



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 July 2014*

(Request for a preliminary ruling — Area of freedom, security and justice — Directive 2003/109/EC — Articles 2, 4(1), 7(1) and 13 — ‘Long-term resident’s EU residence permit’ — Terms for conferring long-term resident status — Legal and continuous residence in the host Member State for five years prior to the submission of the permit application — Person with family connections to the long-term resident — More favourable national provisions — Effects)

In Case C-469/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Verona (Italy), made by decision of 27 August 2013, received at the Court on 30 August 2013, in the proceedings

Shamim Tahir

v

Ministero dell’Interno,

Questura di Verona,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Palatiello, avvocato dello Stato,
- the German Government, by T. Henze and B. Beutler, acting as Agents,
- the French Government, by F.-X. Bréchet and D. Colas, acting as Agents,
- the Netherlands Government, by M. Noort and M. Bulterman, acting as Agents,

* Language of the case: Italian.

— the Polish Government, by B. Majczyna, acting as Agent,
— the European Commission, by M. Condou-Durande and A. Aresu, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 7(1) and 13, read in conjunction with Articles 2(e) and 4(1), 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), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1) ('Directive 2003/109').
- 2 The request has been made in proceedings between Ms Tahir and the Ministero dell'Interno (Italian Ministry for the Interior) and the Questura di Verona (Police Headquarters, Verona) concerning the latter's refusal of an application submitted by Ms Tahir for a long-term resident's EU residence permit.

Legal context

EU law

Directive 2003/109

- 3 According to recitals 4 and 6 in the preamble to Directive 2003/109:
'(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 [European Union] stated in the 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.'
- 4 Recital 17 to that directive states:
'Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. Certain Member States issue permits with a permanent or unlimited validity on conditions that are more favourable than those provided for by this Directive. The possibility of applying more favourable national provisions is not excluded by the Treaty. However, for the purposes of this Directive, it should be provided that permits issued on more favourable terms do not confer the right to reside in other Member States.'

5 Article 1(a) of that directive, entitled ‘Subject matter’, provides:

‘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; ...

...’

6 For the purposes of that directive, the following definitions are provided in Article 2(b), (e), and (g):

- ‘(b) “long-term resident” means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

...

- (e) “family members” means the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [(OJ 2003 L 251, p. 12)];

...

- (g) “long-term resident’s E[U] residence permit” means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.’

7 Article 3 of Directive 2003/109 defines the scope of that directive. Under Article 3(1), the directive ‘applies to third-country nationals residing legally in the territory of a Member State’. Under Article 3(2) and (3), Directive 2003/109 does not apply to certain categories of third-country nationals and is to apply without prejudice to more favourable provisions of certain international agreements.

8 Chapter II of that directive, which contains Articles 4 to 13, concerns the granting of long-term resident status in a Member State.

9 Paragraph 1 of Article 4 of that directive, which is entitled ‘Duration of residence’, provides:

‘Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within [their] territory for five years immediately prior to the submission of the relevant application.’

10 Paragraph 1 of Article 5 of Directive 2003/109, which is entitled ‘Conditions for acquiring long-term resident status’, provides:

‘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 [themselves] and the members of [their] 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.’

11 Under Article 7(1) of that directive:

‘To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he ... resides. The application shall be accompanied by documentary evidence to be determined by national law that he ... meets the conditions set out in Articles 4 and 5 as well as, if required, by a valid travel document or its certified copy.

...’

12 The wording of paragraphs 2 and 4 of Article 8 of that directive, which is entitled ‘Long-term resident’s E[U] residence permit’, is as follows:

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

...

4. Where a Member State issues a long-term resident’s EU residence permit to a third-country national to whom it [has] granted international protection, it shall enter the following remark in that long-term resident’s EU residence permit, under the heading “Remarks”: “International protection granted by [name of the Member State] on [date]”.’

13 Article 13 of Directive 2003/109, entitled ‘More favourable national provisions’, provides:

‘Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.’

14 In Chapter III of that directive, entitled ‘Residence in the other Member States’, provides, Article 14(1) provides:

‘A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him ... long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.’

15 Article 16 of Chapter III concerns family members. Under Article 16(1) and (2):

‘1. When the long-term resident exercises his ... right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his ... family who fulfil the conditions referred to in Article 4(1) of Directive 2003/86/EC shall be authorised to accompany or to join the long-term resident.

2. When the long-term resident exercises his ... right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his ... family other than those referred to in Article 4(1) of Directive 2003/86/EC may be authorised to accompany or to join the long-term resident.’

