

**Case C-592/19**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

2 August 2019

**Referring court:**

Juzgado de lo Contencioso-Administrativo n.º 05 de Barcelona  
(Administrative Court No 5, Barcelona, Spain)

**Date of the decision to refer:**

15 July 2019

**Applicant:**

SI

**Defendant:**

Subdelegación del Gobierno en Barcelona

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**Subject matter of the main proceedings**

The main proceedings concern the rejection of an application by a third-country national for long-term resident status owing to the existence of a criminal record.

**Subject matter and legal basis of the request for a preliminary ruling**

The request for a preliminary ruling is based on Article 267 TFEU.

In essence, the purpose of the request for a preliminary ruling is to determine whether the interpretation by the Tribunal Supremo (Supreme Court) of national legislation on the granting of long-term resident status, to the effect that the existence of a criminal record is sufficient grounds for refusing that status without any requirement to take other factors into account, is compatible with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents and, in particular, with Article 4 and Article 6(1) of that directive.

## Question referred

Must Article 4 and Article 6(1) of Directive 2003/109/EC be interpreted as meaning that a criminal record, of any nature, is sufficient grounds for refusing access to long-term resident status, without any requirement to assess the duration of residence and the existence of links with the country of residence?

## Provisions of EU law cited

Provisions of EU law

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ('Directive 2003/109'): recitals 4, 6 and 8, Articles 1, 4, 6 (specifically Article 6(1)) and 7.

EU case-law

Judgment of 26 April 2012, *Commission v Netherlands*, C-508/10, EU:C:2012:243: paragraphs 65 and 75

Judgment of 18 October 2012, *Singh*, C-502/10, EU:C:2012:636: paragraphs 44 and 45

## Provisions of national law cited

Provisions of national law

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (Organic Law No 4 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration; 'OL 4/2000'): Article 32 (specifically Article 32(1) and (2)).

Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la [LO 4/2000], tras su reforma por Ley Orgánica 2/2009 (Royal Decree No 557 of 20 April 2011 approving the Regulations made under [OL 4/2000], following the reform thereof by Organic Law 2/2009; 'RD 557/2011'): Article 148(1) and Article 149(2)(f) and (3)

National case-law

Judgment of the Supreme Court of 5 July 2018 (1150/2018), which held that the mere existence of a criminal record automatically leads to refusal of long-term resident status.

Judgment 201/2016 of the Tribunal Constitucional (Constitutional Court) of 28 November 2016 (cited indirectly, in the aforementioned judgment of the

Supreme Court), which analyses the weight given to various circumstances in cases involving expulsion for having committed an offence.

**Brief summary of the facts and the main proceedings**

- 1 On 24 September 2017, SI, who holds a residence and employment permit, applied for long-term resident status. SI is employed on a permanent employment contract and registered in the social security system, to which he has contributed for 3 years, 4 months and 12 days according to his work history as at 3 January 2018.
- 2 During the application process, the Dirección General de Policía (Directorate-General of Police) issued an unfavourable opinion based on an arrest in 2013 in Barcelona for forgery of documents, without making any further inquiries as to whether that arrest gave rise to criminal proceedings. According to the certificate issued by the Registro Central de Penados (Central Criminal Records Register), SI was convicted by judgment of 17 October 2016 of forgery of public documents and sentenced to 11 months' imprisonment for offences committed in 2011. The term of imprisonment was suspended for two years from the date of the judgment, so that the sentence would definitively lapse on 17 October 2018.
- 3 By a decision of 30 October 2017, the Subdelegación del Gobierno (Spanish Government Office) in Barcelona rejected SI's application for long-term resident status, on the basis of the earlier unfavourable opinion from the police and the existence of a criminal record, which may constitute grounds for expulsion in accordance with Article 57(2) of OL 4/2000. SI lodged an internal administrative appeal against that decision, which was dismissed by a decision of 13 March 2018.
- 4 SI brought an administrative action against the latter decision, that action giving rise to the present reference for a preliminary ruling.

