her free and full consent in that he or she is subjected to forms of physical or mental coercion of his or her will such as, for example, threats or other forms of emotional or, in the most serious cases, physical abuse. [4]

3. Forced marriages go on underground in Europe but that does not mean that the phenomenon is insignificant. [5] It is precisely in order to restrict this phenomenon, which gives rise to odious breaches of the fundamental rights of the individual, in particular of women, that the provision which the national court is asking the Court of Justice to interpret was introduced in Directive 2003/86.

4. However, as will be seen in what follows, in this case the legitimate pursuit of this objective will have to be reconciled with the requirements arising from the right to respect for family life which is enjoyed by couples who are genuinely married.

1 — Original language: Italian.

2 — Universal Declaration of Human Rights, which the United Nations General Assembly adopted on 10 December 1948 by Resolution 217 A (III). See also, in the same terms, Article 23(2) of the International Covenant on Civil and Political Rights.

3 — Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

4 — Forced marriages can be distinguished from arranged marriages in which the families of the two spouses have a predominant role in arranging the marriage but in which the final choice on marriage ultimately lies with the spouses. However, the dividing line between an arranged marriage and a forced marriage is often somewhat blurred.

5 — It is clear from the responses of most Member State governments to the public consultation on the right to family reunification carried out in 2012 (see http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting_0023_en.htm) that there is little in the way of statistical data on the extent of the phenomenon of forced marriage in the European Union. However, research carried out, for example, in the United Kingdom, put the number of reported cases of forced marriages in 2009 at between 5 000 and 8 000 in that Member State alone. In Germany, on the other hand, over 3 400 cases were recorded in 2008.

I – Legal context

A – *The European Convention on Human Rights*

5. Under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'),[6] entitled 'Right to respect for private and family life':

'1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

B – *EU law*

6. Under Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Respect for private and family life':

'Everyone has the right to respect for his or her private and family life, home and communications.'

7. Directive 2003/86 determines the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States. According to recital 2 in the preamble to that directive, it respects fundamental rights and in particular the right to respect for family life enshrined in several instruments of international law, including, in particular, the abovementioned Articles 8 of the ECHR and 7 of the Charter.

8. Article 4 of Directive 2003/86 defines those family members of the sponsor who may be entitled to a residence permit on the basis of family reunification. Under paragraph 1(a) of that article, those family members include the sponsor's spouse.

9. Article 4(5) of Directive 2003/86 provides as follows:

'In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.'

C – *National law*

10. The Niederlassungs- und Aufenthaltsgesetz (Law on establishment and residence)[7] provides that, on certain conditions, the competent Austrian authorities are to grant a residence permit to the family members of third-country citizens. Under Article 2 of the Niederlassungs- und Aufenthaltsgesetz, family members are, for the purposes of that law, a 'spouse … [and] also registered partners; spouses and registered partners must have reached the age of 21 by the date on which the application is lodged'.

6 — Convention signed in Rome on 4 November 1950.

7 — BGBl. I, 100/2005, in the amended version published in the BGBl I, 111/2010.

II – **Facts, national procedure and questions referred**

11. Mrs Noorzia, the applicant in the main proceedings, is an Afghan citizen born on 11 January 1989.

12. On 3 September 2010, Mrs Noorzia applied to the Austrian embassy in Islamabad (Pakistan) for a residence permit for the purposes of family reunification with her husband, born on 1 January 1990, who is also an Afghan national and who resides in Austria.

13. By decision of 9 March 2011, the Bundesministerin für Inneres (Austrian Minister for the Interior), the defendant in the main proceedings, rejected the application for family reunification. In her decision the reason stated for the rejection of the application was that although Mrs Noorzia's husband had reached the age of 21 before the decision to reject the application for family reunification was adopted, under Austrian law the material date for determining the minimum age is the date on which the application is submitted and not the date on which the decision is adopted. Therefore, since the husband had not reached the age of 21 when the application for family reunification was submitted, a specific condition to be satisfied for an application to be in order had not been met.

14. Mrs Noorzia challenged the decision and the case is being heard by the referring court.

15. That court observes primarily that Article 4(5) of Directive 2003/86 does not specify whether, for the purpose of determining the age limit stated therein which the Member States may require to be reached before the spouse may join the sponsor, the material time is the date of authority's decision, the date of actual entry into territory of the Member State concerned, or some other date. The referring court further observes that the Austrian legislature expressly stated that the age limit of 21 constitutes a formal condition for issue of a residence permit for family reunification, that that condition must be satisfied at the time of submission of the application for reunification, and that failure to satisfy that condition results in rejection of the application, it not being possible for that to be in any way 'remedied' as a result of the age limit in question being reached before the procedure is completed.

