



Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 28 January 2015¹

Case C-579/13

**P
and
S
v**

**Commissie Sociale Zekerheid Breda
and**

College van Burgemeester en Wethouders van de gemeente Amstelveen
(Request for a preliminary ruling)

from the Centrale Raad van Beroep (Netherlands))

(Border controls, asylum and immigration — Immigration policy — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 5(2) and Article 11(1) — Integration obligation defined in national law — Equal treatment of long-term residents — Proportionality — Fine)

I – Introduction

1. The point of law raised in the present request for a preliminary ruling is as follows: to what extent does EU law in the field of immigration policy impose limits on the application of national provisions imposing an integration obligation on foreign nationals?
2. In the Netherlands, an integration obligation for foreign nationals was imposed in 2007. That obligation involves the requirement to pass an exam on the Dutch language and basic knowledge of Netherlands society. Failure to fulfil that obligation within the specified time-limit is an offence punishable by a fine.
3. In the case at issue, the Centrale Raad van Beroep (Higher Social Security Court) has expressed doubts as to whether and, if that question is answered in the affirmative, under what conditions that obligation may apply to foreign nationals who have been legally resident in the Netherlands for a long period and have long-term resident status within the meaning of Directive 2003/109/EC.²

¹ — Original language: Polish.

² — 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), amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1).

II – Legal framework

A – *EU law*

4. Paragraph 1 of Article 4 of Directive 2003/109, entitled ‘Duration of residence’, provides that:

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

5. Paragraph 2 of Article 5 of Directive 2003/109, entitled ‘Conditions for acquiring long-term resident status’, provides that:

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

6. Paragraph 1 of Article 11 of Directive 2003/109, entitled ‘Equal treatment’, provides that:

‘Long-term residents shall enjoy equal treatment with nationals as regards:

- (a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
- (b) educational and vocational training, including study grants in accordance with national law;

...’

7. Paragraph 3 of Article 15 of Directive 2003/109, entitled ‘Conditions for residence in a second Member State’, provides that:

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

This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5(2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.’

B – *Netherlands law*

8. In the Netherlands, the conditions for the grant of long-term resident status within the meaning of Directive 2003/109 are governed by the *Vreemdelingenwet* (Law on Foreign Nationals).

9. Under Article 21(1)(k) of the *Vreemdelingenwet*, an application for the granting of a residence permit of indefinite duration can be refused where the foreign national has not passed the exam provided for in Article 7(2)(a) of the *Wet inburgering* (Law on Integration, ‘*Wi*’), or a diploma, certificate or other document provided for in Article 5(1)(c) of that Law.

10. As the referring court points out, that provision entered into force on 1 January 2007, but was not actually applied until 1 January 2010. Before that date, a foreign national could acquire long-term resident status without having to pass the integration exam.

11. Articles 3 and 31 of the Wi, as it read at the relevant time, provided that:

‘Article 3

1. A foreign national who is legally resident [in the Netherlands] within the meaning of Article 8(a) to (e) or (l) of the Vreemdelingenwet 2000 is obliged to meet the civil integration requirement if he:

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

...

Article 31

1. The College shall impose an administrative fine on persons obliged to meet the civic integration requirement who do not pass the civic integration exam within the period referred to in Article 7(1) or the extended period under Article 7(2)(a).

2. Notwithstanding paragraph 1:

a. the College shall extend the period referred to in Article 7(1) if the person obliged to meet the civic integration requirement makes a reasonable case that he is in no way to blame for not passing the civic integration exam, or

b. the College shall grant exemption from the civic integration obligation if, on the basis of the demonstrable efforts of the person under the civic integration obligation, the College comes to the view that it is not reasonably possible for that person to pass the civic integration exam.

...’

12. The Wi entered into force on 1 January 2007.

13. As the referring court points out, for foreign nationals who immigrated to the Netherlands after the Law entered into force, the period within which they are required to pass the exam on the Dutch language and knowledge of society commences on the first day of their residence in the Netherlands. For persons who were already resident in the Netherlands when the Law entered into force, the period within which they are required to pass the exam is determined by a separate administrative decision.

III – The main proceedings and the question referred for a preliminary ruling

14. P has American nationality and has been resident in the Netherlands since 2002. On 14 November 2008, she acquired long-term resident status within the meaning of Directive 2003/109.

15. By decision of 1 August 2008, which was subsequently replaced by decisions of 4 August 2009 and 25 February 2010, the Commissie Sociale Zekerheid Breda (Breda Commission for Social Security, ‘the Commissie’) informed P that she was obliged to meet the civic integration requirement within the meaning of the Wi and that she should pass the relevant exam by 30 June 2013.

16. P started a civic integration course offered by the Commissie, which she interrupted on 25 August 2008 for health reasons and did not subsequently continue.

17. S is a New Zealand national, who was born in former Yugoslavia and has been resident in the Netherlands since 2000. She acquired long-term resident status on 8 June 2007.

