



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

6 December 2012 *

(Citizenship of the Union — Article 20 TFEU — Directive 2003/86/EC — Right to family reunification — Union citizens who are minor children living with their mothers, who are third country nationals, in the territory of the Member State of which the children are nationals — Permanent right of residence in that Member State of the mothers who have been granted sole custody of the Union citizens — Change in composition of the families following the mothers' remarriage to third country nationals and the birth of children of those marriages who are also third country nationals — Applications for family reunification in the Member State of origin of the Union citizens — Refusal of the right of residence to the new spouses on the ground of lack of sufficient resources — Right to respect for family life — Taking into consideration of the children's best interests)

In Joined Cases C-356/11 and C-357/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Finland), made by decisions of 5 July 2011, received at the Court on 7 July 2011, in the proceedings

O,

S

v

Maahanmuuttovirasto (C-356/11),

and

Maahanmuuttovirasto

v

L (C-357/11),

THE COURT (Second Chamber),

composed of A. Rosas, acting as the President of the Second Chamber, U. Lõhmus, A. Ó Caoimh (Rapporteur), A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

* Language of the case: Finnish.

having regard to the written procedure and further to the hearing on 12 September 2012,

after considering the observations submitted on behalf of:

- L, by J. Streng, asianajaja,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the Danish Government, by V. Pasternak Jørgensen and C. Vang, acting as Agents,
- the German Government, by T. Henze and A. Wiedmann, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and W. Ferrante, avvocato dello Stato,
- the Netherlands Government, by C. Wissels and B. Koopman, acting as Agents,
- the Polish Government, by M. Szpunar, acting as Agent,
- the European Commission, by D. Maidani and E. Paasivirta, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 September 2012,

gives the following

Judgment

- 1 These references for a preliminary ruling concern the interpretation of Article 20 TFEU.
- 2 The references have been made in proceedings, first, between Mr O and Ms S, who are third country nationals, and the Maahanmuuttovirasto (Immigration Office) (Case C-356/11) and, secondly, between the Maahanmuuttovirasto and Ms L, also a third country national (Case C-357/11), concerning the rejection of their applications for residence permits on the basis of family reunification.

Legal context

European Union law

Directive 2003/86/EC

- 3 Recitals 2, 4, 6 and 9 in the preamble to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) read as follows:

‘(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950] and in the Charter of Fundamental Rights of the European Union [“the Charter”].

...

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental [European] Community objective stated in the [EC] Treaty.

...

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

...

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.'

4 In accordance with Article 1 of that directive, its purpose 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'.

5 Under Article 2 of that directive:

'For the purposes of this Directive:

(a) "third country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

...

(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.'

6 In accordance with Article 3(1) and (3) of the directive:

'1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

...

3. This Directive shall not apply to members of the family of a Union citizen.'

7 Article 4(1) of the 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;

- (b) the minor children of the sponsor and of his/her spouse ...
 - (c) the minor children ... of the sponsor where the sponsor has custody and the children are dependent on him or her. ...
 - (d) the minor children ... of the spouse where the spouse has custody and the children are dependent on him or her.'
- 8 When examining an application for entry and residence, the Member States must, in accordance with Article 5(5) of the directive, have due regard to the best interests of minor children.
- 9 Article 7(1) of the directive provides:

'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:

...

- (c) 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 national wages and pensions as well as the number of family members.'
- 10 Article 17 of the directive reads as follows:

'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.'

Directive 2004/38/EC

- 11 Article 1 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34) provides:

'This Directive lays down:

- (a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;
- (b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

...'

12 Article 2 of that directive, ‘Definitions’, provides:

‘For the purposes of this Directive:

1. “Union citizen” means any person having the nationality of a Member State;
2. “family member” means:
 - (a) the spouse;
 - ...
 - (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse ...
 - (d) the dependent direct relatives in the ascending line and those of the spouse ...
3. “host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

13 Article 3 of the directive, ‘Beneficiaries’, provides in paragraph 1:

‘This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.’

Finnish law

14 Paragraph 37(1) of the Law on foreigners (Ulkomaalaislaki) provides:

‘For the application of this law, the spouse of a person living in Finland is regarded as a family member, as is an unmarried child under the age of 18 who is in the custody of a person living in Finland or that person’s spouse. If the person living in Finland is a minor, the person having custody of him/her is a family member. ...’