16. In those circumstances, the referring court is uncertain as to the compatibility of the Austrian law at issue with Article 4(5) of Directive 2003/86. That court considers that two alternative interpretations of the provision in question are possible. On the one hand, the wording of Article 4(5) suggests that it should be interpreted as meaning that the material time for reaching the minimum age laid down therein must be the date on which the authority issues the permit and not the date on which the application is submitted. The referring court considers that if Article 4(5) of Directive 2003/86 did have to be interpreted in that way, the provision of Austrian law might be incompatible with the directive. On the other hand, however, the referring court considers that an analysis of the rationale of the provision at issue could lead to a different interpretation, which could result in the provision of national law being compatible with that directive.

17. In the light of those considerations, the referring court, by order of 29 May 2013, held it necessary to stay the proceedings pending before it in order to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 4(5) of Directive 2003/86 … to be interpreted as precluding a provision under which spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to family reunification is lodged?'

III – **Proceedings before the Court of Justice**

18. The order for reference was received at the Court Registry on 20 June 2013. Written observations were submitted by Mrs Noorzia, the Austrian and Hellenic Governments, and the Commission.

IV – **Legal assessment**

A – *Preliminary observations*

19. The reference for a preliminary ruling made by the referring court concerns the interpretation of Article 4(5) of Directive 2003/86 on the right to family reunification.

20. In that respect the point should first be made that the right to family reunification, which is conferred and governed by Directive 2003/86, constitutes a specific aspect of the right to family life which, in turn, constitutes a fundamental right enshrined in Article 8 of the ECHR and Article 7 of the Charter, and which, as such, is protected in EU law. [8]

21. The direct relationship between the fundamental right to respect for family life and the right to family reunification is recognised specifically in recital 2 in the preamble to Directive 2003/86, which is referred to at point 7 above.

22. In that context, the Court has therefore expressly held that the provisions of Directive 2003/86 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. [9]

23. The Court has further pointed out that Directive 2003/86, and Article 4(1) thereof in particular, 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 discretion. [10]

24. According to the case-law, the authorisation of family reunification is the general rule and therefore the power which Directive 2003/86 confers on Member States to place conditions on exercise of the right to family reunification must be interpreted strictly. [11]

25. The Court has further observed that any margin of discretion which Directive 2003/86 may allow the Member States must not be used by them in a manner which would undermine either the objective of the directive, which is to promote family reunification, or the effectiveness thereof. [12]

26. Furthermore, the Court has held that it is clear from Article 17 of Directive 2003/86, which provides that '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 for family reunification, that the Member States are required to examine individually applications for family reunification. [13]

27. The referring court's request for a preliminary ruling must be addressed in the light of the abovementioned principles deriving from the case-law.

8 — Judgment in *Parliament* v *Council* (C-540/03, EU:C:2006:429, paragraph 52) and the case-law cited.

9 — Judgment in *Chakroun* (C-578/08, EU:C:2010:117, paragraph 44).

10 — *Parliament* v *Council* (EU:C:2006:429, paragraph 60) and *Chakroun* (EU:C:2010:117, paragraph 41).

11 — *Parliament* v *Council* (EU:C:2006:429, paragraph 60) and *Chakroun* (EU:C:2010:117, paragraph 41). See, in that respect, as regards the power provided for in Article 7(1)(e) of Directive 2003/86, paragraph 43 of *Chakroun*.

12 — *Chakroun* (EU:C:2010:117, paragraph 43).

13 — *Chakroun* (EU:C:2010:117, paragraph 48).

B – *The question referred*

28. By its question, the referring court essentially asks the Court to determine whether Article 4(5) of Directive 2003/86 must be interpreted as precluding a provision of national law under which the minimum age which, pursuant to that provision, the Member States may require to be reached before the spouse may join the sponsor, must necessarily be reached by both of them at the time when the application for family reunification is submitted.

