JUDGMENT OF THE COURT (Second Chamber)

17 July 2014 (*)

(Request for a preliminary ruling — Right to family reunification — Directive 2003/86/EC — Article 4(5) — Provision of national law under which the sponsor and his/her spouse must have reached the age of 21 by the date on which the application for family reunification is lodged — Interpretation in conformity with EU law)

In Case C-338/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Austria), made by decision of 29 May 2013, received at the Court on 20 June 2013, in the proceedings

Marjan Noorzia

v

Bundesministerin für Inneres,

THE COURT (Second Chamber),

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

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

– M. Noorzia, by L. Binder, Rechtsanwalt,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the Greek Government, by M. Michelogiannaki, acting as Agent,

– the European Commission, by M. Condou-Durande and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2014,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4(5) 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 Marjan Noorzia and the Bundesministerin für Inneres (Austrian Minister for the Interior; 'the Bundesministerin') arising out of the rejection by the latter of Mrs Noorzia's application for a residence permit for the purposes of family reunification.

Legal context

EU law

3 Article 4 of Directive 2003/86 provides:

'1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

…

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

…'

Austrian law

4 According to the order for reference the law applicable to the dispute in the main proceedings is the Law on establishment and residence (Niederlassungs- und Aufenthaltsgesetz, BGBl. I, 100/2005, 'the NAG'), which entered into force on 1 January 2006.

5 In the version applicable at the material time (BGB1. I, 111/2010), Paragraph 46(4) of the NAG provided that under certain conditions a residence permit would be granted to family members of third-country nationals.

6 Paragraph 2(1)(9) of the NAG defined the concept of 'family member' in the following terms:

'Family member: spouse, minor unmarried child, including an adopted child or stepchild (within the family unit); also registered partners; spouses and registered partners must have reached the age of 21 by the date the application is lodged; in cases of polygamous marriage, … where the sponsor already has a spouse living with him/her in the federal territory, the other spouses are not family members having a right to a residence permit.'

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

7 Marjan Noorzia, born on 1 January 1989, is an Afghan national who, on 3 September 2010, applied for a residence permit for the purpose of family reunification with her spouse, born on 1 January 1990, who is also an Afghan national and who resides in Austria.

8 By decision dated 9 March 2011 the Bundesministerin rejected this application on the ground that, even though Mrs Noorzia's spouse had reached the age of 21 on 1 January 2011, he had not yet

reached that age by the date when the application was lodged with the Austrian Embassy in Islamabad (Pakistan) and that, consequently, a specific condition for reunification was not satisfied.

9 The Bundesministerin maintained that the condition requiring the age of 21 to have been reached by the date of lodging the application was compatible with Directive 2003/86.

10 Hearing the appeal brought by Mrs Noorzia against the Bundesministerin's decision, the referring court considered that Article 4(5) of Directive 2003/86 does not specify clearly the date by reference to which it must be determined whether the minimum age of 21 has been attained.

11 In those circumstances the Verwaltungsgerichtshof (Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 4(5) of Directive [2003/86] to be interpreted as precluding a provision [of national law] under which spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to family reunification is lodged?'

Consideration of the question referred

12 As a preliminary point, it should be noted that in order to ensure better integration and to prevent forced marriages, Article 4(5) of Directive 2003/86 permits Member States to fix a minimum age, which must not be greater than 21 years, that must be attained by the sponsor and his or her spouse prior to the latter being permitted to join the sponsor for reunification.

13 However, since this provision does not define the date by reference to which the national authorities must assess whether or not the minimum age of 21 laid down by the provision has been attained, the referring court asks, in essence, whether Article 4(5) of Directive 2003/86 must be interpreted as precluding a rule of national law that provides that spouses and registered partners must have reached the age of 21 by the date of lodging an application seeking to be considered family members entitled to family reunification.

14 In this regard, it should be observed that, by not specifying whether national authorities must, in order to determine whether the minimum age condition is satisfied, consider the matter by reference to the date when the application seeking family reunification is lodged or the date when the application is ruled upon, the EU legislature intended to leave to the Member States a margin of discretion, subject to the requirement not to impair the effectiveness of EU law.

15 In that regard, it must be noted that the minimum age fixed by the Member States by virtue of Article 4(5) of Directive 2003/86 ultimately corresponds with the age at which, according to the Member State concerned, a person is presumed to have acquired sufficient maturity not only to refuse to enter into a forced marriage but also to choose voluntarily to move to a different country with his or her spouse, in order to lead a family life with him or her there and to become integrated there.

16 Bearing that in mind, it must be stated that a measure, such as that at issue in the main proceedings, requiring the sponsor and his or her spouse to have attained the prescribed minimum age by the date when the application is lodged does not prevent the exercise of the right to family reunification nor render it excessively difficult. Further, such a measure does not undermine the purpose of preventing forced marriages since it permits the presumption that, due to greater maturity, it will be more difficult to influence the persons concerned to contract a forced marriage and accept family reunification if they must have reached the age of 21 by the date when the application is lodged than it would be if they

were under 21 at that date.

17 Furthermore, taking the date when the application for family reunification is lodged as the point by reference to which it must be determined whether the minimum age condition is satisfied is consistent with the principles of equal treatment and legal certainty.

18 As the Austrian Government has observed, the condition relating to the date of lodging the application makes it possible to guarantee that all applicants who are in the same situation chronologically are treated identically, by ensuring that the success of the application depends principally on circumstances attributable to the applicant and not to the administration, such as the length of time taken considering the application.

19 In view of all of the foregoing considerations, the answer to the question referred is that Article 4(5) of Directive 2003/86 must be interpreted as meaning that that provision does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

Costs

20 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:

Article 4(5) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that that provision does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

[Signatures]

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* Language of the case: German.