Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 June 2015*

(Reference for a preliminary ruling — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 5(2) and Article 11(1) — National legislation imposing on third-country nationals with long-term resident status a civic integration obligation, attested by an examination, under pain of a fine)

In Case C-579/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Centrale Raad van Beroep (Netherlands), made by decision of 13 November 2013, received at the Court on 15 November 2013, in the proceedings

P,

S

v

Commissie Sociale Zekerheid Breda,

College van Burgemeester en Wethouders van de gemeente Amstelveen,

THE COURT (Second Chamber),

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

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 November 2014,

after considering the observations submitted on behalf of:

— P and S, by J.B. Bierbach, advocaat,

— the Netherlands Government, by M. Bulterman, M. de Ree and B. Koopman, and by J. Langer, acting as Agents,

— the Portuguese Government, by L. Inez Fernandes and N. Piçarra, acting as Agents,

* Language of the case: Dutch

— the European Commission, by M. Condou-Durande and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2015,

gives the following,

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(2) and Article 11(1) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

2 The request has been made in proceedings between P and S, on the one hand, and the Commissie Sociale Zekerheid Breda (Social Security Commission, Breda; 'Commissie Sociale Zekerheid') and the College van Burgemeester en Wethouders van de gemeente Amstelveen (Municipal executive of Amstelveen), on the other, concerning the imposition of a civic integration obligation.

Legal context

EU law

3 Recitals 2, 4, 6 and 12 in the preamble to Directive 2003/109 state:

'(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

...

(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.

...

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.

...

(12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.'

4 Article 1 of Directive 2003/109, entitled ‘Subject matter’, provides:

‘This Directive determines:

(a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; …’

5 Article 4(1) of Directive 2003/109 provides:

‘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.’

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

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

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

(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

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

7 Article 11 of Directive 2003/109, entitled ‘Equal treatment’, provides, in paragraph 1:

‘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) education and vocational training, including study grants in accordance with national law;

(c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;

(d) social security, social assistance and social protection as defined by national law;

(e) tax benefits;

(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

(g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.

...'

Netherlands law

8 Article 1(p) of the Law on Foreign Nationals 2000 (Vreemdelingenwet 2000), in the version applicable to the case in the main proceedings ('the Vw 2000'), provides:

'In this law and the provisions based on it:

...

(p) long-term resident shall mean: the holder of a residence permit of indefinite duration as referred to in Article 20, implementing Article 8(2) of Directive 2003/109, or of a long-term resident's EC residence permit issued by another State which is party to the Treaty ...'

9 Article 20(1) of the Vw 2000 provides:

'The Minister shall be authorised:

a. to approve, to reject or not to consider applications for the granting or the amendment of residence permits of indefinite duration;

b. to withdraw or to amend a residence permit of indefinite duration.'

10 Under Article 21(1) of the Vw 2000:

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

a. has not been legally resident, within the meaning of Article 8, for a continuous period of five years immediately prior to that application;

...

k. has not passed the integration examination provided for in Article 7(2)(a) of the Law on civic integration [(Wet inburgering), in the version applicable to the main proceedings ('the Wi')], or obtained a diploma, certificate or other document referred to in Article 5(1)(c), of that law.'

11 It can be seen from the order for reference that the Wi regulates the civic integration in Netherlands society of all migrants residing in the Netherlands. Civic integration involves the acquisition of oral and written proficiency in the Dutch language and knowledge of Netherlands society. Language proficiency and knowledge of Netherlands society are tested in an examination. Both migrants who, at the date of entry into force of the Wi, namely 1 January 2007, had already resided legally in the

Netherlands for a long time, and migrants who arrived in the Netherlands after that date are, in principle, required to comply with the civic integration obligation as of 1 January 2007 or the date from which they resided legally in the Netherlands after 1 January 2007.

12 Article 3 of the Wi provides:

‘1. A foreign national who is legally resident within the meaning of Article 8(a) to (e) or (l) of the Vreemdelingenwet 2000 is required to fulfil the civic integration obligation if he:

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

...

4. The civic integration obligation referred to in paragraph 1 shall not be established retroactively.’

13 Article 5 of the Wi provides:

‘1. Notwithstanding Article 3, the following persons shall not be required to fulfil the civic integration obligation:

a. persons under the age of 16 or aged 65 and over;

b. persons who resided in the Netherlands for at least eight years during the school-age period;

c. persons who have acquired a diploma, certificate or other document laid down by or in accordance with a general administrative order;

d. persons who are under an obligation to study or to obtain a qualification;

e. persons who, after the obligation to study or to obtain a qualification, are following an educational course the completion of which will result in the award of a diploma, certificate or other document pursuant to subparagraph c;

f. persons who have demonstrated that they have adequate oral and written skills in the Netherlands language and obvious knowledge of Netherlands society.

