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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

12 September 2024 (\*)

( Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Right to family reunification – Directive 2003/86/EC – Article 16(3) – Refusal to renew the residence permit of the sponsor – Consequences – Refusal to renew the residence permit of the sponsor’s family members – Reason beyond their control – Presence of minor children – Article 15(3) – Conditions for granting an autonomous residence permit – Concept of ‘particularly difficult circumstances’ – Scope – Article 17 – Case-by-case examination – Right to be heard )

In Case C-63/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo no 5 de Barcelona (Administrative Court No 5, Barcelona, Spain), made by decision of 9 January 2023, received at the Court on 6 February 2023, in the proceedings

**Sagrario,**

**Joaquín,**

**Prudencio**

v

**Subdelegación del Gobierno en Barcelona,**

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, I. Jarukaitis and D. Gratsias, Judges,

Advocate General: J. Richard de la Tour,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2024,

after considering the observations submitted on behalf of:

- Ms Sagrario and her two minor children, by E. Leiva Vojkovic, abogado,
- the Spanish Government, by I. Herranz Elizalde, acting as Agent,
- the European Commission, by I. Galindo Martín and J. Hottiaux, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2024,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 15(3) and of Article 17 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12), and Articles 7 and 24, Article 33(1) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between, on the one hand, a mother and her two minor children, all of whom are third-country nationals, and, on the other, the Subdelegación del Gobierno en Barcelona (Provincial Office of the Spanish Government in Barcelona, Spain; 'the competent national authority') concerning the refusal to renew their residence permit for family reunification.

## **Legal context**

### ***European Union law***

#### *Directive 2003/86*

3 Recitals 2, 4, 6 and 15 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[, signed in Rome on 4 November 1950 ('the ECHR')] and in the [Charter].

...

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental [European] Community objective stated in the Treaty.

...

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

...

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.'

4 Under Article 1 of that directive, which is in Chapter I thereof, entitled 'General provisions':

‘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 In that chapter, Article 2 of that directive provides:

‘For the purposes of this Directive:

...

(c) “sponsor” means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) “family reunification” means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident’s entry;

...’

6 In Chapter VI of that directive, entitled ‘Entry and residence of family members’, Article 15 is worded as follows:

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

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.’

7 In Chapter VII of Directive 2003/86, entitled ‘Penalties and redress’, Article 16(3) thereof provides:

‘The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.’

8 In that chapter, Article 17 of that directive provides:

‘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.’

*Directive 2004/38/EC*

9 Article 13 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, and corrigendum OJ 2004 L 229, p. 35), entitled ‘Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership’, provides, in paragraph 2 thereof:

‘Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen’s family members who are not nationals of a Member State where:

...

(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; ...

...’

*The guidance for the application of Directive 2003/86*

10 Point 5.3 of the Communication from the Commission to the European Parliament and the Council of 3 April 2014 on guidance for application of Directive 2003/86/EC on the right to family reunification (COM(2014) 210 final), entitled ‘Access to autonomous residence permit’, is worded as follows:

‘Article 15(1) states that after five years of residence at the latest, and if no residence permit was granted for other reasons, [Member States] must issue, upon application, an autonomous residence permit, independent of the sponsor, to the spouse or unmarried partner and a child who has reached majority. Residence should be understood as lawful stay and the [European] Commission stresses that [Member States] are allowed to grant the permit earlier. In the event of a breakdown of the relationship, the right to an autonomous residence permit must in any case still be given to the spouse or unmarried partner, but [Member States] are allowed to exclude an adult child. While Article 15(4) states that the conditions are to be established by national law, Article 15(3) indicates that a breakdown may be understood to include widowhood, separation, divorce, death, etc.

Articles 15(2) and 15(3) (first sentence) allow [Member States] to issue an autonomous residence permit at any moment to adult children and first-degree ascendants to whom Article 4(2) applies and, upon application, to any persons who have entered by virtue of family reunification in the event of widowhood, divorce, separation, or death of first-degree ascendants or descendants.

Article 15(3) (second sentence) states that [Member States] must issue an autonomous residence permit in the event of particularly difficult circumstances to any family members who have entered by virtue of family reunification. [Member States] are required to lay down provisions in national law for this purpose. The particularly difficult circumstances must have been caused by the family situation or the break-down thereof, not [by] difficulties with other causes. Examples of particularly difficult circumstances may be, for instance, cases of domestic violence against women and children, certain cases of forced marriages, risk of female genital mutilation, or cases where the person would be in a particularly difficult family situation if forced to return to the country of origin.’

***Spanish law***

11 Article 19 of Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social (Basic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social

integration) of 11 January 2000 (BOE No 10 of 12 January 2000, p. 1139), in the version applicable to the main proceedings, provides:

- '1. A residence permit for family reunification held by a reunited spouse or by a reunited child who has reached working age confers the right to work, without any further administrative steps needing to be taken.
2. A reunited spouse may obtain an independent residence permit where he or she has sufficient financial means to meet his or her own needs.

