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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

14 March 2019 (\*)

(Reference for a preliminary ruling — Right to family reunification — Directive 2003/86/EC — Article 16(2)(a) — Article 17 — Withdrawal of the residence permit of a member of the family of a third-country national — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 9(1)(a) — Loss of that status — Fraud — Lack of knowledge of the fraud)

In Case C-557/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 20 September 2017, received at the Court on 22 September 2017, in the proceedings

**Staatssecretaris van Veiligheid en Justitie**

v

**Y.Z.,****Z.Z.,****Y.Y.,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe, C. Lycourgos (Rapporteur), E. Juhász and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 July 2018,

after considering the observations submitted on behalf of

Y.Z., Z.Z. and Y.Y., by M. Strooij and A.C.M. Nederveen, advocaten,

the Netherlands Government, by M.K. Bulterman and H.S. Gijzen and by J.M. Hoogveld, acting as Agents,

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

the European Commission, by R. Troosters and C. Cattabriga, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2018,

gives the following

### Judgment

This request for a preliminary ruling concerns the interpretation of Article 16(2)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003, L 251, p. 12), and Article 9(1)(a) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

The request has been made in proceedings between Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) ('the State Secretary') and Y.Z., Z.Z. and Y.Y., concerning decisions of the State Secretary withdrawing the residence permits granted to Y.Z., Z.Z. and Y.Y. ('the father', 'the son' and 'the mother') ordering them to leave the territory of the Netherlands immediately, and prohibiting their return.

#### Legal context

##### European Union law

##### Directive 2003/86

Recitals 2 and 4 of Directive 2003/86 state:

Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

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

Article 1 provides:

'The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.'

Article 2 of that directive provides:

'For the purposes of this Directive, the following definitions apply:

...

"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;

"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;

Article 4(1) of Directive 2003/86 is worded as follows:

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

the sponsor's spouse;

the minor children of the sponsor and of his/her spouse ...;

The first subparagraph of Article 5(2) of that directive provides:

'The application [for entry and residence] shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4, 6 and, where applicable, 7 and 8 ...'

Article 7(1) of that directive reads as follows:

'When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance of the Member State concerned. ...'

Article 13(3) of Directive 2003/86 provides:

'The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.'

Article 16(2) and (3) of that directive provides:

'2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

...

3. 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.'

Under Article 17 of that directive:

'Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.'

*Directive 2003/109*

Recitals 2, 4, 6 and 12 of Directive 2003/109 state:

The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.

The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. ...

In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.'

Article 4(1) of that directive provides:

'Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.'

Article 5(1) of the directive provides:

'Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance of the Member State concerned. ...

The first subparagraph of Article 7(1) of Directive 2003/109 is worded as follows:

'To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 ...'

Article 8(1) of that directive provides:

'The status as long-term resident shall be permanent, subject to Article 9.'

Article 9 of that directive provides:

'1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases: detection of fraudulent acquisition of long-term resident status;

...

7. Where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain in its territory if he/she fulfils the conditions provided for in its national legislation and/or if he/she does not constitute a threat to public policy or public security.'

*Decision No 1/80*

The first paragraph of Article 7(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, annexed to the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and concluded, approved and confirmed on behalf of the latter by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1), provides:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:

shall be entitled — subject to the priority to be given to workers of Member States of the Community — to respond to any offer of employment after they have been legally resident for at least three years in that Member State;

shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.'

#### **Netherlands law**

Article 14(1) of the wet tot algehele herziening van de vreemdelingenwet (Law providing for a comprehensive review of the Law on Foreign Nationals), of 23 November 2000 (Stb. 2000, No 495) ('the Law of 2000') provides

'The Minister shall be authorised:

to approve, to reject or not to consider applications for the grant of fixed-term residence permits;

...

Paragraph 18(1) of that law provides:

'An application to extend the validity of a fixed-term residence permit under Article 14 may be refused where:

...

the foreign national has provided inaccurate information or has failed to provide information where that information would have led to the initial application for a permit or for extension being refused;

Article 19 of that law is worded as follows:

'A fixed-term residence permit may be withdrawn on the grounds referred to in Article 18(1), with the exception of the ground under Article 18(1)(b) ...'

Under Article 45a(1) of the Law of 2000:

'The Minister shall be authorised:

to approve, to reject or not to consider applications for the grant of a long-term residence permit — EU;

to withdraw the residence permit of a long-term resident — EU.'