2. The following persons are also not required to fulfil the civic integration obligation:

...

c. foreign nationals who, under the legislation of a Member State of the European Union or another State party to the Agreement on the European Economic Area, have fulfilled a civic integration obligation in order to be granted long-term resident status within the meaning of Directive 2003/109;

...

3. Persons required to fulfil the civic integration obligation who have acquired a diploma, certificate or other document laid down by or in accordance with a general administrative order, showing that they have already acquired some of the knowledge and skills referred to in Article 7, are exempt from the obligation to acquire that part of the knowledge or skills and to pass the relevant part of the civic integration examination.

4. By or in accordance with a general administrative order, rules may be laid down in respect of:

a. further total or partial exemption from the civic integration obligation;

b. the residence referred to in paragraph 1, subparagraph b, and

c. the application of paragraph 1, subparagraph f.

5. The Minister can lay down policy rules regarding the application of paragraph 2, subparagraph d.'

14 Article 31 of the Wi provides:

'1. The College van Burgemeester en Wethouders shall impose an administrative fine on persons required to fulfil the civic integration obligation who do not pass the civic integration examination 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 van Burgemeester en Wethouders shall extend the period referred to in Article 7(1) if the person required to fulfil the civic integration obligation makes a reasonable case that he is in no way to blame for not passing the civic integration examination, or

b. the College van Burgemeester en Wethouders 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 examination.

3. By or in accordance with a general administrative order, rules may be laid down in respect of paragraph 2.'

15 It can be seen from the order for reference that the Wi entered into force on 1 January 2007. With the entry into force of the Wi, Article 21(1)(k) was added to the Vw 2000. However that provision was not actually applied until 1 January 2010.

16 The Netherlands government states, in that respect, that the obligation to pass the civic integration examination is a condition for the acquisition of long-term resident status both for third-country nationals who became legally resident in the Netherlands after the entry into force of the Wi and for third-country nationals who, although they were already legally resident in the Netherlands at the date of entry into force of the Wi, applied for long-term resident status after 1 January 2010. Article 21(1)(k) of the Vw 2000 therefore applies to those two categories of third-country nationals.

17 By contrast, third-country nationals who, at the date of entry into force of the Wi, were already legally resident in the Netherlands and who applied for long-term resident status during the period between 1 January 2007 and 1 January 2010, such as the applicants in the main proceedings, are not required to pass the civic integration examination in order to acquire that status. Article 21(1)(k) of the Vw 2000 therefore does not apply to that category of third-country nationals.

18 However, third-country nationals in that category are required to pass the civic integration examination by a date set by a decision of the College van Burgemeester en Wethouders of the municipality in which those persons are resident, on pain of a fine. If the examination is not passed by that date, a new date is set, the amount of the fine being increased each time.

19 Thus, the civic integration obligation to which that category of third-country nationals is subject does not affect either the acquisition or maintenance of long-term resident status.

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

20 P and S are third-country nationals who possess since, respectively, 14 November 2008 and 8 June 2007, long-term resident's residence permits of indefinite duration, on the basis of Directive 2003/109.

21 By a decision of 1 August 2008, the Commissie Sociale Zekerheid informed P that she was required to fulfil a civic integration obligation, as referred to in the Wi, and that she should pass the civic integration examination by 30 June 2013. Following that decision, P started a civic integration programme offered by the Commissie Sociale Zekerheid. As of 25 August 2008, P temporarily interrupted that programme on medical grounds. She did not subsequently continue with that programme. By a decision of 4 August 2009, the Commissie Sociale Zekerheid again stated that P was required to fulfil that obligation and that she should pass that examination by 30 June 2013. On 25 February 2010, the Commissie Sociale Zekerheid upheld its decision of 4 August 2009.

22 By a decision of 24 February 2010, the College van Burgemeester en Wethouders van de gemeente Amstelveen informed S that she was required to comply with the civic integration obligation referred to in the Wi, and that she should pass the civic integration examination by 24 August 2013.

23 In the context of the appeals lodged by P and S against the dismissal of their actions brought against the decisions obliging them to pass the civic integration examination, the Centrale Raad van Beroep (Higher Social Security Court) expresses doubts as to whether the civic integration obligation complies with Directive 2003/109.

24 In particular, while the referring court considers that the imposition of such an obligation is based on Article 5(2) of Directive 2003/109, it questions whether, after the grant of long-term resident status, Member States may subsequently impose integration conditions in the form of a civic integration examination, with penalties in the form of a system of fines.

