

Press and Information Division

PRESS RELEASE No 72/03

11 September 2003

Opinion of Advocate General Stix-Hackl in Joined Cases C-482/01 and C-493/01

*Georgios Orfanopoulos v Land Baden-Württemberg and Raffaele Oliveri v Land Baden-Württemberg*

**THE ADVOCATE GENERAL STATES HER VIEWS ON THE COMPETENCE OF MEMBER STATES TO RESTRICT THE FREE MOVEMENT OF WORKERS ON THE GROUNDS OF PUBLIC POLICY, IN PARTICULAR THE RIGHT TO EXPEL COMMUNITY CITIZENS TO ANOTHER MEMBER STATE BECAUSE THEY HAVE COMMITTED CERTAIN OFFENCES**

*In the Advocate General's view, national provisions which make it impossible to examine the circumstances of each individual case are incompatible with Community law.*

Georgios Orfanopoulos, a Greek national, entered the territory of the Federal Republic of Germany as a 13 year old in 1972 in order to join his parents. In 1978, he returned to Greece for two years in order to carry out his military service. In 1980, he re-entered Germany and, one year later, married a German national. The marriage produced three children. Mr Orfanopoulos has pursued various activities as an employed person (interrupted by long periods of unemployment). He is a drug addict, has been convicted nine times for drug-related offences and crimes of violence and has been in prison several times. His stays in rehabilitation clinics were brief as he had to be discharged on disciplinary grounds.

By decision of 28 February 2001, the Regierungspräsidium Stuttgart (Chief Executive's Office of Stuttgart District, Land Baden-Württemberg) ordered that Mr Orfanopoulos be expelled from the territory of the Federal Republic of Germany and threatened him with deportation to Greece without setting a time-limit. Mr Orfanopoulos brought an action against this decision before the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court).

Raffaele Oliveri, an Italian national, was born in Germany in 1977 and has lived there ever since. He is a drug addict and has committed several offences of theft and one offence of dealing illegally in drugs. He is therefore serving a prison sentence. He abandoned a course

of therapy. By decision of 29 August 2000, the Regierungspräsidium Stuttgart threatened Mr Oliveri with deportation to Italy without setting a time-limit. Mr Oliveri brought an action against that decision before the Verwaltungsgericht Stuttgart. By letter of 20 June 2001, the prison hospital stated that he has been infected with HIV since 1998 and has had full-blown AIDS since 2001 and claimed that he would not be able to obtain adequate treatment in Italy.

The German court is uncertain whether the expulsion orders infringe Community provisions, in particular the free movement of workers, which is laid down in the EC Treaty, and a relevant Community Directive.<sup>1</sup> It therefore referred questions to the Court of Justice of the European Communities for a preliminary ruling.

Advocate General Stix-Hackl is delivering her Opinion in this case today.

The Advocate General's Opinion is not binding on the Court. Its purpose is solely to propose to the Court, entirely independently, a legal solution to the cases brought before it.

First of all, the Advocate General observes that, in its case-law, the Court has laid down four criteria which must be satisfied in order to restrict freedom of movement on the grounds of public policy and security: first, there must be a disturbance of the public order, secondly, there must be a genuine and sufficiently serious threat which, thirdly, affects a fundamental interest of society and, fourthly, the measure taken by the Member State must be proportionate. The second and fourth criteria are at issue.

The Advocate General points out that, under the Community Directive, any measures are to be based exclusively on the personal conduct of the individual concerned. The Directive requires a present and specific threat. She states further that a previous criminal conviction may be taken into account only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to public order. The competent authorities must therefore base their decision on a prognosis of the future conduct of the person concerned. Important factors in making that prognosis are, *inter alia*, the nature and number of convictions to date, any danger of recidivism, suspension of execution of the sentence on probation and the assessment of any illnesses.

The Advocate General states that national authorities and courts must also comply with Article 8 of the European Convention on Human Rights (respect for private and family life).

When carrying out the required assessment of whether a measure is proportionate, it must be determined how long the person concerned has been resident, what knowledge he possesses of the language of his country of origin and to what extent he is integrated in Germany socially, professionally and in terms of family relations. Other relevant criteria are whether the family members can reasonably be expected to move, where social re-integration will be easier, any repeated reoffending and the actual length of any prison sentence.

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1 Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117).

Therefore, in cases such as those in the proceedings giving rise to the references for a preliminary ruling, national law may not make compulsory expulsion the legal consequence of an offence because this would preclude an examination of the circumstances of the individual case.

Furthermore, the Advocate General criticises the Land Baden-Württemberg for having, in her view, infringed the Community Directive in so far as, in cases where the Regierungspräsidium is competent to make an expulsion order, there is no "independent authority" to review all the facts and circumstances, including the *expediency* of the proposed measure, *before* a final decision is adopted, this being required by the Court's case-law.

Finally, the Advocate General examines whether national courts are under an obligation to take account of certain developments in the circumstances of the person concerned which have taken place *after* the last decision of the authority. In the case of Mr Oliveri, the outbreak of AIDS, in particular, constitutes such a development. The Advocate General states that, in this regard also, it must be examined whether there is a present threat to public order, which may require a prognosis of future conduct. When reviewing whether the expulsion of a Union citizen is lawful, it must be possible to take *recent* developments into account.

*NB: The judges of the Court of Justice of the European Communities will now begin their deliberations in this case. Judgment will be given at a later date.*

*Unofficial document, for media use only, which does not bind the Court of Justice*

*Available languages: DE, EN, FR, GR, IT and NL.*

*The full text of the opinion can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).  
In principle it will be available from midday CET on the day of delivery.*

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