Article 45d(3) of that law provides:

'The residence permit of a long-term resident — EU shall be withdrawn where:

...

the residence permit has been obtained fraudulently.'

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

With effect from 29 March 2001, Y.Z., a Chinese national, was granted an ordinary fixed-term residence permit in the Netherlands in connection with his purported duties as manager of a company and then, with effect from 28 April 2006, an ordinary indefinite residence permit in that Member State. Those residence permits were granted on the basis of national law only.

On 31 January 2002, the mother and the son — the father's spouse and the minor child of the couple born in 1991 respectively — themselves also of Chinese nationality, obtained ordinary fixed-term residence permits in that Member State pursuant to Article 14 of the Law of 2000. Those permits were granted for the purpose of family reunification with the father, within the meaning of Directive 2003/86. With effect from 18 October 2006, the mother and the son were granted ordinary residence permits of indefinite duration in the same Member State, bearing the entry 'long-term EU resident', pursuant to Articles 20 and 21 of the Law of 2000, replaced and in substance reproduced in Article 45a of that Law, which transposes Articles 7 and 8 of Directive 2003/109 in the Netherlands legal system.

By several decisions of 29 January 2014, the State Secretary withdrew, with retroactive effect, first, the various ordinary residence permits granted to the father, on the ground that the employment allegedly undertaken by the latter was fictitious, since the company employing him did not carry out any business activities, and that those permits had therefore been acquired fraudulently. Second, the State Secretary also withdrew, with retroactive effect, the fixed-term residence permits granted to the mother and the son for the purpose of family reunification, and also the long-term resident permits granted to them. By those decisions, the State Secretary also ordered the father, the mother and the son to leave the territory of the Netherlands immediately and adopted a decision prohibiting their return.

As regards, more specifically the mother's and the son's ordinary fixed-term residence permits, which were withdrawn pursuant to Article 18(1)(c) and Article 19 of the Law of 2000, which implements Article 16(2)(a) of Directive 2003/86 in domestic law, the State Secretary considers that they were acquired fraudulently, given that they were granted on the basis of fraudulent declarations of the father's employment. The State Secretary considers that the same applies to the mother's and the son's long-term residence permits. First, those permits were obtained on the basis of the incorrect assumption that the mother and the son enjoyed, prior to the grant of those permits, lawful residence in the Netherlands. Second, those fraudulent declarations regarding the father's employment were also produced for the purposes of that grant of residence in order to give the impression that the mother and the son had stable, regular and sufficient resources, since they never had such resources in their own right.

According to the State Secretary, it is irrelevant whether the mother and the son were or were not aware of the fraud committed by the father and the fraudulent nature of the declarations of employment made by him.

By a decision of 4 May 2015, the State Secretary rejected the claim lodged by the father, the mother and the son against the decisions of 29 January 2014.

On an appeal against the decision of 4 May 2015, the rechtbank Den Haag (District Court, The Hague, Netherlands) held, by a judgment of 31 May 2016, that the State Secretary was correct to have withdrawn the various residence permits of the father and, first, the ordinary fixed-term residence permits of the mother and the son, pursuant to Article 16(2)(a) of Directive 2003/86 and, secondly, their long-term residence permits pursuant to Article 9(1)(a) of Directive 2003/109. On the other hand, the court held that the appeal was well founded in that the State Secretary had not duly set out the reasons why the withdrawal of the residence permit granted to the son did not breach the right to private life guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR').

The State Secretary, on the one hand, and the father, the mother and the son, on the other hand, appealed against that judgment before the referring court.

That court upheld the appeal brought by the State Secretary.

The court considered that the latter had not erred in finding, having regard to the various interests involved, that the withdrawal of the residence permits granted to the son did not infringe Article 8 of the ECHR. It added that Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), to which it is appropriate to give the same meaning and scope as to Article 8 of the ECHR, does not lead to a different assessment.

As regards the cross-appeal brought by the father, the mother and the son, the referring court notes that it is not contested that the father fraudulently obtained his fixed-term and indefinite residence permits since his employment was fictitious. Thus, the dispute relates only to the consequences of the fraud committed on the right of residence of the mother and the son.

