



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 July 2015 *

(Reference for a preliminary ruling — Directive 2003/86/EC — Article 7(2) — Family reunification — Integration measures — National legislation requiring the family members of a third country national residing lawfully in that Member State to pass a civic integration exam in order to enter the territory of that Member State — Cost of such an exam — Compatibility)

In Case C-153/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Netherlands), made by decision of 1 April 2014, received at the Court on 3 April 2014, in the proceedings

Minister van Buitenlandse Zaken

v

K,

A,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 February 2015,

after considering the observations submitted on behalf of:

- K, by G.J. Dijkman, advocaat,
- A, by W.P.R. Peeters, advocaat,
- the Netherlands Government, by M. Gijzen, M. Bulterman, B. Koopman and J. Langer, acting as Agents,
- the German Government, by T. Henze and B. Beutler, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,

* Language of the case: Dutch.

— the European Commission, by M. Condou-Durande and G. Wils, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 19 March 2015,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).
- 2 The request has been made in the course of two proceedings between the Minister van Buitenlandse Zaken (Netherlands Minister for Foreign Affairs) and K and A respectively, concerning the applications by the latter for temporary residence permits in the Netherlands for the purposes of family reunification with their spouses residing in that Member State.

Legal context

EU law

- 3 Article 1 of Directive 2003/86 states:

‘The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.’
- 4 Article 4(1) of that directive provides:

‘The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor’s spouse;

...’
- 5 Chapter IV of Directive 2003/86, entitled ‘Requirements for the exercise of the right to family reunification’, contains Articles 6 to 8 of the directive. Under Article 6(1) of that directive:

‘The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.’
- 6 Article 7 of Directive 2003/86 is worded as follows:

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

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

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

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

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

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.'

7 Article 17 of that directive states:

'Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.'

Netherlands law

- 8 According to the order for reference, Articles 4(1) and 7(2) of Directive 2003/86 were transposed by Article 14, the introductory sentence to Article 16(1) and Article 16(1)(h) of the Law on foreign nationals of 2000 (Vreemdelingenwet 2000; 'the Vw 2000') and by Articles 3.71a, 3.98a and 3.98b of the Decree on foreign nationals of 2000 (Vreemdelingenbesluit 2000; 'the Vb 2000').
- 9 The policy adopted by the Secretary of State in the implementation of those provisions is detailed in paragraph B1/4.7.1.2 of the Circular on Foreign Nationals of 2000 (Vreemdelingencirculaire 2000) under the wording applicable to the case in the main proceedings ('the Vc 2000').
- 10 Regard must also be had to the Law on Civic Integration (Wet inburgering; 'the Wi'), the Regulation on foreigners of 2000 (Voorschrift Vreemdelingen 2000; 'the regulation of 2000') and the Immigration and Naturalisation Service's Public Work Instruction No 2011/7 ('the work instruction').

The Vw 2000

11 Article 1(h) of the Vw 2000 is worded as follows:

'Within the meaning of the present law and of the provisions adopted on the basis thereof:

...

(h) "temporary residence permit" shall mean a visa for a stay of more than three months applied for in person by the foreign national at, and issued by, a diplomatic mission or consulate of the [the Kingdom of the] Netherlands in the country of origin or of permanent residence, or failing that, the nearest country in which a mission is established ... after prior authorisation has been obtained from the Minister for Foreign Affairs ...'

12 Under Article 8 of the Vw 2000:

‘A foreign national is lawfully resident in the Netherlands:

- (a) if he holds a residence permit of limited duration as referred to in Article 14;
- (b) if he holds a residence permit of indefinite duration as referred to in Article 20;
- (c) if he holds a residence permit of limited duration as referred to in Article 28;
- (d) if he holds a residence permit of indefinite duration as referred to in Article 33.

...’

13 In accordance with Article 14(1)(a) of the Vw 2000, the Minister is authorised to approve, to reject or not to consider an application for a residence permit of limited duration.

14 Under Article 16(1)(h) of the Vw 2000, an application for a residence permit of limited duration, referred to in Article 14 of that law, may be rejected if the third country national, who does not belong to one of the categories referred to in Article 17(1) of that law, after acquiring a permit for legal residence in the Netherlands, is subject to the civic integration requirement pursuant to Articles 3 and 5 of the Wi and does not have a basic knowledge of the Dutch language and Netherlands society.

15 Article 17(1) of the Vw 2000 lists several categories of third country nationals whose application for residence of limited duration, within the meaning of Article 14 of that law, cannot be rejected on the ground of the lack of a temporary residence permit.

