Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 April 2017 [1]

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2004/114/EC — Article 6(1)(d) — Conditions of admission of third country nationals — Refusal of admission — Concept of 'threat to public security' — Margin of discretion)

In Case C-544/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decision of 14 October 2015, received at the Court on 19 October 2015, in the proceedings

Sahar Fahimian

v

Bundesrepublik Deutschland,

intervener:

Stadt Darmstadt,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, E. Juhász, M. Berger, A. Prechal, M. Vilaras and E. Regan (Rapporteur), Presidents of Chambers, A. Rosas, A. Borg Barthet, D. Šváby, E. Jarašiūnas and C. Lycourgos, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 20 September 2016,

after considering the observations submitted on behalf of:

— Ms Fahimian, by P. von Auer, Rechtsanwalt,

— the German Government, by J. Möller and T. Henze, acting as Agents,

— the Belgian Government, by C. Pochet and M. Jacobs, acting as Agents,

— the Greek Government, by T. Papadopoulou, acting as Agent,

1 — Language of the case: German.

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

— the Italian Government, by G. Palmieri, acting as Agent, and W. Ferrante, avvocato dello Stato,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by C. Cattabriga and F. Erlbacher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2016,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1)(d) of 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).

2 The request has been made in proceedings between Ms Sahar Fahimian and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning the refusal to grant her a visa for the purpose of study.

Legal context

EU law

Directive 2004/114

3 Recitals 6, 7, 14, 15 and 24 of Directive 2004/114 state:

‘(6) One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States’ national legislation on conditions of entry and residence is part of this.

(7) Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.

…

(14) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notions of public policy and public security also cover cases in which a third-country national belongs or has belonged to an association which supports terrorism, supports or has supported such an association, or has or has had extremist aspirations.

(15) In case of doubts concerning the grounds of the application of admission, Member States should be able to require all the evidence necessary to assess its coherence, in particular on the basis of the applicant's proposed studies, in order to fight against abuse and misuse of the procedure set out in this Directive.

…

(24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.'

4 In accordance with Article 1 of the directive:

'The purpose of this Directive is to determine:

(a) the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.'

5 Article 3 of the directive, 'Scope', provides in paragraph 1 that it is to apply in particular 'to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies'.

6 Chapter II of the directive concerns 'Conditions of admission'. It consists of Articles 5 to 11 of the directive. Article 5 reads as follows:

'The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence showing that he/she meets the conditions laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.'

7 Article 6 of the directive provides:

'1. A third-country national who applies to be admitted for the purposes set out in Articles 7 to 11 shall:

(a) present a valid travel document as determined by national legislation. Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;

(b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation for the planned stay;

(c) have sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned;

(d) not be regarded as a threat to public policy, public security or public health;

(e) provide proof, if the Member State so requests, that he/she has paid the fee for processing the application on the basis of Article 20.

2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.'

8 Articles 7 to 11 of the directive relate to the specific conditions of admission for students, school pupils, unremunerated trainees and volunteers, and to the mobility of students. Article 7, 'Specific conditions for students', provides in paragraph 1:

'In addition to the general conditions stipulated in Article 6, a third-country national who applies to be admitted for the purpose of study shall:

(a) have been accepted by an establishment of higher education to follow a course of study;

(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;

(d) provide evidence, if the Member State so requires, that he/she has paid the fees charged by the establishment.'

9 In accordance with Article 12 of the directive:

'1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.

2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:

(a) does not respect the limits imposed on access to economic activities under Article 17;

(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.'

10 Article 18 of the directive, 'Procedural guarantees and transparency', provides in paragraphs 2 and 4:

'2. If the information supplied in support of the application is inadequate, processing of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.

…

4. Where an application is rejected or a residence permit issued in accordance with this Directive is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.'

Regulation (EU) No 267/2012

11 Article 23(2)(d) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), as amended by Council Regulation (EU) No 1263/2012 of 21 December 2012 (OJ 2012 L 356, p. 34), ('Regulation No 267/2012') provides for the freezing of the funds and economic resources of the persons, entities and bodies listed in Annex IX to that regulation who have been identified as 'being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran and entities owned or controlled by them, or persons and entities associated with them'.

12 That annex has been the subject of various amendments, in particular following the adoption of additional restrictive measures. In the version as amended by Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 (OJ 2014 L 325, p. 3), it includes, in Part I B, concerning persons and entities involved in nuclear or ballistic missile activities and persons and entities providing support to the Government of Iran, Sharif University of Technology (Iran) ('SUT').