29. The request for a preliminary ruling is justified by the fact that (i) Article 4(5) of Directive 2003/86 does not expressly state the time at which the sponsor and his or her spouse must have reached the age limit laid down therein and (ii) under the Austrian law implementing that directive the competent national authorities can reject an application made before one or both of the parties concerned have reached that age limit even if they have both reached it by the time of adoption of the decision on the application for family reunification.

30. Thus, the question raised in the reference to the Court entails clarifying at what point, for the purposes of Article 4(5) of Directive 2003/86, the minimum age laid down therein, which may not exceed 21, must be reached. It is therefore necessary to interpret that rule.

1. Interpretation of Article 4(5) of Directive 2003/86

31. It follows from the Court's settled case-law that, in interpreting a provision of EU law, it is necessary to consider not only the wording of the provision but also the context in which it occurs and the objectives pursued by the rules of which it is part.[14] It is therefore necessary to undertake a literal, teleological and schematic interpretation of Article 4(5) of Directive 2003/86.

a) Literal interpretation

32. In its order for reference the national court states that it is clear from the actual wording of Article 4(5) of Directive 2003/86 that that provision should be interpreted as meaning that the date by which the age limit laid down therein must be reached is that on which the competent authority issues the residence permit and not that on which the application for family reunification is submitted.

33. I concur with the referring court's view that the letter of the provision at issue is conducive to an interpretation whereby the material time for reaching the age limit cannot be the time at which the application for family reunification is submitted.

34. Since Article 4(5) of Directive 2003/86 confers on the Member States the power to require that the sponsor and his/her spouse be of a minimum age 'before the spouse is able to join him/her',[15] it presupposes that that age limit must be reached by the time at which the spouse can join the sponsor, that is to say, the time at which the competent authority allows the application for a residence permit for the purposes of family reunification. The spouse can join the sponsor only after the application has been allowed, and not before.

14 — Judgment in *Koushkaki* (C-84/12, EU:C:2013:862, paragraph 34) and the cited case-law.

15 — This footnote is not relevant to the English version of this Opinion.

35. This literal interpretation of Article 4(5) of Directive 2003/86, in the Italian version thereof, is confirmed by the other language versions of that provision. The French, English, German and Spanish versions of the provision in question refer to the fact that the sponsor and his/her spouse must *be* of a minimum age before the spouse *is able* to join him/her [16] and not before the application has been submitted. [17] This reference to the possibility [18] of the spouse joining the sponsor shows that the material time is that at which the application is allowed.

36. Therefore, a literal interpretation of the provision leads to the conclusion that the point by which the sponsor and his or her spouse must have reached the minimum age under the provision at issue is the point at which the spouse is able to join the sponsor. Consequently, that point cannot coincide with the submission of the application for family reunification since, as has also been noted by the referring court itself, at that point the spouse cannot join the sponsor as the competent administrative authority will not yet have completed the necessary analysis of whether the conditions for allowing him or her to do so have been satisfied.

b) Teleological interpretation

37. The referring court considers, however, that a teleological interpretation of Article 4(5) of Directive 2003/86 could lead to a different outcome.

38. The referring court considers that to interpret Article 4(5) Directive 2003/86 as meaning that the time by which the age limit laid down therein must be reached is that at which the application for family reunification is submitted would be more helpful in attaining the objective of preventing forced marriages. The national court considers that there is a greater risk of forced marriages if spouses are permitted to be under the age of 21 at the time at which the application is made than there is where that is not possible.

39. The Austrian and Hellenic Governments agree with this view and maintain that interpreting the provision at issue as requiring an age limit of 21 at the time at which the application is submitted not only enables the objective of preventing force marriage to be attained but also safeguards observance both of the principle of equality — in that it treats equally all applicants in the same situation chronologically, by rendering irrelevant the fact that the age limit can be reached during the procedure — and the principle of legal certainty, in that it protects the applicants against possible discriminatory treatment by the competent authorities.

40. There is no doubt that the fundamental rationale of introducing, through Article 4(5) of Directive 2003/86, the possibility of laying down a minimum age, is to prevent forced marriages. In that respect, I consider it is likely that, in general, being older will entail a greater level of maturity which may, in theory, help the person concerned to resist pressure to enter into a forced marriage and possibly encourage him or her to seek help.

