Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 March 2024*

(Reference for a preliminary ruling – Immigration policy – Status of third-country nationals who are long-term residents – Directive 2003/109/EC – Articles 12 and 22 – Reinforced protection against expulsion – Applicability – Third-country national residing in the territory of a Member State other than the one which had granted him long-term resident status – Decision taken by that other Member State on grounds of public policy and public security to remove the person concerned to the Member State which had granted him that status – Temporary ban on entering the territory of that other Member State imposed by that other Member State – Breach of the obligation to apply to that other Member State for a residence permit in accordance with the provisions of Chapter III of Directive 2003/109 – Decision taken by that Member State on the same grounds to remove that third-country national to his country of origin)

In Case C-752/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 2 December 2022, received at the Court on 9 December 2022, in the proceedings

EP

v

Maahanmuuttovirasto,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, F. Biltgen, N. Wahl, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Finnish Government, by A. Laine and H. Leppo, acting as Agents,

* Language of the case: Finnish.

– the European Commission, by A. Katsimerou and T. Sevón, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(1) and (3) and Article 22(3) of 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), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1) ('Directive 2003/109').

2 The request has been made in proceedings between EP, a Russian national with long-term resident status granted to him by the Republic of Estonia, and the Maahanmuuttovirasto (Immigration Service, Finland) ('the Immigration Service') concerning a decision by the Immigration Service to remove EP from Finland to Russia on grounds of public policy and public security.

Legal context

European Union law

Directive 2003/109

3 Recitals 4, 6, 16 and 21 of Directive 2003/109 state:

'(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.

…

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. …

…

(16) Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion Member States should provide for effective legal redress.

…

(21) The Member State in which a long-term resident intends to exercise his/her right of residence should be able to check that the person concerned meets the conditions for residing in its territory. It should also be able to check that the person concerned does not constitute a threat to public policy, public security or public health.'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive determines:

(a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and

(b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.'

5 Article 2 of that directive, entitled 'Definitions', is worded as follows:

'For the purposes of this Directive:

…

(b) "long-term resident" means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

(c) "first Member State" means the Member State which for the first time granted long-term resident status to a third-country national;

(d) "second Member State" means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence.

…'

6 Article 3 of that directive, entitled 'Scope', provides, in paragraph 1:

'This Directive applies to third-country nationals residing legally in the territory of a Member State.'

7 Chapter II of Directive 2003/109, comprising Articles 4 to 13, contains a set of rules relating to long-term resident status in a Member State, particularly as regards the conferral and loss of that status.

8 Under Article 12 of that directive, entitled 'Protection against expulsion':

'1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

…

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

…’

9 Chapter III of Directive 2003/109, entitled ‘Residence in the other Member States’, comprises Articles 14 to 23.

10 Article 14(1) of that directive states:

‘A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.’

11 Article 15 of Directive 2003/109, entitled ‘Conditions for residence in a second Member State’, provides, in paragraph 1:

‘As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

…’

12 Article 17 of that directive, entitled ‘Public policy and public security’, provides, in paragraph 1:

‘Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.’

13 Article 22 of that directive, entitled ‘Withdrawal of residence permit and obligation to readmit’, states:

‘1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

(a) on grounds of public policy or public security as defined in Article 17;

(b) where the conditions provided for in Articles 14, 15 and 16 are no longer met;

(c) where the third-country national is not lawfully residing in the Member State concerned.

2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.

3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the [European] Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security.

In such cases, when adopting the said decision the second Member State shall consult the first Member State.

When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision.

…

4. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

5. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.'

Directive 2008/115/EC

14 Article 2 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98), entitled 'Scope', provides, in paragraph 1:

'This Directive applies to third-country nationals staying illegally on the territory of a Member State.'

15 Article 3 of that directive, entitled 'Definitions', states:

'For the purpose of this Directive the following definitions shall apply:

…

2. "illegal stay" means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils … other conditions for entry, stay or residence in that Member State;

3. "return" means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

– his or her country of origin, or

– a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

– another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

4. "return decision" means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

…'

16 Article 4 of that directive, entitled 'More favourable provisions', provides, in paragraph 2:

'This Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community *acquis* relating to immigration and asylum.'