Directive 2003/86

- 16 Pursuant to Article 1 thereof, the purpose of Directive 2003/86 ‘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’.

Italian law

- 17 Article 9(1) of Legislative Decree No 286 of 25 July 1998 consolidating the provisions regulating immigration and the rules relating to the status of foreign nationals (Ordinary Supplement to GURI No 139 of 18 August 1998) (‘Legislative Decree No 286/1998’), as amended by Legislative Decree No 3 of 8 January 2007 transposing into Italian law Directive 2003/109 concerning the status of third-country nationals who are long-term residents (GURI No 24 of 30 January 2007), provides:

‘A foreign national who, for at least five years, has held a valid residence permit, who shows that he has an income of not less than the annual amount of social benefits and, where the application relates to members of his family, a sufficient income ... and appropriate accommodation satisfying the minimum conditions laid down by the relevant provisions of national law, may apply to the *Questore* [(Chief of Police)] for a long-term resident’s E[U] residence permit for himself and his family members, as defined in Article 29(1).’

- 18 Article 29(1)(a) of Legislative Decree No 286/1998 provides:

‘A foreign national may apply to be reunited with the following family members:

(a) a spouse from whom he is not legally separated and who is not less than 18 years of age ...’

- 19 Under paragraphs 1 to 4 of Article 16, entitled ‘Application for a residence permit’, of Presidential Decree No 394 of 31 August 1999 laying down provisions for implementing the law consolidating the provisions regulating immigration and the rules relating to the status of foreign nationals in accordance with Article 1(6) of Legislative Decree No [286/1998] (Ordinary Supplement to GURI No 190 of 3 November 1999), as amended by Presidential Decree No 334 of 18 October 2004 amending and supplementing Decree No 394 of 31 August 1999 on immigration (Ordinary Supplement to GURI No 17 of 10 February 2005):

‘1. For the grant of a residence permit as referred to in Article 9 of [Legislative Decree No 286/1998], the person concerned must make an application in writing, using a form of the same model as that approved by decree of the [Minister for the Interior].

2. The foreign national must, in the application to be submitted to the *questura* (police headquarters) of the place in which he resides, provide the following information:

- a. full identification details;
- b. the place or places in Italy in which he has resided over the preceding five years;
- c. his place of residence;
- d. his source of income ...

...

4. Without prejudice to Article 9(2) and Article 30(4) of the consolidated version, where the application relates to family members as referred to in Articles 9(1) and 29(1)(ba) of that version, the information referred to in paragraph 2 and the documents referred to in paragraph 3 of the present Article must also cover the spouse and children under the age of 18 living under the same roof, for whom an application for a residence permit is also being made and documentary evidence of the following must also be produced:

- a. the status of the spouse or the minor child ...;
- b. the availability of accommodation ...;
- c. income ..., taking account of the income of non-dependent family members living under the same roof.'

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

- 20 On 28 February 2012, Ms Tahir — a Pakistani citizen — applied to the Questura di Verona for a long-term resident's EU residence permit to be issued to her as the spouse of Mr Tahir, himself a Pakistani citizen and holder of a long-term resident's EU residence permit.
- 21 The application was refused by the Questura di Verona on the ground that Ms Tahir, who had been resident in Italy only since 15 March 2010 (on the basis of a family reunification entry visa enabling her to be reunited with her spouse), did not meet the condition, laid down in Article 9 of Legislative Decree No 286/1998, requiring persons applying for a long-term residence permit to have held a valid residence permit for at least five years.
- 22 Ms Tahir has brought an action before the Tribunale di Verona (District Court, Verona; or 'the referring court') for annulment of the Questura's decision refusing her application. Relying on Italian legislation, she claims that she is entitled to a long-term resident's EU residence permit since she is related to Mr Tahir, who already enjoys long-term resident status in Italy, and that she is accordingly exempt from the above condition. Ms Tahir claims in particular that her interpretation of Article 9 of Legislative Decree No 286/1998 is supported by Article 13 of Directive 2003/109. She argues that Article 9 of Legislative Decree No 286/1998 is a more favourable measure than that laid down in Directive 2003/109, in that it does not require family members of a person having long-term resident status to meet the condition requiring five years' legal and continuous residence in Italy.
- 23 The Questura di Verona contends that the residence requirement laid down in Article 9 of Legislative Decree No 286/1998 is an essential condition for obtaining a long-term resident's EU residence permit, since it is also laid down in Article 4(1) of Directive 2003/109, and that the legislation in question allows no derogation in that regard.
- 24 In its order for reference, the referring court explains that, subject to certain conditions relating to sufficient income and suitable accommodation, Article 9(1) of Legislative Decree No 286/1998 makes it possible for long-term residents' EU residence permits to be issued in respect of family members of a third-country national who has already obtained a permit of that kind. Accordingly, the five-year residence requirement applies only to that third-country national and not to his family members. Moreover, that interpretation has been upheld in certain judgments delivered by Italian courts. The referring court is uncertain whether Article 9(1) of Legislative Decree No 286/1998 is contrary to Directive 2003/109, in so far as that directive states that, in order to be issued with such a permit, the person making the application must be a long-term resident of the Member State concerned.