16 — The French version of Article 4(5) of Directive 2003/86 provides that 'le regroupant et son conjoint aient *atteint* un âge minimal … avant que le conjoint *ne puisse rejoindre* le regroupant'; the English version provides that 'the sponsor and his/her spouse … *be* of a minimum age … before the spouse *is able* to join him/her'; the German version provides that 'der Zusammenführende und sein Ehegatte ein Mindestalter *erreicht* haben müssen … bevor der Ehegatte dem Zusammenführenden *nachreisen darf*'; and the Spanish version provides that 'el reagrupante y su cónyuge hayan *alcanzado* una edad mínima … antes de que el cónyuge *pueda reunirse* con el reagrupante' (italics added).

17 — See, however, paragraph 6 of that article. See points 53 and 54 below.

18 — In French 'puisse rejoindre'; in English 'able to join'; in German 'nachreisen darf'; and in Spanish 'pueda reunirse'.

41. However, I consider that any assessment of whether that is in fact the case must necessarily be conducted on an individual basis in relation to the particular circumstances of each specific situation. Furthermore, I have to point out how in European civic society doubts are expressed as to the real effect on the prevention of forced marriages of laying down a minimum age for the purpose of authorising family reunification. [19]

42. What is certain, however, is that the laying down of a minimum age for family reunification has a direct effect on the exercise of the right to family reunification by the families of young married persons whose marriage is genuine and not forced. A provision such as the provision of national law at issue which, pursuant to Directive 2003/86, subjects, without distinction and without individual analysis, the exercise of the right to family reunification to the reaching of a certain age prevents those who have married sincerely and genuinely, but who have not yet reached the minimum age laid down therein, from exercising that right.

43. It follows from those considerations that in an interpretation of Article 4(5) of Directive 2003/86, the objective of restricting forced marriages, however legitimate and appropriate, must be counterbalanced by the right of genuinely married couples to exercise their right to family reunification which arises directly from the right to respect for their family life enshrined in Article 8 of the ECHR [20] and Article 7 of the Charter. [21]

44. Furthermore, it follows from the case-law cited above at points 24 and 25, firstly, that in the system created by Directive 2003/86 the authorisation of family reunification is the general rule and therefore the conditions which the Member States may place on the exercise of the right to such reunification must be interpreted strictly and, secondly, that the directive itself must be interpreted in the light of its general objective, which is to promote rather than prevent family reunification, and also in such a way as to safeguard the effectiveness thereof.

45. In the light of these considerations, I consider that an interpretation of Article 4(5) of Directive 2003/86 which requires that a person wait until reaching the age of 21 before submitting an application for family reunification is less consistent with the objectives pursued by the directive than an interpretation of the same provision which, instead, allows an application to be submitted before that age is reached and a residence permit to be obtained where that age has been reached at the time at which the authority's decision on the application for family reunification is adopted.

46. That second interpretation, whilst safeguarding the effectiveness of the provision designed to prevent forced marriages, tends to *promote* family reunification by avoiding a formalistic interpretation of the provision which is an obstacle to such reunification.

47. Against that background, I consider that the arguments put forward by the Austrian and Hellenic Governments concerning the principle of equal treatment and legal certainty respectively must be rejected. Allowing the minimum age to be reached also after the application has been submitted is not likely, in my view, to give rise to any discrimination and does not create any legal uncertainty. In that respect, it should be noted that in any event under Article 5(4) of Directive 2003/86 the competent

19 — A number of representatives of European civic society who participated in the public consultation on family reunification launched by the Commission and mentioned in footnote 5 above highlighted the lack of data on the effectiveness, in terms of preventing forced marriages, of laying down a minimum age for family reunification, thereby casting great doubt on its effectiveness.

20 — The Court recognised the need to have regard to the right to respect for family life under Article 8 of the ECHR in the case of genuine marriage in the judgment in *Akrich* (C-109/01, EU:C:2003:491, paragraph 58).

21 — Of significance in this sense is the judgment of the Supreme Court of the United Kingdom of 12 October 2011, in the case of *Quila* [2011] UKSC 45, in which it declared unlawful a measure providing for an increase in the minimum age for family reunification in the United Kingdom from 18 to 21 in order to deter forced marriages on the ground that the measure constituted disproportionate interference with the right to respect for family life under Article 8 of the ECHR. The Supreme Court essentially held that the objective of preventing forced marriages was lawful, but that the measure was not proportionate since there was not sufficient evidence of the effectiveness of the measure in question and it was evident that the measure in question affected the right to family reunification of couples whose marriage was not forced.

authorities are required to adopt a decision on the application for family reunification 'as soon as possible and in any event no later than nine months from the date on which the application was lodged'. The laying down of a time-limit for processing the application therefore dispels any legal uncertainty.