15 Paragraph 39(1) of that law provides:

‘The grant of a residence permit requires that the foreigner has secure means of subsistence, unless provided otherwise in this law. An exception may be made to the subsistence requirement in an individual case if there is an exceptionally serious reason for this or the best interests of the child demand it. ...’

16 Paragraph 47(3) of that law provides:

‘If a foreigner has been granted a continuous or permanent residence permit, his family members are granted a continuous residence permit. ...’

17 Paragraph 66a of that law provides:

‘If a residence permit has been applied for on the basis of family ties, account must be taken, when considering whether to refuse the permit, of the nature and solidity of the foreigner’s family ties, the duration of his residence in the country, and his family, cultural and social ties to his home country. ...’

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

Case C-356/11

- 18 Ms S, a national of Ghana who lives in Finland on the basis of a permanent residence permit, married on 4 July 2001 a Finnish national, with whom she had a child, born on 11 July 2003. The child has Finnish nationality and has always lived in Finland. Ms S has had sole custody of the child since 2 June 2005. The spouses divorced on 19 October 2005. The child's father lives in Finland.
- 19 According to the order for reference, during her stay in Finland Ms S has studied, taken maternity leave, qualified for a trade, and been gainfully employed.
- 20 On 26 June 2008 Ms S married Mr O, a national of Côte d'Ivoire. On 3 July 2008 Mr O applied to the Maahanmuuttovirasto for a residence permit on the basis of the marriage. On 21 November 2009 a child of the marriage was born in Finland. The child has Ghanaian nationality and the spouses have joint custody of the child. Mr O lives with Ms S and her two children.
- 21 According to the order for reference, Mr O entered into a contract of employment on 1 January 2010 for a period of one year, under which he was to work eight hours a day and be paid EUR 7.50 an hour. He has not, however, produced documents to show that he worked in accordance with the contract.
- 22 By decision of 21 January 2009, the Maahanmuuttovirasto refused Mr O's application for a residence permit on the ground that he did not have secure means of subsistence. It also considered that in the present case there was no reason to make an exception to the requirement of means of subsistence, as permitted by Paragraph 39(1) of the Law on foreigners where there is an exceptionally serious reason or where the best interests of the child demand it.
- 23 By judgment of 27 August 2009, the Helsingin hallinto-oikeus (Administrative Court, Helsinki) dismissed the action brought by Mr O for the decision of the Maahanmuuttovirasto to be annulled.
- 24 Ms S and Mr O therefore appealed against that judgment to the Korkein hallinto-oikeus (Supreme Administrative Court).

Case C-357/11

- 25 Ms L, a national of Algeria, has resided lawfully in Finland since 2003. She obtained a permanent residence permit there following her marriage to a Finnish national. A child was born of that marriage in 2004. The child has dual Finnish and Algerian nationality and has always lived in Finland. The spouses divorced on 10 December 2004 and Ms L was granted sole custody of their child. The child's father lives in Finland.
- 26 On 19 October 2006 Ms L married Mr M, a national of Algeria, who arrived lawfully in Finland in March 2006 and sought asylum there. According to his statement, he lived with Ms L from April of that year. Mr M was returned to his country of origin in October 2006.
- 27 On 29 November 2006 Ms L applied to the Maahanmuuttovirasto for her spouse to be granted a residence permit in Finland on the basis of their marriage.
- 28 On 14 January 2007 a child of the marriage was born in Finland. The child has Algerian nationality and is in the joint custody of both parents. It is not established whether Mr M has had contact with his child.

- 29 According to the order for reference, Ms L has never been in gainful employment during her stay in Finland. Her means of subsistence come from subsistence support and other benefits. Her husband is not known to have been gainfully employed in Finland, although he has said that he believes he will be able to work in Finland because of his linguistic knowledge.
- 30 By decision of 15 August 2008 the Maahanmuuttovirasto rejected the application for a residence permit for Mr M on the ground that he did not have secure means of subsistence.
- 31 The Helsingin hallinto-oikeus allowed Ms L's application for that decision to be annulled, by judgment of 21 April 2009. The Maahanmuuttovirasto appealed against that judgment to the referring court.
- 32 In its references for preliminary rulings the Korkein hallinto-oikeus states that, because Mr O and Mr M have been refused residence permits, it is possible that their spouses and the children in the custody of those spouses, including those who are citizens of the Union, may be forced to leave the territory of the European Union in order to be able to live as a family. It raises the question of the applicability of the principles set out by the Court in Case C-34/09 *Ruiz Zambrano* [2011] ECR I-1177.
- 33 In those circumstances, the Korkein hallinto-oikeus decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

