



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 October 2012*

(Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Scope — Article 3(2)(e) — Residence based on a formally limited permit)

In Case C-502/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Raad van State (Netherlands), made by decision of 14 October 2010, received at the Court on 20 October 2010, in the proceedings,

Staatssecretaris van Justitie

v

Mangat Singh,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta (Rapporteur), acting as President of the Third Chamber, K. Lenaerts, E. Juhász, G. Arestis and T. von Danwitz, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- M. Singh, by I.M. Hagg, advocaat,
- the Netherlands Government, by M. Noort, acting as Agent,
- the Belgian Government, by T. Materne and C. Pochet, acting as Agents,
- the European Commission, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2012,

gives the following

* Language of the case: Dutch.

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).
- 2 The reference has been made in proceedings between the Staatssecretaris van Justitie (State Secretary for Justice; ‘the Staatssecretaris’) and Mr Singh following the rejection of the latter’s application for the grant of a long-term resident’s EC residence permit.

Legal context

European Union law

- 3 As provided in recitals 2, 4, 6 and 12 in the preamble to Directive 2003/109:
 - ‘(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.
 - ...
 - (4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the [EC] Treaty.
 - ...
 - (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. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.
 - ...
 - (12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.’
- 4 Article 1 of that directive, entitled ‘Subject matter’, states:

‘This Directive determines:

 - (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;
 - ...

...’

5 Article 3 of that directive, entitled ‘Scope’, provides, in paragraphs 1 and 2 thereof:

‘1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:

- (a) reside in order to pursue studies or vocational training;
- (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- (c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- (d) are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- (e) reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited;
- (f) enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.’

6 Article 4 of Directive 2003/109, entitled ‘Duration of residence’, is worded as follows:

‘1. Member States shall 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.

2. Periods of residence for the reasons referred to in Article 3(2)(e) and (f) shall not be taken into account for the purposes of calculating the period referred to in paragraph 1.

Regarding the cases covered in Article 3(2)(a), where the third-country national concerned has acquired a title of residence which will enable him/her to be granted long-term resident status, only half of the periods of residence for study purposes or vocational training may be taken into account in the calculation of the period referred to in paragraph 1.

3. Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than 6 consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1.

In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

By way of derogation from the second subparagraph, Member States may take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment purposes, including the provision of cross-border services.'

7 Article 5 of that directive, entitled 'Conditions for acquiring long-term resident status', provides:

'1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

(b) sickness insurance in respect of all risks normally covered for [their] own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.'

8 The first subparagraph of Article 6(1) of the directive provides that Member States may refuse to grant long-term resident status on grounds of public policy or public security.

9 Under the heading 'Acquisition of long-term resident status', Article 7 of Directive 2003/109 provides in paragraph 3 thereof:

'If the conditions provided for by Articles 4 and 5 are met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned shall grant the third-country national concerned long-term resident status.'

National law

10 Directive 2003/109 was transposed in the Netherlands by the law providing for a comprehensive review of the law on foreign nationals (Wet tot algehele herziening van de Vreemdelingenwet) of 23 November 2000 (Stb. 2000, No 495), as amended by the law of 23 November 2006 (Stb. 2006, No 584, 'the Vw 2000').

11 Article 14 of the Vw 2000 provides:

'1. The Minister shall be authorised:

a. to approve, to reject or not to consider applications for the grant of fixed-period residence permits;

...

2. A fixed-period residence permit shall be granted with restrictions relating to the purpose for which residence has been permitted. Other conditions may be attached to the permit. By or in accordance with a general administrative order, rules may be laid down on the restrictions and conditions.

3. A fixed-period residence permit shall be granted for not more than five consecutive years. By general administrative order, rules shall be laid down on the period of validity of the residence permit and the extension of its period of validity.'

12 Article 21(1) of the Vw 2000 provides:

'Pursuant to Article 8(2) of [Directive 2003/109], an application for the granting or amendment of a residence permit of indefinite duration within the meaning of Article 20 can be refused only where the foreign national:

