Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 April 2016*

(Reference for a preliminary ruling — Directive 2003/86/EC — Article 7(1)(c) — Family reunification — Requirements for the exercise of the right to family reunification — Stable and regular resources which are sufficient — National legislation permitting a prospective assessment of the likelihood that the sponsor will retain his resources — Compatibility)

In Case C-558/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country, Spain), made by decision of 5 November 2014, received at the Court on 5 December 2014, in the proceedings

Mimoun Khachab

v

Subdelegación del Gobierno en Álava,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos (Rapporteur) and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,

— the German Government, by T. Henze and B. Beutler, acting as Agents,

— the French Government, by D. Colas and F.-X. Bréchot, acting as Agents,

— the Hungarian Government, by G. Szima and M.Z. Fehér, acting as Agents,

— the Netherlands Government, by M. Bulterman and B. Koopman, acting as Agents,

— the European Commission, by M. Condou-Durande and L. Lozano Palacios, acting as Agents,

* Language of the case: Spanish.

after hearing the Opinion of the Advocate General at the sitting on 23 December 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The request has been made in proceedings between Mr Khachab and the Subdelegación del Gobierno en Álava (Representation of the Spanish State, Álava) ('the Subdelegación') concerning the latter's refusal to approve Mr Khachab's application for a temporary residence permit for his spouse on grounds of family reunification.

Legal context

EU law

3 Recitals 2, 4 and 6 in the preamble to Directive 2003/86 are worded 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 at 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[s], 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.'

4 According to Article 1 of Directive 2003/86, '[t]he purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States'.

5 Article 3(1) of that directive provides:

'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] family are third country nationals of whatever status.'

6 According to Article 4(1)(a) of Directive 2003/86, the Member States are to authorise the entry and residence of, inter alia, the sponsor's spouse, pursuant to that directive and subject to compliance with the conditions laid down in Chapter IV and Article 16 thereof.

7 Under Chapter IV of Directive 2003/86, entitled ‘Requirements for the exercise of the right to family reunification’, Article 7(1) of that 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:

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

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

(c) 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. 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.’

8 Article 15(1) of that directive states:

‘Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.’

9 Article 16(1)(a) of the directive is worded as follows:

‘Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member’s residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.’

10 Under Article 17 of that directive:

‘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] 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.’

Spanish law

11 The first two paragraphs of Article 16 of Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration (Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social) of 11 January 2000 (Boletín Oficial del Estado No 10 of 12 January 2000), in the version applicable to the dispute in the main proceedings (‘Organic Law 4/2000’), provide:

‘1. Resident foreign nationals shall have the right to respect for private and family life as provided for in this Organic Law and in accordance with the provisions of the international treaties signed by Spain.

2. Foreign nationals resident in Spain shall have the right to be joined by the family members specified in Article 17.’

12 Article 17(1)(a) of that organic law states:

‘A resident foreign national shall have the right to be joined in Spain by the following family members:

(a) the resident’s spouse, provided that the latter is not separated from him in fact or in law, and that the marriage is not a sham. ...’

13 Under the title ‘Requirements for family reunification’, Article 18(2) of Organic Law 4/2000 provides:

‘The sponsor must provide evidence, on the conditions to be fixed by regulation, that he has suitable accommodation and resources sufficient to maintain himself and his family once reunited.

The assessment of income for the purposes of reunification shall not include income from the social assistance system, but shall take into account other income contributed by the spouse residing in Spain and living with the sponsor.

...’

14 Royal Decree 557/2011 of 20 April 2011 approved the Regulation implementing Organic Law 4/2000, as recast by Organic Law 2/2009 (Boletín Oficial del Estado No 103 of 30 April 2011). Article 54 of that regulation, entitled ‘Resources of which a foreign national must provide evidence in order to obtain a residence permit for members of his family on grounds of reunification’, states:

‘1. A foreign national applying for a residence permit for members of his family on grounds of reunification shall, when submitting the application for such a permit, enclose documentary evidence that he has resources sufficient to maintain his family, including health care if this is not covered by social security, and equal to the amount indicated below, which, representing a minimum value, shall be expressed at the time of the application for the permit, in EUR or its legal equivalent in foreign currency, by reference to the number of persons he is seeking to have join him and taking into account also the number of family members who are already living with him as dependants in Spain:

(a) In the case of family units which, including the sponsor and, on arrival in Spain, the person joining him, comprise two members, the amount required shall be 150% of the monthly [Multiple-Purpose Public Income Index (Indicador Público de Renta de Efectos Múltiples) (IPREM)].

...