Case C-356/11

1. Does Article 20 TFEU preclude a third country national from being refused a residence permit because of lack of means of subsistence in a family situation in which his spouse has custody of a child who is a citizen of the Union and the third country national is not the child's parent and does not have custody of the child?
2. If the answer to Question 1 is in the negative, must the effect of Article 20 TFEU be assessed differently if the third country national who does not have a residence permit, his spouse, and the child who is in the custody of the spouse and has Union citizenship live together?

Case C-357/11

1. Does Article 20 TFEU preclude a third country national from being refused a residence permit because of lack of means of subsistence in a family situation in which his spouse has custody of a child who is a citizen of the Union and the third country national is not the child's parent, does not have custody of the child, and does not live with his spouse or with the child?
 2. If the answer to Question 1 is in the negative, must the effect of Article 20 TFEU be assessed differently if the third country national who does not have a residence permit, and does not live in Finland, and his spouse have a child, in their joint custody and living in Finland, who is a third country national?
- 34 By order of the President of the Court of 8 September 2011, the references for preliminary rulings in Cases C-356/11 and C-357/11 were joined for the purposes of the written and oral procedure and the judgment. The referring court's request for the accelerated procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and the first paragraph of Article 104a of the Rules of Procedure of the Court, in the version in force at the time, to be applied to the two cases was rejected.

Consideration of the questions referred

- 35 By its questions, which should be examined together, the referring court essentially asks whether the provisions of European Union law on citizenship of the Union must be interpreted as precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national.
- 36 The referring court asks whether the fact that the applicant for a residence permit lives together with his spouse, is not the biological father of the child who is a Union citizen, and does not have custody of the child may affect the interpretation to be given to the provisions on citizenship of the Union.
- 37 The Finnish, Danish, German, Italian, Netherlands and Polish Governments and the European Commission consider that Article 20 TFEU does not preclude a Member State from refusing a right of residence to a third country national who is in a situation such as those at issue in the main proceedings.
- 38 Those governments and the Commission submit essentially that the principles stated by the Court in *Ruiz Zambrano* relate to altogether exceptional situations in which the application of a national measure would lead to the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union. In this case, however, the facts of the disputes in the main proceedings differ substantially from those of the *Ruiz Zambrano* case. Mr O and Mr M are not the biological fathers of the minors who are Union citizens from whom they seek to derive their right to a residence permit. They do not have custody of those children. Furthermore, as the children's mothers themselves have a permanent right of residence in Finland, their children who are Union citizens would not be obliged to leave the territory of the European Union, in contrast to the children concerned in *Ruiz Zambrano*. If the mothers of those Union citizens were to decide to leave the territory of the European Union in order to preserve the family unit, that would not be an inevitable consequence of the refusal to grant their spouses a right of residence.
- 39 The German and Italian Governments emphasise that Mr O and Mr M do not form part of the nuclear families of the Union citizens concerned, since they are not the biological fathers of the children and the children are not dependent on them.
- 40 It should be observed, as a preliminary point, that regardless of which persons are the applicants in the main proceedings in accordance with the provisions of national law, it is clear from the documents before the Court that the applications for residence permits for Mr O and Mr M submitted on the basis of family reunification concern Ms S and Ms L, who are lawfully resident in Finland, as sponsors, that is, persons in respect of whom reunification has been sought.

The provisions of European Union law on citizenship of the Union

- 41 With respect, first, to Directive 2004/38, it must be recalled that it is not all third country nationals who are family members of a Union citizen who derive rights of entry into and residence in a Member State from that directive, but only those who are family members of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national (Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraph 73, and Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 56).

