

## Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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**To (by email)** European Parliament  
Civil Liberties, Justice and Home Affairs Committee  
Rue Wiertz  
B-1047 BRUSSELS

**Reference** CM1302  
**Regarding** Memorandum concerning the Dutch Coalition Agreement concluded between the VVD (People's Party for Freedom and Democracy) and the PvdA (Labour Party) on 29 October 2012  
**Date** 6 February 2013

Dear members of the Civil Liberties, Justice and Home Affairs Committee,

Please find attached a memorandum from the Meijers Committee which analyses proposals contained in the Dutch Coalition Agreement in the areas of security and justice and immigration, integration and asylum from an international and European law perspective. [This memorandum was sent on the 18<sup>th</sup> of January 2013 to the members of the Dutch house of representatives, the State Secretary for Security and Justice, the Minister of Social Affairs and employment and the members of the Senate.]

In this memorandum we have selected the proposals which we regard as most important to consider on the basis of our mandate.

The memorandum examines the following proposals contained in the 2012 Dutch Coalition Agreement:

1. It will become easier to hold suspects in pre-trial detention until (summary) proceedings begin.
2. Sentences in excess of two years will be enforced immediately, even if the defendant lodges an appeal.
3. Illegal residence will be made a criminal offence.
4. Family migration is restricted to nuclear families: long-term, exclusive relationships between partners and those who form part of their household through biological kinship.
5. No residence permits will be issued to applicants who have previously been illegally resident in the Netherlands or committed fraud.
6. Individuals who cannot speak Dutch will not receive social assistance benefits.
7. The period during which aliens must have been resident in the Netherlands to be able to vote in municipal elections, to qualify for naturalisation and to retain their residence rights when applying for social assistance benefit will be extended from five years to seven years.
8. The requirements for integration will be tightened, both in the Netherlands and abroad.

Finally, we make a number of comments on the current reunification policy for family members of asylum seekers.

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. dr. C.A. Groenendijk  
Chairman

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• Commissie Meijers  
Permanente commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht

• Comité Meijers  
Comité permanent d'experts en droit international de l'immigration, des réfugiés et du droit pénal

• Meijers-Ausschuss  
Ständiger Ausschuss von Experten im internationalen Ausländer-, Flüchtlings- und Strafrecht

## **Memorandum concerning the Coalition Agreement concluded between the VVD (People's Party for Freedom and Democracy) and the PVDA (Labour Party) on 29 October 2012**

The Meijers Committee emphasises that the European and international regulations are not a goal in themselves. Many of these regulations are an expression of broadly shared values concerning the treatment of people, not only people in vulnerable situations such as migrants and members of minority groups but also people who use their right to seek better living conditions or new knowledge and new experiences elsewhere in the EU.

The free movement of persons is an essential part of EU regulations which, unavoidably, have varying effects on different Member States at different times. However, the advantages of free movement cannot be enjoyed without also accepting free movement measures which, in some situations, are regarded by Member States as disadvantageous.

The Meijers Committee is delighted that a number of measures from the previous coalition agreement, which were inconsistent with existing European and international regulations, are no longer contained in the current coalition agreement. We are thinking in particular of the withdrawal of the proposal for changes to the Netherlands Nationality Act (TK 33201), the proposal for a conditional Dutch nationality, the exclusion of unmarried partners, the introduction of educational requirements and a test to ensure that the ties with the Netherlands are greater than those with other countries in the case of family reunification, the minimum educational qualifications required for an application for a permanent residence permit (asylum) and attempts to amend the Directive on the free movement of EU citizens (Directive 2004/38) and the Association Agreement with Turkey.

However, the Meijers Committee also notes that many of the proposals contained in the previous coalition agreement still feature in the current agreement, and that new proposals are made which are contrary to the Netherlands' obligations under international or EU law. The memorandum that follows will consider a number of these proposals further.