Finnish law

17 The Ulkomaalaislaki (301/2004) (Law on foreign nationals (301/2004)) of 30 April 2004 ('the Law on foreign nationals') provides, in the first subparagraph of Paragraph 11, that the entry of a foreign national is subject to the condition, inter alia, that an entry ban has not been imposed on him or her and that he or she is not considered to constitute a threat to public policy and public security.

18 Under Paragraph 146a of the Law on foreign nationals, 'return' for the purposes of that law means a removal procedure by which a third-country national who has been refused entry, or whose removal or expulsion has been ordered, either leaves the country voluntarily or is removed to his or her country of origin, to a transit country in accordance with a readmission agreement or other arrangement between the European Union or Finland and a third State, or to another third country to which the third-country national concerned decides to return voluntarily and to which he or she will be admitted.

19 The first subparagraph of Paragraph 148 of the Law on foreign nationals provides that a foreign national may be removed, in particular, if he or she fails to satisfy the conditions for entry into Finland laid down in the first subparagraph of Paragraph 11 of that law, or if there is reason to believe, on the basis of a custodial sentence or on other reasonable grounds, that he or she is going to commit an offence punishable in Finland by imprisonment or is going to commit repeated offences.

20 Under the second subparagraph of Paragraph 148 of the Law on foreign nationals, a foreign national who has entered Finland without a residence permit may also be removed if he or she requires a visa or residence permit in order to stay in Finland but has not applied for or obtained one.

21 The fourth subparagraph of Paragraph 149 of that law states that a foreign national to whom a long-term resident – EU residence permit has been issued in Finland may be expelled only if he or she constitutes an actual and sufficiently serious threat to public policy or public security.

22 Pursuant to Paragraph 149b of the Law on foreign nationals, a third-country national who is staying illegally in Finland, or whose application for a residence permit has been rejected, and who has a valid residence permit or other authorisation offering a right to stay issued by another Member State of the European Union, is required to return immediately to the other Member State concerned. If the third-country national fails to comply with that requirement, or if his or her immediate removal is necessary to ensure public policy or public security, a decision will be taken for his or her removal.

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

23 EP, a Russian national, holds a long-term resident – EU residence permit which was issued by the Republic of Estonia for the period from 12 July 2019 to 12 July 2024 and attests that he has long-term resident status in that Member State. He also holds a Russian passport valid until 26 December 2024.

24 On 9 February 2017, EP was removed from Finland to Estonia for the first time. The removal decision contained a ban on entering Finland for a period of two years.

25 EP was removed from Finland to Estonia a second time on 16 March 2017, and again on 26 November 2018. On that last date, the Immigration Service banned him from entering Finland for a further period of two years.

26 He was removed from Finland to Estonia a fourth time pursuant to a decision of the Immigration Service of 8 July 2019, which was accompanied by ban on entering Finland for a period of four years.

27 In Finland, EP received fines for two offences under the legislation on foreign nationals, a suspended 80-day prison sentence for aggravated drink driving and driving without a licence, and a fine for contravening the entry ban. He is also suspected of having committed other offences.

28 On 18 November 2019, at a hearing, EP told the Immigration Service that he objected to his removal to the Russian Federation, a country with which he has no ties other than his nationality, but that he did not object to his removal to his country of residence, Estonia, where he had resided almost his entire life. He stated that he was living in Finland temporarily and was working for two companies there, but had no other ties with Finland. He explained that his minor child was living in Estonia with his ex-wife.

29 By decision of 19 November 2019, the Immigration Service decided to expel EP to his country of origin, the Russian Federation, on the ground, inter alia, of the threat he posed to public policy and public security in Finland ('the decision at issue in the main proceedings'). That decision also banned him from entering the Schengen area for a period of four years. According to the reasons given in that decision, EP had not produced any documentary evidence of his family ties in Estonia and he did not have a residence permit entitling him to work in Finland.

30 That same day, the Immigration Service asked the Estonian authorities if they would consider withdrawing the long-term resident – EU residence permit they had issued to EP.

31 On 9 December 2019, after the Republic of Estonia had stated that it did not intend to withdraw EP's residence permit, the Immigration Service amended the decision at issue in the main proceedings so as to restrict the entry ban to Finnish territory.