- 42 In the present case, as the Union citizens concerned, both of whom are minors, have never made use of their right of freedom of movement and have always lived in the Member State of which they are nationals, they are not covered by the concept of ‘beneficiary’ within the meaning of Article 3(1) of Directive 2004/38, so that that directive does not apply either to them or to their family members (*Dereci and Others*, paragraph 57).
- 43 With respect, next, to Article 20 TFEU, the Court has previously had occasion to hold that the situation of a Union citizen who, like the children of Finnish nationality concerned in the main proceedings, has not made use of the right of freedom of movement cannot for that reason alone be assimilated to a purely internal situation, that is, a situation which has no factor linking it with any of the situations governed by European Union law (see *Ruiz Zambrano*; Case C-434/09 *McCarthy* [2011] ECR I-3375, paragraph 46; and *Dereci and Others*, paragraph 61).
- 44 Since citizenship of the Union is intended to be the fundamental status of nationals of the Member States, the children of the previous marriages of Ms S and Ms L, as nationals of a Member State, enjoy the status of Union citizens under Article 20(1) TFEU and may therefore rely on the rights pertaining to that status, including against the Member State of which they are nationals (see *McCarthy*, paragraph 48, and *Dereci and Others*, paragraph 63).
- 45 On that basis the Court has held that Article 20 TFEU precludes national measures, including refusals to grant rights of residence to family members of a Union citizen, which have the effect of denying Union citizens the genuine enjoyment of the substance of the rights conferred by their status (see *Ruiz Zambrano*, paragraph 42).
- 46 With respect, finally, to the right of residence of a person who is a third country national in the Member State of residence of his minor children, nationals of that Member State, who are dependant on him and of whom he and his spouse have joint custody, the Court has held that the refusal to grant a right of residence would have the consequence that those children, who are citizens of the Union, would have to leave the territory of the Union in order to accompany their parents, and that those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred by their status (*Ruiz Zambrano*, paragraphs 43 and 44).
- 47 The criterion of the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union referred, in the *Ruiz Zambrano* and *Dereci and Others* cases, to situations characterised by the circumstance that the Union citizen had, in fact, to leave not only the territory of the Member State of which he was a national but also that of the European Union as a whole.
- 48 That criterion is therefore specific in character inasmuch as it relates to situations in which a right of residence, exceptionally, may not be refused to a third country national who is a family member of a national of a Member State, as the effectiveness of the Union citizenship enjoyed by that national would otherwise be undermined (*Dereci and Others*, paragraph 67).
- 49 In the present case, it is for the referring court to establish whether the refusal of the applications for residence permits submitted on the basis of family reunification in circumstances such as those at issue in the main proceedings entails, for the Union citizens concerned, a denial of the genuine enjoyment of the substance of the rights conferred by their status.
- 50 When making that assessment, it must be taken into account that the mothers of the Union citizens hold permanent residence permits in the Member State in question, so that, in law, there is no obligation either for them or for the Union citizens dependent on them to leave the territory of that Member State or of the European Union as a whole.