25 In addition, the referring court considers that the civic integration obligation may in fact be covered by Article 11(1)(a) and (b) of Directive 2003/109. If that is the case, since that obligation is not imposed on nationals, it should not be imposed on third-country nationals who are long-term residents either, if the principle of equal treatment referred to in that provision is not to be infringed.

26 Furthermore, according to the referring court, although integration conditions may indeed be laid down in national law, they cannot however be such that they render impossible or excessively difficult the acquisition or maintenance of long-term resident status. The referring court does not exclude that the civic integration obligation does not comply with that criterion.

27 Lastly, the referring court questions whether the fact that a third-country national is informed, after obtaining long-term resident status, that a civic integration obligation must be fulfilled subsequently, as in S's case, is relevant to the assessment of whether that obligation complies with Directive 2003/109.

28 In those circumstances, the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the aim and scope of Directive 2003/109/EC, or of Article 5(2) and/or of 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?'

Consideration of the questions referred

29 By those questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2003/109 and, in particular, Article 5(2) and Article 11(1) thereof, preclude national legislation, such as that at issue in the main proceedings, which imposes on third-country nationals who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, and whether the fact that that status was acquired before or after that obligation was imposed is relevant in that respect.

30 As a preliminary, it must be noted that the questions referred concern only third-country nationals who were residing legally in the Netherlands at the date of entry into force of the Wi, namely 1 January 2007, and who applied for long-term resident status between 1 January 2007 and 1 January 2010, such as P and S.

31 For that category of third-country nationals, the civic integration obligation at issue in the main proceedings, which consists in passing an examination in order to demonstrate the acquisition of oral and written proficiency in the Dutch language and sufficient knowledge of Netherlands society, is not a condition for acquiring or conserving long-term resident status, but gives rise only to the imposition of a fine on those who have not passed that examination within the prescribed period.

32 In addition, it is necessary to point out the importance which the EU legislature attaches to integration measures, as can be seen inter alia from recital 4 in the preamble to Directive 2003/109, which states that the integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the European Union stated in the Treaty.

33 The questions referred must be examined in the light of those considerations.

34 As regards, in the first place, Article 5(2) of Directive 2003/109, entitled ‘Conditions for acquiring long-term resident status’, that provision provides that the Member States may require that third-country nationals comply with integration conditions, in accordance with national law.

35 Accordingly, it is clear from both the wording of that provision and its context that it allows Member States to make the acquisition of long-term resident status subject to prior fulfilment of certain integration conditions.

36 Article 5(2) of Directive 2003/109 therefore concerns integration conditions the fulfilment of which may be required before long-term resident status is granted.

37 As noted in paragraph 31 above, the civic integration obligation at issue in the main proceedings is not a condition for either acquiring or maintaining long-term resident status for third-country nationals who applied for that status between 1 January 2007 and 1 January 2010. It follows that, as regards that category of third-country nationals, such an obligation cannot be regarded as an integration condition within the meaning of Article 5(2) of Directive 2003/109.

38 Accordingly, since Article 5(2) of Directive 2003/109 neither requires that Member States impose integration obligations on third-country nationals after they have obtained long-term resident status nor precludes them from doing so, that provision does not preclude an integration measure such as that at issue in the main proceedings.

39 As regards Article 11(1) of Directive 2003/109, it must be pointed out that, as stated in recital 12 in the preamble to that directive, that provision guarantees third-country nationals who have acquired long-term resident status equal treatment with nationals of the Member State concerned, in the areas listed in paragraphs (a) to (h) of that provision.

40 Given the fact that the civic integration obligation at issue in the main proceedings is not imposed on nationals, it must be examined whether such an obligation could be contrary to the principle of equal treatment laid down in Article 11(1) of Directive 2003/109, in the various fields to which that provision relates.

41 It must be noted, in that regard, that according to settled case-law, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment in *S.P.C.M. and Others*, C-558/07, EU:C:2009:430, paragraph 74 and the case-law cited).

42 In that context, it must be noted that the integration measures at issue consist, in essence, in the obligation to acquire and/or demonstrate oral and written proficiency in the Dutch language and knowledge of Netherlands society. Whereas it may be presumed that nationals have such proficiency and knowledge, that is not the case as regards third-country nationals. Accordingly, as the Advocate General noted in point 52 of his opinion, the situation of third-country nationals is not comparable to that of nationals as regards the usefulness of integration measures such as the acquisition of knowledge of the language and society of the country.

43 Therefore, since those situations are not comparable, the fact that the civic integration obligation at issue in the main proceedings is not imposed on nationals does not infringe the right of third-country nationals who are long-term residents to equal treatment with nationals, in accordance with Article 11(1) of Directive 2003/109.