48. Finally, it should also be pointed out that Article 4(5) of Directive 2003/86 expressly lays down another objective for which the Member States are offered the possibility of introducing a minimum age for exercising the right to family reunification, that is to say, the objective of ensuring better integration. In that regard, I note, however, that neither the referring court nor the parties which submitted observations have taken a position in that regard. This may be due to the fact that in the context of the provision at issue this objective is perceived as secondary to that of preventing forced marriages.

49. Quite apart from this, I note in that respect that the idea behind stating an objective of that kind appears to be that integration into the society of the Member State receiving the sponsor's spouse may be simpler if the spouse has a greater level of maturity as a result of the fact that he or she has reached a certain age. Without considering this possible rationale for that provision, I none the less consider that it in no way undermines the conclusion that the interpretation of Article 4(5) of Directive 2003/86 whereby the minimum age can be reached by the time at which the spouse joins the sponsor and not the time at which the application is submitted, is more closely in line with attaining the general objectives of the directive.

50. In that regard, I further note, firstly, that prolonged separation of family members is likely in reality to have negative effects on integration since such separation is likely to weaken family ties. Secondly, and in any event, the assessment of the ability of the sponsor's spouse to integrate as a result of age cannot dispense with a case-by-case analysis, as required by Article 17 of the directive in the light of the case-law cited at point 26 above.

c) Schematic interpretation

51. The reading of Article 4(5) of Directive 2003/86, which arises from the literal and teleological interpretation developed in the preceding points is, in my view, corroborated if that provision is interpreted on the basis of the scheme of the legislation.

52. It should be noted first of all that a reading of the directive in question as a whole shows that when the EU legislature wanted to refer to the time of submission of the application, it did so explicitly.

53. An initial example in that regard is provided by paragraph 6 of Article 4 of Directive 2003/86, that is to say, the paragraph following the paragraph which contains the provision to be interpreted in the present case. Article 4(6), inter alia, enables the Member States to place an age limit, albeit a maximum and not a minimum one, on the exercise of the right to family reunification. In that paragraph, the EU legislature provided that, in certain circumstances, 'Member States may request that *the applications* concerning family reunification of minor children *have to be submitted before* the age of 15'.[22]

54. It must thus be found that, in Article 4(6), unlike in Article 4(5) which is the subject of interpretation in the present case, the EU legislature explicitly stated that the age limit laid down therein has to be reached before the date on which the application for family reunification is submitted.

22 — Italics added.

55. In the same way, in Article 7(1) of Directive 2003/86, where it provides that the Member States may require the person concerned to provide evidence that a number of conditions regarding the sponsor have been satisfied, the legislature refers specifically to the time 'when the application for family reunification is submitted'.

56. It follows from these considerations that if the EU legislature had intended that the minimum age laid down in Article 4(5) of Directive 2003/86 has to be reached by the time the application is submitted, it would have stated that specifically in the provision itself. Since it did not do so, preference must be given to the interpretation that the time by which that minimum age must be reached coincides not with the time at which the application is submitted but with the time at which the spouse is able to join the sponsor, that is to say, the time at which the application is allowed.

57. Both the Austrian and the Hellenic Government contend that reaching the minimum age laid down in Article 4(5) of Directive 2003/86 constitutes a formal condition for submitting an application for family reunification. The Hellenic Government contends in particular that the time by which the minimum age must be reached is inferred from Article 5(2) of Directive 2003/86, which provides that the application for family reunification is to be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down inter alia in Article 4 of the directive. In the view of the Hellenic Government, it is clear from the wording of that provision that the documents to be supplied to the authority by the applicant must include evidence that the minimum age laid down in Article 4(5) of Directive 2003/86 has been reached.

58. In that regard I observe, however, that it is not clear from any provision of Directive 2003/86 that reaching the minimum age laid down in Article 4(5) of the directive constitutes a formal condition for submitting an application. In particular, I do not see how it can necessarily be inferred from Article 5(2) of Directive 2003/86, under which the application must be accompanied by documentary evidence of compliance with the conditions laid down in Article 4. That provision, read in conjunction with Article 4(5) of Directive 2003/86 can — and in my opinion must — be interpreted as meaning that the application must be accompanied by documentary evidence that the minimum age will be reached by the time at which the spouse joins the sponsor.

