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Press and Information

Advocate General's Opinion in Joint Cases C-316/16 and C-424/16
B v Land Baden-Württemberg and Secretary of State for the Home Department v Franco Vomero

According to Advocate General Szpunar, the acquisition of a right of permanent residence is a prerequisite of an EU citizen being able to qualify for enhanced protection against expulsion

The period of 'ten years' for which a citizen must, if he is to be protected against expulsion, have resided in a Member State other than his own may include periods of absence or of imprisonment provided that one of those periods has not had the effect of breaking integrative links with that Member State

Under the directive on free movement and residence,[1] EU citizens who have resided in a Member State other than their own (the host Member State) for a continuous period of five years are to acquire a right of permanent residence in that State. In that context, the host Member State may not take an expulsion decision against an EU citizen who has acquired a right of permanent residence on its territory, except on serious grounds of public policy or public security.

Similarly, an expulsion decision may not be taken against an EU citizen who has resided in the host Member State for 'the previous ten years', unless the decision is based on imperative grounds of public security, as defined by that State.

Case C-424/16 *Vomero*

In 1985 Mr Franco Vomero, an Italian national, moved to the UK with his wife, a British national. The couple separated in 1998. Mr Vomero then left the marital home and moved into accommodation with a Mr Mitchell.

On 1 March 2001, Mr Vomero killed Mr Mitchell. In 2002 he was convicted of manslaughter and sentenced to eight years' imprisonment. He was released in July 2006.

By decision of 23 March 2007, confirmed on 17 May 2007, the Secretary of State for the Home Department decided to expel Mr Vomero, under the provisions of the Immigration (European Economic Area) Regulations 2006.[2] With a view to his being expelled, Mr Vomero was detained until December 2007.

The Supreme Court of the UK, before which an appeal against the Secretary of State's decision is pending, considers that Mr Vomero had not acquired a right of permanent residence before he became the subject of the measure for his removal. However, that court observes that Mr Vomero has resided on the territory of the UK since 3 March 1985, so that it can be assumed that he has resided in that Member State 'for the previous ten years' for the purposes of the directive.

[1] Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77), as amended by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 (OJ 2011 L 141, p. 1, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).
[2] Immigration (European Economic Area) Regulations 2006 (SI 2006/1003)

The Supreme Court of the UK, in essence, asks the Court of Justice whether an EU citizen must, if he is to qualify for the protection against expulsion provided for by the directive, necessarily have acquired a right of permanent residence. In the event that the Court were to answer in the negative, the Supreme Court asks the Court to rule on the interpretation of the expression 'the previous ten years' and, in particular, to determine whether periods of absence and of imprisonment are capable of being regarded as periods of residence for the purposes of calculating those ten years.

Case C-316/16 *B*

B is a Greek national born in 1989. In 1993, at the age of three, after his parents separated, he arrived in Germany with his mother. She has worked in that Member State since their arrival and possesses, in addition to Greek nationality, German nationality.

With the exception of short holiday periods and a brief period of two months when B was taken to Greece by his father against the wishes of his mother, B has resided continuously in Germany since 1993.

In 2013 B held up an amusement arcade, armed with a gun loaded with rubber bullets, with the intention of obtaining money. B was convicted and sentenced to a period of imprisonment of five years and eight months.

By decision of 25 November 2014, the German authority responsible for foreign nationals decided that B. had lost his right of entry to, and residence in, Germany.

B brought an action against that decision. He claims that, as he has resided in Germany since the age of three and has no ties to Greece, he qualifies for the enhanced protection against expulsion provided for by the directive. Further, he considers that the offence he committed does not fall within the scope of 'imperative grounds of public security' for the purposes of the directive.

The action having come before it, the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg, Germany) considers that the act committed by B cannot be regarded as falling within the scope of 'imperative grounds of public security' for the purposes of the directive. From that perspective, B could therefore qualify for enhanced protection against expulsion. However, the Verwaltungsgerichtshof Baden-Württemberg is uncertain as to whether that protection can be granted to B, in that he has been prison since 12 April 2013. That being the case, the Verwaltungsgerichtshof Baden-Württemberg asks the Court whether the long-term settlement of a EU citizen in a host Member State and the absence of any link with the Member State of which that citizen is a national are factors of sufficient weight to establish that the person concerned may qualify for enhanced protection for the purposes of the directive.