18. By decisions of 24 February 2010 and 6 May 2010, the College van burgemeester en wethouders van de gemeente Amstelveen (Amstelveen municipal authorities) informed S that she was obliged to meet the civic integration requirement and that she should pass the relevant exam by 24 August 2013.

19. P and S appealed against those decisions before the Rechtbank Breda (District Court, Breda) and the Rechtbank Amsterdam (District Court, Amsterdam) respectively (the courts of first instance in Breda and in Amsterdam). Those appeals were dismissed by judgment of the Rechtbank Breda of 12 July 2010 and judgment of the Rechtbank Amsterdam of 8 September 2011.

20. Both P and S lodged appeals against those judgments before the Centrale Raad van Beroep.

21. In support of their appeals, the applicants argued that, as persons having long-term resident status, they should be treated in the same way as Netherlands nationals and are therefore not obliged to meet the civic integration requirement. They also maintained that imposing such a requirement on long-term residents is contrary to the purposes underlying Directive 2003/109 and also Article 5(2) and Article 11(1) thereof.

22. The referring court considers that it cannot be ruled out that imposing an integration obligation on long-term residents is contrary to Directive 2003/109. It states that Article 5(2) of the directive permits a Member State to refuse to grant long-term resident status where the integration conditions under national law are not met. The grant of that status in principle means that the integration of the person concerned is complete. It is therefore unclear whether a Member State may impose an integration obligation on a person to whom it has already granted long-term resident status and also whether, if that person fails to fulfil that obligation, it may impose a penalty in the form of a fine.

23. It was in this context that the Centrale Raad van Beroep decided to stay proceedings and to request a preliminary ruling from the Court on the following question:

- ‘1. Must the aim and scope of Directive 2003/109/EC, or of Article 5(2) and/or Article 11(1) thereof, be interpreted as meaning that the imposition of the civic integration obligation, under national law, on third-country nationals who have acquired long-term resident status, with penalties in the form of a system of fines, cannot be reconciled therewith?
2. In answering the first question, is it relevant whether the civic integration obligation was imposed before long-term resident status was granted?’

IV – Proceedings before the Court

24. The order for reference was received at the Court on 15 November 2013.

25. Written observations were submitted by P and S, the Netherlands Government, the Portuguese Government and the Commission. P and S requested a hearing.

26. P and S, the Netherlands Government and the Commission took part in the hearing, which was held on 5 November 2014.

V – Analysis

A – Introduction

27. Directive 2003/109 is one of several instruments of EU law concerning the status of third-country nationals, which were adopted on the basis of the legislative powers conferred by the Treaty of Amsterdam.³

28. The legislative objectives of the European Union embodied in the aforementioned Directive were set out in the conclusions of the Tampere European Council of 15 and 16 October 1999. Those conclusions stated, *inter alia*, that the legal status of third-country nationals should be approximated to that of Member States' nationals and, in particular, that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted a set of rights which are as near as possible to those enjoyed by citizens of the European Union.⁴

29. In the light of those objectives, Directive 2003/109 establishes for third-country nationals who have been legally resident within the European Union for at least five years a specific legal status deriving exclusively from EU law, namely long-term resident status.⁵

30. The introduction of that status creates for foreign nationals an alternative to citizenship for the purposes of participation in the social and economic life of the European Union, which in the legal literature is termed 'denizenship', as opposed to 'citizenship'.⁶

31. In matters not governed by EU law, the status of third-country nationals resident within the European Union continues to be subject to the national law of the Member States.

32. In particular, Member States have retained the freedom to pursue integration policies designed to prevent the marginalisation and segregation of foreign nationals.⁷ An integration obligation may be imposed at various stages in the immigration process, depending on whether it is defined as (i) a condition for obtaining an entry and residence permit, (ii) a condition for obtaining a long-term residence permit, (iii) a condition for acquiring long-term resident status or (iv) a condition for acquiring citizenship through naturalisation.

3 — See also Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12); Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004 L 375, p. 12); Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ 2005 L 289, p. 15); and Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ 2009 L 155, p. 17).

4 — See recital 2 of Directive 2003/109 and also the Communication from the Commission on immigration, integration and employment (COM(2003) 336 of 3 June 2003).

5 — The legal status of third-country nationals who are working legally in a Member State, but who are not yet long-term residents, is governed more restrictively by Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 (OJ 2011 L 343, p. 1).

6 — The English word 'denizen' (one of the meanings of which is a naturalised foreign national) has been adopted in the literature relating to migration issues to define the status midway between that of a citizen and a foreign national. See T. Hammar, *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*, Aldershot, Avebury, 1990.

7 — Article 79(4) TFEU excludes any EU competence in matters relating to the harmonisation of national provisions intended to promote the integration of third-country nationals.

33. The aforementioned obligation usually involves the need to demonstrate a certain level of knowledge of the official language and sometimes also knowledge of society within a particular State — its history, legal order and values. Some Member States require an exam to be passed, which may be preceded by compulsory studies. In others, the only requirement is to attend integration courses.⁸

34. The question raised by the Netherlands court in the case at issue concerns the possibility of imposing an integration obligation on a person who has long-term resident status within the meaning of EU law. In Netherlands law, that obligation is defined in respect of such a person not as a condition for acquiring rights, but as a specific requirement which must be fulfilled simply because that person is resident in that State.