- a. has not been lawfully resident for a continuous period of five years immediately prior to that application, as referred to in [that] Article 8;
- b. during the period referred to in a., has either had a temporary residence permit, a formally limited residence permit or a residence permit as a worker of a service provider in the context of cross-border services or as a cross-border provider of services;
- c. during the period referred to in a., has resided 6 months consecutively or longer or a total of 10 months or longer outside the Netherlands;
- d. does not independently and on a long-term basis have sufficient means of existence, whether or not in conjunction with the member of the family with whom he resides;
- e. has been convicted by a judgment which has become final of offences in respect of which he faces a prison sentence of three years or more, or if a measure has been imposed on him such as that provided for in Article 37 a of the Criminal Code (*Wetboek van Strafrecht*);
- f. represents a danger for national security;
- g. does not have sufficient sickness insurance for himself and for dependent family members;
- h. has provided incorrect information or has failed to communicate information which would have resulted in the rejection of the application for the granting, amendment or extension of a permit;
- i. is lawfully resident in the Netherlands within the meaning of Article 8(c) and (d), or is awaiting a final decision on the granting or the extension of the period of validity of a residence permit as referred to in Articles 28 or 33; or
- j. has or had a particularly privileged status during the five years immediately prior to the application;
- k. has not passed the integration exam provided for in Article 13 of the law on integration.'

13 The decree on foreign nationals (*Vreemdelingenbesluit*, Stb. 2000, No 497), which is provided for by the Vw 2000, entered into force on 1 April 2001 ('the Vb 2000').

14 Article 3.5 of the Vb 2000 is worded as follows:

'1. The right of residence based on a fixed-period residence permit referred to in Article 4 of the [Vw 2000] shall be temporary or non-temporary.

2. The right of residence shall be temporary if the residence permit is granted with a restriction relating to:

- a. the formation of a family or family reunification with a person holding a temporary right of residence or a holder of the residence permit referred to in Article 28 of the [Vw 2000], or residence with such a person or such a holder for adoption or as a foster child;
- b. the wait for an investigation into the suitability of persons wishing to adopt, referred to in Article 11 of the law on the admission of foreign children for adoption;
- c. family visits;
- d. the exercise of work as a spiritual leader or religious teacher, unless the holder receives the right of residence on the basis of Association Decision No 1/80 of the EEC-Turkey Association Council;
- e. the search for and exercise of employment or self-employment, unless the holder receives the right of residence on the basis of Association Decision No 1/80 of the EEC-Turkey Association Council;
- f. the search for employment aboard a Dutch ship or a mining installation on the continental shelf, unless the holder receives the right of residence on the basis of Association Decision No 1/80 of the EEC-Turkey Association Council;
- g. the wait for resumption of or reintegration in employment aboard a Dutch ship or a mining installation on the continental shelf, unless the holder receives the right of residence on the basis of Association Decision No 1/80 of the EEC-Turkey Association Council;
- h. residence as a trainee;
- i. residence as a non-privileged soldier or as non-privileged civilian member of staff;
- j. the consequence of studies;
- k. preparation for studies;
- l. residence as an au pair;
- m. residence as part of an exchange;
- n. the following of medical treatment;
- o. the prosecution of human trafficking;
- p. the wait for an application based on Article 17 of the law on Dutch citizenship;
- q. residence as an unaccompanied foreign national who is a minor;
- r. residence as a foreign national who is unable to leave the Netherlands for reasons beyond his control; or
- s. an activity in connection with the provision of cross-border services, as provided for in Article 1(e) of the decree implementing the law on the employment of foreign nationals;

t. the spending of leave in the Netherlands.

3. If the residence permit is issued subject to a restriction other than that mentioned in paragraph 2, the right of residence shall not be temporary unless specified otherwise at the time that the residence permit is issued.'

15 Article 3.33(1) of the Vb 2000 provides:

'Without prejudice to Article 3.31, the fixed-period residence permit, referred to in Article 14 of the Vw 2000, coupled with a restriction linked to the exercise of a paid activity as a spiritual leader or religious teacher, shall be granted only if the foreign national states in writing that he has been informed that:

- a. the residence is only authorised for the performance of the activities of spiritual leader or teacher of religion for the benefit of a group which must be precisely named;
- b. the residence can only be authorised for the duration of those activities;
- c. at the end of those activities, he must leave the Netherlands, and
- d. he is not allowed to carry out activities of a different nature during his residence in the Netherlands.'

16 In the guidelines on the implementation of the law on foreign nationals (Vreemdelingencirculaire, 'the Vc 2000'), the Minister set out the detailed rules for the exercise of the powers which were conferred on him by the Vw 2000 and the Vb 2000.

17 Section B1/2.4 of the Vc 2000 provides:

'...

A right of residence which is per se of a temporary nature shall be designated as a temporary right of residence. The question whether or not the right of residence is per se of a temporary nature is only relevant for as long as the foreign national is in possession of a fixed-period residence permit within the meaning of Article 14 of the Vw [2000]. That residence permit may imply a temporary or a non-temporary right of residence. The temporary nature of the right of residence is unrelated to the circumstance that the fixed-period residence permit has been issued for a maximum duration of 5 years. Moreover, the temporary nature of the right of residence cannot be inferred from the circumstance that the residence permit has been issued subject to a restriction.

