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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

12 December 2019 (*)

(Reference for a preliminary ruling — Immigration policy — Right to family reunification — Directive 2003/86/EC — Article 10(2) — Optional provision — Prerequisites for exercising the right to family reunification — Member of a refugee's family not referred to in Article 4 — Concept of a 'dependant')

In Case C-519/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary), made by decision of 16 July 2018, received at the Court on 7 August 2018, in the proceedings

TB

v

Bevándorlási és Menekültügyi Hivatal,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič and C. Lycourgos (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- TB, by G. Gyöző, ügyvédek,
- the Hungarian Government, by M.Z. Fehér and G. Tornyai, acting as Agents,
- the Netherlands Government, by C. Schillemans and M. Bulterman, acting as Agents,
- the European Commission, by A. Tokár, C. Cattabriga and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2) and (3) and Article 10(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 request has been made in proceedings between TB and the Bevándorlási és Menekültügyi Hivatal (Hungarian Immigration and Asylum Office) concerning that office's refusal to grant a residence permit for purposes of family reunification to the applicant's sister.

Legal context

EU law

3 Recitals 2, 4 and 8 of Directive 2003/86 state:

‘(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 and in the Charter of Fundamental Rights of the European Union.

...

(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, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

...

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.’

4 Article 1 of that directive provides:

‘The 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(5) of Directive 2003/86 is worded:

‘This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.’

6 Article 4(1) to (3) of that directive 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;
- (b) the minor children of the sponsor and of his/her spouse, including children adopted ...;
- (c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her ...
- (d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her.

...

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

- (a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;
- (b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.’

7 Article 10 of Directive 2003/86, which appears in Chapter V thereof, entitled ‘Family reunification of refugees’, provides:

‘1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.’

8 According to 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/her 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.’

Hungarian law

9 Paragraph 19 of the a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény (Law No II of 2007 on the entry and stay of third country nationals, ‘the 2007 Law’), provides:

‘1. A third country national can obtain a residence permit for the purpose of family reunification where he or she is a family member of a third country national who has a residence permit, immigration permit, permanent residence permit, interim permanent residence permit or a national or EC permanent residence permit, or of a person who holds a residence card or permanent residence card under a specific law (for the purposes of this paragraph “the sponsor”);

...

4. The following can obtain a residence permit for the purpose of family reunification:

(a) the parents dependent on the sponsor or his or her spouse or on the person who has been granted refugee status;

(b) the siblings and relatives in the direct line of the sponsor or his or her spouse or of the person who has been granted refugee status where they are objectively unable to provide for their own needs on account of their state of health.’

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

10 On 7 September 2015, TB was granted refugee status by the competent Hungarian authority. On 12 January 2016, TB’s sister applied to the Hungarian diplomatic mission in Teheran (Iran) for

a residence permit for the purposes of family reunification with TB and for a visa so that she could take possession of that residence permit.

11 That application was refused by a decision of the first-tier authority, upheld by the authority hearing the administrative appeal, on the ground, first, that, for the purposes of obtaining the residence permit applied for, TB's sister had provided incorrect information to the competent authority and, secondly, that, having regard to her qualifications and state of health, she had not demonstrated that she was unable to provide for her own needs on account of her state of health, since, according to the medical documents submitted with her application, she was suffering from depression which required regular medical supervision.

12 TB brought an action against that rejection decision before the referring court. In support of his action, he submits, in particular, that the rule laid down in Paragraph 19(4)(b) of the 2007 Law, pursuant to which the siblings of a person who has been granted refugee status may obtain a residence permit for the purposes of family reunification, provided that they are unable to provide for their own needs on account of their state of health, infringes Article 10(1) and (2) of Directive 2003/86.

13 The referring court, which is uncertain whether that rule is compatible with Article 10(2) of Directive 2003/86, notes that the condition laid down in Paragraph 19(4)(b) is not the same as that laid down in Article 10(2) which enables Member States to authorise the reunification of family members other than those referred to in Article 4 of that directive, such as a refugee's siblings, provided that they are 'dependent' on that refugee. Consequently, the condition laid down in Paragraph 19(4)(b) corresponds to the condition laid down in Article 4(2)(b) and (3) of that directive as regards the family reunification not of a refugee's siblings, but of the adult unmarried children of the sponsor or his or her spouse and of the common adult unmarried children of the sponsor and his or her partner.