35. In order to answer that question, it is necessary to consider two fundamental matters: first, it must be established whether imposing an integration obligation on a long-term resident is compatible with his/her long-term resident status in the light of Directive 2003/109 and secondly, if the answer to the first question is in the affirmative, it must be established to what extent EU law limits the freedom of Member States to determine the content of that integration obligation.

B – Whether it is permissible to impose an integration obligation on a long-term resident

36. Article 5(2) of Directive 2003/109 expressly provides for the possibility of imposing ‘integration conditions’ in accordance with national law as a condition for the grant of long-term resident status.

37. However, the directive does not determine whether and to what extent the imposition of an integration obligation is still possible after that status has been acquired.

38. The opinions of the parties to the proceedings are divided in that regard. The applicants in the main proceedings and the Portuguese Government take the view that the imposition of an integration obligation on long-term residents is contrary to Directive 2003/109. However, the Netherlands Government and the Commission consider that the imposition of such an obligation is permissible, arguing that the directive does not determine that matter.

39. As is apparent from the order for reference, both applicants in the main proceedings have lived in the Netherlands for many years and belong to the group of ‘old’ long-term residents, since they acquired that status before the integration obligation began to be applied in practice. However, under Netherlands law, they are required to pass the integration exam.⁹

40. In the question referred for a preliminary ruling, the Netherlands court expresses doubts as to whether it is possible to impose an integration obligation on persons who have already been granted long-term resident status. In that court’s view, acquisition of that status means that that person has already fulfilled the requirement to demonstrate long-term ties with the host State, as referred to in recital 6 of Directive 2003/109, and therefore the process of his/her integration is complete.

8 — See Commission Report of 28 September on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM(2011) 585, p. 3).

9 — The referring court states that the applicant S was born in former Yugoslavia and that it cannot be ruled out that she has Croatian nationality. That information was confirmed by the applicant’s representative at the hearing before the Court. If that were the case, S would not be obliged to meet the civic integration requirement, since she would acquire the status of a Union citizen from the date of Croatia’s accession to the European Union. Furthermore, I would like to point out that, if the applicant is a Union citizen, that would also preclude the imposition of a penalty for failure to fulfil the integration obligation, including in respect of the period before Croatia’s accession.

41. I would like to point out, as the referring court correctly states, that Directive 2003/109 is based on the premiss that, with the passage of time, a person legally and continuously resident within a particular State develops long-standing ties with that State, demonstrating that that person has put down roots in that society. The directive aims to grant special status to such third-country nationals who are long-term residents in the Member States, since that helps to promote economic and social cohesion within the European Union.¹⁰

42. However, in my opinion, that aim does not preclude the Member States from adopting integration measures in respect of long-term residents.

43. It should be noted that Directive 2003/109 uses two different terms in relation to integration measures. Article 5(2) permits the application of ‘integration conditions’¹¹ for the purpose of acquiring long-term resident status. Article 15(3) of the directive, concerning the right of a long-term resident to reside in another Member State, permits the host State to impose ‘integration measures’ on a person who has acquired long-term resident status in another Member State,¹² unless that person has already been required to comply with integration conditions in order to acquire that status in that other State.¹³

44. That interpretation is confirmed by the legislative history of the aforementioned provision. During the preparatory work on Directive 2003/109, within the Council some Member States had proposed that the word ‘measures’ in Article 15 be replaced by the word ‘conditions’. However, that proposal was not adopted in the final text of the directive.¹⁴

45. The provisions of Directive 2003/86 also point to the need to distinguish between integration measures and conditions. Article 7(2) of Directive 2003/86 permits Member States to require foreign nationals who have applied for an entry permit in connection with family reunification to comply with *integration measures*. The legislature used the same form of words as in Article 15(3) of Directive 2003/109. As Advocate General Mengozzi considered on the basis of an analysis of the legislative history of Article 15(3) of Directive 2003/109 and a comparison of the provisions of those two directives, the legislature deliberately used a term other than ‘integration conditions’, which would have to be fulfilled in order to acquire rights.¹⁵

10 — See the judgment in *Tahir* (C-469/13, EU:C:2014:2094, paragraph 32).

11 — The Polish version of the directive differs from the other language versions (see point 7 of this Opinion) since, in Article 15(3), in both the first and second subparagraphs, it uses the same term ‘działania integracyjne’ (‘integration actions’). When referring to that provision in this Opinion, I will use the terms ‘środki integracji’ (‘integration measures’) or ‘warunki integracji’ (‘integration conditions’). The Polish version of the later Directive 2009/50, in relation to Directive 2003/86, uses the terms ‘warunki i środki dotyczące integracji’ (‘integration conditions and measures’).