2. Residence permits shall not be granted if it is determined beyond doubt that there is no likelihood of the resources in question being retained in the year following the date of submission of the application. In this determination, the forecast as to whether a source of income will be retained in that year shall be made by reference to the pattern of the sponsor’s resources in the six months preceding the date of submission of the application.

...’

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

15 Mr Khachab, a third country national residing in Spain, holds a long-term residence permit in that Member State. On 20 February 2012, he applied to the Spanish authorities for a temporary residence permit for his spouse, Ms Aghadar, on grounds of family reunification. By decision of 26 March 2012, the Subdelegación refused Mr Khachab’s application on the ground that he had not provided evidence that he had resources sufficient to maintain his family once reunited.

16 Mr Khachab then lodged an administrative appeal against that decision before the Subdelegación, which was dismissed by decision of 25 May 2012 on the following grounds:

'... In support of his application, [Mr Khachab] produced the fixed-term employment contract which he had concluded with the firm "Construcciones y distribuciones constru-label SL". However, the Social Security Service's Employment Information System showed that Mr Khachab had left that firm on 1 March 2012, having worked a total of 15 days in that year and 48 days during the whole of 2011. It is clear from the foregoing that, at the time the decision was adopted, he was not, and is currently still not, in any form of employment, and that he had not provided any evidence that he had resources sufficient to maintain his family once reunited. On that date, there was no prospect of his having such resources in the year following submission of the application for family reunification. Therefore, the conditions for granting a residence permit on grounds of family reunification were not met.'

17 Mr Khachab then brought an action against that decision before the Juzgado de lo Contencioso-Administrativo No 1 de Vitoria-Gasteiz (Court for Contentious Administrative Proceedings No 1, Vitoria-Gasteiz). By judgment of 29 January 2013, that court upheld that decision, relying in essence on the same grounds as those set out in the decision of 26 March 2012.

18 Mr Khachab then lodged an appeal against that judgment before the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country). In support of his appeal, Mr Khachab argues that the court of first instance did not take into account the new fact to which he had drawn its attention during the proceedings, namely that, since 26 November 2012, he has worked for an agricultural firm as a citrus fruit collector and accordingly has employment which provides him with sufficient income. He adds that he holds a long-term residence permit and has been married to Ms Aghadar since 2009. In addition, he claims to have suitable accommodation and to have paid social security contributions in Spain for more than five years. Furthermore, he submits that account should be taken of the current economic climate, in which it is extremely difficult to have truly continuous employment.

19 In that regard, the referring court has doubts as regards the interpretation of Article 7(1)(c) of Directive 2003/86, pursuant to which the right to family reunification is conditional upon the sponsor having, at the time of submitting the application for reunification, 'stable and regular resources which are sufficient'. It questions, in particular, the compatibility with that provision of the Spanish legislation which allows the national authorities to refuse an application for family reunification — and thus to refuse to issue a temporary residence permit to a member of the sponsor's family — where, on the basis of the pattern of the sponsor's income in the six months preceding the date of submission of the application for family reunification, it is likely that the sponsor will be unable to retain, in the year following that date, the same level of resources as he had on that date.

20 According to the referring court, the Spanish, English and French versions of Article 7(1)(c) of Directive 2003/86 use the verb 'to have' in the present, not the future, tense. Accordingly, that court is unsure whether, in order to be able to qualify for family reunification, the sponsor must have 'stable and regular resources which are sufficient' on the date of submission of the application for reunification or whether account may be taken of the likelihood of his still having such resources in the year following that date.

21 In those circumstances the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 7(1)(c) of [Directive 2003/86] be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows an application for family reunification to be refused on the grounds that the sponsor does not have stable and regular resources sufficient to maintain himself and the members of his family, according to a prospective assessment by the

national authorities of the likelihood of the ... resources in question being retained in the year following the date of submission of the application, taking into account the pattern of [his income] in the six months preceding that date?'

Consideration of the question referred

22 By its question, the referring court asks, in essence, whether Article 7(1)(c) of Directive 2003/86 is to be interpreted as allowing the competent authorities of a Member State to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that Member State, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor's income in the six months preceding that date.

23 According to Article 4(1) of Directive 2003/86, the Member States are to authorise the entry and residence of, inter alia, the sponsor's spouse for the purpose of family reunification, where the conditions laid down in Chapter IV of that directive, entitled 'Requirements for the exercise of the right to family reunification', have been met.

24 Among the conditions laid down in that chapter, Article 7(1)(c) of that directive allows the Member States to demand proof 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 specifies that the 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.