14 Accordingly, the referring court asks, first, whether Article 10(2) of Directive 2003/86 precludes a Member State, which uses the possibility provided for by that provision by authorising the reunification of family members other than those referred to in Article 4 of that directive, from making that reunification subject to conditions other than those laid down in Article 10(2).

15 In that regard, the referring court notes that, in an earlier judgment, the Kúria (Supreme Court, Hungary) held, without making a reference for a preliminary ruling, that that question should be answered in the negative and that Paragraph 19(4)(b) of the 2007 Law did not, therefore, infringe Article 10(2).

16 However, in the referring court's view, while, in accordance with Article 10(2) of Directive 2003/86, Member States may authorise the reunification of family members who are not referred to in Article 4 of that directive and thereby derogate from the definition of the concept of a 'family member' selected in Article 4, they cannot, on the other hand, derogate from the condition laid down in Article 10(2) of that directive, according to which those members are eligible for family reunification if they are dependent on the refugee.

17 Secondly, if the question referred to in paragraph 14 above is answered in the affirmative, the referring court raises the issue of the interpretation of the concept of being 'dependent' within the meaning of Directive 2003/86.

18 In that regard, the referring court notes that, in the version of the language of the case, Article 10(2) of that directive is directed at the family members who are supported by the refugee

(‘*a menekült eltartottjai*’), whereas, in the English-language version, that provision refers to those members who are in a relationship of dependence with the refugee (‘dependent on the refugee’). The referring court is uncertain whether those expressions are fully equivalent.

19 In addition, the referring court asks whether the concept of ‘dependant’ requires an overall assessment of the various aspects of dependence or whether it is sufficient that any of those aspects — such as the inability of the family member concerned to provide for his or her own needs on account of his or her state of health — is present for there to be dependence, with the result that a Member State could, on the basis of that aspect alone, consider that a family member failing to satisfy that aspect is not dependent on the sponsor, without examining that member’s situation on a case-by-case basis. In that regard, the referring court notes that, according to the Kúria (Supreme Court), it is apparent from the case-law of the Court of Justice that the concept of dependence implies not only material dependence, but also physical and intellectual dependence, with the relationship of dependence thus being able to be characterised as a complex relationship of dependence the material burden of which is but one aspect.

20 Thirdly, if the question referred to in paragraph 14 above is answered in the negative, the referring court asks whether Member States are free to impose any condition, including those laid down in Article 4(2) and (3) of Directive 2003/86 and, if necessary, raises the question of the scope of the condition laid down in Article 4(3), relating to the fact that the family members concerned are objectively unable to provide for their own needs on account of their state of health.

21 In those circumstances the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 10(2) of [Directive 2003/86/EC] be interpreted as meaning that, if a Member State, under that article, authorises the entry of a family member other than those referred to in Article 4 [of that directive], only the requirement under Article 10(2) (that the family member must be “dependent on the refugee”) can be applied to that family member?’

(2) If the first question is answered in the affirmative, does the status of “dependent” person (“*dependence*”) as referred to in Article 4(2)(a) of [Directive 2003/86] imply a factual situation in which the various aspects of dependence must all be present, or is it sufficient that any of those aspects is present, depending on the specific circumstances of each case, for there to be dependence? In that context, is it consistent with the requirement established in Article 10(2) [of that directive] (that the family member must be “dependent on the refugee”) that a national provision, excluding any individual assessment, takes account of a single factual element, an indicator of dependence (“[being] objectively unable to provide for [his or her] own needs on account of [his or her] state of health”), as a factor meaning that the requirement in question is satisfied?

(3) In the event that the first question is answered in the negative and that, therefore, a Member State can apply other requirements in addition to that set out in Article 10(2) [of Directive 2003/86] (that the family member must be “dependent on the refugee”), does this mean that the Member State is entitled, if it sees fit, to establish any requirement, including those laid down in Article 4(2) and (3) [of that directive] in relation to other family members, or can the Member State only apply the requirement contained in Article 4(3) of [that d]irective? In that case, what factual situation is entailed by the requirement “*objectively unable to provide for their own needs on account of their state of health*” in Article 4(3) of [that d]irective? Must it be interpreted as meaning that such family

members are unable [to provide] for “their own needs” or that “they are unable” to look after “themselves”, or, if applicable, in some other way?”