In the event that a reunited spouse is a victim of gender-based violence, she may obtain an independent residence and work permit, without meeting the abovementioned condition, once a protection order in her favour has been issued or, failing that, a report from the Ministerio Fiscal [Office of the Public Prosecutor, Spain] recording the existence of evidence of gender-based violence.

3. A reunited child may obtain an independent residence permit once he or she has reached the age of majority and has sufficient financial means to meet his or her own needs.
4. The type and amount of financial means deemed sufficient to enable a reunited family member to obtain an independent permit shall be determined by regulation.
5. In the event of the sponsor's death, reunited family members may obtain an independent residence permit under conditions to be determined.'

12 Article 59 of Real Decreto 557/2011 por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, tras su reforma por Ley Orgánica 2/2009 (Royal Decree 557/2011 approving the regulations made under Basic Law 4/2000, as amended by Basic Law 2/2009) of 20 April 2011 (BOE No 103 of 30 April 2011, p. 43821), which is entitled 'Residence of reunited family members independent of the sponsor's residence', provides:

'1. A reunited spouse or partner may obtain an independent residence and work permit if he or she meets one of the following conditions and provided that he or she owes no debts to the tax or social security authorities:

- (a) possession of sufficient financial means to be granted a temporary non-lucrative residence visa;
- (b) possession, when making the application, of one or more employment contracts providing for remuneration not less than the minimum monthly interprofessional wage in relation to the legal working day or the wage under the applicable collective agreement;
- (c) fulfilment of the conditions for the granting of a temporary residence and self-employed work permit.

...

2. In addition, the spouse or partner may obtain an independent residence and work permit in any of the following cases:

- (a) when the marital relationship that gave rise to the residence ends, by reason of legal separation, divorce or the cancellation of registration, or where the couple ceases to live together, provided that he or she can prove that he or she has lived in Spain with the spouse or partner who is the sponsor for at least two years;
- (b) when she is a victim of gender-based violence, once a court protection order in her favour has been issued or, failing that, a report from the Ministerio Fiscal recording the existence of evidence of gender-based violence. This case shall also apply when she is a victim of a crime of violent behaviour within

the family, once a court protection order in her favour has been issued or, failing that, a report from the Ministerio Fiscal recording the existence of violent behaviour within the family;

applications made under this paragraph shall be processed on a priority basis and the duration of the independent residence and work permit shall be five years;

(c) the death of the sponsor.

3. In the cases provided for in the preceding paragraph, where, in addition to the spouse or partner, other family members have been reunited, the latter shall keep the residence permit granted to them and shall depend, for the purposes of the renewal of their residence permit for family reunification purposes, on the family member with whom they live.

4. Children and minors whose legal representative is their sponsor shall obtain an independent residence permit when they reach the age of majority and are able to prove that they find themselves in one of the situations described in paragraph 1 of this article or when they reach the age of majority after residing in Spain for five years.

...'

13 Article 61 of Royal Decree 557/2011, entitled 'Renewal of residence permits for family reunification', provides, in paragraph 3 thereof:

'The following requirements must be met in order for a residence permit for family reunification to be renewed:

(a) Regarding the reunited family member:

(1) he or she must hold a valid residence permit for family reunification or one that expired no more than 90 calendar days previously;

(2) he or she must maintain the family relationship or the de facto union on the basis of which the permit to be renewed was granted;

...

(b) As regards the sponsor:

(1) he or she must hold a valid residence permit or one that expired no more than 90 calendar days previously;

...'

14 Under Paragraph 4 of the first additional provision of Royal Decree 557/2011:

'Where circumstances of an economic, social or employment nature make it advisable to do so, in unregulated situations of special relevance, the Consejo de Ministros [Council of Ministers, Spain] may, on a proposal from the head of the Secretaría de Estado de Inmigración y Emigración [Secretariat of State for Immigration and Emigration, Spain] and having regard to the report of the head of the Secretaría de Estado de Seguridad [Secretariat of State for Security, Spain] and, where appropriate, of the heads of the Subsecretarías de Asuntos Exteriores y de Cooperación y de Política Territorial y Administración Pública [Undersecretariats for Foreign Affairs, Cooperation, Territorial Policy and Public Administration, Spain], issue, after informing and consulting with the Comisión Laboral Tripartita de Inmigración [Tripartite Working Committee on Immigration, Spain], instructions regarding the granting of temporary residence and/or work permits, which may be associated with a particular period, a position of employment or a particular place, depending on the terms of the instructions, or residence permits. ... Similarly, the head of the Secretariat of

State for Immigration and Emigration may, having regard to the report from the head of the Secretariat of State for Security, grant individual temporary residence permits where exceptional circumstances not contemplated in this regulation prevail.'

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

15 The three applicants in the main proceedings, a mother and her two minor children, hold a residence permit for family reunification, the sponsor being the wife's husband, the father of those two children.

16 On 22 April 2021, the four family members submitted applications for a long-term residence permit.

17 By decision of 27 May 2021, the competent national authority rejected the sponsor's application on account of the existence of a criminal record.