The Wi

16 Article 3(1)(a) of the Wi provides:

‘A foreign national who is lawfully resident within the meaning of Article 8(a) to (e) or (l) of the Vw 2000 is required to meet the civic integration requirement if he:

- a. resides in the Netherlands other than for a temporary purpose ...’

17 Article 5 of the Wi lists several categories of third country nationals who are not subject to the civic integration requirement.

The Vb 2000

18 Article 3.71(1) of the Vb 2000 is worded as follows:

‘The application for a residence permit of limited duration, referred to in Article 14 of the [Vw 2000], shall be rejected if the foreign national does not hold a valid temporary residence permit ...’

19 Under Article 3.71a of the Vb 2000:

‘1. A foreign national has basic knowledge of the Dutch language and of Netherlands society within the meaning of Article 16(1)(h) of the [Vw 2000] if, during the year immediately preceding the application for the temporary residence permit, he has passed the basic civic integration examination referred to in Article 3.98a.

2. The application for a residence permit of limited duration referred to in Article 14 of the [Vw 2000] may not be rejected on the basis of Article 16(1)(h) of [that law] if the foreign national:

...

- c. has sufficiently demonstrated to the Minister voor Wonen, Wijken en Integratie [“the Minister for Housing, Districts and Integration”] that, due to a mental or physical disability, he is permanently unable to take the civic integration examination referred to in Article 3.98a;
- d. has not passed the basic civic integration examination referred to in Article 3.98a and rejection of that application would, according to the Minister for Housing, Districts and Integration, lead to a manifestly and gravely unjust situation.

...’

20 Article 3.98a of the Vb 2000 is worded as follows:

‘1. The Minister for Housing, Districts and Integration shall establish a basic civic integration examination to assess knowledge of the Dutch language and of Netherlands society as referred to in Article 16(1)(h) of the [Vw 2000] by means of an automated system.

2. The basic civic integration examination shall involve an assessment of the foreign national’s reading, listening and speaking skills in Dutch.

3. The Minister for Housing, Districts and Integration shall draw up an examination programme to assess reading, listening and speaking skills. The programme shall aim to ensure that a foreign national who has successfully passed the examination has the following skills in Dutch at A1 level of the Common European framework of reference for modern foreign languages:

- a. reading;
- b. listening;
- c. speaking.

4. The reading, listening and speaking skills in the basic civic integration examination shall be tested in accordance with one of the levels of the Common European framework for modern foreign languages.

5. The basic civic integration examination shall also involve an assessment of knowledge of Netherlands society.

6. The Minister for Housing, Districts and Integration shall set an examination programme to assess the required knowledge of Netherlands society. The examination programme shall ensure that a foreign national who has successfully passed the basic civic integration examination has elementary practical knowledge of:

- a. the [Kingdom of the] Netherlands, including its topography, history and political system;
- b. housing, education, work, health care and civic integration in the Netherlands;
- c. his rights and obligations after his arrival in the Netherlands;
- d. the rights and obligations of others in the Netherlands;

e. accepted rules of conduct in the Netherlands.

7. The basic civic integration examination shall be taken in Dutch at a level which is not higher than the level referred to in paragraph (3).

8. The examination programmes referred to in paragraphs (3) and (6) shall be made available in accordance with rules which shall be laid down and set at a price determined by the Minister for Housing, Districts and Integration.'

21 Article 3.98b of the Vb 2000 is worded as follows:

'1. A foreign national will not be allowed to sit the examination if:

a. he has not paid the costs of the civic integration examination in accordance with rules which shall be laid down by the Minister for Housing, Districts and Integration ...

...

2. The costs referred to in paragraph (1)(a) shall amount to EUR 350. ...'

The regulation of 2000

22 Article 3.11 of the regulation of 2000 states:

'1. The examination programmes referred to in Article 3.98a(3) and (6) [of the Vb 2000] which shall be reproduced in the self-study pack Naar Nederland shall be made available in all authorised bookshops and online bookshops.

2. The recommended retail price of the self-study pack shall amount to EUR 110.'

The Vc 2000

23 In accordance with paragraph B1/4.7.1.2 of the Vc 2000, an application for a residence permit of limited duration may not be rejected pursuant to Article 3.71a(2)(d) of the Vb 2000 if a third country national has not passed the basic civic integration examination and the rejection of the application would lead to a manifestly and gravely unjust situation. This is to be the case if a combination of very special individual circumstances were to result in a third country national being permanently unable to pass the basic civic integration examination. According to the Vc 2000, the mere fact of having attempted the examination once or several times does not mean that the hardship clause provided for in Article 3.71a(2)(d) of the Vb 2000 can be successfully invoked.