In the latter regard, the court emphasises, first, that it is common ground that fraudulent declarations of employment, provided by the father to show that he had stable, regular and sufficient resources, within the meaning of Article 7(1)(c) of Directive 2003/86, formed the basis of the grant and extension of the mother's and the son's ordinary fixed-term residence permits. However, the father never had such resources since his employment was fictitious. In addition, the court observes that the mother and the son did not obtain residence permits in their own right, within the meaning of Article 15(1) of that directive, since, under Netherlands law, such a residence permit is restricted to non-temporary humanitarian grounds and neither the mother nor the son had ever sought to obtain one.

As regards, on the other hand, the long-term residence permits granted to the mother and to the son, the referring court underlines that it is also common ground that the residence of the latter on Netherlands territory prior to obtaining those permits was based on the father's fraud. For that reason, the assumption that they satisfied the condition of five year's legal residence on the territory of a Member State, laid down in Article 4(1) of Directive 2003/109, was also based on fraud. Moreover, those permits were obtained on the basis of the father's fraudulent declarations of employment, which were made for the purpose of obtaining them.

However, according to the court, it is appropriate, in the present case, to proceed on the premiss that the mother and the son were unaware of the fraudulent actions of the father, since the State Secretary had not only not alleged that they knew of it, but also regarded that aspect as irrelevant.

That court wonders whether, in such circumstances, the State Secretary could validly withdraw, first, the fixed-term residence permits granted to the mother and to the son, pursuant to Article 16(2)(a) of Directive 2003/86 and, second, the long-term residence permits granted to them, pursuant Article 9(1)(a) of Directive 2003/109.

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

Must Article 16(2)(a) of [Directive 2003/86] be interpreted as precluding the withdrawal of a residence permit granted for the purpose of family reunification in the case where the acquisition of that residence permit was based on fraudulent information but the family member was unaware of the fraudulent nature of that information?

Must Article 9(1)(a) of [Directive 2003/109] be interpreted as precluding the withdrawal of long-term resident status in the case where the acquisition of that status was based on fraudulent information but the long-term resident was

unaware of the fraudulent nature of that information?’

## **Consideration of the questions referred**

### ***The first question***

By its first question, the referring court asks, in essence, whether Article 16(2)(a) of Directive 2003/86 must be interpreted as precluding a Member State from withdrawing residence permits that were issued to family members of a third-country national pursuant to that directive, on the ground that falsified documents were produced for the purpose of obtaining those residence permits, where those family members were unaware of the fraudulent nature of those documents.

In order to reply to that question, it must be recalled that, under Article 4(1)(a) and (b) of Directive 2003/86, Member States are to authorise the entry and the residence, in accordance with that directive, of the sponsor's spouse and the minor children of the sponsor and of his spouse. Under Article 5(2) of that directive, the application for entry and for residence is to be accompanied by documentary evidence proving that the conditions listed *inter alia* in Article 7 of the directive are complied with, which, under Article 7(1)(c) provides that the Member State concerned may require the person submitting the application to provide evidence that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that Member State.

Article 16(2)(a) of Directive 2003/86 provides that Member States may withdraw the residence permit of a family member where it is shown that false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used.

It follows from the wording of that provision that Member States may, in principle, withdraw that permit where falsified documents were produced or where there has been recourse to fraud for the purpose of obtaining that permit. The provision does not identify the person who provided or used those documents or who committed the fraud, nor does it require that the family member concerned knew of it. It also follows from that wording that the mere use, for those purposes, of false information or falsified documents, *inter alia* to give the impression that the sponsor had stable, regular and sufficient resources, in accordance with Article 7(1)(c) of that directive, suffices to justify a decision to withdraw the residence permit of family members, without Article 16(2)(a) of Directive 2003/86 requiring it to be demonstrated that there was an intention to defraud on the part of those family members, or even that the latter knew of the false nature of that information or those documents.

That interpretation is corroborated by a contextual reading of Article 16(2)(a) of Directive 2003/86.

The grounds laid down in that provision for the withdrawal of a residence permit are identical to the grounds for the rejection of an application for entry and residence. Thus, that provision provides that the use of false or misleading information or of false or falsified documents, or recourse to fraud or other unlawful means, are grounds not only for the withdrawal of a residence permit that has been granted but also for the rejection of that application. Those grounds must therefore be interpreted in the same way in both those cases. However, as the Netherlands Government submits, the effectiveness of that same provision requires a Member State to be able to reject an application for entry and residence of a family member where false or falsified documents are produced in support of that application, even if that family member was not aware of the false or falsified nature of those documents.