18 By decision of 22 June 2021, that national authority also rejected the applications for family reunification submitted by the applicants in the main proceedings, on the ground that, in contravention of the condition laid down in Article 61(3)(b)(1) of Royal Decree 557/2011, the sponsor did not hold a work and/or residence permit.

19 The Juzgado de lo Contencioso-Administrativo no 5 de Barcelona (Administrative Court No 5, Barcelona, Spain), which is the referring court, before which the applicants in the main proceedings brought an action for the annulment of that decision, maintains that that decision was adopted without the competent national authority carrying out, in accordance with Article 17 of Directive 2003/86, an assessment of the nature and solidity of the family relationships of the individuals concerned, of the duration of their residence and of the existence of family, cultural and social ties with the country in which they are residing and with their country of origin.

20 According to the referring court, since Article 15(3) of Directive 2003/86 does not define the 'particularly difficult circumstances' that justify the granting to the sponsor's family members of an autonomous residence permit, it cannot be ruled out that that concept covers the situation which arises from the loss, by those family members, of their residence permit for family reunification for reasons beyond their control, especially in the case of minor children and individuals who suffer structural discrimination in their country of origin, as is the case for women from certain third countries where women are deprived of any protection.

21 However, first, that court observes that Spanish legislation makes no provision for a procedure in which the persons concerned are able to put forward individual circumstances, or for a prior hearing of minor children, with the result that the competent national authorities adopt decisions without taking the personal situation of reunited family members into account. They will, therefore, immediately find themselves to be residing unlawfully. However, it is clear from the case-law of the Court, arising from the judgments of 27 June 2006, *Parliament v Council* (C-540/03, EU:C:2006:429, paragraphs 62 to 64), and of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)* (C-557/17, EU:C:2019:203, paragraph 51 to 55), that such national authorities must, before adopting a decision on family reunification, assess all the particular circumstances of the case before them, and that any automatic decision is precluded.

22 Secondly, the referring court observes that Article 59 of Royal Decree 557/2011, despite the mandatory nature of the wording of Article 15(3) of Directive 2003/86, makes no mention of the 'particularly difficult circumstances' referred to in the latter provision. Moreover, according to that court, while paragraph 4 of the first additional provision of Royal Decree 557/2011 provides for the granting of a residence permit in exceptional cases not contemplated in the legislation, that paragraph does not appear to be consistent with Directive 2003/86. Indeed, that court notes that the jurisdiction to grant such a residence permit is not conferred on the organs of the State's peripheral authorities, which have jurisdiction to grant residence permits, but on a central public authority, and that such a grant is a matter of discretion

for the latter authority, which does not exclude automatic decision-making with regard to residence permits.

23 In those circumstances, the Juzgado de lo Contencioso-Administrativo no 5 de Barcelona (Administrative Court No 5, Barcelona) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must [the second sentence of Article 15(3)] and Article 17 of Directive 2003/86, when they refer to “particularly difficult circumstances”, be understood as automatically including all circumstances involving a minor and/or circumstances that are similar to those provided for in Article 15?

(2) Is national legislation that does not provide for the grant of an autonomous residence permit, which ensures that reunited family members are no longer unlawful residents in the event of such particularly difficult circumstances, compatible with [the second sentence of Article 15(3)] and Article 17 of Directive 2003/86?

(3) Can [the second sentence of Article 15(3)] and Article 17 of Directive 2003/86 be interpreted as meaning that that right to an autonomous permit arises when the reunited family is left without a residence permit for reasons beyond their control?

(4) Is national legislation that does not provide for the necessary and mandatory assessment of the circumstances set out in Article 17 of Directive 2003/86 before a refusal to renew the residence permit of reunited family members compatible with Article 15(3) and Article 17 of [Directive 2003/86]?

(5) Is national legislation that does not provide, as a step that must be taken before the refusal to grant or renew a residence permit as a reunited family member, for a specific procedure for hearing minors, where the grant or renewal of the sponsor’s residence permit has been refused, compatible with Article 15(3) and Article 17 of Directive 2003/86, Article 6(1) and Article 8(1) and (2) of the [ECHR] and Articles [7, 24 and 47] and Article 33(1) of the [Charter]?

(6) Is national legislation that does not provide, as a step that must be taken before the refusal to grant or renew a residence permit as a reunited spouse, where the grant or renewal of the sponsor’s residence permit has been refused, for that spouse to be able to plead the circumstances provided for in Article 17 of Directive 2003/86 in order to request that he or she be granted an option to remain resident without interruption vis-à-vis his or her previous residence status compatible with Article 15(3) and Article 17 of Directive 2003/86, Article 6(1) and Article 8(1) and (2) of the [ECHR] and Articles [7, 24 and 47] and Article 33(1) of the [Charter]?’