A fixed-period residence permit shall confer on its holder either a temporary right of residence or a non-temporary right of residence. Only Article 3.5 of the [Vb 2000] makes it possible to determine whether the foreign national's right of residence is temporary or non-temporary. If the residence permit has been issued subject to a restriction referred to in the second paragraph, the foreign national's residence is then per se of a temporary nature. If the residence permit has been issued subject to another restriction, the foreign national's residence is then in principle per se of a non-temporary nature.

...'

18 Section B1/7.1.2. of the Vc 2000 is worded as follows:

‘When assessing an application for the granting of an ordinary residence permit of indefinite duration, it is of the greatest importance that the right of residence of the foreign national is per se of a non-temporary nature. ... According to Article 21(1)(b) of the [Vw 2000], an application for the granting or amendment of a residence permit of indefinite duration as referred to in Article 20 of [Vw 2000] may be refused in the event of a formally limited right of residence or a right of residence as a worker of a service provider in the context of cross-border services or as a cross-border provider of services.’

19 In the law of 7 July 2010 (Stb. 2010, No 209) and the decree of 24 July 2010 (Stb. 2010, No 307), which are not applicable to the main proceedings, the position has been adopted that the residence of spiritual leaders and religious teachers is per se of a non-temporary nature, so that that residence may be taken into account in relation to the granting of an ordinary residence permit of indefinite duration bearing the entry ‘long-term EC resident’.

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

20 Mr Singh, an Indian national, arrived in the Netherlands on 4 September 2001. On 22 October 2001, he was granted an ordinary fixed-period residence permit, the validity of which was limited to the exercise of an activity as a spiritual leader or religious teacher for the period until 6 September 2002. The validity of that permit was extended until 19 January 2005, then until 19 January 2008. In the meantime the restriction to which the permit had been subject was altered so that its validity was from then on limited to the exercise of an activity as a spiritual leader.

21 On 30 May 2007, Mr Singh submitted an application for the issue of a long-term resident’s EC residence permit. By decision of 15 November 2007, the Staatssecretaris rejected that application pursuant to Articles 21(1)(b) of the Vw 2000 and 3.5(2)(d) of the Vb 2000, but extended the duration of his fixed-period permit until 19 January 2009.

22 Mr Singh lodged an objection against that rejection decision before the Staatssecretaris; that objection was also rejected by decision of the Staatssecretaris of 26 February 2008. By judgment of 29 April 2009, the Rechtbank ’s-Gravenhage upheld Mr Singh’s action against the decision of 26 February 2008 and ordered the Staatssecretaris to adopt a new decision regarding that objection, taking into account the points raised in its judgment.

23 According to the Rechtbank ’s-Gravenhage, the aim of Directive 2003/109 is not to exclude from its scope a situation where, by its very nature, the residence permit granted to the foreign national cannot be regarded as temporary, since Article 3(2)(e) of that directive covers only situations in which the residence is per se of a temporary nature. In this respect, the effectiveness of that directive would be destroyed if a Member State were allowed to exclude from its scope the situation of a foreign national in possession of a residence permit that can be extended indefinitely.

24 The Staatssecretaris brought an action against that judgment before the referring court.

25 According to the referring court, it is possible to take the view that the terms ‘formally limited’ in Article 3(2)(e) of Directive 2003/109 confer a margin of discretion on the Member States to attach formal restrictions to a fixed-period residence permit, provided that the Member States effectively ensure the full application of that directive.

- 26 However, in the referring court's view, the meaning of the concept 'formally limited residence permit' for the purposes of that provision has not been established and the grant of such a margin of discretion to the Member States could undermine the effectiveness of Directive 2003/109 or its objective, which is to achieve harmonisation of the conditions for acquiring the status of long-term EC resident.
- 27 As regards fixed-period residence permits coupled with a restriction relating to the exercise of an activity as a spiritual leader or religious teacher, the referring court observes that it is common ground that the duration of such permits may be extended indefinitely so long as holders thereof continue to comply with the conditions laid down by Netherlands legislation and that, moreover, it is apparent from official documents of the Ministry of Immigration and Integration that, in practice, many foreign nationals who have residence as spiritual leaders in the Netherlands do not leave the country. It is for this reason that the residence of spiritual leaders and religious teachers in the Netherlands has been considered to be per se of a non-temporary nature in the new legislation mentioned in paragraph 19 of this judgment.
- 28 In those circumstances, the Raad van State decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the concept of "residence permit which has been formally limited" within the meaning of Article 3(2)(e) of Directive 2003/109 ... to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the directive?'