59. The Austrian Government goes on to contend that since Article 4(5) of Directive 2003/86 does not expressly specify the time by which the minimum age must be reached, it leaves the Member States a margin of discretion which, in accordance with the principle of procedural autonomy, allows them to determine it as they see fit.

60. In that regard, I observe, on the one hand, that it can be deduced from the considerations set out in points 33 to 36 above that, in actual fact, it follows from the wording of the provision in question that the time by which the minimum age must be reached has to be the time at which the spouse is able to join the sponsor, which means that it cannot be the time at which the application is submitted.

61. On the other hand, even assuming that the provision at issue leaves the Member States a margin of discretion as regards fixing the material time for the purpose of reaching the age limit, it follows from the case-law cited at point 25 above that, although Directive 2003/86 allows the Member States a margin of discretion, the latter must not be used by them in a manner which would undermine the objective of the directive, which is to promote family reunification.

62. In my view, a provision which permits a decision to reject an application for family reunification to be adopted on the ground that, at the time the application is submitted, the age limit for exercising the right to reunification has not been reached, when, however, at the time that decision is adopted, the required age limit has been reached, not only fails to promote family reunification but also hinders it, and does so regardless of the fact, highlighted by the Austrian Government, that the spouses can subsequently re-submit an application for family reunification.

d) Conclusion

63. It is clear from a literal, teleological and schematic interpretation of Article 4(5) of Directive 2003/86 that the time by reference to which the Member States may require that the sponsor and his/her spouse be of a minimum age, of 21 years at most, to exercise the right to family reunification is the time at which the spouse is able to join the sponsor. Consequently, that time cannot coincide with the time at which the application for family reunification is submitted to the competent authority. Therefore, it follows that a provision such as the national provision at issue in the main proceedings, which makes the grant of an application for family reunification subject to necessarily reaching that age limit by the time at which that application is submitted, and thus allows the competent authority to reject such an application on the ground that at the time at which it was submitted that limit had not been reached, even though it had been reached at the time at which the decision to reject that application was adopted, is incompatible with that provision.

2. The request that the Court verify the validity of Article 4(5) of Directive 2003/86

64. In her observations Mrs Noorzia asks the Court to verify the validity of Article 4(5) Directive 2003/86. She contends that the condition requiring that a minimum age of 21 be reached before exercising the right to family reunification, irrespective of whether it must be satisfied by the date on which the application is lodged or the date on which reunification is authorised, is not capable of preventing forced marriages.

65. In that respect, it should be recalled that according to the Court's case-law, it is for the referring court alone to determine the subject-matter of the questions it intends to refer. It is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. [23]

66. In its reference for a preliminary ruling, the national court seeks solely to obtain an interpretation of Article 4(5) of Directive 2003/86. It does not state that it has any doubts as to the validity of that provision or that any such question was raised before it in the case in the main proceedings.

67. In those circumstances, since Article 267 TFEU does not constitute a means of redress available to the parties to a case pending before a national court, the Court cannot be compelled to evaluate the validity of the act of EU law on the sole ground that that question has been put before it by one of the parties in its written pleadings. [24] As a result, regardless of the considerations referred to at point 41 above, I consider that there are no grounds for examining the question raised by Mrs Noorzia of the validity of Article 4(5) of Directive 2003/86.

23 — See *Brünsteiner and Autohaus Hilgert* (C-376/05 and C-377/05, EU:C:2006:753, paragraph 26) and the case-law cited.

24 — See *Brünsteiner and Autohaus Hilgert* (EU:C:2006:753, paragraph 28) and the case-law cited. See, to that effect, also *Melki and Abdeli* (C-188/10 and C-189/10, EU:C:2010:363, paragraph 63). As regards specifically the role of the parties in the preliminary ruling procedure, see point 80 of the Opinion of Advocate General Trstenjak in *VB Pénzügyi Lízing* (C-137/08, EU:C:2010:401).

V – **Conclusion**

68. For the reasons set out above, I therefore propose that the Court give the following answer to the question referred by the Verwaltungsgerichtshof:

Article 4(5) Directive 2003/86 on the right to family reunification precludes a rule whereby the minimum age which, pursuant to that provision, the Member States may require to be reached before the spouse may join the sponsor must necessarily have been reached by both of them by the time the application for family reunification is submitted in order for it to be possible to grant that application.