- 51 For the purpose of examining whether the Union citizens concerned would be unable, in fact, to exercise the substance of the rights conferred by their status, the question of the custody of the sponsors' children and the fact that the children are part of reconstituted families are also relevant. First, since Ms S and Ms L have sole custody of the Union citizens concerned who are minors, a decision by them to leave the territory of the Member State of which those children are nationals, in order to preserve the family unit, would have the effect of depriving those Union citizens of all contact with their biological fathers, should such contact have been maintained up to the present. Secondly, any decision to stay in the territory of that Member State in order to preserve the relationship, if any, of the Union citizens who are minors with their biological fathers would have the effect of harming the relationship of the other children, who are third country nationals, with their biological fathers.
- 52 However, the mere fact that it might appear desirable, for economic reasons or in order to preserve the family unit in the territory of the Union, for members of a family consisting of third country nationals and a Union citizen who is a minor to be able to reside with that citizen in the territory of the Union in the Member State of which he is a national is not sufficient in itself to support the view that the Union citizen would be forced to leave the territory of the Union if such a right of residence were not granted (see, to that effect, *Dereci and Others*, paragraph 68).
- 53 In connection with the assessment, mentioned in paragraph 49 above, which it is for the referring court to carry out, that court must examine all the circumstances of the case in order to determine whether, in fact, the decisions refusing residence permits at issue in the main proceedings are liable to undermine the effectiveness of the Union citizenship enjoyed by the Union citizens concerned.
- 54 Whether the person for whom a right of residence is sought on the basis of family reunification lives together with the sponsor and the other family members is not decisive in that assessment, since it cannot be ruled out that some family members who are the subject of an application for family reunification may arrive in the Member State concerned separately from the rest of the family.
- 55 It should also be noted that, contrary to the submissions of the German and Italian Governments, while the principles stated in the *Ruiz Zambrano* judgment apply only in exceptional circumstances, it does not follow from the Court's case-law that their application is confined to situations in which there is a blood relationship between the third country national for whom a right of residence is sought and the Union citizen who is a minor from whom that right of residence might be derived.
- 56 On the other hand, both the permanent right of residence of the mothers of the Union citizens concerned who are minors and the fact that the third country nationals for whom a right of residence is sought are not persons on whom those citizens are legally, financially or emotionally dependent must be taken into consideration when examining the question whether, as a result of the refusal of a right of residence, those citizens would be unable to exercise the substance of the rights conferred by their status. As the Advocate General observes in point 44 of his Opinion, it is the relationship of dependency between the Union citizen who is a minor and the third country national who is refused a right of residence that is liable to jeopardise the effectiveness of Union citizenship, since it is that dependency that would lead to the Union citizen being obliged, in fact, to leave not only the territory of the Member State of which he is a national but also that of the European Union as a whole, as a consequence of such a refusal (see *Ruiz Zambrano*, paragraphs 43 and 45, and *Dereci and Others*, paragraphs 65 to 67).
- 57 Subject to the verification which it is for the referring court to carry out, the information available to the Court appears to suggest that there might be no such dependency in the cases in the main proceedings.

- 58 In the light of the foregoing, it must be stated that Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union, that being for the referring court to ascertain.
- 59 Should that court find that, in the circumstances of the cases before it, such a denial does not follow from the refusals of residence permits at issue in the main proceedings, that would be without prejudice to the question whether, on the basis of other criteria, inter alia by virtue of the right to the protection of family life, Mr O and Mr M could not be refused a right of residence. That question must be addressed in the framework of the provisions on the protection of fundamental rights which are applicable in each case (see *Dereci and Others*, paragraph 69).
- 60 In this respect, it must be recalled that, in accordance with the case-law of the Court, the Court may find it necessary to consider rules of European Union law which the national court has not referred to in its question but which may be of use in giving judgment in the case pending before it (see, inter alia, Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraph 64).

Directive 2003/86

- 61 In the present case, the referring court mentioned Directive 2003/86 in its orders for reference, without, however, putting a question concerning that directive.
- 62 Similarly, the Finnish Government in part, and the Italian, Netherlands and Polish Governments and the Commission submit that the right of residence of Mr O and Mr M and the situation of their families have been or should be examined in the light of the provisions of Directive 2003/86.
- 63 On this point, it should be recalled that in accordance with Article 1 of that directive its purpose 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.
- 64 The definition of family members in Article 4(1) of that directive includes the sponsor's spouse, the children of the sponsor and the spouse, and the minor children of the sponsor or of the spouse where that person has custody and the children are dependent on him or her.
- 65 It follows that the nuclear family referred to in recital 9 in the preamble to that directive was conceived broadly by the European Union legislature.
- 66 However, in accordance with Article 3(3) of that directive, the directive does not apply to the family members of a Union citizen.
- 67 In paragraph 48 of the judgment in *Dereci and Others*, the Court took the view that, in so far as the disputes in the main proceedings concerned Union citizens who resided in a Member State and their family members who were third country nationals who wished to enter and reside in that Member State for the purposes of living as a family with those citizens, Directive 2003/86 was not applicable to those third country nationals.
- 68 However, in contrast to the circumstances of the cases at issue in *Dereci and Others*, Ms S and Ms L are third country nationals residing lawfully in a Member State and seeking to benefit from family reunification. They must therefore be recognised as being 'sponsors' within the meaning of

Article 2(c) of Directive 2003/86. Moreover, the children they have with their spouses are themselves third country nationals, and do not therefore have the status of citizens of the Union conferred by Article 20 TFEU.