The question referred for a preliminary ruling

- 29 By its question the referring court asks, in essence, whether Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of 'residence permit which has been formally limited' includes a fixed-period residence permit, granted to a specific group of persons, the validity of which may be extended indefinitely, without however offering any prospect of a residence permit of indefinite duration.

The cases referred to in Article 3(2)(e) of Directive 2003/109

- 30 According to Article 3(1) of Directive 2003/109, the scope of that directive covers third-country nationals residing legally in the territory of a Member State.
- 31 However, according to Article 3(2)(e), that directive does not apply to third-country nationals who reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited.
- 32 Thus, in order to reply to the question put by the referring court, it is necessary to determine at the outset whether the terms 'in cases where their residence permit has been formally limited' cover a case different from that of third-country nationals 'who reside solely on temporary grounds' or whether, on the contrary, as in the case of au pairs, seasonal or posted workers and cross-border providers of services, it is merely an additional example illustrating the case of third-country nationals who reside solely on temporary grounds, which is therefore the only case covered by Article 3(2)(e) of Directive 2003/109.

- 33 In this respect, it must be stated that, in a large number of language versions, the literal wording of Article 3(2)(e) of Directive 2003/109 is not unambiguous in meaning and it is not therefore possible to determine clearly and at first sight its exact scope.
- 34 As regards the manner in which Article 3(2)(e) of Directive 2003/109 should logically be interpreted, it must be stated that, whilst au pairs, seasonal or posted workers and cross-border providers of services reside in the Member State concerned solely on temporary grounds, that is not necessarily the case in respect of a national whose residence permit is formally limited.
- 35 Formal limitations which may be attached to a residence permit cannot be attributed solely to the temporary nature of that permit. Moreover, even on the assumption that the formal limitation of the 'permit' relates solely to its temporary nature, that does not however mean that the ground itself of the 'residence', as in the case of an au pair, a seasonal or posted worker or a cross-border provider of services, is of an exclusively temporary nature.
- 36 Furthermore, residence permits are mostly granted for a limited period, so that, if the formal limitation of the permit were to be interpreted as being exclusively a limitation stemming from the temporary nature of the grounds of the residence, the terms 'in cases where their residence permit has been formally limited' would not constitute an example intended to illustrate the terms 'reside solely on temporary grounds', but instead a reiteration of the latter terms.
- 37 Similarly, if the second interpretation mentioned in paragraph 32 of this judgment were to be adopted, it would be difficult to reconcile the use of the conjunction 'or' before the terms 'in cases where their residence permit has been formally limited' with the fact that the residence permit granted to au pairs, seasonal or posted workers and to cross-border providers of services is mostly formally limited to those activities.
- 38 Thus, Article 3(2)(e) of Directive 2003/109 must be interpreted as covering two cases, namely, first, that of third-country nationals who reside solely on temporary grounds and, second, that of third-country nationals whose residence permits have been formally limited.

The meaning of the terms 'in cases where their residence permit has been formally limited'

- 39 It should be noted as a preliminary point that, although, according to Article 1(a) of Directive 2003/109, the subject matter of the directive is to determine 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, that subject matter does not define either the concept of 'legal residence' or the conditions or rights pertaining to that residence, which fall within the competence of the Member States.
- 40 Thus, Member States may, when exercising their competences in immigration matters, define the conditions of legal residence and, in that context, limit formally residence permits of third-country nationals.
- 41 However, it is not sufficient that a residence permit is formally limited for the purposes of the national law of a Member State for it to be regarded as a 'formally limited residence permit' within the meaning of Article 3(2)(e) of Directive 2003/109.
- 42 It must be noted that, according to settled case-law of the Court of Justice, the need for a uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the

purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (Joined Cases C-424/10 and C-425/10 *Ziolkowski and Szeja* [2011] ECR I-14035, paragraph 32 and the case-law cited).

