ORDER OF THE COURT (First Chamber)

10 June 2011 *

In Case C-155/11 PPU,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Rechtbank 's-Gravenhage, zittinghoudende te Zwolle-Lelystad (Netherlands), made by decision of 31 March 2011, received at the Court on the same date, in the proceedings

Bibi Mohammad Imran

v

Minister van Buitenlandse Zaken

THE COURT (First Chamber),

composed of A. Tizzano, President of the First Chamber, A. Borg Barthet (Rapporteur), M. Ilešič, M. Safjan and M. Berger, Judges,

Advocate General: P. Mengozzi,
Registrar: A. Calot Escobar,

* Language of the case: Dutch.

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The reference has been made in the course of proceedings between Ms B. Mohammad Imran and the Minister van Buitenlandse Zaken (Netherlands Minister for Foreign Affairs) concerning his refusal to issue a provisional residence permit for the Netherlands to Ms B. Mohammad Imran.

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

3 On 19 June 2009, Ms B. Mohammad Imran lodged an application for a provisional residence permit with the Netherlands Embassy in New Delhi (India) for the purpose of residing with her spouse, Mr A. Safi.

4 By decision of 20 July 2009, the Netherlands Ministry of Foreign Affairs ('the Ministry') refused the application.

5 By letter of 10 August 2009, Ms B. Mohammad Imran raised an objection to that decision.

6 It is apparent from the order for reference that Ms B. Mohamad Imran's eight children, of whom seven are minors, have been legally resident in the Netherlands since 5 August 2009. Mr A. Safi and the children still have Afghan nationality. Mr A. Safi has never been in possession of a temporary residence permit for the purposes of asylum pursuant to Article 29(a), (b) or (c) of the Netherlands Law on Aliens 2000.

7 By decision of 15 February 2010, the Ministry dismissed the objection raised by Ms B. Mohammad Imran on the ground that, in accordance with the judgment of the Raad van State (Council of State) of 2 December 2008 (JV 2009/29), the Ministry may refuse applications for provisional residence permits if the civic integration examination has not been passed. According to the Ministry, Ms B. Mohammad Imran has not produced any concrete evidence which might cast doubt on the accuracy or comprehensiveness of the medical report of 21 April 2009 compiled by the medical officer attached to the diplomatic mission in New Delhi, Dr Lalit Gupta, from which it does not appear that the applicant qualified for an exemption from the civic integration examination for medical reasons.

8 On 15 March 2010, Ms B. Mohammad Imran brought an appeal against that decision before the Rechtbank Zwolle-Lelystad (District Court, Zwolle-Lelystad) ('the Rechtbank').

9 The Rechtbank is uncertain whether the obligation imposed by the Netherlands law on the family members of third country nationals, first to take a civic integration

examination abroad before being able to come to the Netherlands, interprets Article 7(2) of Directive 2003/36 too strictly.

10 In those circumstances, the Rechtbank has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 7(2) of the Family Reunification Directive allow a Member State to refuse entry and residence to a family member, as referred to in Article 4 of that directive, of a third country national lawfully residing in that Member State, exclusively on the ground that that family member has not passed the civic integration examination abroad as prescribed in the legislation of that Member State?

1(a) Is it important in answering Question 1 that the family member concerned is a mother of eight, of whom seven are minors, lawfully residing in that Member State?

1(b) Is it important in answering Question 1 whether, in the country of residence, accessible tuition is available to the family member in the language of that Member State?

1(c) Is it important in answering Question 1 whether the family member concerned, given his or her educational background and personal circumstances, particularly medical problems, would be able to pass that examination in the near future?

1(d) Is it important in answering Question 1 that no reviews take place in respect of the provisions of Article 5(5) and Article 17 of the Family Reunification Directive, Article 24 of the Charter of Fundamental Rights of the European Union or the principle of proportionality as contained in European Union law?

1(e) Is it important in answering Question 1 that nationals of certain other third countries are exempt, purely on the basis of their nationality, from the obligation to pass the civic integration examination abroad?'

Procedure before the Court

11 By letter of 11 April 2011, received at the Court Registry the same day, the Rechtbank requested that the reference for a preliminary ruling be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure of the Court of Justice.

12 By decision of 14 April 2011, the First Chamber granted that application.

13 By letter of 19 May 2011, received at the Court Registry the same day, the Ministry informed the Court that it had, by decision of 12 May 2011, following further examination, declared Ms B. Mohammad Imran's objection of 10 August 2009 well founded and that, accordingly, the decision of 15 February 2010 against which the appeal is directed was inoperative.

14 By letter of 30 May 2011, received at the Court Registry the same day, the national court informed the Court of Justice that a provisional residence permit had been issued that day to Ms B. Mohammad Imran by the Netherlands Embassy in Islamabad.

In those circumstances, the national court considers that the questions referred for a preliminary ruling are no longer urgent and requests that the Court take no further steps in the procedure pursuant to Article 104b of the Rules of Procedure. The national court also considers that it is not currently appropriate to withdraw those questions since Ms B. Mohammad Imran 'has not (yet) withdrawn her appeal and, furthermore, she intends to bring an appeal for damages before the court'.

Consideration of the reference for a preliminary ruling

15 In accordance with settled case-law, the procedure provided for by Article 267 TFEU is a means of cooperation between the Court of Justice and national courts, by which the Court provides the national courts with the points of interpretation of European Union law which they need in order to decide the disputes before them (see, in particular, Case C-314/96 *Djabali* [1998] ECR I-1149, paragraph 17; Case C-318/00 *Bacardi-Martini and Cellier des Dauphins* [2003] ECR I-905, paragraph 41, and order of 14 October 2010 in Case C-336/08 *Reinke*, not published in the ECR, paragraph 13).

16 In the present case, the Netherlands Government has stated to the Court that the decision of 15 February 2010, against which the appeal in the main proceedings is directed, is inoperative since, by the decision of 12 May 2011, Ms B. Mohammad Imran's objection has, following further examination been declared well founded.

17 That information has been confirmed, in essence, by the national court by its letter of 30 May 2011.

18 Clearly, Ms B. Mohammad Imran's request for a provisional residence permit has been met and, therefore, the main proceedings no longer have a purpose.

19 Admittedly, by the letter of 30 May 2011, the national court indicated its intention to maintain its request for a preliminary ruling since Ms B. Mohammad Imran intends to bring an action for damages before it.

20 Clearly, however, the initiation of such proceedings is, at this stage, merely possible and hypothetical.

21 According to settled case-law, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, inter alia, Case C-225/02 *García Blanco* [2005] ECR I-523, paragraph 28, and the order in Case C-525/06 *Nationale Loterij* [2009] ECR I-2197, paragraph 10).

22 It follows from the foregoing considerations that it is not necessary to give a ruling on the request for a preliminary ruling.

Costs

23 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 (First Chamber) hereby rules:

It is not necessary to give a ruling on the request for a preliminary ruling submitted by the Rechtbank 's-Gravenhage, zittinghoudende te Zwolle-Lelystad (Netherlands), by decision of 31 March 2011.

[Signatures]