**The essential arguments of the parties in the main proceedings**

- 5 Before giving judgment, the referring court heard the parties on the possibility of referring a question to the Court of Justice of the European Union for a preliminary ruling. The applicant made no submissions in that regard, and the Spanish Government Office, the defendant, opposed the reference on the ground that the question had already been determined.

**Brief statement of the grounds for the request for a preliminary ruling**

*REGULATION UNDER SPANISH LAW*

- 6 Article 32 of OL 4/2000 establishes that persons who have been temporarily resident in Spain for a continuous period of five years and who satisfy the

conditions laid down in regulations are to be entitled to long-term resident status. Article 149(2)(f) of RD 557/2011 stipulates that applications for long-term resident status must be accompanied by a criminal records certificate, which must not contain any convictions for offences under Spanish law.

*DISCREPANCY IN THE CASE-LAW AND THE SUPREME COURT JUDGMENT OF 5 JULY 2018 (1150/2018)*

- 7 The provisions of national law described above have given rise to contradictory interpretations by the Spanish courts. In essence, different positions have been adopted: under a mechanistic approach, authorisation is automatically refused where the applicant has a criminal record; under an evaluative approach, the applicant's circumstances are examined on a case-by-case basis, with an assessment being made of the relevant facts and the individual's convictions in order to determine whether, at the time of the authorisation, these constitute a genuine, current threat that is sufficiently serious and affects a fundamental interest of society; in other cases it has been found that there is no need to examine an applicant's criminal record, on the ground that it is not a requirement for authorisation.
- 8 The Supreme Court gave a ruling on this question in its judgment 1150/2018 of 5 July 2018, holding that the mere existence of any criminal record meant that an application for long-term resident status must automatically be rejected.
- 9 The Supreme Court held that the fact that Article 149(2)(f) of RD 557/2011 requires the submission of a criminal records certificate which records any convictions for offences under Spanish law means that it is a requirement that the individual must not have a criminal record. It held that it was illogical for the absence of a criminal record to be a condition for temporary resident status while there was no such requirement in order to be granted a more advantageous status. It also held that that interpretation was not contrary to Directive 2003/109, concluding that third-country nationals who wished to obtain and retain long-term resident status must not constitute a threat to public policy or public security, and that the existence of a criminal record could constitute such a threat. The Supreme Court noted, basing its opinion on the case-law of the Constitutional Court and the wording of the provisions on the expulsion of long-term residents, that while in the case of expulsion there is a requirement to assess a series of circumstances, there is no express requirement for such an assessment in the case of an application for long-term resident status, and it held that it was proportionate to impose more stringent conditions and requirements on individuals seeking to obtain long-term resident status than when expelling a foreign national who already had that status.

*COMMENTS BY THE REFERRING COURT*

- 10 The referring court considers that there is clearly friction between Directive 2003/109 and the Spanish legislation, which has been highlighted in the Supreme

Court's interpretation of the Spanish legislation in the aforementioned judgment of 1150/2018.

- 11 In the referring court's view, judgment 1150/2018 of the Supreme Court grants enhanced protection to long-term residents, but not to applicants for such residence, disregarding the fact that the main condition for granting long-term resident status must be residence, as stated in recital 6 of Directive 2003/109. Although Article 6 of that directive governs the possibility of refusing that status on grounds of public policy or public security, it also states that, to that end, the Member State is to consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.
- 12 However, the interpretation given by the Supreme Court disregards the primacy which the directive confers on residence and lays down an exclusionary criterion: any criminal conviction, therefore, for a serious, less serious, or minor offence — without any assessment being carried out of the remainder of the applicant's personal circumstances as required by the second subparagraph of Article 6(1) of Directive 2003/109 — requires that the application for long-term resident status be rejected.
- 13 Consequently, it is the referring court's understanding that, if the national legislation is applied in line with the interpretation given in judgment 1150/2018 of the Supreme Court, there can be no assessment whatsoever of the applicant's personal situation and employment ties, the status of the execution of the sentence (suspended or completed), the offence committed, or any other circumstances, while the previous criminal convictions are not spent.