25 The Court has previously held that, since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of Directive 2003/86 must be interpreted strictly. The margin for manoeuvre which the Member States are recognised as having must therefore not be used by them in a manner which would undermine the objective of that directive and the effectiveness thereof (judgment in *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 74 and the case-law cited).

26 It is apparent, in that regard, from recital 4 in the preamble to Directive 2003/86, that that directive has the general objective of facilitating the integration of third country nationals in Member States by making family life possible through reunification (see judgment in *Parliament* v *Council*, C-540/03, EU:C:2006:429, paragraph 69).

27 In addition, the Court has held that Article 7(1)(c) of Directive 2003/86 cannot be applied in such a manner that its application would disregard the fundamental rights set out in, inter alia, Article 7 of the Charter (see judgment in *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 77).

28 Although Article 7 of the Charter cannot be interpreted as depriving the Member States of the margin of appreciation available to them when examining applications for family reunification, the provisions of Directive 2003/86 must nonetheless, in the course of such an examination, be interpreted and applied in the light of — inter alia — Article 7 of the Charter, as is moreover apparent from recital 2 in the preamble to that directive, which requires the Member States to examine applications for reunification with a view to promoting family life (see, to that effect, judgment in *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraphs 79 and 80).

29 It is in the light of the aforementioned elements that it is necessary, in the first place, to determine whether Article 7(1)(c) of Directive 2003/86 must be interpreted as allowing the competent authority of that Member State to assess whether the condition relating to the sponsor's stable and regular resources which are sufficient will continue to be met beyond the date of submission of that application.

30 Although that provision makes no explicit mention of such a possibility, it nonetheless follows from the actual wording thereof, in particular the use of the words 'stable' and 'regular', that those financial resources must have a certain degree of permanence and continuity. In that regard, according to the second sentence of Article 7(1)(c) of Directive 2003/86, the Member States are to assess those resources by reference to, inter alia, their 'regularity', which entails a periodic analysis of the pattern of those resources.

31 Thus, it can be seen from Article 7(1)(c) of Directive 2003/86 that the wording of that provision cannot be interpreted as precluding the competent authority of the Member State concerned by an application for family reunification from examining whether the condition relating to the sponsor's resources is met by taking into account an assessment as regards whether those resources will be retained beyond the date of submission of that application.

32 That interpretation is not contradicted by the fact, raised by the referring court, that Article 7(1) of Directive 2003/86 uses the present tense when it states that the Member State concerned may require the person who has submitted the application for family reunification to provide evidence that the sponsor 'has' the elements listed in subparagraphs (a) to (c) of that provision. The sponsor must indeed prove that he has all of those elements, including 'resources which are sufficient', at the time when his application for family reunification is being examined, which justifies the use of the present tense. However, since it is apparent from the wording of Article 7(1)(c) of that directive that the sponsor's resources must be not only 'sufficient' but also 'stable and regular', such requirements imply a prospective assessment of those resources by the competent national authority.

33 That interpretation is borne out by Article 7(1)(a) and (b) of Directive 2003/86. Indeed, it should be emphasised that the conditions relating to possessing 'accommodation regarded as normal' and 'sickness insurance' laid down in those provisions must also be interpreted as conferring on the Member States, for the purposes of ensuring the stability and permanence of sponsors in their territory, the ability to rely, when examining an application for family reunification, on the likelihood that those sponsors will continue to meet those conditions beyond the date of submission of the application for family reunification.

34 The interpretation of Article 7(1)(c) of Directive 2003/86 set out in paragraph 31 above is also supported by Articles 3(1) and 16(1)(a) of that directive.

35 First, Article 3(1) of Directive 2003/86 restricts the personal scope of that directive to sponsors who have obtained a residence permit for at least one year and who have reasonable prospects of obtaining the right of permanent residence. The assessment of whether such prospects exist necessarily requires the competent authority of the Member State concerned to carry out an examination of future developments in the sponsor's situation in relation to the obtaining of that right of residence.

36 In those circumstances, as the Advocate General noted in point 33 of his Opinion, an interpretation of Article 7(1)(c) of Directive 2003/86 whereby that authority would be unable to carry out an assessment of the maintenance, beyond the date of submission of the application for reunification, of the sponsor's stable and regular resources which are sufficient would not be consistent with the system provided for in that directive.

37 Second, it should be noted that, where the conditions laid down by Directive 2003/86 are no longer satisfied, Article 16(1)(a) thereof enables the Member States to withdraw or refuse to renew a family member's residence permit.

