ECLI:EU:C:2019:1072

Provisional text

JUDGMENT OF THE COURT (First Chamber)

12 December 2019 (*)

(References for a preliminary ruling — Border controls, asylum and immigration — Immigration policy — Directive 2003/86/EC — Right to family reunification — Requirements for the exercise of the right to family reunification — Concept of 'grounds of public policy' — Rejection of an application for entry and residence of a family member — Withdrawal of or refusal to renew a residence permit of a family member)

In Joined Cases C-381/18 and C-382/18,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decisions of 6 June 2018, received at the Court on 11 June 2018, in the proceedings

G.S. (C-381/18)**,**

V.G. (C-382/18)

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, M. Safjan, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

Advocate General: G. Pitruzzella,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 2 May 2019,

after considering the observations submitted on behalf of:

– G.S., by M. Strooij and J. Hoftijzer, advocaten,

– V.G., by V. Sarkisian and N. Melehi, advocaten,

– the Netherlands Government, by M.K. Bulterman, M.L. Noort, M.A.M. de Ree and J. M. Hoogveld, acting as Agents,

– the German Government, initially by T. Henze and R. Kanitz, and subsequently by R. Kanitz, acting as Agents,

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

– the European Commission, by C. Cattabriga and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 6(1) and (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 requests have been made in proceedings brought by G.S. (Case C-381/18) and V.G. (Case C-382/18) against the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; the State Secretary') concerning the legality, first, of a decision which refused renewal of the residence permit granted to G.S. for the purposes of family reunification and retroactively withdrew that residence permit and, second, of a decision which rejected V.G.'s application for grant of a residence permit for the purposes of family reunification.

Legal context

Directive 2003/86

3 Recitals 2 and 14 of Directive 2003/86 are worded as follows:

'(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,] and in the Charter of Fundamental Rights of the European Union.

…

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third-country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.'

4 In Article 2(c) of Directive 2003/86, 'sponsor' is defined as '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'.

5 Article 3(3) of Directive 2003/86 provides:

'This Directive shall not apply to members of the family of a Union citizen.'

6 Article 4(1) of Directive 2003/86 provides that the Member States are to authorise the entry and residence, pursuant to that directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the family members which that provision sets out.

7 Article 6(1) and (2) of Directive 2003/86 states:

'1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.'

8 Article 17 of Directive 2003/86 is worded as follows:

'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 27(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34) states:

'Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.'

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

Case C-381/18

10 On 8 April 2009, G.S., a third-country national, was granted in the Netherlands, on the basis of the national provisions relating to family reunification, a residence permit as the 'partner' of a sponsor. That permit was renewed for the period from 9 March 2010 to 28 August 2014.

11 On 17 August 2012, G.S. was sentenced in Switzerland to a term of imprisonment of four years and three months for participation in drug trafficking, in respect of acts which took place until 4 September 2010.

12 G.S. then applied for renewal of his residence permit in the Netherlands.

13 On 24 September 2015, the State Secretary rejected the application on grounds of public policy. He also withdrew G.S.'s residence permit retroactively with effect from 4 September 2010 and imposed an entry ban on him.

14 In adopting those decisions, the State Secretary acted on the basis of an appraisal framework provided for by national law, enabling a residence permit to be withdrawn or its renewal to be refused where the sentence imposed on the person concerned is sufficiently severe in comparison with the duration of his lawful residence in the Netherlands. In addition, the State Secretary weighed the interests of the person concerned and his partner against the general interest in the protection of public policy.

15 Following an objection lodged by G.S., the State Secretary, by decision of 21 October 2016, upheld his appeal so far as concerns the entry ban and declared that G.S. could not reside lawfully on Netherlands territory. As to the remainder, the State Secretary reaffirmed his initial decisions.