12 — See, in the German, English and French language versions respectively: ‘Integrationsanforderungen — Integrationsmaßnahmen’, ‘integration conditions — integration measures’ and ‘conditions d’intégration — mesures d’intégration’. On the other hand, the Dutch language version of Directive 2003/109 uses a single term ‘integratievoorwaarden’ and does not contain the aforementioned distinction. However, that distinction does appear in Article 15(3) of Directive 2009/50 (‘integratievoorwaarden en — maatregelen’).

13 — According to the third subparagraph of Article 15 of Directive 2003/109, it is also permissible, as an exception, to require attendance at language courses.

14 — See the Opinion of Advocate General Mengozzi in *Dogan* (C-138/13, EU:C:2014:287, point 51), where reference is made to the note from the Presidency of the Council of 14 March 2003 (Council Document 7393/1/03 REV-1, p. 5).

15 — See the Opinion of Advocate General Mengozzi in *Dogan* (EU:C:2014:287, points 51 to 56). Article 15(3) of Directive 2009/50 also refers to integration ‘conditions’ and ‘measures’. See also the provisions of Articles 7, 10 and 11 of Directive 2004/114, which contain optional conditions governing entry and residence permits for students (the requirement to provide evidence of sufficient language knowledge), and also certain requirements applying to unremunerated trainees and volunteers (completion of a language course).

46. The aforementioned distinctions are especially important for the application of Directive 2003/86. Treating an integration exam as an absolute ‘condition’ for obtaining an entry permit for a family member undermines the very essence of the right to family reunification.¹⁶

47. The distinction discussed above plays an equally important role in Directive 2003/109. Integration measures imposed on long-term residents exercising the right to reside in another Member State may not impose ‘conditions’, that is to say they may not establish a *de jure* or a *de facto* instrument for the selection of persons or for the control of migration. Otherwise, such integration measures would undermine the freedom of movement within the European Union, which is an essential part of the legal status deriving from Directive 2003/109.

48. Both of the aforementioned legislative acts therefore contain a distinction between integration actions defined as *conditions* for acquiring or exercising rights or as *measures* intended solely to facilitate integration.¹⁷

49. In my opinion, the imposition of integration *measures* on long-term residents is not contrary to the aims of Directive 2003/109, since those measures are intended solely to contribute towards the integration of the long-term resident into the economic and social life of the State of residence.

50. The permissibility of such measures also seems to be justified by the scheme of the directive. As I have already mentioned, Article 15(3) of the directive, subject to certain specific requirements, permits a Member State to impose integration measures on a person who has acquired long-term resident status in another Member State. It does not seem that the imposition of such measures on ‘home’ residents who have not exercised the right to reside in another Member State would be contrary to the aims of the directive.

51. The applicants before the national court cite the principle of equal treatment of long-term residents, referring to the fact that the integration obligation was not imposed either on Netherlands nationals or other Union citizens.

52. I am not convinced by that argument since, as regards the integration obligation, third-country nationals are not in a situation comparable to that of nationals of a particular Member State or that of other Union citizens.

53. That conclusion also applies to foreign nationals who have long-term resident status. Under Article 11(1) of the directive, a long-term resident must enjoy equal treatment with nationals of a particular Member State in many areas referred to in that provision, for example in access to employment and self-employed activity, education and vocational training, social security and goods and services. The right of long-term residents to equal treatment therefore applies not least in the specific areas referred to in Article 11(1) of Directive 2003/109.¹⁸ The *ratio legis* of that provision is reflected in recital 2 of the directive, which refers to making the status of long-term residents ‘as near as possible’ to the status of nationals, but not to making their status exactly the same.

16 — The Court has not yet had the opportunity to determine whether Directive 2003/86 precludes the imposition of an obligation to pass such an exam before entering the country; see the Opinion of Advocate General Mengozzi in *Dogan* (EU:C:2014:287, point 59) and also the Commission documents referred to in footnote 52 of that Opinion. The European Committee of Social Rights pointed out that imposing such an obligation as a condition for obtaining a permit for entry or further residence in connection with family reunification is contrary to Article 19§(6) of the European Social Charter (see Working Document of 15 July 2014 ‘The relationship between EU law and the European Social Charter’, paragraph 76).

17 — See the Opinion of Advocate General Mengozzi in *Dogan* (EU:C:2014:287, point 53).

18 — Under Article 11(5), Member States may extend the principle of equal treatment to areas not covered in paragraph 1.

54. I have no doubt that national provisions imposing an integration obligation as a condition for obtaining long-term resident status or for exercising the rights associated with that status would be contrary both to Article 9 of Directive 2003/109, which defines the conditions for withdrawal or loss of that status, and to Article 5(2) of the directive, which permits the imposition of integration ‘conditions’ solely as a requirement for acquiring that status.

55. The distinction between an integration obligation as an integration *measure* or an integration *condition* is therefore of decisive importance in the case at issue.

56. It is apparent from the order for reference that the national provisions applicable to the case at issue do not explicitly impose the obligation to pass the integration exam as a ‘condition’ for enjoying long-term resident status. Failure to fulfil that obligation does not lead to the loss of long-term resident status or to restrictions on the rights deriving from that status. As is apparent from the documents before the Court, the only negative consequence under national law is the imposition of a fine.