### **Consideration of the questions referred**

#### ***The first to third questions***

24 By its first to third questions, which it is appropriate to examine together, the referring court asks, in essence, whether the second sentence of Article 15(3) of Directive 2003/86 must be interpreted as precluding legislation of a Member State which does not provide that the competent national authority is required to issue, on account of the existence of ‘particularly difficult circumstances’, within the meaning of that provision, an autonomous residence permit to a sponsor’s family members where those family members have lost their residence permit for reasons beyond their control or where minor children are part of that family.

25 In order to examine those questions, it should be noted, at the outset, that, under Article 16(3) of that directive, Member States may withdraw or refuse to renew the residence permit of a sponsor’s family member where that sponsor’s residence comes to an end and the family member concerned does not yet enjoy, under Article 15 of that directive, an autonomous right of residence.



26 In that regard, it is apparent, first, from the first subparagraph of Article 15(1) of Directive 2003/86 that the sponsor's spouse or unmarried partner and a child of the sponsor who has reached majority are entitled to an autonomous residence permit, independent of that of the sponsor, not later than after five years of residence, provided that they have not been granted a residence permit for reasons other than family reunification, although Member States have the option, in accordance with the second subparagraph of that provision, to limit the granting of such an autonomous residence permit to the spouse or unmarried partner in cases of breakdown of the family relationship. Under Article 15(2) of that directive, Member States may also issue an autonomous residence permit to the sponsor's adult children and to relatives in the direct ascending line of the sponsor.

27 Next, pursuant to the first sentence of Article 15(3) of that directive, an autonomous residence permit may be issued, even before the end of the period of five years of residence provided for in Article 15(1), to persons who have entered by virtue of family reunification, in the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line. The second sentence of Article 15(3) provides that Member States are to lay down provisions ensuring the granting of an autonomous residence permit in the event of 'particularly difficult circumstances'.

28 Lastly, as set out in Article 15(4) of that directive, the conditions relating to the granting and duration of that autonomous residence permit are established by national law.

29 It is in the light of those preliminary considerations that the scope of the second sentence of Article 15(3) of Directive 2003/86, which is the subject of the first three questions, must be defined.

30 At the outset, it should be noted that neither that provision nor any other provision of that directive defines the concept of 'particularly difficult circumstances' or provides an illustration of such a situation.

31 However, contrary to what the Spanish Government claimed during the hearing, it does not follow that the scope of that concept can be determined unilaterally by the Member States, with the result that they have unlimited discretion to define that concept in their national law.

32 Indeed, it must be held, as the Advocate General observed in point 40 of his Opinion, that the second sentence of Article 15(3) of Directive 2003/86 confers a right on the family members referred to in that provision, by requiring the Member States to adopt provisions ensuring the granting of an autonomous residence permit in the event of 'particularly difficult circumstances', and lays down, in that regard, a substantive condition that must be satisfied in order for an autonomous residence permit to be granted, without in any way referring to the laws of the Member States.

33 Admittedly, since Article 15(4) of that directive stipulates that the conditions applicable to the granting and duration of that autonomous residence permit are established in national law, the Court has held that the discretion conferred on the Member States under that directive must be considered to be broad as regards the conditions for granting, on the basis of the second sentence of Article 15(3) thereof, an autonomous residence permit to a third-country national who entered the territory of the Member State concerned on the basis of family reunification where he or she is in 'particularly difficult circumstances' within the meaning of the latter provision (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraphs 85 and 86).

34 Thus, by making a reference to national law in Article 15(4) of Directive 2003/86, the EU legislature indicated that it wished to leave to the discretion of each Member State the responsibility for determining the conditions under which an autonomous residence permit should be issued to a third-country national who had entered its territory on the basis of family reunification where he or she is in such circumstances (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraph 87 and the case-law cited).

35 For that reason, according to settled case-law, the margin of discretion conferred on the Member States must not be used by them in a manner which would undermine the effectiveness or the objective of that directive or which would infringe the principle of proportionality (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraph 88 and the case-law cited). Accordingly, a Member State cannot impose conditions that are so onerous as to constitute a difficult obstacle to overcome which, in practice, prevent the granting of an autonomous residence permit (see, to that effect, judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 52 and the case-law cited).

36 It follows that, lest they undermine the effectiveness or the objective of their duty, pursuant to the second sentence of Article 15(3) of Directive 2003/86, to adopt provisions that ensure, for the family member concerned, the right to obtain an autonomous residence permit in the event of ‘particularly difficult circumstances’, the Member States cannot have unlimited discretion to establish what those circumstances are.

37 In that regard, it should be borne in mind that, according to the Court’s case-law, it is necessary, for the purpose of interpreting a provision of EU law, to consider the wording of that provision, the context in which it appears and the objectives pursued by the rules of which it forms part (judgment of 18 April 2024, *Girelli Alcool*, C-509/22, EU:C:2024:341, paragraph 77). The legislative history of that provision may also reveal elements that are relevant to its interpretation (see, to that effect, judgment of 7 September 2022, *Staatssecretaris van Justitie en Veiligheid (Nature of the right of residence under Article 20 TFEU)*, C-624/20, EU:C:2022:639, paragraph 28 and the case-law cited).