### **1. It will become easier to hold suspects in pre-trial detention until (summary) proceedings begin.**

The ECHR places stringent requirements on pre-trial detention and this is not without good reason: the deprivation of liberty represents a significant breach of fundamental rights. According to ECHR case-law, pre-trial detention can be imposed only if significant legal interests are at stake and alternatives to custody are inadequate on account of the risks of escape, collusion, reoffending or a breach of the peace. The State must demonstrate in each case that nothing less than detention would be sufficient; alternatives must always be considered first.

In the context of the above, making it easier to hold suspects in pre-trial detention until proceedings begin (as the Government proposes) can never be a goal in itself. The fact that the Netherlands has not often been corrected on this point in ECHR judgments is explained by the fact that the Strasbourg based Court places a great deal of emphasis on the length of the custody before the suspect goes before the court.<sup>1</sup> The fact remains, however, that in Europe the Netherlands is at the top of the list in terms of the use of pre-trial detention. Where the requirements of Articles 67 and 67a of the Code of Criminal Procedure have been met, a suspect is generally routinely placed in pre-trial detention. Alternatives to detention are considered only if the pre-trial detention is suspended (Article 80 of the Code of Criminal Procedure). Not only does this make the Dutch provisions vulnerable in Strasbourg, it is moreover inconsistent with the efforts that are currently being made within the European Union to keep the use of pre-trial detention to a minimum (foreign suspects included) and to promote alternatives to detention.<sup>2</sup> In the light of these European developments there is no reason to endeavour to make it easier to use pre-trial detention. There is, however, reason to consider the possibility of selecting alternatives to pre-trial detention before such detention is suspended.

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<sup>1</sup> See *inter alia* ECHR 24 July 2003, appl.no. 46133/99 (Smirnova v. Russia); ECHR 26 June 2012, appl.no. 33376/07 (Piruzyan v. Armenia); ECHR 5 July 2007, appl.no. 28831/04 (Kanzi v. the Netherlands); also, *Court of 's-Hertogenbosch 13 June 2012, LJN BW9141*. See also A.H. Klip, 'Voorlopige hechtenis' [pre-trial detention], *DD 2012*, 8.

<sup>2</sup> Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, OJ 2009 L 294, p 20.

## **2. Sentences in excess of two years will be enforced immediately, even if the defendant lodges an appeal. In cases involving victims, this measure will apply to sentences in excess of one year.**

As far as the proposal to enforce sentences immediately even where the defendant has lodged an appeal is concerned, the question must be asked as to exactly what the Government wishes to achieve by this. Indeed, in those cases where an unconditional custodial sentence in excess of two years has been pronounced, more often than not, the circumstances and grounds set forth in Articles 67 and 67a of the Code of Criminal Procedure will have been met. In practice, pending appeal, the period of detention will then be extended almost routinely. In other words, pre-trial detention already implies immediate enforcement. What then, in the Government's opinion, is the added benefit of the proposal in question?

Moreover, we must make one criticism of this usual way of proceeding, given that in practice there is a feeling that fewer appeal cases are heard than would be if the suspect was not being detained on an ongoing basis. Indeed, it is not uncommon for a suspect to have already completed or almost completed his custodial sentence when his case is heard at appeal. In this situation, it is quite understandable that the suspect is not aware what is to be gained from an appeal. This threatens to seriously undermine the appeals process, which is unacceptable from a constitutional perspective.

In addition, it must be emphasised that the option of enforcing sentences immediately is not unlimited from a human rights perspective. Indeed, the ECHR requires at all times that a *judge* explicitly balances the interests of the defendant and society. The proposal that sentences of a particular length where the defendant has lodged an appeal *always* be enforced immediately (thus, without the judge having explicitly ordered that this be the case) is contrary to this requirement.