57. In my view, therefore, it is not inconceivable that the integration obligation under Netherlands law may be considered an ‘integration measure’ within the meaning of Directive 2003/109.

58. In the light of the above considerations, it is my view that Directive 2003/109, and in particular Article 5(2) and Article 11(1) thereof, do not preclude the imposition of integration measures on third-country nationals who have acquired long-term resident status in a particular Member State,¹⁹ provided that the sole purpose of those measures is to facilitate the integration of the person in question and they do not constitute an express or hidden condition for maintaining that status or for exercising the rights associated with it.

59. Regarding the second question referred for a preliminary ruling, I would point out that, if the above interpretation is to be applied, it is of no significance whether the integration obligation was imposed before or after the person in question acquired long-term resident status. If the State did not impose the aforementioned obligation as a condition for acquiring long-term resident status, it cannot withdraw that decision by introducing a condition for maintaining that status or exercising the rights associated with it in the case of persons to whom that status has been granted. In such cases, from the time that long-term resident status is acquired, integration should be restricted to integration *measures*.²⁰

60. Next, it is necessary to consider the extent to which EU law may limit Member States’ freedom to determine the content of such integration measures.

C – Assessment of the compatibility with EU law of national provisions imposing an integration obligation on a long-term resident

1. Criteria for assessing the aforementioned provisions in the light of EU law

61. As I have already mentioned, Directive 2003/109 permits Member States to impose integration obligations ‘in accordance with national law’ (Article 5(2) and Article 15(3)), but contains no indication as to the content of such measures or any conditions for their application, referring instead to national law in this regard.

19 — I would point out that the position of third-country nationals who have long-term resident status acquired in another Member State is governed by Article 15(3) of Directive 2003/109.

20 — As is apparent from the documents before the court, this applies to the situation of P, who acquired long-term resident status on 14 November 2008, that is to say after the Wi entered into force on 1 January 2007 and also after the adoption of the administrative decision of 1 August 2008 establishing an individual deadline for passing the exam. I would point out that, before 1 January 2010, passing the integration exam was not a condition for acquiring long-term resident status in the Netherlands.

62. What, then, are the criteria for assessing provisions of national law governing an integration obligation from the point of view of their compatibility with EU law?

63. In order to answer that question, it is necessary to consider whether the aforementioned provisions fall within the scope of application of EU law. If the answer to that question is in the affirmative, those provisions must also be assessed from the point of view of the prohibition on infringing the aims or effectiveness of EU law and the obligation to comply with the principle of proportionality and to respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter').

64. I would point out that Directive 2003/109 introduces a new legal status for third-country nationals residing within the territory of the European Union and thus makes it necessary to lay down comprehensive rules governing that status.

65. In those circumstances, the mere confirmation that integration measures fall within the competence of the Member States nevertheless does not justify the conclusion that they have retained complete freedom in that area. The exercise by Member States of their power, in so far as it affects the rights conferred and protected by the legal order of the Union, is amenable to review in the light of EU law.²¹

66. Regarding charges for the issue of residence permits on the basis of Directive 2003/109, the Court has held that, although Member States enjoy a margin of discretion in fixing the amount of those charges, they may not apply national rules which are liable to jeopardise the achievement of the objectives pursued by the directive and, therefore, deprive it of its effectiveness.²²

67. I have no doubt that, where a Member State exercises the option clearly contained in Directive 2003/109, the relevant national provisions fall within the scope of application of EU law.

68. This is the case where the national provisions impose 'integration conditions' for the acquisition of long-term resident status, thereby exercising the power clearly provided for in Article 5(2) of Directive 2003/109. It is necessary here also to take account of the fact that the acquisition of the status of long-term resident is subject to a specific procedure governed by Directive 2003/109, which exhaustively determines the conditions for acquiring that status.²³

69. Likewise, national provisions imposing 'integration measures' on a person who has acquired long-term resident status in another Member State under Article 15(3) of Directive 2003/109 undoubtedly fall within the scope of application of EU law.

70. Does a national regulation, such as that in the case at issue, imposing an integration obligation on 'home' long-term residents, that is to say on those who have not exercised the right to reside in another Member State, also fall within the scope of application of EU law?

71. To my mind, that question must be answered in the affirmative.

72. Long-term resident status per se derives exclusively from EU law. In those circumstances, it is not essential to distinguish between 'migrating' and 'home' long-term residents, that is to say those who have exercised and those who have not exercised freedom of movement within the European Union, in order to determine the scope of application of EU law. Even a case where a long-term resident has not exercised the right to reside in another Member State is not a purely internal situation.

21 — Regarding the exercise by Member States of their power to lay down the conditions for the loss of the nationality of a Member State, see the judgment in *Rottman* (C-135/08, EU:C:2010:104, paragraph 48).

22 — Judgment in *Commission v Netherlands* (C-508/10, EU:C:2012:243, paragraphs 64 and 65).