38 In the first place, as regards the wording used in the second sentence of Article 15(3) of Directive 2003/86, it should be noted that, in view of its meaning in everyday language, the expression ‘particularly difficult circumstances’ presupposes, as the Advocate General noted in point 49 of his Opinion, the existence of circumstances that are by nature particularly serious or arduous for the family member concerned or which expose that person to significant insecurity or vulnerability going beyond the usual hazards of a normal family life.

39 In the second place, that interpretation is consistent with the objective pursued by that provision and by the EU rules of which it forms part.

40 Indeed, it should be recalled that Directive 2003/86, as is apparent from recitals 2, 4 and 6 thereof, seeks, generally, to protect the family and to facilitate the integration of third-country nationals in Member States by making family life possible and by helping to create sociocultural stability through family reunification (see, to that effect, inter alia, judgments of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 26; of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraph 83; and of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C-273/20 and C-355/20, EU:C:2022:617, paragraph 58).

41 Furthermore, according to settled case-law, measures concerning family reunification must respect fundamental rights, in particular the right to respect for private and family life guaranteed in Article 7 and Article 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life (see, to that effect, inter alia, judgments of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 56 and the case-law cited, and of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C-273/20 and C-355/20, EU:C:2022:617, paragraph 59).

42 Article 15 of Directive 2003/86, as is apparent from recital 15 thereof, comes fully within the scope of that objective of protecting the family by allowing a sponsor’s family members who have obtained a residence permit for the purpose of carrying out a family reunification to be granted a status independent

of the sponsor in order to promote their integration, by facilitating their access to education, employment and vocational training.

43 In those circumstances, the second sentence of Article 15(3) of that directive pursues the specific objective of protecting a sponsor's family members by granting them a status independent of that sponsor, even before the end of the five years of residence which automatically grants such status pursuant to the first subparagraph of Article 15(1) by guaranteeing those family members a right of residence in the host Member State which does not stem from their dependence on that sponsor, where that dependence gives rise to particular difficulties that arise from that family situation and causing them, as the Advocate General stated in point 46 of his Opinion, to have a real need for protection by the granting of an autonomous residence permit.

44 From that perspective, it should be observed that, contrary to what the Spanish Government claims, it is irrelevant that the granting, pursuant to the second sentence of Article 15(3) of that directive, of an autonomous residence permit to the family members concerned may lead to the separation of that family, in so far as the sponsor, on account of the loss of his or her residence permit in the host Member State, may be required to return to his or her third country of origin, while those family members could continue to reside in that Member State.

45 As is apparent from paragraphs 40 to 42 above, the objective pursued in the second sentence of Article 15(3) of Directive 2003/86 is not necessarily the same as the more general objective pursued by that directive. While that directive, as a whole, seeks to protect the family through its reunification, the second sentence of Article 15(3) of that directive seeks to protect the family by granting, in the context of a preexisting family reunification, an independent status to the family members concerned, which may, in certain cases, facilitate the estrangement of those family members from the sponsor and, accordingly, lead to separating certain family members.

46 Thus, the Court has noted that the second sentence of Article 15(3) of Directive 2003/86 seeks, in particular by granting an autonomous residence permit, to protect the third-country national who entered the territory of the host Member State on the basis of family reunification and who has been the victim of acts of domestic violence committed by the sponsor during the marriage (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraphs 69, 70, 85 and 89).

47 That interpretation of the concept of 'particularly difficult circumstances', within the meaning of the second sentence of Article 15(3) of Directive 2003/86, is supported by the explanatory memorandum of the Proposal for a Council Directive on the right to family reunification, presented by the Commission on 1 December 1999 (COM(1999) 638 final, p. 22), according to which that provision is designed, among other things, both to protect women who have suffered domestic violence and must not be penalised by withdrawal of their residence permit if they decide to leave home, and to address the situation of women who are widowed, divorced or repudiated, and who would be in particularly difficult circumstances if they were obliged to return to the country of origin.

48 Moreover, those examples overlap with those referred to in point 5.3 of the guidance for the application of Directive 2003/86, which list, as examples of 'particularly difficult circumstances', within the meaning of the second sentence of Article 15(3) of Directive 2003/86, not only cases of domestic violence against women and children and cases where the person concerned would be in a particularly difficult family situation if forced to return to the country of origin, but also certain cases of forced marriages or the risk of female genital mutilation (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraph 64).

49 In the third place, the foregoing interpretation is supported by the context in which Article 15(3) of Directive 2003/86 appears, as is apparent, first, from an overall reading of both sentences which make up that provision.

50 According to the first sentence of Article 15(3) of Directive 2003/86, in the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, the competent national authorities have, as is apparent from the word ‘may’, the straightforward option to grant an autonomous residence permit to persons who have entered by virtue of family reunification, by exercising their discretion in that regard where such situations may already be regarded as being, in themselves, situations presenting significant difficulties for the persons concerned.