16 G.S. brought an action against the State Secretary's decisions before the rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands). By judgment of 3 February 2017, that court annulled the decision of 24 September 2015 in so far as it had imposed an entry ban and the decision of 21 October 2016 in so far as it had declared that G.S. could not reside lawfully on Netherlands territory. However, it declared the action unfounded as to the remainder.

17 G.S. lodged an appeal against that judgment before the referring court.

18 The referring court is uncertain whether, in order properly to rely on grounds of public policy, within the meaning of Article 6(2) of Directive 2003/86, the competent authority must establish that the individual conduct of the third-country national concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

19 It observes that such a requirement could follow from the solutions adopted by the Court in the judgments of 11 June 2015, *Zh. and O.* (C-554/13, EU:C:2015:377); of 24 June 2015, *T.* (C-373/13, EU:C:2015:413); and of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84), and

from the limitation — apparent, in particular, from the judgment of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117) — of the leeway of the Member States when applying Directive 2003/86.

20 Nevertheless, in the light, inter alia, of recital 2 of Directive 2003/86 and of the judgment of 27 June 2006, *Parliament* v *Council* (C-540/03, EU:C:2006:429), it is, according to the referring court, conceivable to take the view that that directive must be applied within the framework defined by the case-law of the European Court of Human Rights, to which national practice corresponds.

21 In those circumstances, the Raad van State (Council of State, Netherlands) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 6(2) of Directive [2003/86] be interpreted as meaning that the withdrawal of or the refusal to renew the residence permit of a family member on grounds of public policy requires that reasons be stated as to why the personal conduct of the family member concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of society?

(2) If question 1 is to be answered in the negative, what are the requirements under Article 6(2) of Directive [2003/86] that apply to the reasons for the withdrawal or the refusal to renew the residence permit of a family member on grounds of public policy?

Must Article 6(2) of Directive [2003/86] therefore be interpreted as precluding a national practice according to which the residence permit of a family member can be withdrawn or the renewal thereof can be refused on grounds of public policy if the penalty or measure to which the family member concerned has been sentenced is sufficiently high in relation to the duration of the lawful stay in the Netherlands …, so that, on the basis of the criteria laid down in the judgments of the European Court of Human Rights (the ECtHR) of 2 August 2001, *Boultif v. Switzerland* (CE:ECHR:2001:0802JUD005427300), and of 18 October 2006, *Üner v. The Netherlands* (CE:ECHR:2006:1018JUD004641099), a balance is struck between the interest of the family member concerned to exercise the right to family reunification in the Netherlands, on the one hand, and the interest of the Netherlands State to protect public policy, on the other hand?'

Case C-382/18

22 During the years from 1999 to 2011, V.G., a third-country national, was resident, in part lawfully, in the Netherlands.

23 During that period, V.G. was sentenced four times to a fine or community service for shoplifting and driving while intoxicated. In June 2011 he was surrendered to the Armenian authorities in connection with alleged drug offences.

24 On 28 July 2016, V.G.'s wife, a Netherlands national, applied for the grant of a residence permit to V.G. under the legislation on family reunification.

25 On 19 September 2016, the State Secretary rejected the application on grounds of public policy.

26 In adopting that decision, the State Secretary acted on the basis of an appraisal framework provided for by national law, enabling entry of a third-country national on the basis of family reunification to be refused if he has been sentenced for a criminal offence to community service or a fine, including where the offence was committed more than five years ago in so far as the person

concerned was a repeat offender. In addition, the State Secretary weighed the interests of the person concerned against the general interest in the protection of public policy.

27 Following an objection lodged by V.G., the State Secretary, by decision of 6 February 2017, reaffirmed his initial decision.

28 V.G. brought an action against that decision before the rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam). By judgment of 23 June 2017, that court dismissed the action.

29 V.G. lodged an appeal against that judgment before the referring court.

30 The Raad van State (Council of State) observes that, in accordance with Article 3(3) of Directive 2003/86, the situation at issue in the main proceedings does not fall within the scope of that directive, since V.G.'s spouse is a Netherlands national.