32 EP's removal to Russia pursuant to that decision took place on 24 March 2020.

33 EP subsequently re-entered Finnish territory, from whence he was expelled to Estonia on 8 August 2020 and 16 November 2020.

34 Following dismissal of his action against the decision at issue in the main proceedings by judgment of the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), EP brought an appeal against that judgment before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), which is the referring court.

35 The referring court states that the Immigration Service argued in particular before it that, in the present case, Directive 2003/109, in particular Article 17 and Article 22(3) thereof, does not apply because EP was not residing legally in Finnish territory, as required by Article 3(1) of that directive. Indeed, EP was banned from entering Finnish territory and had not applied for a residence permit there after entering Finland with a long-term resident – EU residence permit issued by another Member State.

36 According to the Immigration Service, Directive 2008/115 therefore applies. Since EP's immediate departure was required for reasons of public policy and public security, a return decision was issued against him under that directive. In accordance with that directive, such a return decision can only order a person's return to a third country, not to another Member State.

37 In the light of the Immigration Service's arguments, the referring court considers, in the first place, that the provisions of Directive 2003/109 do not enable an unequivocal determination to be made as to how Article 3(1) of that directive should be interpreted in a situation such as the one at issue in the proceedings before it.

38 Although EP's stay in Estonia was lawful, on the basis of the long-term resident status granted to him by that Member State, his stay in Finland was not, since he did not apply for a residence permit there in accordance with the provisions of Chapter III of Directive 2003/109 and since he was subject to an entry ban prohibiting him from entering Finnish territory.

39 In the second place, the referring court takes the view that the Law on foreign nationals does not contain provisions expressly transposing Article 22(3) of Directive 2003/109 as regards the removal from EU territory of a third-country national holding a long-term resident – EU residence permit issued to him or her by another Member State.

40 Thus, according to the wording of the fourth subparagraph of Paragraph 149 of the Law on foreign nationals, that law applies only to foreign nationals to whom such a residence permit has been issued in Finland.

41 The question therefore arises whether Article 12(1) and (3) and Article 22(3) of Directive 2003/109 are unconditional and sufficiently precise in content, within the meaning of the Court's case-law, such that a third-country national can rely on them against a Member State.

42 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Directive 2003/109 concerning the status of third-country nationals who are long-term residents apply to the [removal] from the European Union of a person who entered the territory of a Member State during the period of validity of an entry ban imposed on him [or her], whose stay in the Member State was therefore illegal under national law and who did not apply for a residence permit in that Member State if the person has been issued with a long-term residence permit for third-country nationals in another Member State?

If the first question is answered in the affirmative:

(2) Are Article 12(1) and (3) and Article 22(3) of Directive 2003/109 concerning the status of third-country nationals who are long-term residents, so far as their subject matter is concerned, so unconditional and sufficiently precise that they can be relied upon by a third-country national against a Member State?'

Consideration of the questions referred

The first question

43 By its first question, the referring court asks, in essence, whether Article 22(3) of Directive 2003/109 must be interpreted as meaning that the reinforced protection against expulsion which third-country nationals who are long-term residents enjoy under that provision is applicable in the context of the adoption, by the second Member State, within the meaning of Article 2(d) of that directive, of a decision to remove such a third-country national from EU territory on grounds of public policy or public security, where his or her stay on the territory of that Member State is in breach of an entry ban on that territory and he or she has not applied to the competent authorities of that Member State for a residence permit in accordance with the provisions of Chapter III of that directive.

44 As a preliminary point, it should be recalled, in the first place, that the right of residence in the 'second Member State', within the meaning of Article 2(d) of Directive 2003/109, is derived from long-term resident status in the 'first Member State', within the meaning of Article 2(c) of that directive (see, to that effect, judgment of 29 June 2023, *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)*, C-829/21 and C-129/22, EU:C:2023:525, paragraph 44).

45 In the second place, it should be noted that, as stated in recital 16 of Directive 2003/109, long-term residents should enjoy 'reinforced protection against expulsion' based on the criteria determined by the decisions of the European Court of Human Rights.

46 In the third place, it is certainly true, as the Immigration Service argued in particular before the referring court, that since, in the present case, EP was banned from entering Finnish territory and had not applied for a residence permit there after entering Finland with a long-term resident – EU residence permit issued by another Member State, his stay on that territory was unlawful under Finnish law.