51 By contrast, as stated in paragraphs 32 and 36 above, the second sentence of Article 15(3) requires the Member States to adopt provisions that ensure the granting of such an autonomous residence permit in the event of ‘particularly difficult circumstances’ within the meaning of that provision.

52 That gradation in the scheme of Article 15(3) of that directive makes it apparent that the second sentence thereof relates to family situations that are even more serious than those already covered by the first sentence so far as concerns the insecurity or vulnerability for the family member concerned, with the result that those situations must go beyond the usual hazards of a normal family life.

53 That being so, it cannot be inferred, contrary to what the Spanish Government maintains, that there is a link between both sentences of that third paragraph, with the result that the ‘particularly difficult circumstances’ covered by the second sentence of that provision must necessarily have been caused by the breakdown of the marital relationship, as resulting from death, divorce or separation, which are referred to in the first sentence of that provision.

54 Indeed, the situations covered by the second sentence of Article 15(3) of Directive 2003/86 cannot be limited only to those resulting from the breakdown of the marital relationship, since the seriousness of the difficulties with which the sponsor’s family member may be confronted may be unrelated to a breakdown of the marital relationship and may, on the contrary, result from the maintenance of that relationship, in particular in the case of domestic violence, forced marriages or risk of female genital mutilation, particularly where the sponsor could be required to return to the country of origin in the event of the loss of the sponsor’s right of residence, otherwise that provision would be deprived of all effectiveness and the objective pursued by it, consisting in granting the family members concerned a status independent of that of the sponsor, would be undermined.

55 It is therefore apparent that, as the Commission correctly claimed, ‘particularly difficult circumstances’, as referred to in the second sentence of Article 15(3) of Directive 2003/86, must stem from the family situation of the third-country nationals concerned, in a broad sense, irrespective of whether or not that situation is linked to the breakdown of the marital relationship.

56 That interpretation is supported, secondly, by point (c) of the first subparagraph of Article 13(2) of Directive 2004/38 which, as regards the family members of Union citizens, shares with the second sentence of Article 15(3) of Directive 2003/86, the objective of ensuring protection for family members who are victims of domestic violence (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)* C-930/19, EU:C:2021:657, paragraphs 70 and 89).

57 Indeed, point (c) of the first subparagraph of Article 13(2) of Directive 2004/38 also provides that divorce, annulment of marriage or termination of a registered partnership does not entail loss of the right of residence of the family members of Union citizens where this is warranted by particularly difficult circumstances, and explicitly cites as examples situations such as having been a victim of domestic violence

‘while the marriage or registered partnership was subsisting’, thus making it expressly apparent that such situations may arise in the absence of any breakdown of the marital relationship.

58 It follows from all of those considerations that the existence of ‘particularly difficult circumstances’, within the meaning of the second sentence of Article 15(3) of Directive 2003/86, makes it necessary to establish that the third-country national residing in the territory of a host Member State on the basis of family reunification is facing circumstances stemming from the family situation that are by nature particularly serious or arduous or expose him or her to significant insecurity or vulnerability, causing him or her to have a real need for the protection afforded by the granting of an autonomous residence permit, irrespective of whether or not the marital relationship has broken down.

59 It follows that the mere presence of minor children among the sponsor’s family members or the fact that the loss of those family members’ residence permit is the result of circumstances specific to the sponsor, such as that sponsor having committed a criminal offence, cannot suffice to justify the granting of an autonomous residence permit based on the existence of ‘particularly difficult circumstances’ within the meaning of the second sentence of Article 15(3) of Directive 2003/86.

60 In particular, as regards that second circumstance, it must be noted that the loss of the family members’ residence permit due to circumstances beyond their control reflects the principle that, in accordance with the objectives pursued by Directive 2003/86, as set out in paragraphs 40 and 41 above, as long as the family members concerned have not acquired an autonomous right of residence on the basis of Article 15 of that directive, their right of residence is a right derived from that of the sponsor concerned and intended to assist the latter’s integration (see, to that effect, judgment of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)*, C-557/17, EU:C:2019:203, paragraph 47).

61 In that regard, it should be observed that, having regard to the central importance of the sponsor in the system established by Directive 2003/86, it is in accordance with the objectives pursued by that directive and its underlying rationale that the loss of a residence permit by that sponsor or the refusal to renew that permit for reasons specific to him or her may, theoretically, have repercussions for the process of family reunification and, in particular, affect the residence permits granted to the members of the sponsor’s family (see, by analogy, judgment of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)*, C-557/17, EU:C:2019:203, paragraph 46).

62 In the same way, since the purpose of Directive 2003/86, in accordance with Article 1 thereof, 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, that right is confined to such nationals, which is confirmed by the definition of the concepts of ‘sponsor’ and ‘family reunification’ in Article 2(c) and (d) of that directive. However, a sponsor who has his or her residence permit withdrawn can no longer be regarded as residing lawfully on the territory of a Member State. It is therefore, a priori, justified that residence permits granted to his or her family members on the basis of Directive 2003/86 may also be withdrawn or not renewed without those family members being able to rely on ‘particularly difficult circumstances’, within the meaning of the second sentence of Article 15(3) of that directive, solely on the ground that the reason for that withdrawal was beyond their control (see, by analogy, judgment of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)*, C-557/17, EU:C:2019:203, paragraph 48).