The work instruction

24 According to the referring court, the work instruction states that the civic integration requirement applies to those third country nationals who must be in possession of a temporary residence permit prior to their arrival in the Netherlands, who are coming to the Netherlands for a non-temporary residence purpose within the meaning of the Wi and who are not exempt from the civic integration requirement pursuant to Articles 3 and 5 of the Wi.

- 25 The basic civic integration examination referred to in Article 3.98a of the Vb 2000 comprises a spoken Dutch test, a test of knowledge of Netherlands society and a reading comprehension test. The examination is to be taken at an embassy or consulate general in the country of origin or permanent residence of the sponsor's family member and is to be taken using a telephone directly connected to a talking computer.
- 26 The spoken Dutch test consists of the following components: repeating sentences, answering short questions, giving opposites and retelling a short story twice. The required language level is level A1 of the Common European Framework of Reference for Languages. The part of the examination on knowledge of Netherlands society consists of questions concerning the film *To the Netherlands*, which the family member must view at home. The questions which may be asked concern, in particular, whether men and women have the same rights, where the Netherlands Government is located, whether there is a separation of Church and State in the Kingdom of the Netherlands, which country occupied the Netherlands during the Second World War, whether health insurance is compulsory and the age up to which education is compulsory. All the questions and answers can be studied at home with the help of a self-study pack. That pack is available in 18 languages and contains, inter alia, DVDs, a photograph album, an exercise book, audio CDs, a self-study textbook and practice papers. Since March 2011, the pack also contains a literacy module so that the reading comprehension test can be prepared for. That test assesses whether the family member is able to read Dutch at A1 level of the Common European Framework of Reference for Languages.
- 27 As far as the hardship clause under Article 3.71a(2)(d) of the Vb 2000 is concerned, according to the referring court, the work instruction provides that there are grounds for applying the hardship clause if, as a result of a set of very special individual circumstances, a third country national is permanently unable to pass the basic civic integration examination. That third country national must demonstrate that he has made every effort to pass the examination that he could reasonably be expected to make. This could be shown, inter alia, by having taken the civic integration examination once or several times and having, for example, passed the spoken Dutch test and the knowledge of Netherlands society test, but not the reading comprehension test. The work instruction states that the mere fact that a candidate does not have sufficient financial or technical means to prepare for the examination and to take the examination, or that he is experiencing travel-related problems or other similar obstacles, does not by itself mean that the hardship clause can be successfully invoked. Furthermore, the work instruction states that the mere fact that the course material is not available in a language of which the candidate has a command, that he does not have appropriate support in preparing for the examination or that he is illiterate also does not mean that the hardship clause can be successfully invoked.

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

The case of K

- 28 K is an Azerbaijani national who, on 22 February 2011, lodged an application at the Embassy of the Kingdom of the Netherlands in Ankara (Turkey) for a temporary residence permit on grounds of family reunification so that she could reside in the Netherlands with her spouse, who is residing in that Member State. For that purpose, she submitted a medical certificate stating that, due to health problems indicated by that certificate, she was unable to take the civic integration examination outside the territory of the Kingdom of the Netherlands.
- 29 By decision of 30 May 2011, the Minister for Foreign Affairs rejected K's application for a temporary residence permit.

- 30 By decision of 28 February 2012, the Minister for Foreign Affairs declared the challenge that K had lodged against the decision of 30 May 2011 unfounded on the basis that K's health problems did not justify dispensation from the requirement to pass the civic integration examination. According to the Minister for Foreign Affairs, requiring K to pass the civic integration examination before authorising entry and residence is, in any event, not precluded by Directive 2003/86.
- 31 By judgment of 23 November 2012, the Rechtbank 's-Gravenhage (District Court, the Hague) declared the appeal lodged by K against the decision of the Minister for Foreign Affairs of 28 February 2012 well founded and, consequently, set that decision aside and ruled that the Minister should grant K a temporary residence permit.
- 32 The Minister for Foreign Affairs has appealed against the judgment of the Rechtbank 's-Gravenhage of 23 November 2012 before the referring court.