23 — See the judgments in *Kamberaj* (C-571/10, EU:C:2012:233, paragraph 66) and *Tahir* (EU:C:2014:2094, paragraph 27).

73. I therefore consider that national provisions imposing an integration obligation on a person who has long-term resident status fall within the scope of application of EU law, regardless of whether that person has exercised the right to reside in another Member State.

74. The above conclusions are also important for the purpose of determining the limits of the application of EU law for the purposes of Article 51(1) of the Charter.²⁴ The aforementioned provision of the Charter is based on the case-law of the Court to the effect that the fundamental rights guaranteed in the legal order of the European Union are applicable in *all* situations governed by EU law.²⁵

75. That finding undoubtedly includes a situation in which a Member State exercises an option for implementing an option for which that directive clearly provides or which follows from the scheme of that directive, as is the case here.

76. It makes no difference here that the provisions of Directive 2003/109 relating to integration conditions and measures refer to national law. The Court has already had occasion to find that, when determining the scope of a long-term resident's rights to social assistance within the meaning of Article 11(1)(d) and Article 11(4) of Directive 2003/109 and also the scope of core benefits, Member States must comply with the fundamental rights guaranteed by the Charter, even though the aforementioned provision of the directive refers to national law.²⁶

77. I would point out that the Court has already examined national provisions imposing integration measures in the case of entry to a country on the basis of the right to family reunification. On that occasion the Court examined whether they were justified by overriding reasons in the public interest and whether they were proportionate.²⁷ It is true that that analysis was carried out on the basis of the freedom of establishment recognised by the Association Agreement with Turkey. However, there is no reason why similar criteria should not be applied to the assessment of integration measures, not least because they are imposed in an area governed by the EU directives relating to immigration policy.

78. In the light of all the above considerations, it is my view that national provisions imposing integration measures on a long-term resident fall within the scope of application of EU law, also within the meaning of Article 51(1) of the Charter.

2. Assessment of the proportionality of the integration measures

79. As I have already mentioned, because Article 79(4) TFEU excludes any power on the part of the European Union to harmonise the law in the field of integration, it seems appropriate to conclude that EU law allows Member States a margin of discretion.

24 — It follows from recital 3 of Directive 2003/109 that that directive respects the fundamental rights recognised in particular by the Charter. Today, that provision no longer has autonomous meaning since, under Article 6(1) TEU, the Charter has the same legal value as the Treaties.

25 — See the judgment in *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 19).

26 — See the judgment in *Kamberaj* (EU:C:2012:233, paragraph 81).

27 — See the judgment in *Dogan* (C-138/13, EU:C:2014:2066, paragraphs 37 and 38) in relation to Article 41(1) of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey (OJ 1972 L 293, p. 1).

80. However, that margin of discretion must not be used by the Member States in a manner which would undermine the objective and effectiveness of the directive.²⁸ National provisions falling within the scope of application of EU law must also respect the principle of proportionality: the integration obligation must be applied in such a way as to achieve the aim pursued and must not exceed what is necessary in order to achieve that aim.²⁹

81. Where it is imposed on long-term residents, an integration obligation may not excessively impede the exercise of the rights associated with their status. That obligation may not impede the exercise of the right to employment and self-employed activity, education and vocational training. An essential matter here is access to evening courses. Account should also be taken of the cost of training and access to a system of material assistance.³⁰ I would point out that the Court has held that charges which have a significant financial impact on third-country nationals who satisfy the conditions laid down by Directive 2003/109 for the grant of residence permits could prevent them from claiming the rights conferred by that directive, thereby undermining its aims.³¹

82. After examining whether the integration requirements imposed on long-term residents are per se disproportionate, it is also necessary to compare them with the requirements governing the acquisition of citizenship through naturalisation. The requirements imposed on long-term residents must be less stringent, or in any event may not be more stringent than those governing the acquisition of citizenship.³²

83. The measures imposed must be compatible with the fundamental rights guaranteed by the Charter; in particular, consideration must be given here to the right to respect for private and family life (Article 7 of the Charter), freedom of thought, conscience and religion (Article 10 of the Charter), non-discrimination (Article 21 of the Charter),³³ the rights of the child (Article 24 of the Charter), the rights of the elderly (Article 25 of the Charter) and the rights of persons with disabilities (Article 26 of the Charter).

84. Although it is for the national court to assess national provisions in the light of the aforementioned principles, the Court may give the interpretative guidance needed to make that assessment.

85. When making that assessment, it must first of all be considered whether the national provisions are integration *conditions* or integration *measures* within the meaning of Directive 2003/109. Although no clear indications are given in that regard in either Directive 2003/86 or Directive 2003/109, it is none the less clear that ‘integration measures’ must be regarded as less onerous than ‘integration conditions’.³⁴

86. Integration measures, unlike integration conditions, are intended solely to facilitate a particular person’s integration into the economic and social life of the State in question and under no circumstances may they serve as an instrument for selecting immigrants or for controlling migration.³⁵

28 — See, to that effect, in relation to Directive 2003/86, the judgment in *Chakroun* (C-578/08, EU:C:2010:117, paragraph 43) and the Opinion of Advocate General Mengozzi in *Noorzia* (C-338/13, EU:C:2014:288, point 61).

