

JUDGMENT OF THE COURT (Third Chamber)

10 September 2014 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2004/114/EC — Articles 6, 7 and 12 — Conditions of admission of third-country nationals for the purposes of studies — Refusal to admit a person who meets the conditions laid down in Directive 2004/114 — Discretion enjoyed by the competent authorities)

In Case C-491/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Germany), made by decision of 5 September 2013, received at the Court on 13 September 2013, in the proceedings

Mohamed Ali Ben Alaya

v

Bundesrepublik Deutschland,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by T. Henze, acting as Agent,
- the Belgian Government, by L. Van den Broeck and C. Pochet, acting as Agents,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by L. Christie, acting as Agent, and by J. Holmes, Barrister,
- the European Commission, by G. Wils and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 June 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004 L 375, p. 12).

2 The request was made in the course of proceedings brought by Mr Ben Alaya against the Bundesrepublik Deutschland, concerning its refusal to grant him a visa for study purposes.

Legal context

EU law

3 Recitals 6, 7, 14, 15 and 24 in the preamble to Directive 2004/114 state:

(6) One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.

(7) Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.

...

(14) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy or public security. The notion of public order may cover a conviction for committing a serious crime. In this context it has to be noted that the notions of public policy and public security also cover cases in which a third-country national belongs or has belonged to an association which supports terrorism, supports or has supported such an association, or has or has had extremist aspirations.

(15) In case of doubts concerning the grounds of the application of admission, Member States should be able to require all the evidence necessary to assess its coherence, in particular on the basis of the applicant's proposed studies, in order to fight against abuse and misuse of the procedure set out in this Directive.

...

(24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.'

4 Under Article 1 of Directive 2004/114, which is entitled 'Subject matter':

'The purpose of this Directive is to determine:

(a) the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.'

5 Paragraph 1 of Article 3 of Directive 2004/114, which is entitled 'Scope', provides that the directive is to 'apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies' and that 'Member States may also decide to apply [the] Directive to third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service.'

6 Paragraph 2 of Article 4 of that directive, which is entitled 'More favourable provisions', states: 'This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.'

7 Chapter II of Directive 2004/114, which is entitled 'Conditions of admission', is composed of Articles 5 to 11.

8 Article 5 of the directive, which is entitled 'Principle', is worded as follows:

'The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence showing that he/she meets the conditions laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.'

9 Under Article 6 of Directive 2004/114, which is entitled 'General conditions':

'1. A third-country national who applies to be admitted for the purposes set out in Articles 7 to 11 shall:

- (a) present a valid travel document as determined by national legislation. Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;
- (b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation for the planned stay;
- (c) have sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned;
- (d) not be regarded as a threat to public policy, public security or public health;
- (e) provide proof, if the Member State so requests, that he/she has paid the fee for processing the application on the basis of Article 20.

2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.'

10 Articles 7 to 11 in Chapter II of Directive 2004/114 relate to specific conditions for students, school pupils, unremunerated trainees and voluntary workers. Paragraph 1 of Article 7 of that directive, which is entitled 'Specific conditions for students', provides:

'1. In addition to the general conditions stipulated in Article 6, a third-country national who applies to be admitted for the purpose of study shall:

- (a) have been accepted by an establishment of higher education to follow a course of study;
- (b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

- (c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;
- (d) provide evidence, if the Member State so requires, that he/she has paid the fees charged by the establishment.'

11 The provisions laid down in Chapter III of Directive 2004/114, which is entitled 'Residence permits', relate to the residence permit to be issued to each of the categories of persons covered by that directive. Article 12 of the directive, which is entitled 'Residence permit issued to students', provides:

'1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.

2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:

- (a) does not respect the limits imposed on access to economic activities under Article 17;
- (b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.'

German law

12 Subparagraph 3 of Paragraph 6, which is entitled 'Visa', of the Law on the residence, employment and integration of foreign nationals in the Federal Territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet), as revised and published on 25 February 2008 (BGBl. I, p. 162) ('the AufenthG'), provides:

'Long-term stays shall require a visa for the federal territory (national visa), which must have been issued before entry into that territory. The visa shall be issued in accordance with the requirements in force concerning residence permits, EU Blue Cards, establishment permits and EU permanent residence permits. ...'