13 The reasons for including SUT in that list are as follows:

'[SUT] has a number of cooperation agreements with Iranian Government organisations which are designated by the UN and/or the EU and which operate in military or military-related fields, particularly in the field of ballistic missile production and procurement. This includes: an agreement with the EU-designated Aerospace Industries Organisation for inter alia the production of satellites; cooperating with the Iranian Ministry of Defence and the Iranian Revolutionary Guards Corps (IRGC) on smart boat competitions; a broader agreement with the IRGC Air Force which covers developing and strengthening the University's relations, organisational and strategic cooperation;

SUT is part of a six-university agreement which supports the Government of Iran through defence-related research; and SUT teaches graduate courses in unmanned aerial vehicle (UAV) engineering which were designed by the Ministry of Science among others. Taken together, these show a significant record of engagement with the Government of Iran in military or military-related fields that constitutes support to the Government of Iran.'

German law

14 The Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, economic activity and integration of foreign nationals in the territory of the Federal Republic), in the version of 25 February 2008 (BGBl. I, p. 162) ('the AufenthG'), provides in subparagraph 1 of Paragraph 4, 'Requirement for a residence permit':

'Foreign nationals require a residence permit for entry and residence in the territory of the Federal Republic … Residence permits are granted as:

1. a visa within the meaning of Paragraph 6(1), point 1, and (3);

…'

15 Paragraph 6 of the AufenthG, 'Visa', provides in subparagraph 3:

'For long-term stays a visa for the territory of the Federal Republic (national visa) is required, granted before entry. It shall be granted in accordance with the provisions applicable to the residence permit, the EU Blue Card, the settlement permit and the EU long-term residence permit …'

16 Paragraph 16 of the AufenthG, 'Study, language courses, school attendance', provides in subparagraph 1:

'A foreign national may be granted a residence permit for the purpose of study at a State or State-approved higher education establishment or comparable training establishment … The residence permit for the purpose of study may be granted only if the foreign national has been admitted by the educational establishment; conditional admission shall be sufficient. Proof of knowledge of the language of instruction is not required if language skills have already been taken into account for the admission decision or are to be acquired by preparatory measures for study. The period of validity of the residence permit for study, when first issued and when extended, shall be at least one year and must not exceed two years for study and preparatory measures for study; it may be extended if the purpose of residence has not yet been achieved and may yet be achieved within an appropriate period.'

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

17 Ms Fahimian, born in 1985, is an Iranian national. According to the order for reference, she holds a Master of Science degree in the field of information technology awarded by SUT. That university specialises in technology, engineering science and physics.

18 On 21 November 2012 Ms Fahimian applied to the embassy of the Federal Republic of Germany in Teheran for a visa, in order to pursue doctoral studies at the Technische Universität Darmstadt (Darmstadt Technical University, Germany), Center for Advanced Security Research Darmstadt (CASED), within the framework of the 'Trusted Embedded and Mobile Systems' project.

19 Ms Fahimian annexed to her application evidence of her admission to that university and a letter from the managing director of the Center for Advanced Security Research Darmstadt of 14 November 2012. The subjects of Ms Fahimian's research project were described in that letter as ranging from 'security of mobile systems, esp. intrusion detection on smartphones to security protocols'. The managing director also explained that Ms Fahimian's task within that project would be to 'find new efficient and effective protections mechanisms for smartphones under the well-known restrictions of restricted power, restricted computing resources, and restricted bandwidth'.

20 To finance her doctoral studies, Ms Fahimian obtained a doctoral grant from that research centre.

21 When her application for a visa was refused on 27 May 2013, Ms Fahimian made a request for reconsideration, which was likewise dismissed by decision of 22 October 2013.

22 On 22 November 2013 she brought an action against that decision before the referring court, seeking the grant of the visa for which she had applied. That court observes that the parties disagree on whether grounds of public security within the meaning of Article 6(1)(d) of Directive 2004/114 preclude Ms Fahimian from entering German territory.