63 Consequently, the answer to the first to third questions is that the second sentence of Article 15(3) of Directive 2003/86 must be interpreted as not precluding legislation of a Member State which does not provide that the competent national authority is required to issue, on account of the existence of ‘particularly difficult circumstances’, within the meaning of that provision, an autonomous residence permit to a sponsor’s family members where those family members have lost their residence permit for reasons beyond their control or where minor children are part of that family.

## ***The fourth to sixth questions***

### ***Admissibility***

64 The Spanish Government claims that the fifth question is inadmissible on the ground that it does not concern the interpretation of EU law. Indeed, neither Article 15(3) nor Article 17 of Directive 2003/86 lays down rules on hearing persons other than the applicant for family reunification and EU law does not contain any provision on the legal standing of minor children in an administrative procedure.

65 Moreover, that question appears hypothetical to the extent that the order for reference, first, did not provide any indication of the age of the minor children at issue in the main proceedings and, secondly, stated that all of the family members concerned submitted applications for a long-term residence permit for family reunification, which makes it clear that all of them took part in the administrative procedure together. Furthermore, that question is based on the ‘unrealistic premiss’ that minor children could claim a right of residence outside of the family unit. In any event, it argues, it is not apparent from the order for reference that the mother of those children requested that they be heard and there is no evidence of there being a conflict of interests between them.

66 It must be borne in mind that, in accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, 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 11 April 2024, *Sozialministeriumservice*, C-116/23, EU:C:2024:292, paragraph 29 and the case-law cited).

67 However, in the present case, it should, in the first place, be noted that the question whether minor children have, under EU law, a right to be heard before a decision to refuse to renew their residence permit for family reunification is taken concerns the substance of the question raised, and not its admissibility.

68 In the second place, that question cannot be regarded as hypothetical since the case in the main proceedings concerns, according to the express terms of the order for reference, the lawfulness of a decision by which the competent national authority refused, in respect of the two minor children at issue in the main proceedings, who had a residence permit for family reunification, to renew that permit following the loss, by the sponsor, of his residence permit.

69 It is irrelevant in that regard that the order for reference does not state the precise age of the two minor children. Indeed, the absence of such a statement concerning the facts of the case in the main proceedings, which are for the referring court alone to establish, in no way affects the admissibility of the question raised since it does not prevent the Court from providing the referring court with a useful response to that question by carrying out the interpretation of EU law that is being sought.

70 In addition, as regards the claims by the Spanish Government that, in the present case, those two minor children had submitted applications together with the other members of their family, their mother had not requested that they be heard and no evidence of a conflict of interests was adduced, it must be held that those claims also concern the facts which are for the referring court alone to assess in order to resolve the dispute in the main proceedings. Those claims are, accordingly, irrelevant to the admissibility of the fifth question.

71 Consequently, that question must be deemed admissible.

### ***Substance***

72 By its fourth to sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 17 of Directive 2003/86 must be interpreted as precluding legislation of a Member State which permits the competent national authority to adopt a decision refusing to renew the residence permit issued to a sponsor's family members, without first carrying out an individual assessment of their situation or hearing them, and, if so, where that decision concerns a minor child, whether that child must also be heard.

73 As regards, in the first place, the scope of the examination which the competent national authority must carry out, it should be recalled that, according to the express wording of Article 17 of Directive 2003/86, Member States, where they reject an application, or withdraw or refuse to renew a residence permit, must take due account of the nature and solidity of the family relationships of the person concerned and the duration of his or her residence in the host Member State and of the existence of family, cultural and social ties with his or her country of origin.

74 It is, therefore, for the competent national authority, when implementing Directive 2003/86, to make, inter alia, an individual assessment of the situation of the family member at issue, which takes account of all the relevant aspects of the particular case and, where appropriate, pays particular attention to the interests of the children concerned and with a view to promoting family life. In particular, circumstances such as the age of the children concerned, their circumstances in the country of origin and the extent to which they are dependent on relatives are liable to influence the extent and intensity of the examination required (see, to that effect, judgment of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraphs 58 and 59 and the case-law cited).

75 That assessment must be carried out in the light of the objectives pursued by that directive (judgment of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C-273/20 and C-355/20, EU:C:2022:617, paragraph 61), by making a balanced and reasonable assessment of all the interests in play (judgment of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 43 and the case-law cited).

76 Accordingly, the refusal of a residence permit cannot occur automatically (see, to that effect, inter alia, judgments of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)*, C-557/17, EU:C:2019:203, paragraph 51, and of 12 December 2019, *G.S. and V.G. (Threat to public policy)*, C-381/18 and C-382/18, EU:C:2019:1072, paragraph 65).