47 However, it does not follow that, in the present case, Directive 2003/109 does not apply because the third-country national concerned does not reside legally in the territory of a Member State, as required by Article 3(1) of that directive, and that, consequently, he does not fall within the scope of that directive.

48 Since the third-country national concerned has long-term resident status in the Republic of Estonia, he has the right to reside in the 'territory of a Member State' within the meaning of Article 3(1), namely Estonian territory.

49 In the fourth place, as the Advocate General also observed, in essence, in points 37 to 39 of his Opinion, the removal from EU territory of a third-country national who is a long-term resident, such as the person concerned in the main proceedings, falls within the scope of Directive 2003/109 and not that of Directive 2008/115.

50 Since the provisions of Directive 2003/109 which establish reinforced protection against expulsion for third-country nationals who are long-term residents are undoubtedly 'more favourable' for such third-country nationals than the provisions on removal laid down in Directive 2008/115, it is those former provisions which apply, under Article 4(2) of Directive 2008/115, to the removal from EU territory of a third-country national who is a long-term resident, such as the person concerned in the main proceedings.

51 Having made those preliminary observations, it should be recalled that, according to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context and the objectives and purpose pursued by the act of which it forms part (judgment of 21 September 2023, *Staatssecretaris van Justitie en Veiligheid (Diplomatic card)*, C-568/21, EU:C:2023:683, paragraph 32 and the case-law cited).

52 As regards, first of all, the wording of Article 22(3) of Directive 2003/109, it is apparent from that provision that it imposes four conditions on the second Member State when it intends to adopt a decision to remove from EU territory a third-country national who has long-term resident status in another Member State.

53 In the first place, that third-country national need not have acquired long-term resident status in the second Member State. If he or she enjoyed that status in the second Member State, it would be the provisions of Chapter II of Directive 2003/109 which would apply, including in relation to removal. In the second place, that Member State is required to act 'in accordance with and under the guarantees of Article 12' of that directive. In the third place, such a removal decision may be taken only on 'serious grounds of public policy or public security'. In the fourth and last place, when taking such a removal decision, the second Member State is required to consult the first Member State and take all the appropriate measures to implement that decision effectively, and it is also required to provide the first Member State with appropriate information concerning that implementation.

54 It is clear that the wording of Article 22(3) of Directive 2003/109 does not provide a basis for interpreting that provision in such a way that the reinforced protection against expulsion which it lays down does not apply where a third-country national with long-term resident status in the first Member State is staying on the territory of the second Member State in breach of an entry ban and where he or she has not applied to the competent authorities of that second Member State for a residence permit in accordance with the provisions of Chapter III of that directive.

55 In that regard, it is true that the heading of Article 22 of Directive 2003/109, namely 'Withdrawal of residence permit and obligation to readmit', and the reference in Article 22(1) to the power of the second Member State to refuse to renew or to withdraw a residence permit granted in accordance with the provisions of Chapter III of that directive, might suggest that Article 22 is concerned only with a situation relating to the withdrawal or non-renewal of such a residence permit.

56 It must be stated that the wording of Article 22(3) of Directive 2003/109 does not refer to the grant of a residence permit in the second Member State and that it is sufficiently broad to cover a situation such as that at issue in the main proceedings in which the second Member State adopts a decision to remove from EU territory a third-country national who is a long-term resident, where he or she has not applied to that Member State for a residence permit in accordance with the provisions of Chapter III of that directive and is therefore not in possession of such a residence permit.

57 Next, as regards the context of Article 22(3) of Directive 2003/109, it should be noted that that provision must be understood in the light of the arrangements for reinforced protection against expulsion which third-country nationals who are long-term residents enjoy under Article 22.

58 Those arrangements for reinforced protection comprise, in the first place, Article 22(1) of Directive 2003/109, which lays down rules, in particular, on the removal from the territory of the second Member State of third-country nationals with long-term resident status on the grounds listed therein.

59 They also comprise, in the second place, Article 22(3) of that directive, which, as was pointed out in paragraphs 52 and 53 above, imposes four conditions that, if satisfied, allow that Member State to adopt a decision to remove such a third-country national from EU territory.