In today's Opinion, Advocate General Maciej Szpunar considers first that **the degree of integration of an EU citizen in the host Member State is a key aspect of the system of protection against expulsion safeguarded by the directive**, since the level of protection is proportionate to the extent of that citizen's integration in the Member State concerned. The Advocate General concludes that it is not possible to qualify for the higher level of protection without first reaching the degree of integration necessary in order to qualify for the lower level of protection.

The Advocate General states that a host Member State may not take an expulsion decision against an EU citizen who has acquired a right of permanent residence on its territory, in other words, a person who has resided legally in that State for a continuous period of five years, except on serious grounds of public policy or public security. That protection is one of the advantages flowing from the right of permanent residence, since for the holder of that right the conditions that have to be satisfied, if his residence on the territory of the host Member State is to be classified as legal, are less stringent. In particular, the holder of a right of permanent residence is protected against expulsion even if he is a burden on the social assistance system of the host Member State.

In the view of the Advocate General, **an approach whereby the right of residence does not constitute a prerequisite of qualifying for enhanced protection against expulsion would make the system of protection provided for by the directive plainly incoherent**. Such an approach would mean that a person who has resided in the host Member State for the previous ten years could normally not be removed other than on imperative grounds of public security, but that he could also, paradoxically, be removed whenever he became an unreasonable burden on the social assistance system of that State. **Consequently, the Advocate General considers that the Court's answer should be that the acquisition of a right of permanent residence is a prerequisite of being able to qualify for enhanced protection.**

Next, the Advocate General examines the method of calculating the period corresponding to the 'previous ten years'. He observes that that period must, in principle, be continuous, provided that the continuity of the period must not be equated to a complete prohibition of absences, since it would be contrary to the objective of free movement of persons to deter citizens from making use of their freedom of movement. The Advocate General considers that, in its case-law, the Court has rather adopted the concept of an overall assessment, which must be carried out only when the question of the continuity of residence during the previous ten years arises. Such an approach makes it possible to ensure the genuine enjoyment of free movement rights without imposing an unrealistic requirement, namely the unconditional continuity of presence in the host Member State.

The Advocate General considers therefore that **in order to establish to what extent periods in which an EU citizen is not present on the territory of the host Member State interrupt residence** and prevent the person concerned from qualifying for enhanced protection, **an overall assessment must be made of the integrative links of the person concerned with the host Member State**.

Further, if the integration, on which the system of protection against expulsion under the directive is based, is to be assessed according to the location of the centre of the personal, family or professional interests of the EU citizen in the territory of a Member State (implying the existence of a genuine link with that Member State), the imprisonment of that citizen allows doubt to be cast on his integration in that Member State. A period of imprisonment is tantamount to a forced presence on the territory of the host Member State.

However, the Advocate General considers that there can be no justification for not **including periods of imprisonment in the overall assessment.** The Advocate General notes, in particular, that an exclusion of periods of imprisonment from the assessment of integrative links would run counter to the Member States' current penal policy, according to which the rehabilitation of offenders, enabling them to reestablish their place in society after detention, is a basic function of the sentence.

Consequently, **the Advocate General proposes that the expression 'the previous ten years' must be interpreted as referring to a continuous period, calculated by looking back from the precise time when the question of expulsion arises, that includes any periods of absence or imprisonment, provided that none of those periods of absence or imprisonment has had the effect of breaking the integrative links with the host Member State**.

Last, the Advocate General considers that the overall assessment of integrative links cannot be confined solely to the criteria of long-lasting settlement in the host Member State and the absence of any link with the Member State of origin. That assessment must instead take account of all the relevant factors of the individual case and must take place at the time when the authorities are ruling on the expulsion decision.

The relevant factors should include, according to the Advocate General, the nature of the offence that led to a conviction and the enforcement of a sentence of imprisonment, the circumstances in which that offence was committed and other factors not directly related to the prison sentence. The Advocate General adds that the stronger the integrative links (particularly in relation to the circumstances prior to imprisonment), the more disruptive the period that interrupts the continuity

of residence must be if the person concerned is not to qualify for the enhanced protection against expulsion.

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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