Consideration of the questions referred

Preliminary observations

22 The Hungarian Government submits that the questions referred for a preliminary ruling are inadmissible in that they are hypothetical. It adds that those questions are based on the erroneous premiss that Hungary implemented, by means of Paragraph 19(4)(b) of the 2007 Law, Article 10(2) of Directive 2003/86, when that Member State has not notified such information to the Commission under Article 20 of that directive.

23 In that regard, the Court notes that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26).

24 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27).

25 In the present case, it must be pointed out that, according to the referring court, in adopting Paragraph 19(4)(b) of the 2007 Law, the Hungarian legislature did indeed seek to implement Article 10(2) of Directive 2003/86, that latter provision granting Member States a freedom of choice which forms an integral part of the system established by that directive (see, in that regard, by analogy, judgment of 21 December 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 65 to 68).

26 The Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling. Consequently, whatever criticism the Hungarian Government may have made of the interpretation of national law adopted by the referring court, the present reference for a preliminary ruling must be examined in the light of the referring court’s interpretation of that law (see, to that effect, judgment of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 25).

27 The fact that Hungary has not, pursuant to Article 20 of Directive 2003/86, notified the Commission of Paragraph 19(4)(b) as a measure transposing Article 10(2) of that directive, cannot alter that finding. The fact that a national measure has not been notified to the Commission by the Member State concerned does not suffice in order to preclude that measure from implementing a provision of a directive.

28 The plea of inadmissibility must, therefore, be dismissed.

29 In addition, it must be found that, by its second and third questions, the referring court seeks clarification from the Court as to how Article 4(2) and (3) of Directive 2003/86 should be interpreted.

30 However, those provisions are directed at situations different from that at issue in the main proceedings, since they concern the family reunification of members of the refugee's family other than his sister.

31 The mere fact that, in the context of the implementation of Article 10(2) of Directive 2003/86, the Hungarian legislature used analogous language to that referred to in Article 4(2) and (3) of that directive is not sufficient to justify a request for interpretation of those provisions. The referring court did not assert, in its request for a preliminary ruling, that the Hungarian legislature had intended to make a direct and unconditional reference to such provisions in adopting Paragraph 19(4)(b) of the 2007 Law (see, in that regard, judgments of 18 October 2012, *Nolan*, C-583/10, EU:C:2012:638, paragraph 47, and of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 33).

32 It follows that, in the context of the present case, there is no need to interpret Article 4(2) and (3) of Directive 2003/86.

Substance

33 By its questions, which must be examined together, the referring court asks, in essence, whether Article 10(2) of Directive 2003/86 must be interpreted as precluding a Member State from authorising the reunification of a refugee's sister only where she is, on account of her state of health, unable to provide for her own needs.

34 As set out in Article 1 thereto, the purpose of Directive 2003/86 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.

35 In that context, Article 4 of that directive lists the members of a third country national's family on whom Member States must or may, as the case may be, confer a right to family reunification within the meaning of Directive 2003/86.

36 Recital 8 of that directive states, however, that the directive provides more favourable conditions for refugees to exercise their right to family reunification, since special attention should be paid to their situation on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there (judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 32).

37 One of those more favourable conditions is set out in Article 10(2) of Directive 2003/86.

38 Whereas Article 10(1) of that directive makes Article 4 apply to refugees, with the exception of the derogation in the third subparagraph of Article 4(1), which is not to apply to the children of refugees, Article 10(2) of that directive allows, in addition, Member States to confer the right to family reunification, within the meaning of Directive 2003/86, on the members of a refugee's family other than those referred to in Article 4.

39 However, it must be stated, in the first place, that Article 10(2) is optional in nature. That provision therefore leaves it to the discretion of each Member State to decide whether to give effect to the extension of the personal scope of Directive 2003/86 authorised by that directive.

40 In addition, as the Advocate General observed, in essence, in point 37 of his Opinion, Article 10(2) of Directive 2003/86 also confers on the Member States significant latitude with regard to determining those members of a refugee's family, other than the members referred to in Article 4 of that directive, whom the Member States wish to allow to be reunified with the refugee residing on their territory.