25 In those circumstances, the Tribunale di Verona decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is Article 7(1) of Directive 2003/109 to be interpreted as meaning that the condition laid down in Article 4(1) of that directive, under which long-term residence status is dependent upon a person having resided legally and continuously in a Member State for five years, documentary evidence of which must be submitted when an application for a long-term [resident’s EU] residence permit is made, may also be applied to a person, other than the [person making the application], who has a family connection with the [person making the application] for the purposes of Article 2(e) of [Directive 2003/109]?’
- (2) Is the first sentence of Article 13 of Directive 2003/109 to be interpreted as meaning that one of the more favourable terms on which Member States may issue a ‘long-term resident’s E[U] residence permit’ of permanent or unlimited validity is that, where a person has already acquired long-term resident status, having satisfied the pre-condition for receiving that status laid down in Article 4(1) of that directive, under which legal and continuous residence in the Member State concerned for five years is required, members of that person’s family for the purposes of Article 2(e) of [Directive 2003/109] are to be deemed also to have satisfied that pre-condition, irrespective of the length of time for which they have resided in the national territory of the Member State in which the application is submitted?’

Consideration of the questions referred

Question 1

- 26 By its first question, the referring court asks whether Article 7(1) of Directive 2003/109 is to be interpreted as meaning that family members, as defined in Article 2(e) of that directive, of a person who has already acquired long-term resident status may be exempted from the condition laid down in Article 4(1) of that directive, under which, in order to obtain that status, a third-country national must have resided legally and continuously in the Member State concerned for five years immediately prior to the submission of the relevant application.
- 27 In that regard, it should be borne in mind that the Court has held that the system put in place by Directive 2003/109 clearly makes the acquisition of the status of long-term resident conferred by that directive subject to a specific procedure and, in addition, to fulfilment of all the conditions set out in Chapter II of that directive (judgment in *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 66).
- 28 Accordingly, the Court has observed that Article 4 of Directive 2003/109 provides that the Member States are to reserve the grant of long-term resident status to third-country nationals who have resided legally and continuously on their territory for five years immediately prior to the submission of the relevant application. Article 5 of the directive makes the acquisition of long-term resident status conditional upon evidence that third-country nationals who wish to enjoy that status have sufficient resources and sickness insurance. Lastly, Article 7 of the directive lays down the procedural requirements for acquisition of that status (judgment in *Kamberaj*, EU:C:2012:233, paragraph 67).
- 29 However, there is nothing in Article 7 or any other provision of Directive 2003/109 to suggest that family members as defined in Article 2(e) thereof may, in order to receive the long-term resident status provided for under that directive, be exempted from the condition requiring legal and continuous residence in the territory of the Member State concerned for five years prior to the submission of the relevant application.

