



Press and Information

Court of Justice of the European Union
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Judgment in Case C-636/16
Wilber López Pastuzano v Delegación del Gobierno en Navarra

A decision may not be adopted to expel a third-country national who is a long-term resident for the sole reason that he or she has been sentenced to a term of imprisonment of more than one year

A Colombian national, who was granted a long-term residence permit in Spain in 2013, was later sentenced to two terms of imprisonment, one of 12 months and one of 3 months, and consequently sent to jail in 2015. Administrative expulsion proceedings were subsequently initiated against him. On 29 June 2015, the Government Delegation in Navarra (Spain) adopted a decision ordering the expulsion of the Colombian national from Spanish territory. That decision was accompanied by a ban on entry into Spain for a period of five years and the withdrawal of his long-term residence permit.

The directive concerning the status of third-country nationals who are long-term residents¹ provides that long-term residents should enjoy reinforced protection against expulsion. Accordingly, Member States may take a decision to expel long-term residents solely when they constitute an actual and sufficiently serious threat to public policy or public security. Before taking a decision to expel a long-term resident, Member States are to have regard to a number of factors: the duration of residence in their territory, the age of the person concerned, the consequences for the person concerned and family members, and the links with the country of residence or the lack of links with the country of origin.

The Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Administrative Court No 1, Pamplona, Spain) notes that, in the Spanish legal system, there are two different sets of rules relating to the administrative expulsion of a foreign national, namely, first, expulsion as a penalty imposed on a person committing certain administrative offences, and, second, expulsion as a legal consequence stemming from a conviction for wilful misconduct to a term of imprisonment of more than one year. That court notes that, with regard to long-term residents in Spain, according to the case-law of some national courts, the reinforced protection against the penalties of expulsion must be granted solely in the case of decisions to expel adopted as a penalty for certain administrative offences and not in the case of decisions adopted against a long-term resident sentenced to a term of imprisonment of more than one year. The Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Administrative Court No 1, Pamplona) asks the Court of Justice, in essence, whether the directive precludes that case-law.

By today's judgment, the Court of Justice declares that the directive precludes legislation of a Member State which, as interpreted by some of the courts of that Member State, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.

¹ 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).

First of all, the Court recalls that the principal purpose of the directive is the integration of third-country nationals who are settled on a long-term basis in the Member States and who should, to that end, enjoy reinforced protection against expulsion.

Next, the Court notes that, before taking a decision to expel a third-country national who is a long-term resident, Member States are to have regard to the duration of residence in their territory, the age of the person concerned, the consequences for the person concerned and family members and links with the country of residence or absence of links with the country of origin. It finds **that it is therefore irrelevant whether such a measure has been delivered in the form of an administrative penalty or whether it is the result of a criminal conviction.**

The Court also pointed out that the adoption of an expulsion measure may not be ordered automatically following a criminal conviction, but rather requires assessment on a case by case basis, which must, in particular, have regard to the matters mentioned. Consequently, **a decision to expel may not be adopted against a third-country national who is a long-term resident for the sole reason that he or she has been sentenced to a term of imprisonment of more than one year in duration.**

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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