44 However, the means of implementing that civic integration obligation must not undermine the principle of non-discrimination, in the areas listed in Article 11(1) of Directive 2003/109.

45 In any event, it must be added that the Member States may not apply national rules which are liable to jeopardise the achievement of the objectives pursued by that directive and, therefore, deprive it of its effectiveness (see judgment in *Commission* v *Netherlands*, C-508/10, EU:C:2012:243, paragraph 65).

46 In that regard, as is apparent from recitals 4, 6 and 12 in the preamble to Directive 2003/109, the principal purpose of that directive is the integration of third-country nationals who are settled on a long-term basis in the Member States (see judgment in *Commission* v *Netherlands*, C-508/10, EU:C:2012:243, point 66).

47 That being said, as regards, first of all, the obligation to pass the civic integration examination at issue in the main proceedings, it cannot be disputed that the acquisition of knowledge of the language and society of the host Member State greatly facilitates communication between third-country nationals and nationals of the Member State concerned and, moreover, encourages interaction and the development of social relations between them. Nor can it be contested that the acquisition of knowledge of the language of the host Member State makes it less difficult for third-country nationals to access the labour market and vocational training.

48 With that in mind, since the obligation to pass an examination, such as that at issue in the main proceedings, ensures that the third-country nationals concerned acquire knowledge which is undeniably useful for establishing connections with the host Member State, it must be held that such an obligation does not, by itself, jeopardise the achievement of the objectives pursued by Directive 2003/109, but may on the contrary contribute to their achievement.

49 However, the means of implementing that obligation also must not be liable to jeopardise those objectives, having regard, in particular, to the level of knowledge required to pass the civic integration examination, to the accessibility of the courses and material necessary to prepare for that examination, to the amount of fees applicable to third-country nationals as registration fees to sit that examination, or to the consideration of specific individual circumstances, such as age, illiteracy or level of education.

50 As regards, next, the system of fines at issue in the main proceedings, it must be noted that the imposition of a fine on third-country nationals who are long-term residents and who have not passed the civic integration examination at the expiry of the prescribed period, as a means of ensuring the effectiveness of the civic integration obligation to which they are subject, does not, by itself, jeopardise the achievement of the objectives pursued by Directive 2003/109 and, accordingly, does not deprive it of its effectiveness.

51 However, account must be taken of the fact that the maximum amount of the fine at issue in the main proceedings is relatively high, namely EUR 1 000, and that that fine may, moreover, be imposed each time that the period prescribed for the third-country national to pass the civic integration examination expires without that examination having been passed, without any limit, until the third-country national concerned has passed that examination.

52 It must also be pointed out that the fine is imposed on third-country nationals who, upon the expiry of prescribed period, have not passed the civic integration examination, irrespective of whether, during that period, those third-country nationals never sat that examination, or sat it several times.

53 Moreover, the registration fees to sit the civic integration examination and any costs incurred in preparing for that examination are borne by the third-country nationals concerned. It must also be noted that, at the hearing, the Netherlands government indicated that the registration fees amount to EUR 230, that the third-country nationals concerned must pay those costs each time that they sit the civic integration examination during the prescribed period and that those fees are not reimbursed to the third-country nationals who do not pass that examination. It follows, therefore, that the imposition of a fine is not the only negative effect suffered by third-country nationals who do not pass that examination within the prescribed period.

54 In those circumstances, which it is for the referring court to verify, the payment of a fine penalising failure to comply with the obligation to pass the civic integration examination, in addition to payment of the costs incurred in relation to the examinations sat, is liable to jeopardise the achievement of the objectives pursued by Directive 2003/109 and, therefore, deprive it of its effectiveness.

55 Lastly, since the civic integration obligation laid down in the national legislation at issue in the main proceedings has no influence on the acquisition or maintenance of long-term resident status by third-country nationals who applied for that status during the period from 1 January 2007 to 1 January 2010, as noted in paragraph 31 of the present judgment, it must be held that whether the long-term resident status was acquired before or after that obligation was imposed is, in the present case, irrelevant to the answer to be given to the referring court.

56 Having regard to the foregoing, the answer to the questions referred is that Directive 2003/109 and, in particular, Article 5(2) and Article 11(1) thereof do not preclude national legislation, such as that at issue in the main proceedings, which imposes on third-country nationals who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

Costs

57 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:

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents and, in particular, Article 5(2) and Article 11(1) thereof do not preclude national legislation, such as that at issue in the main proceedings, which imposes on third-country nationals who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

[Signatures]