29 — See the judgment in *Siragusa* (C-206/13, EU:C:2014:126, paragraph 34 and the case-law cited therein).

30 — That condition is also of fundamental importance as regards the acquisition of long-term resident status since, in the light of recital 9 of Directive 2003/109, economic considerations should not be a ground for refusing to grant that status and must not be considered as interfering with the relevant conditions.

31 — Judgment in *Commission v Netherlands* (EU:C:2012:243, paragraph 70).

32 — See Commission report of 28 September 2011 (COM(2011) 585, p. 4) and also the judgment in *Commission v Netherlands* (EU:C:2012:243, paragraph 78).

33 — Recital 5 of the directive refers to the need to observe the prohibition of discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

34 — See the Opinion of Advocate General Mengozzi in *Dogan* (EU:C:2014:287, point 52).

35 — See point 48 of this Opinion.

87. What is the function in that context of the requirement to pass an integration exam?

88. An exam is a means of assessing a particular person's level of knowledge. It establishes a threshold for qualification by those who fulfil the requirements imposed, on the assumption that some will fail to fulfil those requirements. Where an exam is organised by the State, it undoubtedly becomes an instrument for selection based on criteria established by the administration.

89. However, I do not see how the introduction of a compulsory examination of language skills or knowledge of society could serve the aim pursued by the integration measures, namely to facilitate a person's integration into society. This is especially true in the case of a person who has been legally resident in a particular State for a long period and as a result has long-term resident status and who, regardless of his/her language skills and knowledge of the society in question, already has a certain network of ties with that society.

90. To impose on such a person an obligation to pass an integration exam within a specified period would undermine the very essence of integration *measures*, which should be actions to assist socialisation within a given society and should not impose qualifying conditions connected with residence in a particular State.

91. The obligation to pass an exam is a particularly inadequate measure for persons having long-term resident status, given that, as is clear from the Netherlands system described in the order for reference,³⁶ it is no more than a criterion indicating a particular person's level of integration.

92. A person who has lived in a given environment for a long time has undoubtedly created a network of integrating ties with that environment, through marriage or family, living with neighbours, work, hobbies and activities in non-governmental organisations. An integration measure that does not permit the individual assessment of such factual circumstances and which simply recognises the result of an integration exam is disproportionate to the purpose of facilitating that person's further integration into society.

93. The possibility of using an integration exam as a measure intended to facilitate the integration of immigrants does not seem to be compatible with the premisses underlying the Common Basic Principles for Immigrant Integration Policy adopted by the Council in 2004 and confirmed by the 'Stockholm Programme'.³⁷

94. The Common Principles define integration as a dynamic two-way process a key element of which is interaction, frequent contact between immigrants and citizens of a particular State and the promotion of inter-cultural dialogue. That document states that basic knowledge of the host society's language, history and institutions is indispensable to integration and enabling immigrants to acquire this basic knowledge is essential to successful integration. However, the various measures recommended for that purpose at national and EU level do not include integration exams or tests.³⁸

36 — It is apparent from the Netherlands provisions cited in the order for reference that, by way of derogation, the integration obligation does not apply, inter alia, to persons under the age of 16 or aged 65 and over, persons who have resided in the Netherlands for at least 8 years during the school-age period, persons who have acquired the appropriate diploma, certificate or other document and persons who have demonstrated that they have adequate oral and written knowledge of the Dutch language (Article 5(1) Wi).

37 — See Council conclusions of 19 November 2004 (Council document 14615/04) and of 11 December 2009 (Council document 17024/09) and also the Communication from the Commission, 'A Common Agenda for Integration — Framework for the Integration of Third-Country Nationals in the European Union' (COM(2005) 389 of 1 September 2005).

38 — The measures proposed at national level include, inter alia, access to various kinds of language and citizenship courses, training and mentoring schemes which take account of the varying situations of immigrants, their educational background and their previous knowledge of the country in question.

95. In my opinion, this does not mean that integration measures may not impose any obligations on a long-term resident. However, such obligations should not involve the need to demonstrate a specific level of knowledge of the society or language skills by means of a qualifying exam or test.³⁹

96. I would like to point out that this view, according to which integration measures may not include obligations to achieve a result, such as the obligation to pass an exam, has been expressed in the literature on this subject.⁴⁰

97. On the basis of the views referred to above, ‘integration measures’ in the light of Directive 2003/109, unlike ‘integration conditions’, cannot to my mind include an obligation to pass an integration exam.

3. The proportionality of the penalties

98. The question raised by the referring court, in so far as it relates to the possibility of imposing penalties for failure to comply with the integration obligation, needs to be considered separately.

99. In my opinion, that question should be viewed as hypothetical, since it is apparent from both the order for reference and the observations submitted by the parties to the proceedings that no fine has been imposed on either of the applicants.

