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Press and Information

Advocate General's Opinion in Case C-153/14
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According to Advocate General Kokott, family reunification in the case of married couples who are third-country nationals may in principle be made contingent on the spouse who is intending to join the family passing an examination that tests knowledge of the country and of its language

In the event of unreasonableness or special circumstances, it must, however, be possible for exemptions from the examination to be granted in individual cases, and any examination fees must not be so high as to create an obstacle to the exercise of the right to family reunification

In order for married couples who are third-country nationals to be granted family reunification, the Netherlands requires the spouse who is intending to join the family to pass a civic integration examination prior to entry, to demonstrate a basic knowledge[1] of the Dutch language and of the Netherlands.[2] This is intended to improve the starting-point of those coming to join their families in the Netherlands and to foster their integration in Netherlands society. An exemption may be granted in the case of a serious mental or physical disability and in cases of hardship.[3] Nationals of certain third countries, such as Canada and the USA, are also exempt. Admission to the examination is subject to payment of the examination fee of €350. If the examination has to be retaken, the fee becomes payable again. To help those preparing for the examination, the Netherlands provides a self-study pack in 18 languages, at a one-off cost of €110.

The Netherlands Raad van State asks whether that civic integration examination is compatible with the Family Reunification Directive,[4] which, under the heading 'Requirements for the exercise of the right to family reunification', allows Member States to require third-country nationals to comply with integration measures. The Raad van State has to decide on the cases of an Azerbaijani and a Nigerian who wish to join their husbands who are living in the Netherlands and who are also third-country nationals. Each has pleaded physical or mental difficulties in order to be granted exemption from the civic integration examination requirement. The competent authority did not, however, consider these to be sufficiently serious and therefore refused the applications.

In her Opinion today, Advocate General Juliane Kokott expresses the view that the **civic integration examination** at issue here is **in principle a permissible integration measure** within the meaning of the Directive.

Learning the language of a country is an essential prerequisite for integration. Language proficiency not only improves the prospects of third-country nationals in the labour market, but also enables them to seek help in the host country independently in emergencies. Basic knowledge of a country also ensures that the person coming to join the family is familiar with important fundamental rules of co-existence, which can help to avoid misunderstandings and breaches of the law. Since the Netherlands' concern is precisely to help to improve the starting-point of the person joining his family, tuition which starts only after entry into the country would not be equally effective.

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[1] Level A1 (Breakthrough) of the Common European Framework of Reference for Languages.
[2] Questions might cover, for example, whether men and women have equal rights in the Netherlands, whether the separation of church and State applies in the Netherlands, or at what age children are required to attend school.
[3] That is if, as a result of very special individual circumstances, the person seeking to join his family is permanently unable to pass the examination and demonstrates that he has made every effort to pass the examination that he could reasonably have been expected to make.
[4] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

The integration test is also appropriate; in particular, only a basic knowledge of the language is required, which can normally be acquired without a great deal of effort. The exemption of nationals of certain third countries does not necessarily mean that the Netherlands legislation is inconsistent, as the Directive permits favourable treatment on the basis of bilateral agreements.

The Netherlands legislation is, **however, disproportionate and incompatible with the Directive if the civic integration examination requirement applies even where that requirement is unreasonable for the person intending to join his family, taking into account his individual circumstances, or where, on account of the special circumstances of an individual case, there are grounds on which family reunification should be granted notwithstanding the failure to pass the examination.**

It is for the Raad van State to make that assessment and, in particular, to assess whether the existing hardship clause enables those matters to be taken into account. As regards reasonableness, besides the state of health, cognitive abilities and level of education of the person concerned, factors such as the availability of preparatory material in a form that he can understand, the costs payable and the burden in terms of time may also be significant. A person intending to join his family who does not command any of the 18 languages of the study materials cannot, for example, always be expected first to learn one of those languages in order then, with the aid of those materials, to start his actual preparation for the examination.

According to Advocate General Kokott, **the Directive also precludes national provisions which attach fees to a civic integration examination such as that at issue here, where those fees and the charging of them are liable to prevent the person intending to join his family from exercising the right to family reunification.**

That risk exists in the present case. A fee of €350 could, in view of per capita income, represent a significant financial burden in many parts of the world. It could, therefore, in individual cases, create a disproportionate obstacle that undermines the objective of the Directive and its effectiveness, particularly as the examination fee is payable every time the examination is taken. In such cases, a solution could lie, inter alia, in measures for a **dispensation or deferral**. Whether and to what extent that is possible under Netherlands law will be a matter for the Raad van State to assess.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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