60 In the third place, the arrangements for reinforced protection include transversal provisions, namely, Article 22(2) and (5) of Directive 2003/109, which, in the event of removal by the second Member State of a long-term resident and his or her family members, requires the first Member State to readmit them 'immediately … without formalities', while allowing them to move to a 'third Member State', and Article 22(4) of that directive, which precludes removal decisions of the kind referred to in Article 22(1)(b) and (c) thereof from being accompanied by a 'permanent ban on residence'.

61 It is true that, as was observed in paragraph 54 above, the wording of Article 22(3) of Directive 2003/109 does not provide a basis for an interpretation whereby the reinforced protection against expulsion which it establishes does not apply to a situation such as that at issue in the main proceedings. However, the same cannot be said of the wording of Article 22(1)(b) and (c) of that directive, since it expressly refers to those two circumstances as grounds justifying the adoption, in respect of such a third-country national, of a decision to remove him or her from the territory of that Member State.

62 First, Article 22(1)(b) of Directive 2003/109, in so far as it refers, in particular, to a breach of the conditions laid down in Article 15 of that directive, permits the adoption of such a removal decision where the obligation established by Article 15(1) is not met, namely the obligation requiring a third-country national who is a long-term resident to apply to the competent authorities of the second Member State for a residence permit as soon as possible and no later than three months after entering the territory of that Member State.

63 Second, Article 22(1)(c) of Directive 2003/109, in so far as it refers to the situation in which a third-country national 'is not lawfully residing' in the second Member State as a ground enabling the justification that that Member State adopts a decision to remove that third-country national from its territory, covers the situation of a stay on that territory in breach of an entry ban on that territory.

64 Furthermore, the express reference, in Article 22(1) of Directive 2003/109, to those two circumstances mentioned in points (b) and (c) of that provision as grounds able to justify the adoption of a decision to remove from the territory of the second Member State a third-country national who is a long-term resident supports the conclusion already drawn from the wording of Article 22(3) of that directive that the existence of those circumstances does not have the effect of disapplying the latter provision.

65 As regards, in particular, the ground relating to failure by the long-term resident, in breach of Article 15(1) of Directive 2003/109, to apply to the competent authorities of the second Member State for a residence permit, it is true, as has already been pointed out in paragraph 55 above, that the wording used in Article 22(1) of that directive, namely the reference in that latter provision to the second Member State's power to refuse to renew or to withdraw a residence permit granted in accordance with the provisions of Chapter III of that directive, might suggest that Article 22(1) is concerned only with the withdrawal or non-renewal of such a permit.

66 However, the fact remains that Article 22(1) expressly refers not only to measures by the second Member State refusing to renew or withdrawing a residence permit granted in accordance with the provisions of Chapter III, but also to other measures such as, specifically, decisions to remove the person concerned from the territory of that Member State.

67 Those various contextual factors confirm the conclusion, drawn from consideration of the wording of Article 22(3) of Directive 2003/109, that the applicability of the reinforced protection against expulsion from EU territory established by that provision is not precluded by the fact that the person concerned is staying on the territory of the second Member State in circumstances where he or she is banned from entering that territory and has not applied to the competent authorities of that Member State for a residence permit in accordance with the provisions of Chapter III of that directive within the prescribed period.

68 Finally, such a literal and contextual interpretation of Article 22(3) of Directive 2003/109 is also borne out by the purpose of that provision.

69 That interpretation, in so far as it is based on a delimitation of the respective scopes of paragraphs 1 and 3 of Article 22 of Directive 2003/109, depending on whether the case involves removal from the territory of the second Member State or removal from EU territory and the resulting reinforced protection against expulsion in its different permutations, makes it possible to avoid loopholes in the arrangements for 'reinforced protection against expulsion' which Article 22 of that directive seeks to achieve, as is apparent from recital 16 thereof, and, therefore, also ensures that those arrangements are effective.

70 That interpretation thus ensures that a third-country national enjoys that reinforced protection even if he or she is staying on the territory of the second Member State in breach of an entry ban on that territory and has not applied to the competent authorities of that Member State for a residence permit in accordance with the provisions of Chapter III of that directive.