- 30 On the contrary, it can be seen from Articles 4 and 7 of Directive 2003/109, read in the light of recital 6 to that directive, that that residence requirement is an essential condition for the grant of long-term resident status.
- 31 First, it should be noted that Article 7 of Directive 2003/109 explicitly refers to the conditions set out in Articles 4 and 5 of that directive. Therefore, an application lodged with the competent authorities of a Member State by a third-country national must be accompanied by documentary evidence that he meets those conditions and, in consequence, satisfies, *inter alia*, the residence requirement. Second, recital 6 to that directive states that the main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. That recital also states that residence should be both legal and continuous in order to show that the person has put down roots in the country.
- 32 The Court has accordingly held that it follows from, *inter alia*, recitals 4 and 6 to Directive 2003/109 that the main objective of that directive is the integration of third-country nationals who are long-term residents in the Member States (see, to that effect, the judgment in *Singh*, C-502/10, EU:C:2012:636, paragraph 45).
- 33 The Court has also held that, as can be seen from Article 4(1) of Directive 2003/109 and recital 6 thereto, it is the five-year duration of the legal and continuous residence that shows that the person concerned has put down roots in the country and therefore that that person is a long-term resident (see, to that effect, the judgment in *Singh*, EU:C:2012:636, paragraph 46).
- 34 Consequently, it must be concluded that the condition laid down in Article 4(1) of Directive 2003/109 requiring legal and continuous residence within the territory of the Member State concerned for five years prior to the submission of the relevant application is an essential condition for acquiring the long-term resident status provided for in that directive, with the result that a third-country national may apply to acquire that status, pursuant to Article 7(1) of that directive, only if he personally meets that condition.
- 35 In the present case, it is clear from the case-file submitted to the Court that, at the time of lodging her application for a long-term resident's EU residence permit, Ms Tahir had been resident in Italy for a period of less than two years. Accordingly — though it is for the referring court to ascertain whether this is in fact the case — it appears that she did not meet the condition set out in Article 4(1) of Directive 2003/109.
- 36 In addition, while it is true that Directive 2003/109 includes provisions concerning the right of residence of family members as defined in Article 2(e) thereof, those provisions address the specific situation of family members of a third-country national who has long-term resident status in one Member State and is exercising his right of residence in another. Thus, Article 16 of that directive determines the right and the conditions under which those family members may accompany or join that resident in the second Member State.
- 37 In the light of all of the foregoing, the answer to Question 1 is that Articles 4(1) and 7(1) of Directive 2003/109 must be interpreted as meaning that family members, as defined in Article 2(e) of that directive, of a person who has already acquired long-term resident status may not be exempted from the condition laid down in Article 4(1) of that directive, under which, in order to obtain that status, a third-country national must have resided legally and continuously in the Member State concerned for five years immediately prior to the submission of the relevant application.

Question 2

- 38 By its second question, the referring court asks, in essence, whether Article 13 of Directive 2003/109 is to be interpreted as allowing a Member State to issue family members, as defined in Article 2(e) of that directive, with long-term residents' EU residence permits on terms more favourable than those laid down by that directive.
- 39 In that regard, it should first of all, be stated that the possibility for such third-country nationals to be issued with residence permits without having to meet the condition, laid down in Article 4(1) of that directive, requiring legal and continuous residence in the Member State concerned, can follow from the option provided for under Article 13 of Directive 2003/109, which permits the Member States to issue residence permits of permanent or unlimited validity on terms more favourable than those laid down by that directive.
- 40 However, recital 17 to Directive 2003/109 states that harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. In that connection, the recital goes on to state that permits with a permanent or unlimited validity issued on terms more favourable than those laid down by the directive do not confer the right to reside in other Member States.
- 41 Thus, even though Article 13 of Directive 2003/109 allows Member States the possibility mentioned above, it is clear from the unequivocal wording of the second sentence of that provision that that possibility relates only to 'residence permits [which] shall not confer the right of residence in the other Member States as provided by Chapter III of [that] Directive'.
- 42 As can be seen in particular from Article 2(b) of Directive 2003/109, read in conjunction with Article 14(1) thereof, a long-term resident's EU residence permit, in principle, grants its holder the right to reside in the territory of Member States — other than the one which granted him long-term residence status — for a period exceeding three months.
- 43 Therefore, residence permits which, pursuant to Article 13 of Directive 2003/109, would be issued by a Member State to family members, as defined in Article 2(e) of that directive, on terms more favourable than those laid down by EU law, cannot in any circumstances be long-term residents' EU residence permits within the meaning of that directive.
- 44 In the light of the foregoing, the answer to Question 2 is that Article 13 of Directive 2003/109 must be interpreted as not allowing a Member State to issue family members, as defined in Article 2(e) of that directive, with long-term residents' EU residence permits on terms more favourable than those laid down by that directive.

Costs

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

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

1. **Articles 4(1) and 7(1) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011, must be interpreted as meaning that family members, as defined in Article 2(e) of that directive, of a person who has already acquired long-term resident status may not be exempted from the**

condition laid down in Article 4(1) of that directive, under which, in order to obtain that status, a third-country national must have resided legally and continuously in the Member State concerned for five years immediately prior to the submission of the relevant application.

- 2. Article 13 of Directive 2003/109, as amended by Directive 2011/51, must be interpreted as not allowing a Member State to issue family members, as defined in Article 2(e) of that directive, with long-term residents' EU residence permits on terms more favourable than those laid down by that directive.**

[Signatures]