- 69 In view of the purpose of Directive 2003/86, which is to promote family reunification (Case C-578/08 *Chakroun* [2010] ECR I-1839, paragraph 43), and the protection it aims to give to third country nationals, in particular minors, the application of that directive cannot be excluded solely because one of the parents of a minor third country national is also the parent of a Union citizen, born of a previous marriage.
- 70 Article 4(1) of Directive 2003/86 imposes on the Member States precise positive obligations, with corresponding clearly defined individual rights. It requires them, in the cases determined by that directive, to authorise the family reunification of certain members of the sponsor's family, without being left a margin of appreciation (see Case C-540/03 *Parliament v Council* [2006] ECR I-5769, paragraph 60).
- 71 That provision is, however, subject to compliance with the conditions laid down in particular in Chapter IV of Directive 2003/86. Article 7(1)(c) of that directive forms part of those conditions and allows the Member States to require evidence that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system of the Member State concerned. That provision also states that Member States are to evaluate those 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 (*Chakroun*, paragraph 42).
- 72 With respect to Article 4(1) of Directive 2003/86, it must be stressed, first, that, in principle, it is the resources of the sponsor that are the subject of the individual examination of applications for reunification required by that directive, not the resources of the third country national for whom a right of residence is sought on the basis of family reunification (see *Chakroun*, paragraphs 46 and 47).
- 73 Moreover, as regards those resources, the expression 'recourse to the social assistance system' in Article 7(1)(c) of Directive 2003/86 does not allow a Member State to refuse family reunification to a sponsor who proves that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs or income support measures (see *Chakroun*, paragraph 52).
- 74 Next, since authorisation of family reunification is the general rule, the Court has held that the faculty provided for in Article 7(1)(c) of Directive 2003/86 must be interpreted strictly. The margin which the Member States are recognised as having must therefore not be used by them in a manner which would undermine the objective and the effectiveness of that directive (*Chakroun*, paragraph 43).
- 75 Finally, it must be recalled that, as may be seen from recital 2 in the preamble to Directive 2003/86, the directive respects the fundamental rights and observes the principles enshrined in the Charter.
- 76 Article 7 of the Charter, which contains rights corresponding to those guaranteed by Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognises the right to respect for private and family life. That provision of the Charter must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with both parents (see *Parliament v Council*, paragraph 58, and Case C-403/09 PPU *Detiček* [2009] ECR I-12193, paragraph 54).

- 77 Article 7(1)(c) of Directive 2003/86 cannot be interpreted and applied in such a manner that its application would disregard the fundamental rights set out in those provisions of the Charter.
- 78 The Member States must not only interpret their national law in a manner consistent with European Union law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the legal order of the European Union (see *Parliament v Council*, paragraph 105, and *Detiček*, paragraph 34).
- 79 It is true that Articles 7 and 24 of the Charter, while emphasising the importance for children of family life, cannot be interpreted as depriving the Member States of their margin of appreciation when examining applications for family reunification (see, to that effect, *Parliament v Council*, paragraph 59).
- 80 However, in the course of such an examination and when determining in particular whether the conditions laid down in Article 7(1) of Directive 2003/86 are satisfied, the provisions of that directive must be interpreted and applied in the light of Articles 7 and 24(2) and (3) of the Charter, as is moreover apparent from recital 2 in the preamble to and Article 5(5) of that directive, which require the Member States to examine the applications for reunification in question in the interests of the children concerned and with a view to promoting family life.
- 81 It is for the competent national authorities, when implementing Directive 2003/86 and examining applications for family reunification, to make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned.
- 82 In the light of the foregoing, the answer to the questions referred must be:
- Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union, that being for the referring court to ascertain.
 - Applications for residence permits on the basis of family reunification such as those at issue in the main proceedings are covered by Directive 2003/86. Article 7(1)(c) of that directive must be interpreted as meaning that, while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. It is for the referring court to ascertain whether the decisions refusing residence permits at issue in the main proceedings were taken in compliance with those requirements.

Costs

- 83 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:

Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union, that being for the referring court to ascertain.

Applications for residence permits on the basis of family reunification such as those at issue in the main proceedings are covered by Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Article 7(1)(c) of that directive must be interpreted as meaning that, while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights of the European Union, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. It is for the referring court to ascertain whether the decisions refusing residence permits at issue in the main proceedings were taken in compliance with those requirements.

[Signatures]