13 Subparagraph 1 of Paragraph 16 of that Law, which is entitled 'Studies, language courses, schooling', provides:

'A residence permit may be granted to a foreign national for the purposes of study at a State or State-approved establishment of higher education or at a comparable training establishment. The purpose of a study stay shall include the pursuit of pre-study language courses and attendance at a school where foreign students prepare for university studies (preparatory measures for university studies). The residence permit for study purposes may be granted only if the foreign national has been accepted by the educational establishment; conditional admission shall be sufficient. No evidence of knowledge of the language of instruction shall be required if language skills have already been taken into account for the purposes of the admission decision or if it is provided that language knowledge must be acquired within the framework of the preparatory measures for study. The residence permit for study purposes shall, when first issued and when extended, remain valid for at least one year, but the period of validity must not exceed two years for the studies and the study preparatory measures; it may be extended if the objective of the training has not yet been achieved and may yet be achieved within an appropriate period.'

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

14 Mr Ben Alaya, born on 19 February 1989 in Germany, is a Tunisian national. He left Germany in 1995 to live in Tunisia.

- 15 After obtaining his baccalaureate in Tunisia in 2010 and enrolling at university there to study information technology, Mr Ben Alaya took steps to be able to begin higher education (bachelor's degree) in Germany. On several occasions, he was accepted by the Technische Universität Dortmund to study mathematics. Mr Ben Alaya made a number of applications to the competent German authorities for a student visa in order to attend that course or to undergo the language training organised by the university for foreign nationals seeking access to higher education. All those applications were refused.
- 16 The most recent decision refusing to grant Mr Ben Alaya a visa, adopted on 23 September 2011, was based on doubts as to his motivation for wishing to study in Germany, particularly in the light of the inadequacy of the grades previously obtained, his weak knowledge of German and the fact that there was no connection between his proposed course of study and his intended career.
- 17 On 1 November 2011, Mr Ben Alaya brought an action contesting that decision before the Verwaltungsgericht Berlin (Administrative Court of Berlin or 'the referring court') in order to obtain a visa for study purposes under Paragraph 16(1) of the AufenthaltG. He claims to have sufficient knowledge to be capable of studying mathematics and that, for the duration of his studies, he will be supported by his father, who resides in Germany.
- 18 The referring court is uncertain whether, in cases where the conditions for admission laid down in Articles 6 and 7 of Directive 2004/114 are met, Article 12 of that directive confers entitlement to a student visa, without leaving the national administrative authorities any discretion in that regard. On that point, the referring court states that the German courts recognise the national authorities as having discretion to refuse a visa for study purposes, the conditions for granting a student visa being governed by Paragraph 16(1) of the AufenthaltG.
- 19 The referring court takes the view that, under Directive 2004/114, third-country nationals have a right to be admitted to the territory of a Member State for study purposes if those conditions are met, without the public authorities having any discretion as regards the admission decision.
- 20 Accordingly, the Verwaltungsgericht Berlin decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Directive [2004/114] establish a non-discretionary right to a visa for the purposes of studies and the subsequent residence permit under Article 12 of [that directive], if the conditions of admission, namely those listed in Articles 6 and 7 of the directive, are met and there are no grounds for refusing the visa under Article 6(1)(d) of the directive?'

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Article 12 of Directive 2004/114 must be interpreted as meaning that the Member State concerned is obliged to admit to its territory a third-country national who wishes to stay more than three months in that territory for study purposes, where that person meets the conditions for admission laid down in Articles 6 and 7 of the directive.
- 22 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, the judgment in *Koushkaki*, C-84/12, EU:C:2013:862, paragraph 34 and the case-law cited).
- 23 In the first place, as regards the general structure of Directive 2004/114, it must first of all be noted that Article 5 of that directive provides that the admission of a third-country national to the territory of a Member State under Directive 2004/114 is to be subject to the verification of documentary evidence showing that the person in question meets the general conditions laid down in Article 6 of that directive and, additionally, where the third-country national is seeking admission for study purposes, the specific conditions laid down in Article 7 of that directive.