The case of A

- 33 A is a Nigerian national who, on 18 June 2008, lodged an application at the mission of the Kingdom of the Netherlands in Abuja (Nigeria) for a temporary residence permit on grounds of family reunification so that she could reside in the Netherlands with her spouse, who is residing in that Member State. For that purpose, she submitted medical documents indicating that she suffers from psychological problems for which she takes medication.
- 34 By decision of 18 August 2009, the Netherlands Minister for Foreign Affairs rejected A's application for a temporary residence permit.
- 35 By decision of 30 July 2012, the Minister for Foreign Affairs declared the challenge that A had lodged against the decision of 18 August 2009 unfounded on the basis that A's psychological problems did not justify dispensation from the requirement to pass the civic integration examination and that she could also not rely on the hardship clause provided for in Article 3.71a(2)(d) of the Vb 2000, since she had not provided sufficient evidence of having made every reasonable effort to pass the civic integration examination. According to the Minister for Foreign Affairs, the claim that A was unable to travel to the Netherlands mission because of her psychological problems could not be accepted since that statement had not been substantiated. In any event, the Minister for Foreign Affairs considers that the civic integration requirement is not precluded by Directive 2003/86.
- 36 According to the order for reference, A's three children have also lodged an application for a temporary residence permit so that they could reside in the Netherlands with their father and, in contrast to the decision concerning A, by the same decision of 30 July 2012, the Minister for Foreign Affairs declared the challenge lodged by A's three children against the rejection of their application for a temporary residence permit to be well founded.
- 37 By judgment of 12 December 2012, the Rechtbank 's-Gravenhage declared A's appeal against the decision of the Minister for Foreign Affairs of 30 July 2012 to be well founded and, consequently, set aside that decision and ruled that the Minister grant A a temporary residence permit.
- 38 The Minister for Foreign Affairs has brought an appeal before the referring court against the judgment of the Rechtbank 's-Gravenhage of 12 December 2012.

Considerations common to both cases

- 39 It is common ground that both the sponsors and K and A are third country nationals, that the sponsors are the spouses of K and A and that the sponsors are lawfully resident within the meaning of Article 8(a) or (b) of the Vw 2000. Furthermore, it is not in dispute that K and A do not belong to one

of the categories referred to in the Netherlands legislation for which the application for a residence permit of limited duration within the meaning of Article 14 of the Vw 2000 cannot be rejected on the ground of the absence of a temporary residence permit and that they are subject to the civic integration requirement under Article 16(1)(h) of the Vw 2000.

- 40 In both cases in the main proceedings, the Rechtbank 's-Gravenhage has ruled that it is contrary to Article 7(2) of Directive 2003/86 to require a third country national who, from outside of the European Union, lodges an application for a temporary residence permit in the context of family reunification to satisfy the civic integration requirement before being allowed into the Netherlands. The Rechtbank 's-Gravenhage considered it to be decisive in that regard that, in its written observations in the proceedings of the case giving rise to the order in *Mohammad Imran* (C-155/11 PPU, EU:C:2011:387) which were included in K's file before the Rechtbank 's-Gravenhage, the Commission took the view that Article 7(2) of the Directive 2003/86 precludes a Member State from refusing the spouse of a third country national living lawfully in that Member State entry and residence exclusively on the ground that that spouse has not, outside the European Union, passed the civic integration examination provided for in the legislation of that Member State.
- 41 However, in the course of the appeals lodged against the judgments of the Rechtbank 's-Gravenhage, the Minister for Foreign Affairs submitted that it appears from the Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86) (COM(2011) 735 final) ('the Green Paper'), which postdates the Commission's written observations mentioned in the previous paragraph, that the Commission does not consider the requirement for the spouses of sponsors to pass a civic integration examination prior to the granting of authorisation of entry into and residence in the territory of the Member State concerned to be contrary to Article 7(2) of the directive in every case.
- 42 The referring court refers to the fact that, in fact, in paragraph II, 2.1, of the Green Paper, entitled 'integration measures', the Commission states that whether or not integration measures are permissible depends on whether they serve the purpose of facilitating integration and whether they respect the principles of proportionality and subsidiarity.
- 43 Given that neither Directive 2003/86 nor the criterion of proportionality as defined in the Green Paper states what leeway is available to the Member States in imposing integration measures within the meaning Article 7(2) of that directive, and having regard to the fact that the Court has never ruled on the concept of 'integration measures' within the meaning of that provision, and thus the scope of that notion has not been clarified, the Raad van State (Council of State) has decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) (a) Can the term "integration measures" contained in Article 7(2) of Directive No 2003/86 be interpreted as meaning that the competent authorities of the Member States may require a member of a sponsor's family to demonstrate that he or she has knowledge of the official language of the Member State concerned at a level corresponding to level A1 of the Common European Framework of Reference for Languages, as well as a basic knowledge of the society of that Member State, before those authorities authorise that family member's entry and residence?
- (b) Is it relevant to the answer to that question that, also in the context of the proportionality test as described in the Green Paper, the national legislation containing the requirement referred to in Question 1(a) provides that, leaving aside the case in which the family member has shown that, due to a mental or physical disability, he or she is permanently unable to take the civic integration examination, it is only in the case where there is a combination of very special individual circumstances which justifies the assumption that the family member will be permanently unable to comply with the integration measures that the request for authorisation of entry and residence cannot be rejected?

