Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

11 June 2020*

(Reference for a preliminary ruling — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 12 — Adoption of a decision to expel a long-term resident — Elements to be taken into consideration — National case-law — Failure to take those elements into consideration — Compatibility — Directive 2001/40/EC — Mutual recognition of decisions on the expulsion of third-country nationals — Relevance)

In Case C-448/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha, Spain), made by decision of 15 May 2019, received at the Court on 12 June 2019, in the proceedings

WT

v

Subdelegación del Gobierno en Guadalajara,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, M. Vilaras (Rapporteur), President of the Fourth Chamber, and K. Jürimäe, Judge,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– WT, by A. García Herrera and A. Abeijón Martínez, abogados,

– the Spanish Government, initially by J. García-Valdecasas Dorrego and subsequently by S. Jiménez García, acting as Agents,

– the European Commission, by S. Pardo Quintillán and C. Cattabriga, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Spanish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12 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), read in conjunction with Council Directive 2001/40/EC of 28 May 2001 concerning the mutual recognition of decisions on the expulsion of third-country nationals (OJ 2001 L 149, p. 34).

2 The request has been made in proceedings between WT and the Subdelegacion del Gobierno en Guadalajara (Government Representation in Guadalajara, Spain) concerning a decision of that authority ordering WT to be expelled from Spanish territory.

Legal context

European Union law

Directive 2003/109

3 Article 12 of Directive 2003/109, entitled 'Protection against expulsion', provides in paragraphs 1 and 3 thereof:

'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.'

Directive 2001/40

4 It is apparent from Article 1(1) of Directive 2001/40 that the purpose of the directive is to enable an expulsion decision taken by a competent authority of a Member State to be recognised against a third-country national who is in the territory of another Member State.

5 Article 3(1) of that directive provides:

‘The expulsion referred to in Article 1 shall apply to the following cases:

(a) a third country national is the subject of an expulsion decision based on a serious and present threat to public order or to national security and safety, taken in the following cases:

– conviction of a third country national by the issuing Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year,

…’

Spanish law

6 The Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social (Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration) of 11 January 2000 (BOE No 10, 12 January 2000, p. 1139), in the version applicable to the main proceedings (‘Law 4/2000’), governs, in Title III thereof, ‘offences committed by foreign nationals and associated penalties’.

7 Article 57, which forms part of that title, is worded as follows:

‘1. Where an offender is a foreign national and commits offences which may be classified as very serious or serious, within the meaning of Article 53(1)(a), (b), (c), (d) and (f) of this law, having regard to the principle of proportionality, it is possible to order removal from Spanish territory, instead of a fine, following the appropriate administrative procedure and by means of a reasoned decision which includes an assessment of the facts which constitute the offence.

2. Likewise, the foreign national’s conviction, in Spain or abroad, of wilful misconduct constituting[, in Spain,] a criminal offence punishable by a term of imprisonment of more than one year shall constitute a legal basis for expulsion, after the relevant procedure has been brought to a close, unless the conviction is spent.

…

5. Unless the offence committed is that laid down in Article 54(1)(a), or consists in the repetition, within a period of one year, of an offence of the same nature punishable by expulsion, the sanction of expulsion may not be imposed on foreign nationals who are in the following situations:

…

(b) long-term residents. Before a decision is taken to expel a long-term resident, consideration should be given to the length of time they have resided in Spain and the links created [with Spain], their age, the consequences for the person concerned and the members of their family, and the links with the country to which they are to be removed.

…’

The dispute in the main proceedings and the question referred

8 WT is a Moroccan national who holds a long-term residence permit in Spain. On 22 February 2016, when he went to the competent police authorities to complete the formalities connected with his status as an alien, the police officer handling his case noticed that WT had been sentenced, between 2011 and 2014, a number of times, including in particular to three terms of imprisonment of more than one year. Consequently, administrative expulsion proceedings were initiated against WT, during the course of which he was heard.

9 WT claimed in particular that his previous criminal convictions could not in themselves justify his expulsion from Spanish territory and that, as he had resided in that Member State for more than 10 years, he was integrated into Spanish society, of which he had also assimilated the culture. It is also in that country that he has his family and occupational ties.

10 On 26 April 2016, the Government Representation in the province of Guadalajara adopted a decision ordering WT's expulsion from Spanish territory, taking the view that the conditions for the application of the ground for expulsion laid down in Article 57(2) of Law 4/2000 were satisfied in his case.

11 WT brought an action against that decision before the Juzgado de lo Contencioso-Administrativo nº 1 de Guadalajara (Administrative Court No 1, Guadalajara, Spain). In support of his action, he reiterated, in essence, the same arguments as those previously put forward during the administrative procedure.

12 By judgment of 3 July 2017, the Juzgado de lo Contencioso-Administrativo nº 1 de Guadalajara (Administrative Court No 1, Guadalajara) dismissed WT's action as unfounded. He appealed against that judgment before the referring court, the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha, Spain), alleging infringement of Article 12 of Directive 2003/109.