31 It nonetheless points out that Article 6 of Directive 2003/86 must apply, by analogy, to V.G. since Netherlands law provides that, where, as in the present instance, Netherlands primary and secondary legislation does not draw a distinction between a situation governed by EU law and a situation falling outside its scope, the relevant provisions of EU law are directly and unconditionally applicable to the internal situation.

32 The referring court considers, therefore, that the interpretation of Article 6 of Directive 2003/86 is decisive for the outcome of the main proceedings. It raises the question, however, whether, in the light of the judgment of 18 October 2012, *Nolan* (C-583/10, EU:C:2012:638), the Court has jurisdiction to answer questions relating to that article in a situation such as that at issue in the main proceedings.

33 If the answer is in the affirmative, the referring court is uncertain whether, in order to rely on grounds of public policy, within the meaning of Article 6(1) of Directive 2003/86, the competent authority must establish that the personal conduct of the third-country national concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

34 It observes that such a requirement could follow from the case-law of the Court of Justice referred to in paragraph 19 of the present judgment.

35 That said, the judgments of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862), and of 4 April 2017, *Fahimian* (C-544/15, EU:C:2017:255), suggest that a more flexible standard is applicable where complex assessments are involved, as is the case where a decision must be adopted on the entry of a third-country national into the territory of the Member States.

36 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

(1) Does the Court of Justice, having regard to Article 3(3) of Directive [2003/86] and the [judgment of 18 October 2012, *Nolan* (C-583/10,] EU:C:2012:638), have the jurisdiction to answer questions referred for a preliminary ruling by a Netherlands court on the interpretation of certain provisions of that directive in a dispute concerning an application for entry and residence of a family member of a sponsor who has Netherlands nationality, if that directive was declared to apply directly and unconditionally to such family members in Netherlands law?

(2) Must Article 6(1) of Directive [2003/86] be interpreted as meaning that the rejection of an application for entry and residence of a family member on the grounds of public policy requires that reasons be stated as to why the personal conduct of the family member concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of society?

(3) If question 2 is to be answered in the negative, what are the requirements under Article 6(1) of Directive [2003/86] that apply to the reasons for rejecting an application for entry and residence of a family member on the grounds of public policy?

Must Article 6(1) of Directive [2003/86] therefore be interpreted as precluding a national practice according to which an application for entry and residence of a family member can be rejected on grounds of public policy on the basis of convictions during an earlier stay in the Member State concerned, so that, on the basis of the criteria laid down in the judgments of the European Court of Human Rights (the ECtHR) of 2 August 2001, *Boultif v. Switzerland* (CE:ECHR:2001:0802JUD005427300), and of 18 October 2006, *Üner v. The Netherlands* (CE:ECHR:2006:1018JUD004641099), a balance is struck between the interest of the family member concerned and the sponsor concerned to exercise the right to family reunification in the Netherlands, on the one hand, and the interest of the Netherlands State to protect public policy, on the other hand?'

37 By decision of the President of the Court of 3 July 2018, Cases C-381/18 and C-382/18 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

First question in Case C-382/18

38 By its first question in Case C-382/18, the referring court asks, in essence, whether the Court has jurisdiction, under Article 267 TFEU, to interpret Article 6 of Directive 2003/86 in a situation in which a court is called upon to rule on an application for entry and residence of a third-country national who is a member of the family of a Union citizen who has not exercised his or her right to free movement, where that provision has been made directly and unconditionally applicable to such a situation by national law.

39 It should be noted, first, that Article 2(c) of Directive 2003/86 specifies that the term 'sponsor' necessarily refers to a third-country national and, second, that Article 3(3) of that directive provides that the directive is not to apply to members of the family of a Union citizen (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 29).

40 The EU legislature did not therefore intend Directive 2003/86 to apply to a third-country national who is a member of the family a Union citizen who has not exercised his or her right to free movement, such as the applicant in the main proceedings, as is indeed confirmed by the *travaux préparatoires* for that directive (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 30 and the case-law cited).