Moreover, in a situation such as that at issue in the main proceedings, in which the sponsor has committed fraud, it is, having regard to the central importance of the sponsor in the system established by Directive 2003/86, in accordance with the objectives pursued by that directive and its underlying rationale, that that fraud has repercussions for the process of family reunification and, in particular, affects the residence permits granted to the members of the sponsor's family, even if the latter did not know of the fraud committed.

It is apparent from recital 4 of Directive 2003/86, that that directive has the general objective of facilitating the integration of third-country nationals, namely the sponsors, in Member States by making family life possible through reunification (judgment of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 26). It follows from that objective and a reading of the whole of that directive, in particular Article 13(3) and Article 16(3) thereof, that, 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. In those circumstances, a Member State must be able to find that the fraud committed by the sponsor affects the process of family reunification as a whole, in particular the derived right of residence of the sponsor's family members and, on that basis, withdraw the residence permits of those family members, even though they were unaware of the fraud that was committed. That is all the more so where, as in the present case, the fraud committed vitiates the regularity of the sponsor's right of residence.

As regards that point, it should be added that, in accordance with Article 1 of Directive 2003/86, the purpose of that 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. It follows that the right is confined to such nationals, which is confirmed by the definition of the concept of 'family reunification' in Article 2(d) of that directive. However, a third-country national who, like the father in the case in the main proceedings, has his residence permits withdrawn with retroactive effect, owing to the fact that they were acquired fraudulently, cannot be regarded as residing lawfully on the territory of a Member State. It is therefore, *a priori*, justified that such a national cannot benefit from that right and that the residence permits granted to the members of his family on the basis of that directive may be withdrawn.

In the present case, it is not contested, first, that a fraud was committed by the father, who produced falsified declarations of employment in order to show that he had stable and regular resources which were sufficient to maintain himself and the members of his family and, second, that those declarations were provided for the purpose of

obtaining the residence permits of his family members, namely the mother and the son, even though they were unaware of the fraudulent nature of those declarations.

In those circumstances, it is clear from the interpretation of Article 16(2)(a) of Directive 2003/86, given in paragraph 43 of this judgment, that the fraud committed by the father and the use of false or falsified declarations of employment in order to show that the father had stable, regular and sufficient resources, within the meaning of Article 7(1)(c) of that directive, are a priori capable of justifying the withdrawal of those residence permits that were obtained by the mother and the son on the basis of that directive.

Nevertheless, as the Advocate General observed in points 27 and 28 of his opinion, the withdrawal of a residence permit pursuant to Article 16(2)(a) of Directive 2003/86 cannot occur automatically. It is clear from the use, in that provision, of the words 'may ... withdraw' that Member States have a discretion as to that withdrawal. In that regard, in accordance with Article 17 of that directive, the Member State concerned must first examine, on a case-by-case basis, the situation of the family member concerned, by making a balanced and reasonable assessment of all the interests in play (see, to that effect, the judgments of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 81, and of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 43).

Under that latter article, the Member State must take due account of the nature and solidity of that person's family relationships, the duration of his residence in its territory and, as regards in particular the withdrawal of a right of residence, the existence of the person's family, cultural or social ties with his country of origin.

Furthermore, as is clear from recital 2 of Directive 2003/86, the measures concerning family reunification, such as measures for the withdrawal of a residence permit issued to family members, must be adopted in conformity with fundamental rights, in particular the right to respect for private and family life guaranteed by Article 7 of the Charter, which contains rights corresponding to those protected by Article 8(1) of the ECHR (see, to that effect, the judgments of 4 March 2010, *Chakroun*, C-578/08, EU:C:2010:117, paragraph 44, and of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraphs 75 and 76). Therefore, while the Member State enjoys a certain discretion for the purposes of the assessment laid down in Article 17 of Directive 2003/86, that assessment must be conducted in compliance with Article 7 of the Charter.

Thus, in the present case, as the Advocate General observed in paragraph 32 of his opinion, the competent national authorities must take into account inter alia the duration of residence of the mother and the son in the Netherlands, the age at which the latter arrived in that Member State and the possibility that he has been brought up and received an education there, and whether the mother and the son have family, economic, cultural and social ties with and in that Member State. They must also take into account whether the mother and the son have such ties with and in their country of origin, which is to be assessed on the basis of such factors as, inter alia, a family circle present in that country, travel or periods of residence therein and the level of knowledge of the language of that country.