23 The order for reference states that the defendant in the main proceedings submits that the situation in Iran gives reason to fear that the knowledge Ms Fahimian would acquire during her stay for study purposes would later be misused in her country of origin. According to the defendant, the Iranian Government has for a long time been developing a large scale cyber-programme by which it hopes to gain access to confidential information in western countries. The defendant states that hackers are searching essentially for sensitive data from the air and aerospace sectors and the arms industry. According to security experts, hacking attacks are being undertaken in particular in order to obtain construction plans and research results for the Iranian nuclear programme, which is suspected of pursuing military objectives.

24 In this context, the significance of SUT's involvement in the field of research for military purposes in Iran is said to be recognised in the international community. The defendant in the main proceedings observes in this respect that the nature of that involvement induced the EU legislature, by Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 (OJ 2012 L 356, p. 55), originally to add that university to the list of entities subject to restrictive measures in Annex IX to Regulation No 267/2012. That listing was annulled by the General Court of the European Union, by its judgment of 3 July 2014, *Sharif University of Technology* v *Council* (T-181/13, not published, EU:T:2014:607). The EU legislature added that university to that list once again by Implementing Regulation No 1202/2014. The defendant in the main proceedings notes that the reason for putting SUT back on the list was the proven close connection between it and the Iranian regime in the military or related fields.

25 Moreover, according to the defendant in the main proceedings, it cannot be ruled out that even after graduating from SUT Ms Fahimian still maintains contacts with persons in that university.

26 In addition, the defendant in the main proceedings fears that the knowledge Ms Fahimian would acquire during her studies in Germany could also be used for purposes of internal repression in Iran, or in connection with human rights violations more generally. The technologies that are the subject of Ms Fahimian's research project could be used by the Iranian authorities for surveillance of the population.

27 The referring court entertains doubts, however, as to whether Article 6(1)(d) of Directive 2004/114 can be relied on in the present case. No specific circumstance relating to Ms Fahimian's conduct or her contacts with certain persons has been put forward by the defendant in the main proceedings, which has, moreover, not made clear the relationship between the skills which would be acquired by her during her doctoral studies and their subsequent misuse.

28 In those circumstances, the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. (a) Is Article 6(1)(d) of Council Directive [2004/114] to be interpreted as meaning that the competent authorities of the Member States enjoy a margin of discretion in examining whether a third country national who applies to be admitted for the purposes set out in Articles 7 to 11 of that directive is regarded as a threat to public policy, public security or public health, as a result of which discretion the assessment by the authorities is subject to only limited judicial review?

(b) If Question 1(a) is answered in the affirmative:

What are the legal limits placed on the competent authorities of the Member States when making the assessment that a third country national who applies to be admitted for the purposes set out in Articles 7 to 11 of Council Directive [2004/114] is to be regarded as a threat to public policy, public security or public health, with respect particularly to the facts to be used as a basis for that assessment and their evaluation?

2. Independently of the answer to Questions 1(a) and 1(b):

Is Article 6(1)(d) of Council Directive [2004/114] to be interpreted as meaning that the Member States are thereby empowered, in a case such as the present, in which a third country national from [the Islamic Republic of] Iran, who obtained her university degree from [SUT] (Teheran) in Iran, which specialises in technology, engineering science and physics, seeks entry for the purpose of taking up doctoral studies in the area of IT security research within the framework of the "Trusted Embedded and Mobile Systems" project, in particular the development of effective security mechanisms for smartphones, to deny entry to their territory, stating as grounds for this refusal that it cannot be ruled

out that the skills acquired in connection with the research project would be misused in Iran, for instance for the acquisition of sensitive information in western countries, for the purpose of internal repression, or more generally in connection with human rights violations?'

Consideration of the questions referred

29 By its questions, which should be considered together, the referring court asks essentially whether Article 6(1)(d) of Directive 2004/114 must be interpreted as meaning that the competent national authorities, when dealing with an application by a third country national for a visa for the purpose of study, enjoy a wide discretion which is subject only to limited judicial review in determining whether that national represents a threat to public security within the meaning of that provision, and whether those authorities are entitled to refuse to grant the visa applied for in circumstances such as those of the main proceedings.

30 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (see, inter alia, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 22 and the case-law cited).

31 In the first place, as regards the general scheme of Directive 2004/114, Article 5 provides that the admission of a third country national to the territory of a Member State pursuant to the directive is to be subject to the verification of documentary evidence showing that the applicant meets both the general conditions laid down in Article 6 of the directive and also, where the third country national is seeking admission for study purposes, the specific conditions laid down in Article 7 of the directive (see, to that effect, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 23).