- (2) Does the purpose of Directive 2003/86, and in particular Article 7(2) thereof, given the proportionality test as described in the abovementioned Green Paper, preclude costs of EUR 350 per attempt for the examination which assesses whether the family member complies with the aforementioned integration measures, and costs of EUR 110 as a single payment for the pack to prepare for the examination?’

Consideration of the questions referred

- 44 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the first subparagraph of Article 7(2) of Directive 2003/86 must be interpreted as meaning that Member States may require third country nationals to pass a civic integration examination, such as the one at issue in the main proceedings, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national's entry into and residence in the territory of the Member State for the purposes of family reunification.
- 45 Under Article 4(1) of Directive 2003/86, the Member States are to authorise the entry and residence of the sponsor's spouse for the purposes of family reunification, provided that the conditions laid down in Chapter IV of that directive, entitled 'Requirements for the exercise of the right to family reunification', are complied with.
- 46 The Court has already held that that provision imposes specific positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by that directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation (judgment in *Chakroun*, C-578/08, EU:C:2010:117, paragraph 41).
- 47 Amongst the requirements referred to in Chapter IV of Directive 2003/86, the first subparagraph of Article 7(2)(1) of that directive provides that a Member State may require third country nationals to comply with integration measures, in accordance with national law.
- 48 Furthermore, the second subparagraph of Article 7(2) of Directive 2003/86 provides that with regard to refugees and/or family members of refugees the integration measures referred to in the first subparagraph of Article 7(2) of that directive may be applied only once the persons concerned have been granted family reunification.
- 49 Consequently, in the context of family reunification other than that of refugees and their family members, the first subparagraph of Article 7(2) of Directive 2003/86 does not preclude Member States from subjecting the granting of authorisation of entry into the territory for the sponsor's family members to the observance by those family members of certain integration measures prior to entry.
- 50 However, since authorisation of family reunification is the general rule, the first subparagraph of Article 7(2) of Directive 2003/86 must be interpreted strictly. Furthermore, the leeway given to the Member States must not be used by them in a manner which would undermine the objective and effectiveness of that directive, which is to promote family reunification (see, to that effect, judgment in *Chakroun*, C-578/08, EU:C:2010:117, paragraph 43).
- 51 In that regard, in accordance with the principle of proportionality, which is one of the general principles of EU law, the measures implemented by the national legislation transposing the first subparagraph of Article 7(2) of Directive 2003/86 must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them (see, by analogy, judgment in *Commission v Netherlands*, C-508/10, EU:C:2012:243, paragraph 75).

- 52 Accordingly, in so far as the first subparagraph of Article 7(2) of Directive 2003/86 concerns only measures of ‘integration’, it is clear that the measures which the Member States may require on the basis of that provision can be considered legitimate only if they are capable of facilitating the integration of the sponsor’s family members.
- 53 Against that background, it cannot be disputed that the acquisition of knowledge of the language and society of the host Member State greatly facilitates communication between third country nationals and nationals of the Member State concerned and, moreover, encourages interaction and the development of social relations between them. Nor can it be contested that the acquisition of knowledge of the language of the host Member State makes it less difficult for third country nationals to access the labour market and vocational training (see, concerning the interpretation 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), judgment in *P and S* (C-579/13, EU:C:2015:369, paragraph 47)).
- 54 From that perspective, the requirement to pass a civic integration examination at a basic level is capable of ensuring that the nationals of third countries acquire knowledge which is undeniably useful for establishing connections with the host Member State.
- 55 Furthermore, in the light of the level of knowledge required to pass the civic integration examination at issue in the main proceedings, it must be considered, in principle, that the requirement to pass such an examination does not undermine the aims of family reunification pursued by Directive 2003/86.
- 56 However, in any event, the principle of proportionality requires the conditions of application of such a requirement not to exceed what is necessary to achieve those aims. That would, in particular, be the case if the application of that requirement were systematically to prevent family reunification of a sponsor’s family members where, despite having failed the integration examination, they have demonstrated their willingness to pass the examination and they have made every effort to achieve that objective.
- 57 The integration measures referred to in the first subparagraph of Article 7(2) of Directive 2003/86 must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States.
- 58 Moreover, specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health of a sponsor’s relevant family members must be taken into consideration in order to dispense those family members from the requirement to pass an examination such as the one at issue in the main proceedings when, due to those circumstances, they are unable to take or pass that examination.
- 59 Were that not the case, in such circumstances such a requirement could form a difficult obstacle to overcome in making the right to family reunification recognised by Directive 2003/86 exercisable.
- 60 That interpretation is supported by Article 17 of Directive 2003/86, which requires applications for family reunification to be examined on a case-by-case basis.
- 61 However, in this case, according to the order for reference, leaving aside the case in which a family member shows that, due to a mental or physical disability, he is permanently unable to take the civic integration examination at issue in the main proceedings, it is only in the case where the hardship clause provided for in Article 3.71a(2)(d) of the Vb 2000 applies that the request for authorisation of entry and residence cannot be rejected.