38 Thus, according to that provision, the competent authority of the Member State concerned may, inter alia, withdraw an authorisation of family reunification where the sponsor no longer has stable and regular resources which are sufficient, as referred to in Article 7(1)(c). The fact that it is possible to withdraw that authorisation means that that authority may require the sponsor to have such resources beyond the date of submission of his application.

39 Lastly, it should be noted that that interpretation is confirmed by the objective of Article 7(1) of Directive 2003/86. Evidence that the condition relating to resources set out in subparagraph (c) of that provision has been met enables the competent authority to ensure that, once the family reunification has taken place, neither the sponsor nor the members of his family are likely to become a burden on the social assistance system of the Member State concerned during their period of residence (see, to that effect, judgment in *Chakroun*, C-578/08, EU:C:2010:117, paragraph 46).

40 It follows from the foregoing that the possibility provided for in Article 7(1)(c) of Directive 2003/86 necessarily implies that the competent authority of the Member State concerned is to assess prospectively whether the sponsor will retain stable and regular resources which are sufficient beyond the date of submission of the application for family reunification.

41 Having regard to that conclusion, it is necessary, in the second place, to question whether that provision allows the competent authority of the Member State concerned to make the authorisation of family reunification conditional upon the likelihood of those resources being retained in the year following the date of submission of the application for reunification, by taking account of the sponsor's income in the six months preceding that date.

42 It should be noted, in that regard, that, in accordance with the principle of proportionality, which is one of the general principles of EU law, the measures implemented by the national legislation transposing Article 7(1)(c) of Directive 2003/86 must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them (see, regarding Article 7(2) of Directive 2003/86, judgment in *K and A*, C-153/14, EU:C:2015:453, paragraph 51).

43 Lastly, it should be borne in mind that it follows from the case-law of the Court that Article 17 of Directive 2003/86 requires that applications for reunification be examined on a case-by-case basis (judgments in *Chakroun*, C-578/08, EU:C:2010:117, paragraph 48, and *K and A*, C-153/14, EU:C:2015:453, paragraph 60), and that the competent national authorities, when implementing Directive 2003/86 and examining applications for family reunification, must make a balanced and reasonable assessment of all the interests in play (see, to that effect, judgment in *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 81).

44 In the present case, the first subparagraph of Article 54(2) of Royal Decree 557/2011 states that a residence permit on grounds of family reunification will not be granted if it is determined beyond doubt that there is no likelihood of the resources in question being retained in the year following the date of submission of the application. That provision indicates that the forecast as to whether a source of income will be retained in that year will be made by reference to the pattern of the sponsor's resources in the six months preceding the date of submission of the application.

45 It should be noted, in that regard, that the period of one year, during which the sponsor should probably have resources which are sufficient, appears reasonable and does not go beyond what is necessary to enable assessment, on a case-by-case basis, of the risk that the sponsor may need to have recourse to the social assistance system of that State once family reunification has taken place. Indeed, that one-year period corresponds to the minimum period of validity of the residence permit which the

sponsor must have under Article 3(1) of Directive 2003/86 in order to be able to apply for family reunification. In addition, according to Article 16(1)(a) of that directive, the competent authorities of the Member State concerned have the option of withdrawing the residence permit of a member of the sponsor's family if the sponsor no longer has stable and regular resources which are sufficient during that family member's period of residence and until that family member obtains an autonomous residence permit, that is, pursuant to Article 15(1) of Directive 2003/86, not later than after five years of residence in that Member State.

46 Concerning the application of the obligation to ensure proportionality at national level, account should also be taken of the fact that, according to the first subparagraph of Article 54(2) of Royal Decree 557/2011, the competent national authority cannot refuse to grant a residence permit on grounds of family reunification unless it is determined 'beyond doubt' that the sponsor will be unable to retain resources which are sufficient in the year following the date of submission of his application. Thus, that provision merely imposes a requirement that the maintenance of the sponsor's resources be foreseeable in order for him to be allowed to obtain that residence permit on grounds of family reunification.

47 Regarding the setting of the length of the period prior to the submission of the application on which the prospective assessment of the sponsor's resources may be based at six months, it should be noted that Directive 2003/86 is silent on that point. In any event, such a period is not capable of undermining the objective of that directive.

48 Consequently, it follows from all of the foregoing that Article 7(1)(c) of Directive 2003/86 must be interpreted as allowing the competent authorities of a Member State to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that Member State, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor's income in the six months preceding that date.

Costs

49 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 (Fourth Chamber) hereby rules:

Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as allowing the competent authorities of a Member State to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that Member State, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor's income in the six months preceding that date.

[Signatures]