77 It follows that a decision to refuse to renew a residence permit granted to a sponsor's family members can only be taken after an individual examination taking account of all the relevant aspects relating to the situation of those family members, and, in particular, the circumstances that enable the competent national authority to assess whether there are reasons in respect of those family members which justify the granting, pursuant to the second sentence of Article 15(3) of Directive 2003/86, of an autonomous residence permit on account of the existence of 'particularly difficult circumstances' within the meaning of that provision.

78 In that regard, admittedly, the loss, by the family members concerned, of their residence permit for reasons beyond their control or the presence of minor children among them cannot, in themselves, establish, as is apparent from paragraphs 59 to 63 above, the existence of such 'particularly difficult circumstances'. Nevertheless, it cannot be ruled out that, in conjunction with other circumstances relating to the family life of the persons concerned, which, however, do not appear to have been invoked in the case in the main proceedings, those factors could contribute to justifying the granting of an autonomous residence permit pursuant to the second sentence of Article 15(3) (see, by analogy, judgment of 14 March 2019, *Y.Z. and Others (Fraud in family reunification)*, C-557/17, EU:C:2019:203, paragraph 54 and 55).

79 As regards, in the second place, the right to be heard, it should be borne in mind that, according to settled case-law, that fundamental right, observance of which is required even where the applicable legislation does not expressly provide for it (see, *inter alia*, judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 39 and the case-law cited), guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (see, to that effect, *inter alia*, judgments of 12 May 2022, *Boshab v Council*, C-242/21 P, EU:C:2022:375, paragraphs 57 and 58, and of 29 September 2022, *HIM v Commission*, C-500/21 P, EU:C:2022:741, paragraphs 42 and 43), it being understood that that right does not necessarily mean that that person must be given the opportunity to express his or her views orally (order of 21 May 2019, *Le Pen v Parliament*, C-525/18 P, EU:C:2019:435, paragraph 66 and the case-law cited).

80 Furthermore, it is apparent from the Court's case-law that the right to be heard also requires the competent national authority to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision; the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person concerned to understand why his or her application is being rejected is thus a corollary of the principle of respect for the rights of the defence (judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 38 and the case-law cited).

81 In the present case, it must be found, as the Commission observed, that a decision to refuse to renew a residence permit granted to the sponsor's family members clearly affects their interests adversely, and therefore that they must be heard by the competent national authority before such a decision is taken.

82 As regards the question whether minor children must also be heard by that authority, it should be recalled that Article 24(1) of the Charter requires that children express their views freely and that those views be taken into consideration on matters which concern them in accordance with their age and maturity.

83 Moreover, Article 24(2) of the Charter requires the competent national authority, in all actions relating to children, to take account of the child's best interests.

84 According to the settled case-law, the latter provision means that, in all actions taken by Member States when applying Directive 2003/86, and which concern children, the child's best interests must be a primary consideration (see, to that effect, *inter alia*, judgment of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C-273/20 and C-355/20, EU:C:2022:617, paragraph 42 and the case-law cited).

85 Accordingly, the appropriateness of such a hearing, which is not necessarily required by the child's best interests, must be assessed having regard to what is required in the best interests of the child in each individual case (see, to that effect, judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraphs 63 and 64).

86 It follows that the provisions of Article 24 of the Charter do not require that the child be heard *per se*, but that the child have the opportunity to be heard (see, to that effect, judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, paragraphs 62).

87 Accordingly, the right of the child to be heard does not necessarily require a hearing be held, but it does require that procedures and legal conditions be in place to enable the child to express his or her views freely and that those views be taken into account.



88 Therefore, where the decision to refuse to renew a residence permit concerns a minor child, it is incumbent on the Member States to take all appropriate measures to offer that child a genuine and effective opportunity of being heard, in accordance with his or her age or degree of maturity.

89 Consequently the answer to the fourth to sixth questions is that Article 17 of Directive 2003/86 must be interpreted as precluding legislation of a Member State which permits the competent national authority to adopt a decision refusing to renew a residence permit issued to a sponsor's family members, without first carrying out an individual assessment of their situation or hearing them. Where that decision concerns a minor child, it is incumbent on the Member States to take all appropriate measures to offer that child a genuine and effective opportunity of being heard, in accordance with his or her age or degree of maturity.

#### **Costs**

90 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

**1. The second sentence of Article 15(3) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,**

**must be interpreted as not precluding legislation of a Member State which does not provide that the competent national authority is required to issue, on account of the existence of 'particularly difficult circumstances', within the meaning of that provision, an autonomous residence permit to a sponsor's family members where those family members have lost their residence permit for reasons beyond their control or where minor children are part of that family.**

**2. Article 17 of Directive 2003/86**

**must be interpreted as precluding legislation of a Member State which permits the competent national authority to adopt a decision refusing to renew a residence permit issued to a sponsor's family members, without first carrying out an individual assessment of their situation or hearing them. Where that decision concerns a minor child, it is incumbent on the Member States to take all appropriate measures to offer that child a genuine and effective opportunity of being heard, in accordance with his or her age or degree of maturity.**

[Signatures]

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\* Language of the case: Spanish.