13 In its request for a preliminary ruling, the referring court refers to two judgments of the Tribunal Supremo (Supreme Court, Spain), of 19 and 27 February 2019, in which that court, referring in particular to the first indent of Article 3(1)(a) of Directive 2001/40, held that foreign nationals who are long-term residents must automatically be expelled for intentional criminal offences punishable by custodial sentences of more than one year, pursuant to Article 57(2) of Law 4/2000, without applying paragraph 5 of that article.

14 The referring court, which states that it is bound by the case-law of the Tribunal Supremo (Supreme Court), is of the view that the abovementioned judgments of that court are incompatible with the provisions of Directive 2003/109, as interpreted by the Court of Justice in its judgments of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809), and of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949). That case-law of the Tribunal Supremo (Supreme Court) takes as its basis Directive 2001/40, which is purely procedural in nature, in order to draw conclusions which appear to be wrong in law.

15 The first indent of Article 3(1)(a) of that directive provides solely that an expulsion decision based on a serious and present threat to public policy or national safety and security is to be enforceable in a Member State other than that in which it was adopted, in particular where it was adopted on the basis of a conviction of the third-country national concerned, by the Member State which issued that decision, for an offence punishable by a custodial sentence of at least one year. However, that provision does not govern the circumstances in which such a decision may be adopted.

16 In those circumstances the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castilla-La Mancha) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is an interpretation such as that set out in judgments of the Tribunal Supremo (Supreme Court) No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ES:TS:2019:663), according to which, through an interpretation of [Directive 2001/40], it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a [custodial] sentence of at least one year can and should be "automatically" removed, that is to say, without it being necessary to give any consideration to his personal, family, social or employment circumstances referred to in [Directive 2003/109], compatible with Article 12 of [Directive 2003/109], and with — inter alia — the judgments of the [Court of Justice] of 8 December 2011, *Ziebell* (Case C-371/08, EU:C:2011:809), and of 7 December 2017, *López Pastuzano* (Case C-636/16, EU:C:2017:949)?'

Consideration of the question referred

17 Since the referring court refers, in the question referred for a preliminary ruling, to two judgments of the Tribunal Supremo (Supreme Court), it must be borne in mind, as a preliminary point, that, although it is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law with the legal rules of the European Union, it has jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (judgment of 26 January 2010, *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 23 and the case-law cited).

18 It follows therefrom that, in the context of the present request for a preliminary ruling, it is not for the Court to determine whether the referring court's reading of the judgments of the Tribunal Supremo (Supreme Court), which it cites in this request, is correct, nor whether those judgments infringe EU law. It is, however, for the Court to indicate to the referring court whether Article 12 of Directive 2003/109 precludes national case-law having the scope which that court ascribes to the abovementioned judgments of the Tribunal Supremo (Supreme Court).

19 Consequently, it must be held that, by its question, the referring court asks, in essence, whether Article 12 of Directive 2003/109 must be interpreted as precluding legislation of a Member State which, as interpreted by national case-law with reference to Directive 2001/40, provides for the expulsion of any third-country national who holds a long-term residence permit who has committed a criminal offence punishable by a custodial sentence of at least one year, without it being necessary to examine whether the third country national represents a genuine and sufficiently serious threat to public order or public security or to take into account the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.

20 In that regard, it should be borne in mind that, in paragraph 29 of its judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949), the Court, answering a question from a Spanish court hearing a case concerning the same provision of Spanish law as that referred to by the referring court in the present case, held that Article 12 of Directive 2003/109 must be interpreted as precluding 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.

21 It is thus clear from paragraphs 25 to 27 of that judgment of the Court, in essence, that Article 12 of Directive 2003/109 precludes a Member State from adopting a decision to expel a third-country national who is a long-term resident solely on the basis of criminal convictions against him in the past, without determining whether that third-country national represents a genuine and sufficiently serious threat to the public order or security of that Member State, or taking into account of the various factors listed in paragraph 3 of that article, namely the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.

22 The provisions of Directive 2001/40 cannot justify a different interpretation of Article 12 of Directive 2003/109.

23 As the European Commission has, in essence, pointed out in its written observations, it is clear from Article 1(1) of Directive 2001/40 that that directive relates to the recognition by a Member State of a decision ordering expulsion taken by a competent authority of another Member State against a third-country national who is in the territory of the first Member State.

24 That directive does not therefore govern the conditions for the adoption, by a Member State, of such a decision in respect of a third-country national who is a long-term resident and who is on its own territory.

25 In the light of the foregoing considerations, the answer to the question referred is that Article 12 of Directive 2003/109 must be interpreted as precluding legislation of a Member State which, as interpreted by national case-law with reference to Directive 2001/40, provides for the expulsion of any third-country national who holds a long-term residence permit who has committed a criminal offence punishable by a custodial sentence of at least one year, without it being necessary to examine whether the third country national represents a genuine and sufficiently serious threat to public order or public security or to take into account the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.

Costs

26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Ninth Chamber) hereby rules:

Article 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding legislation of a Member State which, as interpreted by national case-law with reference to Council Directive 2001/40/EC of 28 May 2001 concerning the mutual recognition of decisions on the expulsion of third-country nationals, provides for the expulsion of any third-country national who holds a long-term residence permit who has committed a criminal offence punishable by a custodial sentence of at least one year, without it being necessary to examine whether the third country national represents a genuine and sufficiently serious threat to public order or public security or to take into account the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.

[Signatures]