41 It is clear, however, from the Court's settled case-law that the Court has jurisdiction to give a preliminary ruling on questions concerning provisions of EU law in situations in which, even if the facts of the main proceedings do not fall directly within the field of application of EU law, provisions of EU law have been rendered applicable by domestic law due to a reference made by the latter to the content of those provisions (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 31 and the case-law cited).

42 In such situations, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, the provisions taken from EU law should be interpreted uniformly (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 32 and the case-law cited).

43 Thus, an interpretation by the Court of provisions of EU law in situations not falling within their scope is warranted where such provisions have been made directly and unconditionally applicable to such situations by national law, in order to ensure that those situations and situations falling within the scope of those provisions are treated in the same way (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 33 and the case-law cited).

44 In the present instance, the referring court, which has exclusive jurisdiction to interpret national law under the system of judicial cooperation established in Article 267 TFEU (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 34 and the case-law cited), has explained that it follows from Netherlands law that, where, as in the main proceedings, the national legislature subjects one situation falling within the scope of EU law and another falling outside its scope to the same rule, those situations must be treated in the same way. The referring court has inferred from this that under Netherlands law it had to apply Article 6 of Directive 2003/86 in the main proceedings.

45 Accordingly, it must be held, as the Netherlands Government has also observed, that Netherlands law has made that provision directly and unconditionally applicable to a situation such as that at issue in the main proceedings and that it is therefore clearly in the interest of the European Union that the Court rule on the request for a preliminary ruling in Case C-382/18.

46 That conclusion cannot be affected by the fact that Article 3(3) of Directive 2003/86 expressly excludes situations such as that at issue in the main proceedings in Case C-382/18 from the scope of that directive, since it is clear from the Court's case-law that such a fact is not capable of calling into question the Court's jurisdiction to give a preliminary ruling in the context defined in the Court's settled case-law recalled in paragraphs 41 to 43 of the present judgment (see, to that effect, judgments of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraphs 36 to 43; of 7 November 2018, *K and B*, C-380/17, EU:C:2018:877, paragraph 40; and of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraphs 40 to 42).

47 The case-law recalled in paragraphs 41 to 43 of the present judgment is intended specifically to allow the Court to rule on the interpretation of provisions of EU law, irrespective of the circumstances in which those provisions are applicable, in situations which the authors of the Treaties or the EU legislature did not consider it appropriate to include within the scope of those provisions. Thus, it cannot be justified for the Court's jurisdiction to vary depending on whether the scope of the relevant provision was limited by a definition of the cases to which it refers or by means of certain exclusions from its scope, since both legislative techniques may be used interchangeably (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraphs 38 and 39 and the case-law cited).

48 In the light of the foregoing, the answer to the first question in Case C-382/18 is that the Court has jurisdiction under Article 267 TFEU to interpret Article 6 of Directive 2003/86 in a situation in which a court is called upon to rule on an application for entry and residence of a third-country national who is a member of the family of a Union citizen who has not exercised his or her right to free movement, where that provision has been made directly and unconditionally applicable to such a situation by national law.

First and second questions in Case C-381/18 and second and third questions in Case C-382/18

49 By its first and second questions in Case C-381/18 and its second and third questions in Case C-382/18, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) and (2) of Directive 2003/86 must be interpreted as precluding a national practice under which the competent authorities may, on grounds of public policy, first, reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned and, second, withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant.

50 Article 6(1) of Directive 2003/86 provides that the Member States may reject an application for entry and residence which is founded on that directive on grounds of public policy, public security or public health.

51 The first subparagraph of Article 6(2) of Directive 2003/86 provides that the Member States may, on the same grounds, withdraw or refuse to renew a residence permit founded on that directive.

52 It follows that the Member States may adopt the decisions envisaged in Article 6(1) and (2) of Directive 2003/86 inter alia where the third-country national concerned must be regarded as posing a threat to public policy.