41 In the second place, it must be stated that the Member States' latitude in implementing Article 10(2) is, however, limited by the condition to which such implementation is made subject by that provision. It is apparent from the wording of Article 10(2) that Member States may authorise the reunification of other members of a refugee's family, not referred to in Article 4 of Directive 2003/86, if they are dependent on the refugee.

42 First, if that condition is not to be rendered entirely ineffective, Article 10(2) of Directive 2003/86 must be interpreted as precluding a Member State from authorising the reunification of a member of a refugee's family, who is not referred to in Article 4 of that directive, where that family member is not dependent on the refugee. National legislation which does not comply with that condition would be contrary to the objectives of Directive 2003/86 inasmuch as it would allow the status arising from that directive to be granted to persons who do not meet the conditions for obtaining it (see, by analogy, judgments of 27 June 2018, *Diallo*, C-246/17, EU:C:2018:499, paragraph 55, and of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 44).

43 That finding is, however, without prejudice to the possibility for Member States, under Article 3(5) of Directive 2003/86, to confer a right of entry and residence under more favourable conditions, on the basis of their national law alone.

44 Secondly, as regards the meaning to be given to the condition of being 'dependent' on the refugee, it must be borne in mind that the need to ensure a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 62 and the case-law cited).

45 Since Article 10(2) of Directive 2003/86 does not include any reference to the Member States' national law as regards that condition, the condition must be given such an independent and uniform interpretation.

46 In that regard, it must be noted that the Court has already had occasion to interpret the condition that the family member must be dependent on the sponsor in the context 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. 77).

47 According to that case-law, the status of 'dependent' family member of a Union citizen holding a right of residence presupposes that the existence of a situation of real dependence is

established. That dependent status is the result of a factual situation characterised by the fact that material support for the family member is provided by the holder of the right of residence (judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 43; of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 55; of 16 January 2014, *Reyes*, C-423/12, EU:C:2014:16, paragraphs 20 and 21; and of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 50).

48 In order to determine the existence of such dependence, the host Member State must assess whether, having regard to his or her financial and social conditions, the family member is not in a position to support himself or herself. The need for material support must exist in the State of origin of the family member or the country whence he or she came at the time when he or she applies to join the EU citizen (see, to that effect, judgments of 9 January 2007, *Jia*, C-1/05, EU:C:2007:1, paragraph 37, and of 16 January 2014, *Reyes*, C-423/12, EU:C:2014:16, paragraphs 22 and 30).

49 That case-law must be taken into consideration in order to interpret the concept of ‘dependent’ family member, within the meaning of Directive 2003/86. Directives 2004/38 and 2003/86 pursue similar objectives in seeking to ensure or encourage, within the host Member State, the family reunification of the nationals of other Member States or of third countries lawfully residing there.

50 However, regard must also be had to the fact that, as stated in recital 8 of Directive 2003/86, and is apparent from paragraph 35 of the present judgment, special attention should be paid to the situation of refugees, since they have been obliged to flee their country and cannot conceivably lead a normal family life there, they may have been separated from their family for a long period of time before being granted refugee status, and it is often impossible or dangerous for refugees or their family members to produce official documents, or to contact the authorities of their country of origin (see, to that effect, judgments of 7 November 2018, *K and B*, C-380/17, EU:C:2018:877 paragraph 53, and of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 66).

51 In that regard, to require the refugee actually to provide, as at the date of the application for family reunification, material support for the member of his or her family in the State of origin or the country whence that family member came could result in the members of a refugee’s family who are genuinely dependent on him or her being excluded from the scope of Article 10(2) of Directive 2003/86, merely because the refugee is not, or is no longer, in a position to supply the material support required by them in order to ensure that they are supported in the State of origin or country whence they came. It cannot be precluded that the refugee is unable, or no longer able, to provide such support because of factors beyond his or her control, such as the physical impossibility of supplying the necessary funds or the fear of endangering the safety of the members of his or her family by entering into contact with them.

52 Consequently, a member of a refugee’s family must be considered dependent on that refugee, within the meaning of Article 10(2) of Directive 2003/86, where the family member is genuinely dependent in the sense that, first, having regard to his or her financial and social conditions, the family member is not in a position to support himself or herself in his or her State of origin or the country whence he or she came and, secondly, it is ascertained that the family member’s material support is actually provided by the refugee, or that, having regard to all the relevant circumstances, such as the degree of relationship of the family member concerned with the refugee, the nature and solidity of the family member’s other family relationships and the age and financial situation of his or her other relatives, the refugee appears as the family member most able to provide the material support required.