- 43 While the wording of Article 3(2)(e) of Directive 2003/109 does not give any guidance on how the terms ‘in cases where their residence permit has been formally limited’ are to be understood, the directive does not contain any reference to national laws as regards the meaning of those terms either. It follows that those terms must be regarded, for the purposes of application of the directive, as designating an autonomous concept of European Union law which must be interpreted in a uniform manner throughout the Member States.
- 44 In this respect, it must be borne in mind that the meaning and scope of terms for which European Union law provides no definition must be determined by considering, inter alia, the context in which they occur and the purposes of the rules of which they form part (see, inter alia, Case C-336/03 *easyCar* [2005] ECR I-1947, paragraph 21; Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17; Case C-151/09 *UGT-FSP* [2010] ECR I-7591, paragraph 39; and Case C-34/10 *Brüstle* [2011] ECR I-9821, paragraph 31).
- 45 As is apparent from recitals 4, 6 and 12 in the preamble to Directive 2003/109, the principal objective of that directive is the integration of third-country nationals who are settled on a long-term basis in the Member States (see Case C-508/10 *Commission v Netherlands* [2012] ECR, paragraph 66). Similarly, as is also apparent from recital 2 in the preamble thereto, the directive seeks, by granting the status of long-term resident to such third-country nationals, to approximate the legal status of third-country nationals to that of Member States’ nationals.
- 46 As is observed in Article 4(1) of, and recital 6 in the preamble to, Directive 2003/109, it is the duration of the legal and continuous residence of 5 years which shows that the person concerned has put down roots in the country and therefore the long-term residence of that person.
- 47 In the light of the aforementioned objectives, Article 3(2) of that directive excludes from its scope residence of third-country nationals which, whilst lawful and of a possibly continuous nature, does not *prima facie* reflect any intention on the part of such nationals to settle on a long-term basis in the territory of the Member States.
- 48 Thus, Article 3(2)(e) of Directive 2003/109 excludes from the scope of that directive residence ‘on temporary grounds’. Such grounds imply residence by a third-country national in the Member State concerned which is not long term. To that effect, the directive gives several examples of residence linked to the exercise of an activity which is per se of a temporary nature, such as au pair work, seasonal work or the provision of cross-border services.
- 49 Moreover, that provision also excludes from the scope of Directive 2003/109 third-country nationals who reside in a Member State on the basis of a formally limited residence permit.
- 50 In contrast with the situation of third-country nationals whose residence is based solely on temporary grounds, in which it is clear that that temporary nature does not permit the long-term residence of the third-country national concerned, the fact that a residence permit contains a formal restriction does not in itself give any indication as to whether that third-country national might settle on a long-term basis in the Member State, notwithstanding the existence of such a restriction.
- 51 Thus, a formally limited residence permit within the meaning of national law, but whose formal limitation does not prevent the long-term residence of the third-country national concerned, cannot be classified as a formally limited residence permit within the meaning of Article 3(2)(e) of Directive

2003/109, as otherwise the achievement of the objectives pursued by the directive would be jeopardised and, therefore, it would be deprived of its effectiveness (see, to that effect, *Commission v Netherlands*, paragraph 65 and the case-law cited).

- 52 It is therefore for the national court to ascertain whether the formal limitation of a residence permit within the meaning of national law does or does not permit the long-term residence of the holder of that permit in the Member State concerned.
- 53 In the context of such an analysis, the fact that the formal limitation concerns only a specific group of persons is not, in principle, relevant for the purposes of Article 3(2)(e) of Directive 2003/109.
- 54 By contrast, the fact that the validity of a residence permit can be extended for successive periods, including beyond a five-year period, and, in certain cases, indefinitely, may be a strong indication from which it can be concluded that the formal limitation attached to that permit does not prevent the long-term residence of the third-country national in the Member State concerned. However, it is for the national court to ascertain, in the light of all the circumstances, whether that is indeed the case.
- 55 If the national court finds that the formal limitation attached to the residence permit does not prevent the long-term residence of the third-country national, the residence permit in question will not fall within Article 3(2)(e) of Directive 2003/109 and residence on the basis of such a permit will have to be regarded as legal residence for the purpose of acquisition by its holder of the status of third-country national who is a long-term resident.
- 56 In the light of the foregoing considerations, the answer to the question referred is that Article 3(2)(e) of Directive 2003/109 must be interpreted as meaning that the concept of ‘residence permit [which] has been formally limited’ does not include a fixed-period residence permit, granted to a specific group of persons, the validity of which may be extended indefinitely without however offering any prospect of a residence permit of indefinite duration where such a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned, that being a matter for the referring court to ascertain.

Costs

- 57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as meaning that the concept of ‘residence permit [which] has been formally limited’ does not include a fixed-period residence permit, granted to a specific group of persons, the validity of which may be extended indefinitely without however offering any prospect of a residence permit of indefinite duration where such a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned, that being a matter for the referring court to ascertain.

[Signatures]