- 62 Also according to the order for reference, it is only if, as a result of a set of very special individual circumstances, the third country national is permanently unable to pass that examination that the hardship clause is to apply.
- 63 It therefore appears that the hardship clause provided for in Article 3.71a(2)(d) of the Vb 2000 is not capable of dispensing the members of the sponsors' family concerned, in the light of the individual circumstances of their situations, from the requirement to pass the civic integration examination in all possible cases where maintaining that requirement would make family reunification impossible or excessively difficult.
- 64 Finally, concerning in particular the various costs relating to the civic integration examination at issue in the main proceedings, it must be pointed out that, whilst the Member States are free to require third country nationals to pay various fees related to integration measures adopted under Article 7(2) of Directive 2003/86 as well as to determine the amount of those fees, the fact remains that, in accordance with the principle of proportionality, the level at which those costs are determined must not aim, nor have the effect of, making family reunification impossible or excessively difficult if it is not to undermine the objective of Directive 2003/86 and render it redundant.
- 65 That would in particular be the case if the amount of the fees required to be paid to take the civic integration examination at issue in the main proceedings were excessive in the light of its significant financial impact on the third country nationals concerned (see, by analogy, judgment in *Commission v Netherlands*, C-508/10, EU:C:2012:243, paragraph 74).
- 66 In that regard, it must be noted that, as is clear from the order for reference, under the national legislation at issue in the main proceedings, both the course fees for taking the civic integration examination at issue in the main proceedings and the fees relating to its preparation must be paid by the relevant family members of the sponsor.
- 67 It must also be noted that the cost of the examination preparation pack, charged as a single payment, is EUR 110 and the course fees are EUR 350. The relevant family members of the sponsor incur the course fees every time that they take the examination.
- 68 It is also clear from the order for reference that a relevant family member of the sponsor who has not paid the course fees is not allowed to take the civic integration examination at issue in the main proceedings.
- 69 In those circumstances, as the Advocate General stated in point 53 of her Opinion, the inevitable conclusion is that the amount of the fees relating to the civic integration examination at issue in the main proceedings is, in circumstances such as those at issue in the main proceedings, capable of making family reunification impossible or extremely difficult.
- 70 It is *a fortiori* thus where the course fees must be paid every time the examination is taken and by each of the sponsor's family members wishing to join the sponsor in the host Member State and, in addition to those fees, there are those costs which the relevant family members of the sponsor must incur in order to travel to the closest Netherlands mission to take the examination.
- 71 Having regard to the above considerations, the answer to the questions referred is that the first subparagraph of Article 7(2) of Directive 2003/86 must be interpreted as meaning that Member States may require third country nationals to pass a civic integration examination, such as the one at issue in the main proceedings, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national's entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it impossible or excessively difficult to exercise the right to family reunification. In

circumstances such as those of the cases in the main proceedings, in so far as they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, those conditions make the exercise of the right to family reunification impossible or excessively difficult.

Costs

- ⁷² Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

The first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that Member States may require third country nationals to pass a civic integration examination, such as the one at issue in the main proceedings, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national's entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it impossible or excessively difficult to exercise the right to family reunification. In circumstances such as those of the cases in the main proceedings, in so far as they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, those conditions make the exercise of the right to family reunification impossible or excessively difficult.

[Signatures]