53 In that context, with a view to determining the scope of the concept of 'grounds of public policy', within the meaning of those provisions, it should be noted that it is apparent from the Court's settled case-law that a Union citizen who has exercised his or her right to free movement and certain members of that citizen's family can be regarded as posing a threat to public policy only if their individual conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned (see, to that effect, judgments of 29 April 2004, *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, EU:C:2004:262, paragraphs 66 and 67, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 44).

54 Nonetheless, as is apparent from paragraphs 28 to 30 of the judgment delivered today in *E.P. (Threat to public policy)* (C-380/18), any reference by the EU legislature to the concept of 'threat to public policy' does not necessarily have to be understood as referring exclusively to individual conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned.

55 It is thus necessary, in order to define the scope of the concept of 'grounds of public policy', within the meaning of Article 6(1) and (2) of Directive 2003/86, to take into account the wording of those provisions, their context and the objectives pursued by the legislation of which they form part (see, to that effect, judgments of 24 June 2015, *T.*, C-373/13, EU:C:2015:413, paragraph 58, and of 4 April 2017, *Fahimian*, C-544/15, EU:C:2017:255, paragraph 30). The origins of a provision of EU law may also provide information relevant to its interpretation (see, to that effect, judgment of 1 October 2019, *Planet49*, C-673/17, EU:C:2019:801, paragraph 48 and the case-law cited).

56 As regards, in the first place, the wording of Article 6(1) and (2) of Directive 2003/86, it is to be noted that, unlike inter alia Article 27(2) of Directive 2004/38, it does not expressly require the personal conduct of the individual concerned to represent a genuine, present and sufficiently serious

threat affecting one of the fundamental interests of society in order for that individual to be capable of being regarded as a threat to public policy.

57 In this connection, it should be pointed out that, whilst the second subparagraph of Article 6(2) of Directive 2003/86 provides that the Member States are to consider, in particular, the severity or type of the offence against public policy committed by that individual or the dangers that are emanating from him or her, that obligation refers to a standard that is markedly less stringent than the standard resulting from the case-law mentioned in paragraph 53 of the present judgment. In particular, in addition to the fact that that obligation does not require the competent authorities systematically to base their decision on the genuine and present threat that the conduct of that individual represents, it does not establish a link between the concept of 'threat to public policy' and the risk of one of the fundamental interests of society being adversely affected.

58 So far as concerns, in the second place, the context of Article 6(1) and (2) of Directive 2003/86, it should be noted that recital 14 of the directive states that the notion of 'public policy' may cover a conviction for committing a serious crime, which tends to indicate that the mere existence of such a conviction could suffice to establish that there is a threat to public policy, within the meaning of the directive, without it being necessary to establish a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned.

59 As regards, in the third place, the origins of Article 6 of Directive 2003/86, it is apparent from the amended proposals for a Council Directive on the right to family reunification (COM(2000) 624 final and COM(2002) 225 final), which gave rise to Directive 2003/86, that it was initially intended to require that the grounds of public policy be based exclusively on the personal conduct of the family member concerned. However, that restriction on the leeway given to the Member States when applying Article 6 of that directive was finally not adopted by the EU legislature.

60 In the fourth place, so far as concerns the objective pursued by Directive 2003/86, it is apparent from the Court's case-law that that directive is intended to promote family reunification and to grant protection to third-country nationals, in particular minors (see, to that effect, judgments of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 44, and of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 45).

61 In order to achieve that objective, Article 4(1) of Directive 2003/86 imposes on the Member States precise positive obligations, with corresponding clearly defined individual rights. It thus requires them to authorise the family reunification of certain members of the sponsor's family, without being left a margin of appreciation, provided that the conditions laid down in Chapter IV of the directive, which includes Article 6 thereof, are satisfied (see, to that effect, judgments of 9 July 2015, *K and A*, C-153/14, EU:C:2015:453, paragraphs 45 and 46, and of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 46).