## **3. Illegal residence will be made a criminal offence. Private individuals and organisations that offer individuals help will not be criminally liable.**

As in a previous memorandum of 2010, the Meijers Committee wishes to point out the very negative side effect of the proposed criminalisation on persons other than criminal or trouble-making aliens.<sup>3</sup> Under the current body of legislation, on the basis of which a person residing illegally can be issued with a long-term ban on entry or be declared an undesirable alien, illegal residence on the part of the latter group constitutes a criminal act under Sections 66a and 67 of the Aliens Act 2000, in conjunction with Article 197 of the Penal Code. In addition, violation of a number of provisions of the Aliens Act 2000 already constitutes an offence under Section 108 of the Aliens Act 2000. A maximum of six months' imprisonment may be imposed for both the crime and the offence. The difference between a crime and an offence seems to be relevant in particular in the policy on prosecution, which gives priority to the prosecution of crimes. The separate criminalisation of illegal residence in addition to the existing opportunities for criminal justice seems to be mainly symbolic in nature. It will do little to 'deter' the aliens concerned but is likely to lead to undesirable behaviour by aliens and others. Moreover, any criminalisation that results in detention will be problematic from an EU law perspective.

In its judgment in *El Dridi* (Case C-61/11, 28 April 2011) the Court of Justice concluded that Member States shall not apply any provision, even in the field of criminal law, which could jeopardise the realisation of the objectives set forth in the Return Directive (2008/115/EC). According to European Court of Justice case-law, removal and restriction of the freedom of third country nationals in respect of whom a return order has been issued must be deemed to impede the return procedure. A Member State must guarantee that the enforcement thereof will stop as soon as it is possible to physically remove the person concerned from the Member State in question (European Court of Justice, 6 December 2012, Case C-430/11, *Sagor*). The Dutch penitentiary system, which has no built-in procedure for considering the possibility of deporting detainees, offers no such guarantee. In that case, the imposition of a fine would be the only option but, again, this begs the question (a) what the benefit would be for the effectiveness of the deportation policy, (b) the ability of those concerned to pay substantial fines and (c) how it can be guaranteed that imprisonment as a substitute for non-payment of a fine will be suspended as soon as it is possible to physically remove the person concerned from the Netherlands. Furthermore, it is still doubtful whether the police and the judiciary have

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<sup>3</sup> See the Meijers Committee's memorandum of 8 November 2010, CM1016, [www.commissie-meijers.nl](http://www.commissie-meijers.nl).

sufficient capacity to prosecute persons residing illegally in the Netherlands.<sup>4</sup> Are the costs of detection, prosecution and detention of the aliens concerned actually justified by the impact on the behaviour of these aliens which can reasonably be expected from such criminalisation? Quantified data regarding the anticipated impact of this proposal, e.g. through comparison with Member States that already practice such criminalisation, has so far not been provided.

#### **4. Family migration is restricted to nuclear families: long-term, exclusive relationships between partners and those who form part of their household through biological kinship.**

According to the coalition agreement, the nuclear family is constituted by long-term, exclusive relationships between partners and those who form part of their household through biological kinship. This allows family reunification for unmarried partners once again, as stated in the State Secretary for Security and Justice's letter of 21 December 2012 (ref. 0000732930). The fact that reunification is restricted to biologically related family members gives the impression that adoptive children are no longer part of the nuclear family. An exclusion of this type would be contrary to Article 4(1) of the Family Reunification Directive (2003/86), which puts biological children and adoptive children on an equal footing. It is not clear whether this exclusion is actually intended or whether this group was overlooked when defining the nuclear family. This begs the question of whether foster children are excluded from family reunification. Although this group is not explicitly referred to in the coalition agreement, the exclusion of such children could be contrary to the right to a family life under Article 8 ECHR, to the interests of the child in the case of family reunification under Articles 3 and 10 of the International Convention on the Rights of the Child and to the rights of the child under Article 24 of the EU Charter of Fundamental Rights. The policy must allow for compliance with these provisions to be checked.

As far as grandparents, single parents and children over the age of 18 are concerned, according to the letter of 21 December 2012, family reunification is now possible only if the criterion of 'more than emotional ties' (Article 8 ECHR) is met. It can be deduced from this that a check for compliance with the aforementioned provisions is also required when assessing an application for family reunification involving foster children. The Meijers Committee deems it advisable to include in the Aliens Decree the grounds for residence afforded by Article 8 ECHR. Otherwise, aliens will always have to invoke the Minister's discretionary powers. The inclusion of 'residence in pursuance of Article 8 ECHR' as a separate ground for residence in the first paragraph of Article 3.4 of the Aliens Decree 2000 would allow 'a compliance with Article 8 ECHR check' to be made as part of an mvv (provisional residence permit) application. The limitation of family reunification to the nuclear family cannot be applied to EU citizens and their family members in cases where Directive 2004/38 applies.