As the Advocate General observed in point 30 of his opinion, in their assessment those authorities must also take into consideration the fact that, in the present case, the mother and the son were not personally responsible for the fraud committed by the father and they had no knowledge of it.

It is for the referring court to verify whether the decisions at issue in the main proceedings, by which the State Secretary withdrew the residence permits of the mother and the son, are justified in the light of the considerations set out in paragraphs 51 to 55 above, or whether the latter must, having regard to those considerations, retain those residence permits.

Having regard to the foregoing considerations, the answer to the first question is that Article 16(2)(a) of Directive 2003/86 must be interpreted as meaning that, where falsified documents were produced for the issuing of residence permits to family members of a third-country national, the fact that those family members did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing those permits. In accordance with Article 17 of that directive, it is, however for the competent national authorities to carry out, beforehand, a case-by-case assessment of the situation of those family members, by making a balanced and reasonable assessment of all the interests in play.

### **The second question**

By its second question, the referring court asks, in essence, whether Article 9(1)(a) of Directive 2003/109 must be interpreted as precluding a Member State from withdrawing the long-term resident status which was granted to third-country nationals in accordance with that directive, on the ground that the status was obtained by recourse to falsified documents, where those nationals were unaware of the fraudulent nature of those documents.

In order to answer that question, it should be recalled that, pursuant to Article 4(1) of Directive 2003/109, Member States are to grant long-term resident status to third-country nationals who have resided lawfully and continuously for five years on their territory. The acquisition of that status is not however automatic. In accordance with Article 7(1) of that directive, the third-country national concerned must, for that purpose, lodge an application with the competent national authorities of the Member State in which he resides, which must be accompanied by documentary evidence proving that he complies with the conditions laid down in Articles 4 and 5 of the directive. In particular, he must, in accordance with Article 5(1)(a) of the directive, demonstrate that he has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system of the Member State.

Article 8(1) of Directive 2003/109 provides that long-term resident status is to be permanent, subject to Article 9 of the directive.

In that regard, Article 9(1)(a) of the directive provides that the long-term resident loses the right to that status where that status is found to have been acquired fraudulently. That provision does not however identify the person who must

have committed the fraud and does not require the resident concerned to have knowledge of it.

In accordance with the established case-law of the Court, individuals cannot rely fraudulently on EU law, since the principle of prohibition of fraud is a general principle of EU law which individuals must comply with (see, to that effect, judgments of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraphs 48 and 49, and of 11 July 2018, *Commission v Belgique*, C-356/15, EU:C:2018:555, paragraph 99). The refusal or withdrawal of a right on account of abusive or fraudulent acts is simply the consequence of the finding that, in the event of fraud, the objective conditions required in order to obtain the right sought are not, in fact, met (see, to that effect, the judgment of 22 November 2017, *Cussens and Others*, C-251/16, EU:C:2017:881, paragraph 32).

Furthermore, it is clear from recitals 2, 4, 6 and 12 of Directive 2003/109 that the objective of the directive is the integration of third-country nationals who are settled lawfully and on a long-term basis in the Member States (see, to that effect, judgments of 17 July 2014, *Tahir*, C-469/13, EU:C:2014:2094, paragraph 32; of 4 June 2015, *P and S*, C-579/13, EU:C:2015:369, paragraph 46; and of 2 September 2015, *CGIL and INCA*, C-309/14, EU:C:2015:523, paragraph 21) and, for that purpose, bringing the rights of those nationals closer to those enjoyed by EU citizens, inter alia by establishing equal treatment with the latter in a wide range of economic and social fields. Thus, long-term resident status enables the person benefiting from it to enjoy equal treatment in the fields covered by Article 11 of Directive 2003/109, under the conditions laid down in that article. Under Article 14(1) of that directive, that status also affords the long-term resident the right to reside for a period exceeding three months on the territory of Member States other than the one which granted him that status, under the conditions set out in Chapter III of the directive, and to benefit there, in accordance with Article 21 of the same directive, from equal treatment as provided for in Article 11 thereof.

Having regard to the extensive rights attached to long-term resident status, it is important that Member States are able to combat fraud effectively by withdrawing from its beneficiary long-term resident status which was based on fraud.