62 Accordingly, since authorisation of family reunification is the general rule, Article 6(1) and (2) of Directive 2003/86 must be interpreted strictly and the leeway given to the Member States must not be used by them in a manner which would undermine the objective and effectiveness of the directive (see, by analogy, judgments of 9 July 2015, *K and A*, C-153/14, EU:C:2015:453, paragraph 50, and of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 51).

63 Nonetheless, in the light of the matters referred to in paragraphs 56 to 59 of the present judgment, it follows from the choices made by the EU legislature that that limitation on the leeway of the Member States cannot mean that the competent authorities are precluded from applying

Article 6(1) and (2) of Directive 2003/86 in reliance solely upon the fact that the person concerned has been convicted of a criminal offence, without having to establish that the individual conduct of that person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned.

64 On the other hand, in accordance with the principle of proportionality, which is one of the general principles of EU law, the national practice applying those provisions cannot, in particular, go beyond what is necessary to ensure that public policy is safeguarded (see, by analogy, judgment of 9 July 2015, *K and A*, C-153/14, EU:C:2015:453, paragraph 51).

65 It follows that the competent authorities cannot automatically take the view that a third-country national is a threat to public policy, for the purposes of Article 6(1) and (2) of Directive 2003/86, merely because he or she has been convicted of some or other criminal offence.

66 Thus, the competent authorities can establish that a third-country national is a threat to public policy in reliance solely upon the fact that that national has been convicted of a criminal offence only if that offence is so serious, or of such a type, that it is necessary to rule out residence of that national on the territory of the Member State concerned.

67 That conclusion is, moreover, borne out both by the reference to the notion of 'conviction for committing a serious crime' in recital 14 of Directive 2003/86 and, as regards specifically the withdrawal of a residence permit or refusal to renew it, by the requirement imposed in the second subparagraph of Article 6(2) of that directive to take account of the severity or type of the offence committed.

68 Furthermore, before adopting a negative decision on the basis of Article 6 of Directive 2003/86, the competent authorities must carry out, in accordance with Article 17 of that directive, an individual assessment of the situation of the person concerned, taking due account of the nature and solidity of that person's family relationships, of the duration of his or her residence in the Member State and of the existence of family, cultural and social ties with his or her country of origin (see, to that effect, judgment of 13 March 2019, *E.*, C-635/17, EU:C:2019:192, paragraph 58 and the case-law cited).

69 It is for the referring court to establish whether the national practice at issue in the main proceedings meets those requirements.

70 In the light of the foregoing considerations, the answer to the first and second questions in Case C-381/18 and the second and third questions in Case C-382/18 is that Article 6(1) and (2) of Directive 2003/86 must be interpreted as not precluding a national practice under which the competent authorities may, on grounds of public policy, first, reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned and, second, withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant, provided that that practice is applicable only if the offence which warranted the criminal conviction at issue is sufficiently serious to establish that it is necessary to rule out residence of that applicant and that those authorities carry out the individual assessment provided for in Article 17 of that directive, matters which are for the referring court to verify.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The Court has jurisdiction under Article 267 TFEU to interpret Article 6 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification in a situation in which a court is called upon to rule on an application for entry and residence of a third-country national who is a member of the family of a Union citizen who has not exercised his or her right to free movement, where that provision has been made directly and unconditionally applicable to such a situation by national law.**

2. **Article 6(1) and (2) of Directive 2003/86 must be interpreted as not precluding a national practice under which the competent authorities may, on grounds of public policy, first, reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned and, second, withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant, provided that that practice is applicable only if the offence which warranted the criminal conviction at issue is sufficiently serious to establish that it is necessary to rule out residence of that applicant and that those authorities carry out the individual assessment provided for in Article 17 of that directive, matters which are for the referring court to verify.**

[Signatures]

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* Language of the case: Dutch.