71 In the light of all the foregoing considerations, the answer to the first question is that Article 22(3) of Directive 2003/109 must be interpreted as meaning that the reinforced protection against expulsion which third-country nationals who are long-term residents enjoy under that provision is applicable in the context of the adoption, by the second Member State, within the meaning of Article 2(d) of that directive, of a decision to remove such a third-country national from EU territory taken on grounds of public policy or public security, where, first, his or her stay on the territory of that Member State is in breach of an entry ban on that territory, and, second, he or she has not applied to the competent authorities of that Member State for a residence permit in accordance with the provisions of Chapter III of that directive.

The second question

72 By its second question, the referring court asks, in essence, whether Article 12(3) and Article 22(3) of Directive 2003/109 must be interpreted as meaning that they allow a third-country national who is a long-term resident to rely on those provisions against the second Member State, within the meaning of Article 2(d) of that directive, where that Member State intends to take a decision to remove that third-country national from EU territory on grounds of public policy or public security.

73 In that regard, it should be recalled that, according to settled case-law, whenever provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon by individuals against a Member State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (judgment of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato (Municipality of Ginosa)*, C-348/22, EU:C:2023:301, paragraph 62 and the case-law cited).

74 The Court has stated that a provision of EU law is, first, unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States other than the measure transposing it into national law and, second, sufficiently precise to be relied on by an individual and applied by a court where it sets out an obligation in unequivocal terms (judgment of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato (Municipality of Ginosa)*, C-348/22, EU:C:2023:301, paragraph 63 and the case-law cited).

75 In the present case, it is apparent from the order for reference that Article 12(3) and Article 22(3) of Directive 2003/109 have not been expressly transposed into Finnish law.

76 However, in the light of the case-law cited in paragraphs 73 and 74 above, it must be held that those provisions are capable of producing a direct effect to the advantage of the third-country nationals concerned. Those provisions are unconditional and sufficiently precise in that, without imposing any condition or necessitating the adoption of additional measures, they unequivocally require the second Member State, when it takes a decision to remove from EU territory a third-country national who is a long-term resident on grounds of public policy or public security, to ensure compliance with the various conditions and guarantees established by those provisions in favour of such a third-country national and which are in keeping with the objective of reinforced protection against expulsion pursued by Directive 2003/109.

77 The same is true of both Article 22(3) of Directive 2003/109, which, as recalled in paragraphs 52 and 53 above, imposes, in essence, four specific conditions on the second Member State when it adopts a decision to remove from EU territory a third-country national who is a long-term resident, and Article 12(3) of that directive, since the latter provision lists four factors which Article 22(3) categorises as 'guarantees' and which the Member States concerned must take into account when adopting such a removal decision, namely the duration of residence in their territory, the age of the person concerned, the consequences for the person concerned and his or her family members, and the links with the country of residence or the absence of links with the country of origin.

78 Therefore, since those different conditions and guarantees are laid down by provisions which must be regarded, so far as their subject matter is concerned, as unconditional and sufficiently precise, it follows that, in accordance with the principle enshrined in the case-law cited in paragraph 73 above, individuals may rely on them against a Member State.

79 In the light of the foregoing, the answer to the second question is that Article 12(3) and Article 22(3) of Directive 2003/109 must be interpreted as meaning that they allow a third-country national who is a long-term resident to rely on those provisions against the second Member State, within the meaning of Article 2(d) of that directive, where that Member State intends to take a decision to remove that third-country national from EU territory on grounds of public policy or public security.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

1. **Article 22(3) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011,**

   must be interpreted as meaning that the reinforced protection against expulsion which third-country nationals who are long-term residents enjoy under that provision is applicable in the context of the adoption, by the second Member State, within the meaning of Article 2(d) of that directive, of a decision to remove such a third-country national from the territory of the European Union taken on grounds of public policy or public security, where, first, his or her stay on the territory of that Member State is in breach of an entry ban on that territory, and, second, he or she has not applied to the competent authorities of that Member State for a residence permit in accordance with the provisions of Chapter III of that directive.

2. **Article 12(3) and Article 22(3) of Directive 2003/109, as amended by Directive 2011/51,**

   must be interpreted as meaning that they allow a third-country national who is a long-term resident to rely on those provisions against the second Member State, within the meaning of Article 2(d) of that directive, where that Member State intends to take a

decision to remove that third-country national from the territory of the European Union on grounds of public policy or public security.

[Signatures]