53 That interpretation is reinforced by Article 17 of Directive 2003/86 which requires applications for family reunification to be examined on a case-by-case basis, according to which, as is apparent from recital 8 of that directive, account must be taken, inter alia, of the specificities related to the sponsor's refugee status (see, to that effect, judgment of 7 November 2018, *K and B*, C-380/17, EU:C:2018:877, paragraph 53).

54 Thirdly, it is apparent from the foregoing that although, as the referring court states, in some language versions Article 10(2) is directed at the family member's dependence on the refugee, whereas in other versions that provision relates to the status of the family member as being supported by the refugee, such a difference is irrelevant as regards interpreting the condition laid down in Article 10(2).

55 It must be noted, in the third place, that, when giving effect to the option granted to them in Article 10(2) of Directive 2003/86, Member States may lay down additional requirements relating to the nature of the relationship of dependence required by that provision, in particular by making conferral of the rights arising from Directive 2003/86 subject to the condition that the refugee's family members concerned must be dependent on the refugee on certain grounds.

56 The condition relating to the existence of a relationship of dependence between the refugee and his or her family member must be interpreted as seeking to exclude from the benefit of the option conferred in Article 10(2) of Directive 2003/86 the members of the refugee's family, other than those referred to in Article 4 of that directive, who are not dependent on the refugee, without, however, requiring a Member State, which decides to give effect to such an option, automatically to confer on some or all of the refugee's family members, other than those referred to in Article 4 of that directive, a right to reunification as soon as they are dependent on the refugee.

57 In that regard, the Court points out, first, that the disparities which may follow from the fact that each Member State is thereby free to define the nature of the relationship of dependence which, in accordance with its national law, enables a refugee's family members, other than those referred to in Article 4 of Directive 2003/86, to enjoy a right to family reunification within the meaning of that directive, are perfectly reconcilable with the nature and purpose of Article 10(2) of that directive. It is apparent from paragraphs 38 to 40 above that Article 10(2) was conceived by the EU legislature as an optional provision the implementation of which leaves the Member States a discretion, so that disparities in the national laws implementing such an option flow naturally from that legislature's choice (see, by analogy, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 47).

58 Secondly, the option thus conferred on the Member States to set additional requirements does not, as such, undermine the objectives generally pursued by Directive 2003/86, as set out in recitals 4 and 8 thereof, which are (i) to facilitate the integration of the third country nationals concerned by enabling them to lead a normal family life and (ii) to lay down more favourable conditions for the exercise by refugees of their right to family reunification, having regard to their special situation. As pointed out in paragraphs 36 and 37 above, in making use of the option available in Article 10(2) of Directive 2003/86 and in authorising the reunification of a refugee's family members, other than those referred to in Article 4 of that directive, the Member State concerned already encourages the attainment of those objectives, even when it makes that reunification subject to stricter conditions than that laid down in Article 10(2).

59 By contrast, to prohibit a Member State from laying down such additional requirements would be contrary to the very logic of Article 10(2) which, as ascertained in paragraphs 38 and 39 above, enables the Member States both to decide not to confer on any of a refugee's family

members envisaged in that provision a right to family reunification and to determine freely which of those members may enjoy such a right to reunification.

60 In addition, such a prohibition could thwart the objectives noted in paragraph 57 above by encouraging Member States to abandon implementing the option provided for in Article 10(2) of Directive 2003/86.

61 However, it should further be pointed out, in the fourth place, that, in exercising the option conferred on them in Article 10(2) of Directive 2003/86, Member States do implement EU law.

62 Consequently, the discretion afforded to the Member States by Article 10(2) must, first of all, not be used by them in a manner which would undermine the objective of Directive 2003/86 and the effectiveness of that directive (see, to that effect, judgment of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 53).

63 In that regard, as established in paragraphs 36, 50 and 53 above, first, special attention should be paid, in the implementation of Directive 2003/86, to the situation of refugees and, secondly, Article 17 of that directive requires applications for family reunification to be examined on a case-by-case basis.

64 Next, as confirmed moreover by recital 2 of Directive 2003/86, that directive must comply with the Charter of Fundamental Rights of the European Union ('the Charter').