100. Nevertheless, since that question was the subject of debate during the proceedings and, moreover, that debate was marked by considerable differences of opinion,⁴¹ I would like to make a few observations in this regard.

101. The existence of a penalty emphasises the mandatory nature of the integration measures and their role as an instrument of control by the administration, thereby blurring the boundary between an integration condition and an integration measure. The possibility of imposing a penalty involves a considerable level of interference by the State in the situation of persons having long-term resident status guaranteed by EU law.

102. The imposition of penalties on long-term residents with a view to forcing them to participate in integration measures seems to be difficult to justify in the light of Directive 2003/109.

103. The only indisputably permissible form of exerting financial pressure in the aforementioned situation is an order to reimburse the costs incurred in organising the integration measures in cases where a particular person has refrained from participating in integration measures without good reason.

104. Nevertheless, contrary to the views expressed by the Commission in the case at issue, I likewise do not exclude the possibility of imposing a penalty in the form of a fine on a person who persistently refuses to fulfil the obligations imposed on him/her as part of integration measures. However, the penalty should be proportional to the offence and also take account of the reasons why such action is

39 — Examples of measures of this kind not based on a qualifying exam might include an obligation to attend language courses, educational courses providing knowledge of the society and its laws, lessons on culture or meetings with leading figures from the society in question.

40 — See E. Bribosia, S. Ganty, ‘Arrêt Dogan: quelle légalité pour les tests d’intégration civique?’, *Journal de droit européen*, 2014, No 213, p. 378, and also the wide range of academic writings cited in footnote 19 on p. 379. Some authors argue that the concept of integration measures, unlike ‘integration conditions’ which are binding and are subject to penalties, may also mean that they may not include mandatory conditions or penalties. See S. Carrera, ‘Integration of Immigrants in EU Law and Policy’, in L. Azoulay, K. de Vries, *EU Migration Law: Legal Complexities and Political Rationales*, Oxford University Press 2014, p. 159.

41 — The Commission maintains that, in the light of the principle of proportionality, the only permissible penalty is an order to reimburse the costs of the integration measures, whilst the Netherlands government takes the view that a fine with a maximum limit of EUR 1 000 is proportional.

considered undesirable.⁴² When determining the level of the fine, account should also be taken of the fact that the material status of immigrants is often lower than the average in a particular State. The imposition of penalties should be limited in time and apply to repeat offences. It should also be considered whether the relevant financial penalty is punitive, in which case it would be necessary to take account of Article 49(3) of the Charter, which prohibits penalties which are disproportionately severe compared with the offence committed.⁴³

105. That guidance would seem to be relevant to the case at issue since, as follows from the observations submitted by the Netherlands Government at the hearing, the maximum fine for failure to fulfil the integration obligation is very high in the Netherlands, EUR 1 000, and, if the exam is not passed within the new deadline, it can be imposed a second time, with no limit on the cumulation of penalties in the event of ‘repeat offences’. Given that the level of the fine is so high and there is no limit to its reimposition in the event of further failures to fulfil the integration obligation, it might also be necessary to consider whether, for some persons, the threat of a penalty is grounds for leaving the territory of a particular Member State, which would clearly undermine the long-term resident status deriving from Directive 2003/109.

106. The above considerations support the conclusion that the penalty in the form of a fine established under Netherlands law for failure to fulfil an integration obligation is disproportionate in view of both its amount and the conditions under which it is imposed.

VI – Conclusions

107. On the basis of the above considerations, I propose that the Court reply as follows to the question raised by the Centrale Raad van Beroep (Netherlands):

- (1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents does not preclude a Member State from imposing obligations in the form of integration measures on third-country nationals who have acquired long-term resident status in that State. Such measures may be imposed for the sole purpose of facilitating the integration of the person in question and may not constitute a condition for maintaining that status or for exercising the rights associated with it.

In the light of the principle of proportionality, integration measures may not excessively impede the exercise of the rights associated with long-term resident status; they must also be applied in such a way as to achieve the aim of facilitating integration and not exceed what is necessary in order to achieve that aim. In particular, integration measures imposed on long-term residents may not include the obligation to pass a civic integration exam.

- (2) For the purposes of the above interpretation, it is of no significance whether the aforementioned obligation was imposed before the person in question acquired long-term resident status.

⁴² — The maximum penalty for refusal to participate in compulsory integration measures should not exceed the penalties imposed for similar breaches of civic duties, for example failure to fulfil the obligation to vote or failure to comply with the duty to fly the national flag.

⁴³ — See the case-law of the European Court of Human Rights concerning the scope of application of Articles 6 and 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in respect of penalties not belonging to the ‘hard core’ of criminal law, in particular the judgment of 23 November 2006 in *Jussila v. Finland* [GC], no. 73053/01, § 43, ECHR 2006-XIV and also, in respect of the proportionality of a penalty, the judgment of 7 June 2012 in *Segame SA v. France*, no. 4837/08, § 59, ECHR 2012 (extracts).