32 In particular, the Member States are to verify whether, under Article 6(1)(d) of Directive 2004/114, read in the light of recital 14 of the directive, there are grounds relating to the existence of a threat to public policy, public security or public health which may justify a refusal to admit a third country national (judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 24).

33 Pursuant to Article 12 of Directive 2004/114, students from third countries must be issued with a residence permit where they meet the general and specific conditions exhaustively listed in Articles 6 and 7 of the directive (see, to that effect, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 27).

34 In the second place, as regards the objectives of Directive 2004/114, it can be seen from Article 1(a) read in conjunction with recital 24 of the directive that its purpose is to determine the conditions for the admission of third country nationals to the territory of Member States for study purposes, for a period exceeding three months (see, inter alia, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 28).

35 The Court has held that, according to recitals 6 and 7 of Directive 2004/114, the directive is intended to promote the mobility of students who are third country nationals to the European Union for the purpose of education, that mobility being intended to promote Europe as a world centre of excellence for studies and vocational training (judgment of 21 June 2012, *Sommer*, C-15/11, EU:C:2012:371, paragraph 39).

36 A Member State may not therefore, in relation to the admission of third country nationals for study purposes, introduce conditions additional to those laid down in Articles 6 and 7 of Directive 2004/114, as that would run counter to the objectives pursued by the directive (see, inter alia, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 30).

37 On the other hand, Directive 2004/114 allows the competent national authorities a margin of discretion in assessing whether the general and specific conditions laid down in Articles 6 and 7 of the directive are met, in particular whether grounds relating to the existence of a threat to public security preclude the admission of the third country national concerned (see, to that effect, judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 33).

38 It should be noted here that Directive 2004/114 does not define the concept of 'public security' within the meaning of Article 6(1)(d) of the directive, which was the basis for the refusal of the visa at issue in the main proceedings.

39 The Court has, however, explained that the concept of 'public security' covers both the internal security of a Member State and its external security. Public security may thus be affected by a threat to the functioning of institutions and essential public services and the survival of the population, as well as by the risk of a serious disturbance to foreign relations or the peaceful coexistence of nations, or a risk to military interests (see, inter alia, judgments of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraphs 43 and 44, and of 15 February 2016, *N*, C-601/15 PPU, EU:C:2016:84, paragraph 66).

40 As regards the condition of the existence of a threat to public security, it must be observed that, in contrast inter alia to Article 27(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 7, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34), which requires that a measure taken in the name of public security must be based exclusively on the personal conduct of the individual concerned and that that conduct must represent a 'genuine, present and sufficiently serious threat' to that fundamental interest of society (see, inter alia, judgments of 22 May 2012, *I*, C-348/09, EU:C:2012:300, paragraph 30; of 13 September 2016, *Rendón Marin*, C-165/14, EU:C:2016:675, paragraph 84; and of 13 September 2016, *CS*, C-304/14, EU:C:2016:674, paragraph 40), it is apparent from Article 6(1)(d) of Directive 2004/114, read in the light of recital 14 of that directive, that the admission of a third country national may be refused if the national authorities competent to process that national's application for a visa consider, on the basis of an assessment of the facts, that he is a threat, if only 'potential', to public security. That assessment may thus take into account not only the personal conduct of the applicant but also other elements relating, in particular, to his professional career.

41 The assessment of the individual situation of an applicant for a visa may involve complex evaluations based inter alia on the personality of that applicant, his integration in the country where he resides, the political, social and economic situation of that country, and the potential threat to public security represented by the admission of that applicant for study purposes to the territory of the Member State concerned, in view of the risk that the knowledge acquired by that applicant during his studies might subsequently be used in his country of origin for purposes prejudicial to that public security. Such evaluations involve predicting the foreseeable conduct of the applicant for the visa, and must be based inter alia on an extensive knowledge of his country of residence and on the analysis of various documents and of the applicant's statements (see, to that effect, judgment of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraphs 56 and 57).

42 In those circumstances, the competent national authorities enjoy a wide discretion when assessing the relevant facts in order to determine whether the grounds set out in Article 6(1)(d) of Directive 2004/114, relating to the existence of a threat inter alia to public security, preclude the admission of the third country national (see, by analogy, judgment of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraph 60).

43 It is for those national authorities, in order to determine whether an applicant for a visa represents a threat, if only potential, to public security, to perform an overall assessment of all the elements of that person's situation.