Finally, with regard to the introduction of a waiting period of a year for family reunification, an exception is made to this waiting period where non-admission of the family member would be contrary to the interests of minor children, as set out in Article 5(5) of the Family Reunification Directive (2003/86) (see Article 3.15(3) of the Aliens Decree). This key provision of the Directive had until now not been transposed into Dutch legislation at all. Although this first step towards implementation is to be applauded, the Meijers Committee points out that the exception in pursuance of Article 5(5) also applies to all other cases where an application for family reunification risks being rejected on the grounds of a statutory or policy provision, such as the civic integration examination that is taken abroad, the age limit of 21 or the income requirement. The Meijers Committee recommends that Article 5(5) be fully implemented immediately in a new statutory provision. Indeed, the same applies to Article 17 of Directive 2003/86, which has been transposed only for negative decisions on the grounds of public order (see Articles 3.77 and 3.86 of the Aliens Decree).

#### **5. No residence permits will be issued to applicants who have previously been illegally resident in the Netherlands or committed fraud.**

A new Article 16j Aliens Act 2000, which deals with national visas and a number of other matters, has been incorporated into the Act of 24 May 2012 amending the Aliens Act 2000 (State Journal 2012, 258). It states that aliens who have previously been unlawfully resident in the Netherlands can no longer be issued with a

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<sup>4</sup> The doubts expressed in this connection in our previous memorandum to the House of Representatives (CM1016 of 8 November 2010, [www.commissie-meijers.nl](http://www.commissie-meijers.nl)) still remain. See in particular the report 'Prestaties in de strafrechtsketen' [performance in the criminal law enforcement chain], Court of Audit 2012. See also: J van der Leun, Crimmigratie [Crimmigration] (Leiden lecture), Apeldoorn/Antwerp: Maklu-Uitgevers, 2010, p. 22.

residence permit. Section 17a of the Aliens Act makes an exception for vulnerable groups, such as children and victims of human trafficking, and also includes a hardship clause. These provisions have not yet come into effect.

The Meijers Committee is of the opinion that this provision cannot be invoked in respect of EU citizens and those covered by the Association Agreement with Turkey. In the case of family reunification, such refusal to issue a residence permit will be incompatible with Directive 2003/86, Directive 2003/109 and Directive 2004/38. In addition, the policy must guarantee that the deportation that results from such rejection is checked for compliance with Article 3 ECHR and Article 8 ECHR.

**6. Individuals who cannot speak Dutch will not receive social assistance benefit. This principle will be applied consistently: to EU nationals, third-country nationals and Dutch nationals**

As far as *citizens of other EU Member States* are concerned, this new language requirement is a classic example of indirect discrimination on the grounds of nationality, because citizens of other Member States are far more often unable to meet this requirement than citizens of the Netherlands. Consequently, this language requirement is incompatible with Articles 18(1) and 45 TFEU and Article 24 of Directive 2004/38, unless it can be justified on the basis of objective considerations which are separate from the nationality of the persons concerned and which are proportional to the legitimate aim pursued by the national law. Since the judgment in *Pinna* in 1986, indirect discrimination has also been forbidden under the established case-law of the Court of Justice. In that judgment the Court ruled 'that the principle of equal treatment prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result' (judgment of 15 January 1986, para. 23).

There is a close link between nationality and language knowledge. Consequently, the Court will impose stringent requirements regarding the justification of such a language requirement, in the same way as it would for a length of stay or place of residence requirement. A language requirement may be justified if an individual assessment has established that the individual's chances of (re)entering the Dutch labour market will actually be increased through this language knowledge. In many cases this will not be relevant, as many EU citizens are in jobs where knowledge of the Dutch language is not required or, given their age, they are no longer active on the labour market. If this new requirement is not also applied systematically to Dutch citizens - which would mean that illiterate Dutch citizens would also henceforth be excluded from social assistance - it will constitute direct discrimination of citizens of other Member States. EU law does not permit the justification of such a discrepancy in treatment on the grounds of nationality.