65 Admittedly, the provisions of the Charter cannot be interpreted so as to deprive the Member States of the discretion available to them when they decide to implement Article 10(2) of Directive 2003/86 and examine the applications for family reunification made under that provision. However, the provisions of Directive 2003/86 must, in the course of such an examination, be interpreted and applied in particular in the light of Article 7 of the Charter, which enshrines, inter alia, the right to respect for family life (see, to that effect, judgment of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 28).

66 Lastly, 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 10(2) 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 (judgment of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 42).

67 Consequently, national legislation implementing the option provided for in Article 10(2) must observe both the fundamental rights enshrined in the Charter and the principle of proportionality and must not prevent an application for family reunification from being examined on a case-by-case basis, and that examination must also be carried out having regard to the special situation of refugees.

68 Lastly, whether Article 10(2) of Directive 2003/86 precludes a Member State from conferring the right to family reunification on a refugee's sister only where she is unable to provide for her own needs on account of her state of health must be examined in the light of all the foregoing considerations.

69 In that regard, it must be noted, first, that a refugee's sister is not one of a sponsor's family members referred to in Article 4 of Directive 2003/86. It is, therefore, open to a Member State to

acknowledge a right to family reunification to such a member of a refugee's family, in accordance with Article 10(2) of that directive.

70 Secondly, it follows from the considerations set out in paragraphs 54 to 59 above that Article 10(2) does not preclude, as a matter of principle, Member States from introducing an additional condition which requires the relationship of dependence between the refugee and the member of his or her family to be caused by that family member's state of health.

71 Indeed, it must be stated that, in the context of a more precise harmonisation, the EU legislature specifically allowed Member States, in Article 4(2)(b) and (3) of Directive 2003/86, to make the right to family reunification of certain family members of a third country national subject to a similar condition.

72 However, it also follows from paragraph 42 above that, in order to preserve the effectiveness of Article 10(2) of Directive 2003/86, a Member State could not allow a refugee's sister to enjoy the right to family reunification, under Article 10(2) of Directive 2003/86, without her being dependent on him, such dependence implying, as shown in paragraph 52 above, not only that a refugee's sister is unable to support herself, but also that it has been ascertained that her material support is actually provided by the refugee, or that, having regard to all the relevant circumstances, the refugee appears as the family member most able to provide the material support required.

73 In addition, it is also apparent from paragraphs 53 and 63 above that the competent national authorities are required to carry out an examination on a case-by-case basis of whether the condition that a refugee's sister must be dependent on the refugee on account of her state of health is met.

74 It follows, in particular, that such an application cannot be refused solely because the condition from which a refugee's sister suffers is automatically considered incapable of establishing such a relationship of dependence.

75 Specifically, the examination on a case-by-case basis of the application must take into account, in a balanced and reasonable manner, all the relevant aspects of the personal situation of a refugee's sister, such as her age, level of education, professional and financial situation, and state of health. The national authorities must also take account of the fact that the extent of needs can vary greatly depending on the individual (see, to that effect, judgment of 4 March 2010, *Chakroun*, C-578/08, EU:C:2010:117, paragraph 48), and also of the special situation of refugees, in particular the specific difficulties faced by them as regards obtaining evidence in their countries of origin.

76 It is for the national court to interpret, to the fullest extent possible, its national law, and in particular Paragraph 19(4)(b) of the 2007 Law, consistently with those requirements.

77 It follows from all the foregoing considerations that the answer to the questions referred is that Article 10(2) of Directive 2003/86 must be interpreted as not precluding a Member State from authorising the family reunification of a refugee's sister only if she is, on account of her state of health, unable to provide for her own needs, provided that:

- first, that inability is assessed having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, and
- secondly, that it may be ascertained, having regard also to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, that the

material support of the person concerned is actually provided by the refugee, or that the refugee appears as the family member most able to provide the material support required.

Costs

78 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 (Fifth Chamber) hereby rules:

Article 10(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as not precluding a Member State from authorising the family reunification of a refugee's sister only if she is, on account of her state of health, unable to provide for her own needs, provided that:

- **first, that inability is assessed having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, and**
- **secondly, that it may be ascertained, having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, that the material support of the person concerned is actually provided by the refugee, or that the refugee appears as the family member most able to provide the material support required.**

[Signatures]

* Language of the case: Hungarian.