44 As the Court has held, in the examination of the conditions of admission there is nothing to prevent the competent national authorities, in accordance with recital 15 of Directive 2004/114, from requiring all the evidence necessary to assess the coherence of the application for admission (judgment of 10 September 2014, *Ben Alaya*, C-491/13, EU:C:2014:2187, paragraph 34). If the information provided in support of the visa application is inadequate for assessing whether there is a threat to public security, Article 18(2) of the directive states that the authorities may require the applicant to provide the further information that they need.

45 As regards judicial review of the discretion enjoyed by the competent national authorities in connection with Article 6(1)(d) of Directive 2004/114, the national court must, while taking account of the distribution of the burden of proof as described in the previous paragraph, ascertain in particular whether the contested decision is based on a sufficiently solid factual basis.

46 Moreover, since the competent national authorities have a wide discretion in assessing the facts, judicial review is limited, as far as that assessment is concerned, to the absence of manifest error. Judicial review must also relate to compliance with procedural guarantees, which is of fundamental importance. Those guarantees include the obligation for those authorities to examine carefully and impartially all the relevant elements of the situation in question (see, to that effect, judgments of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraphs 60 and 61, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 69), and also the obligation to give a statement of the reasons for their decision that is sufficient to enable the national court to ascertain, in connection with the right of challenge provided for in Article 18(4) of Directive 2004/114, whether the factual and legal elements on which the exercise of the power of assessment depends were present (see, by analogy, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 69). On the latter point, it must be noted that, according to recital 14 of Directive 2004/114, a refusal of admission of a third country national for study purposes must be based on 'duly justified grounds'.

47 In the present case, concerning the action brought by Ms Fahimian against the German authorities' decision to refuse to grant her the visa for study purposes for which she had applied, it is for the referring court to take account of all the elements of her situation.

48 Among those elements, those of particular importance with respect to Article 6(1)(d) of Directive 2004/114 are the fact that Ms Fahimian obtained her degree from SUT, which was and still is on the list of entities subject to restrictive measures in Annex IX to Regulation No 267/2012, and the fact that the research she intends to conduct in Germany for her doctorate relates to the sensitive field of information technology security.

49 The same applies to additional elements available to the competent national authorities which give reason to fear that the knowledge Ms Fahimian will acquire in Germany may subsequently be misused for purposes, such as those suggested by the referring court in its second question, contrary to the maintenance of public security.

50 Having regard to all the above considerations, the answer to the questions referred is that Article 6(1)(d) of Directive 2004/114 must be interpreted as meaning that the competent national authorities, where a third country national has applied to them for a visa for study purposes, have a wide discretion in ascertaining, in the light of all the relevant elements of the situation of that national, whether he represents a threat, if only potential, to public security. That provision must also be interpreted as not precluding the competent national authorities from refusing to admit to the

territory of the Member State concerned, for study purposes, a third country national who holds a degree from a university which is the subject of EU restrictive measures because of its large scale involvement with the Iranian Government in military or related fields, and who plans to carry out research in that Member State in a field that is sensitive for public security, if the elements available to those authorities give reason to fear that the knowledge acquired by that person during his research may subsequently be used for purposes contrary to public security. It is for the national court hearing an action brought against the decision of the competent national authorities to refuse to grant the visa sought to ascertain whether that decision is based on sufficient grounds and a sufficiently solid factual basis.

Costs

51 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 (Grand Chamber) hereby rules:

Article 6(1)(d) of 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 must be interpreted as meaning that the competent national authorities, where a third country national has applied to them for a visa for study purposes, have a wide discretion in ascertaining, in the light of all the relevant elements of the situation of that national, whether he represents a threat, if only potential, to public security. That provision must also be interpreted as not precluding the competent national authorities from refusing to admit to the territory of the Member State concerned, for study purposes, a third country national who holds a degree from a university which is the subject of EU restrictive measures because of its large scale involvement with the Iranian Government in military or related fields, and who plans to carry out research in that Member State in a field that is sensitive for public security, if the elements available to those authorities give reason to fear that the knowledge acquired by that person during his research may subsequently be used for purposes contrary to public security. It is for the national court hearing an action brought against the decision of the competent national authorities to refuse to grant the visa sought to ascertain whether that decision is based on sufficient grounds and a sufficiently solid factual basis.

[Signatures]