As far as *third-country nationals* with an EU residence permit for long-term residents (a regular residence permit for an indefinite period in accordance with Section 21 of the Aliens Act) are concerned, this language requirement is contrary to Article 11(1)(d) of the Directive on long-term residents (Directive 2003/109). In accordance with this provision, these long-term residing third-country nationals are entitled to equal treatment with Dutch nationals with regard to the provision of assistance. The same applies to refugees under Article 29 of Directive 2011/95/EU and Article 23 of the Convention relating to the Status of Refugees. This entitlement does not permit any indirect form of unfair treatment through the imposition of a language requirement. Indeed, non-Dutch residents would be affected far more often by this language requirement than Dutch citizens. It is very unlikely that the Court of Justice will rule that the ban on indirect discrimination is not applicable in this instance, particularly since the objective of Directive 2003/109 is to grant the third-country nationals concerned a set of uniform rights 'which are as near as possible to those enjoyed by citizens of the European Union' (Recital 2).

As far as *Turkish citizens* are concerned, the language requirement is problematic in the context of the equal treatment provisions contained in Article 9 of the Association Agreement between the EEC and Turkey (indeed, access to the labour market falls within the scope of this Agreement), Article 13(4) of the European Social Charter and Article 1 of the European Convention on Social and Medical Assistance. This also applies to citizens of other third countries which are party to one of the latter two agreements.

As far as *Dutch citizens* are concerned, a separate language requirement is contrary to Articles 1 and 20 of the Constitution. Indeed, this language requirement will far more often result in a refusal to grant social assistance payments or in the reduction or cessation of such payments in the case of Dutch citizens from immigrant groups than it will in the case of indigenous Dutch citizens. On account in particular of the fact that

they are strongly over-represented in the lowest income groups, Dutch citizens born outside the Netherlands are six to eight times more dependent on social assistance than Dutch citizens who were born in the Netherlands. Since this language requirement effectively makes a distinction between Dutch citizens born in the Netherlands and Dutch citizens born outside the Netherlands, this requirement is also contrary to Articles 2 and 5(e)(iv) of the UN Convention on the Elimination of All Forms of Racial Discrimination. In accordance with Article 1(1) of that Convention, not only direct but also indirect discrimination is forbidden: not only measures which have the purpose to discriminate on the grounds of race or origin are forbidden but also measures which have that effect are forbidden.

The new language requirement is even more difficult to justify since, as of 1 January 2013, language courses for established migrants will no longer be paid for under the terms of the Civic Integration Act. As a result of this measure, the Netherlands represents an exception in this respect within the EU: it will no longer pay for language tuition but it plans to introduce new and more stringent sanctions for anyone deemed to have inadequate language skills. This change does not make the likelihood any greater of the Court of Justice ruling that this new language requirement and the associated sanctions are sufficiently justified. In any case, in instances where a better knowledge of the Dutch language could improve the employment opportunities of the individual concerned, the existing Work and Social Assistance Act offers sufficient opportunities to require this individual to follow a language course.

**7. The period during which aliens must have been resident in the Netherlands to be able to vote in municipal elections, to qualify for naturalisation and to retain their residence rights when applying for social assistance benefit will be extended from five years to seven years.**

The Meijers Committee wonders firstly how these measures fit with the Government's plan to focus its immigration policy on the rapid integration of migrants. The coalition agreement says that 'it is important that those who come to this country can stand on their own two feet, support themselves through work, integrate swiftly and help contribute to this society'. Extending the time that it takes to be able to participate fully in Dutch society will hamper rather than encourage integration. As a result of this proposal migrants will, amongst other things, be excluded for a further two years from many jobs, from participating in political decision-making, from a Government guarantee if they purchase their own home and from support from banks if they start their own business.