- 24 In particular, Member States may verify whether, under Article 6(1)(d) of Directive 2004/114, read in the light of recital 14 thereto, there are grounds relating to the existence of a threat to public policy, public security or public health, which may justify refusal to admit a third-country national.
- 25 Next, if the general and specific conditions laid down respectively in Articles 6 and 7 of Directive 2004/114 are met, the Member State is to issue a student residence permit in accordance with Article 12 of the directive.
- 26 Lastly, it should be noted that Article 3 of Directive 2004/114 makes a distinction between, on the one hand, the provisions relating to third-country nationals who apply for admission to the territory of a Member State for study purposes and, on the other hand, the provisions relating to third-country nationals who make such an application for the purposes of pupil exchange, unremunerated training or voluntary service. While the Member States are under an obligation to transpose the former group of provisions into national law, transposition of the latter group is left to their discretion. That distinction reflects the endeavour to attain a certain level of approximation of the national legislation of the Member States relating to conditions of entry and residence.
- 27 It is thus clear from those provisions of Directive 2004/114, read together, that, where students from third countries meet the general and specific conditions exhaustively listed in Articles 6 and 7 of that directive, they must, pursuant to Article 12 of the directive, be issued with a residence permit.
- 28 In the second place, as regards the objectives of Directive 2004/114, it can be seen from Article 1(a) of that directive, read in conjunction with recital 24 thereto, that the directive seeks to determine the conditions for the admission of third-country nationals to the territory of Member States for study purposes, for a period exceeding three months.
- 29 In that regard, the Court has held that, according to recitals 6 and 7 to Directive 2004/114, that directive is intended to promote the mobility of students who are third-country nationals to the European Union for the purpose of education, that mobility being intended to promote Europe as a world centre of excellence for studies and vocational training (*Sommer*, C-15/11, EU:C:2012:371, paragraph 39). In particular, recital 6 to the directive states that the approximation of the national legislation of the Member States relating to the conditions of entry and residence is part of that objective.
- 30 To allow a Member State to introduce, in relation to the admission of third-country nationals for study purposes, conditions additional to those laid down in Articles 6 and 7 of Directive 2004/114 would be contrary to the objective pursued by that directive of promoting the mobility of such nationals.
- 31 It follows, therefore, from the general structure and objectives of Directive 2004/114 that, pursuant to Article 12 of that directive, Member States are required to issue a residence permit for study purposes to an applicant who meets the conditions laid down in Articles 6 and 7 of that directive, since those provisions exhaustively list both the general and the specific conditions that must be met by an applicant for a student residence permit, as well as the possible grounds for refusing to admit such an applicant.
- 32 Moreover, that interpretation of Article 12 of Directive 2004/114 is borne out by the possibility provided for in Article 4(2) of that directive, under which Member States may adopt provisions that are more favourable to the persons to whom the directive applies. To accept that Member States may find it necessary to introduce conditions for admission additional to those laid down in Directive 2004/114 would narrow the conditions for the admission of those persons, contrary to the objective pursued by Article 4(2).
- 33 It is true that Directive 2004/114 allows Member States to exercise a measure of discretion when considering applications for admission. However, it should be noted that, as the Advocate General observed in point 49 of his Opinion, the discretion available to the national authorities relates only to the conditions laid down in Articles 6 and 7 of that directive and, within that context, to the assessment of the relevant facts in order to determine whether those conditions

are met and, in particular, whether there are grounds relating to the existence of a threat to public policy, public security or public health which preclude the admission of the third-country national.

- 34 Consequently, for the purposes of the appraisal to be made in relation to the conditions for admission on the basis of Directive 2004/114, there is nothing to prevent Member States, in accordance with recital 15 to that directive, from requiring all the evidence necessary to assess the coherence of the application for admission, in order to fight against abuse and misuse of the procedure set out in that directive.
- 35 In the present case, the documents before the Court suggest that, in the main proceedings, Mr Ben Alaya meets the general and specific conditions laid down in Articles 6 and 7 of Directive 2004/114 respectively. In particular, none of the grounds listed in Article 6(1)(d) of that directive appears to have been raised against him by the German authorities. Accordingly, in a situation such as that of the case before the referring court, it appears that a residence permit ought to have been issued to him by the national authorities; that is a matter for the national court to verify.
- 36 In the light of the foregoing considerations, the answer to the question referred is that Article 12 of Directive 2004/114 must be interpreted as meaning that the Member State concerned is obliged to admit to its territory a third-country national who wishes to stay more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Articles 6 and 7 of that directive and provided that that Member State does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.

Costs

- 37 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 (Third Chamber) hereby rules:

Article 12 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service must be interpreted as meaning that the Member State concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Articles 6 and 7 of that directive and provided that that Member State does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.