It follows from the foregoing that it cannot be contended, in order to retain rights acquired under Directive 2003/109 by means of fraud, that that fraud was or was not committed by the beneficiary of those rights, or was not known to that person, since the decisive element is that the acquisition of those rights was the result of fraud.

It follows that Article 9(1)(a) of Directive 2003/109 applies in every case in which the acquisition of long-term resident status is based on fraud, that is to say where fraud is at the origin of that acquisition, whoever the person who committed that fraud might be and irrespective of whether the resident was aware of it.

In particular, that provision applies where, as in the case in the main proceedings, the resident concerned, for the purpose of obtaining long-term resident status, provided falsified documents with a view to proving that he had stable and regular resources which were sufficient to maintain himself and the members of his family, even if he did not commit the fraud and was unaware of the fraudulent nature of those documents. In such a case, the acquisition of that status rests directly on that fraud, such that it necessarily affects that status.

That interpretation is not called into question by the judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744), referred to by the referring court.

In that case, the Court held that, from the time when the family members of a Turkish worker acquired an autonomous right of residence pursuant to the first paragraph of Article 7 of Decision No 1/80, that right could no longer be called into question on account of irregularities which, in the past, affected the right of residence of that worker and which, in that case, were irregularities arising from the latter's fraudulent conduct (see, to that effect, the judgment of 18 December 2008, *Altun*, C-337/07, EU:C:2008:744, paragraphs 56, 57 and 59). Thus, the Court held in essence that the fraud affecting the Turkish worker's right of residence could not affect the autonomous right of residence of his family members.

However, it must be observed that the facts of the case that gave rise to that judgment are different from those in the case in the main proceedings. In accordance with the first paragraph of Article 7 of Decision No 1/80, the family members of a Turkish worker obtain an autonomous right of residence after a period of residence of three years in the host Member State, without it being necessary to submit an application to that effect. Therefore, the Court did not rule on the consequences that use of falsified documents in support of such an application would have had for the rights of the persons concerned.

In the present case, it is clear from the order for reference that the decisions at issue in the main proceedings, by which the State Secretary withdrew the mother's and the son's long-term residence permits, were specifically based on the fact, in particular, that the fraudulent declarations of employment of the father were produced in support of the application by the mother and the son seeking to obtain long-term resident status, in order to give the impression that they had stable, regular and sufficient resources, in circumstances where the acquisition of such a status was only possible, as is set out in paragraph 59 above, following such an application.

It follows from the foregoing that, pursuant to Article 9(1)(a) of Directive 2003/109, a third-country national loses the long-term resident status provided for by that directive where it is established that the acquisition of that status was based on falsified documents, even if that national was unaware of the fraudulent nature of those documents.

While that is so, the loss of long-term resident status does not mean, in itself, that the person concerned also loses the right of residence in the host Member State on the basis of which he lodged his application to be granted that status pursuant to Article 7(1) of Directive 2003/109 and obtained it pursuant to Article 4(1) of that directive, whether that right of residence was acquired under national law or EU law. That loss of status also does not therefore have the automatic consequence of removal from the territory of that Member State, as is clear from Article 9(7) of Directive

2003/109. In a situation where, as in the case in the main proceedings, the persons concerned, namely the mother and the son, have obtained long-term resident status on the basis of a right of residence granted pursuant to Directive 2003/86, it is for the referring court, as set out in paragraph 56 above, to determine whether those persons must, in accordance with Article 17 of that directive, retain the residence permit that was issued to them under the directive.

Having regard to the foregoing considerations, the answer to the second question is that Article 9(1)(a) of Directive 2003/109 must be interpreted as meaning that, where long-term resident status has been granted to third-country nationals on the basis of falsified documents, the fact that those nationals did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing that status.

#### **Costs**

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 (Fourth Chamber) hereby rules:

**Article 16(2)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that, where falsified documents were produced for the issuing of residence permits to family members of a third-country national, the fact that those family members did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing those permits. In accordance with Article 17 of that directive, it is however for the competent national authorities to carry out, beforehand, a case-by-case assessment of the situation of those family members, by making a balanced and reasonable assessment of all the interests in play.**

**Article 9(1)(a) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, must be interpreted as meaning that, where long-term resident status has been granted to third-country nationals on the basis of falsified documents, the fact that those nationals did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing that status.**

[Signatures]

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\* Language of the case: Dutch.