*Extension of the period during which aliens must have been resident in the Netherlands to be able to vote in municipal elections from five years to seven years* is contrary to Article 6(1) of the Convention on the Participation of Foreigners in Public Life at Local Level, which was concluded in 1992 under the auspices of the Council of Europe. This Article states that, after five years of lawful residence, immigrants must be entitled to vote in municipal elections. If the Government wishes to implement this proposal this agreement would have to be denounced. The Meijers Committee wishes to point out that, if it implements this policy proposal, the Netherlands will be seriously out of step with other European countries: no other European country has imposed a period of seven years before an entitlement to vote in municipal elections can be granted.

*Extension of the period for qualifying for naturalisation from five years to seven years* is in contravention of Article 6(4) of the European Convention on Nationality. This Article requires signatories to facilitate the naturalisation of various groups, including vulnerable groups such as stateless persons and refugees. This proposal is also in contravention of Article 34 of the Refugee Convention, which requires that the Netherlands 'as far as possible facilitate the ... naturalization of refugees'. Extending the period of residence requirement can hardly be regarded as facilitation.

*Extension of the period for submitting an application for social assistance benefit from five years to seven years* is contrary to a number of international and European regulations by which the Netherlands is bound. Pursuant to Article 4(1) of Directive 2003/109, Member States must grant long-term resident status to third-country nationals who have resided legally and continuously within their territory for five years. Pursuant to Article 11(1)(d), long-term residents must enjoy equal treatment with nationals in respect of the receipt of assistance. People with asylum status are entitled to equal treatment with Dutch citizens with regard to assistance and can therefore not be required to comply with a period of residence (Article 28 of Directive 2004/83 and Article 23 of the Refugee Convention). The proposal is also contrary to Article 24 of Directive 2004/38 and possibly to Article 17 of this Directive. Moreover, Article 1 of the European Convention

on Social and Medical Assistance and Article 13(4) of the European Social Charter provide for equal treatment with regard to assistance for the citizens of the countries which, like the Netherlands, are signatories to the said agreements. These agreements also restrict the option of expulsion on the grounds of an application for social assistance alone.

As far as *termination of residence on the grounds of an application for social assistance* is concerned, it should also be borne in mind that a long-term resident cannot be expelled for economic reasons (Article 12(2) of Directive 2003/109). The policy proposal is also incompatible with Article 4(1) of Directive 2003/86 on family reunification, since the status cannot be withdrawn on the sole ground of a lack of income. Moreover, taking account of interests in accordance with Article 5(5) and Article 17 might also prevent such withdrawal. Finally, in many cases, withdrawal of the right of residence will not be possible because Article 8 ECHR is applicable.

## **8. The requirements for integration will be tightened, both in the Netherlands and abroad.**

Since 1 January 2013, the *Civic Integration Act* has become even more stringent. Failure to pass a civic integration examination may now lead, amongst other things, to the rejection of an application for renewal of a regular residence permit for a fixed period and to the withdrawal of such a residence permit. Article 16 of Directive 2003/86 does not allow a residence permit to be withdrawn or not renewed if a person fails a civic integration examination. In 2011, the Council of State said the following: '*Nor does Article 16 of the Family Reunification Directive 2003/86/EC permit the right of residence to be lost on the sole ground that the civic integration requirement has not been met.*'<sup>5</sup> This restriction was, mistakenly, not included in the new legislation.

Article 5(2) of Directive 2003/109 gives Member States the option of imposing integration conditions. This option is however not unlimited. The integration conditions must not undermine the effectiveness of the Directive and must comply with the principle of proportionality. Whether or not this is the case depends on the nature and level of the knowledge that is expected of the applicant, the knowledge of the host country, the cost of the examination, the accessibility of the integration course and tests and the comparison between the integration requirements that apply to a prospective long-term resident and those that apply to a prospective national.<sup>6</sup> Now that, since the start of 2013, the financial responsibility for civic integration lies fully with the migrant and the Government has stopped offering civic integration services, and, as a result, the accessibility and availability of courses has come under pressure, the Dutch policy is increasingly inconsistent with Directive 2003/109. The halving of the number of applications for a regular residence permit for an indefinite period since the introduction of the civic integration requirement is a strong indication that this requirement is restricting the beneficial effect of Directive 2003/109.

In the *Mohammed Imran* case, the European Commission made it clear that the Dutch policy of refusing to grant an mvv (provisional residence permit) if the applicant has failed the *basic civic integration abroad examination* ran counter to the Directive's objective (promoting family reunification) and to the beneficial effect of the Directive.<sup>7</sup> If an application for admission cannot be rejected on the grounds that the civic integration examination has not been passed, a residence permit cannot be withdrawn or not renewed on these grounds either (Article 16 of Directive 2003/86). The Aliens Chamber of the District Court The Hague in Den Bosch has recently followed the stance taken by the European Commission in the *Mohammed Imran* case and ruled that an application for an mvv (provisional residence permit) should not have been rejected because the family member failed the basic civic integration examination.<sup>8</sup> In the meantime, the Berlin Administrative Court has asked the European Court of Justice to rule on whether the German language test abroad, which imposes a similar condition on the applicant, is compatible with Directive 2003/86.<sup>9</sup> Even if a test of this type is permissible, Member States are still required to weigh up the interests involved in accordance with Article 5(5) and Article 17 of the Directive and to apply the principle of proportionality enshrined in EU law. An almost automatic rejection on the grounds of failure to pass the basic examination

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<sup>5</sup> TK 33086, no. 4, p. 9.

<sup>6</sup> Commission report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

<sup>7</sup> Commission's written observations in Case C-155/11 PPU (*Mohammed Imran*), 4 May 2011.

<sup>8</sup> Court of The Hague, Den Bosch subsidiary court, 23 November 2012, LJN: BY4171.

<sup>9</sup> Berlin Administrative Court, 25 October 2012, VG 29 K 138.12 V.

does not meet the requirement that the interests involved be carefully considered and may therefore also result in the violation of Articles 7 and 24 of the Charter and Article 8 ECHR.

The current Civic Integration Act and Civic Integration Abroad Act will not withstand scrutiny under EU law. The proposed tightening up of integration requirements will only increase the inconsistencies with EU law, particularly with the two aforementioned directives and with the provisions of the EU Charter of Fundamental Rights.

## **9. Family reunification policy for persons granted international protection**

The deadline of three months for the submission of an application for family reunification has been retained. This statutory provision was intended to allow the family members of those entitled to international protection to be reunited quickly with each other since, objectively speaking, their right to a family life cannot be exercised in the country of origin. However, the rigorous deadline of three months after the granting of asylum status and the stringent conditions of the regular procedure for family reunification to which those entitled to international protection are condemned if they fail to submit an application for family reunification within this period will in practice mean that families will remain apart for years or even permanently.<sup>10</sup> This may be contrary to Article 8 ECHR (the right to a family life), Article 7 and Article 24(3) of the EU Charter of Fundamental Rights (the right to a family life and the right of the child to have contact with their parents), Article 10 of the International Convention on the Rights of the Child (the right to rapid family reunification) and the Annex to the Refugee Convention.

In the opinion of the Meijers Committee, there is now even more reason to review the policy in respect of the family reunification deadline following the ECHR's recent ruling, in the *Hode and Abdi* case<sup>11</sup> that, when attaching conditions to the exercising of the right to a family life, the making of a distinction between refugees that formed a family before they fled from their country of origin (family reunification) and those that did so at a later date (family formation) cannot be justified by the fulfilment of an international obligation.

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<sup>10</sup> See also the report 'Hoelang duurt het nog voordat we naar onze moeder kunnen? Barrières bij de gezinshereniging van vluchtelingen' [How long will it be before we can see our mother? Barriers to the family reunification of refugees], Defence for Children NL and Vluchtelingen Werk Nederland [Dutch Council for Refugees], October 2012.

<sup>11</sup> ECHR, *Hode and Abdi v. the United Kingdom*, no. 22341/09, 8 November 2012.