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Court of Justice of the European Union

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Advocate General's Opinion in Case C-348/09
P. I. v Oberbürgermeisterin der Stadt Remscheid

According to Advocate General Bot, a Union citizen who has lived more than ten years in the host Member State can be subject to an expulsion process where his criminal conduct endangers public security

Furthermore, the fact of having concealed, by threats or duress, criminal conduct constituting a serious disturbance of public policy can deprive the perpetrator of the protection against expulsion resulting from a prolonged stay in the host Member State

The Directive on the right of citizens of the Union to move and reside freely within the territory of the Member States¹ lays down the conditions for exercising that right and its limitations on grounds of public policy, public security or public health. Thus, the host Member State cannot take an expulsion decision against a Union citizen who has acquired a permanent right of residence (at the end of a continuous period of a minimum of five years) except on serious grounds of public policy or public security. Where that citizen of the Union has resided on the territory of the host Member State for the previous 10 years, an expulsion decision may only be taken on imperative grounds of public security.

Mr I., an Italian national, has been living in Germany since 1987. By a decision of 16 May 2006, he was sentenced to a term of imprisonment of a total of seven years and six months for sexual abuse, coercion and rape of a minor daughter of his former partner (between 1990 and 2001). Mr I. has been in custody since 10 January 2006 and is due to complete his sentence on 9 July 2013.

By decision of 6 May 2008, the German court made a declaration, pursuant to German law, of forfeiture of Mr I.'s right to enter and reside, on the ground, inter alia, that he might reoffend, and ordered him to leave Germany, failing which he would be deported to Italy.

The Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land North Rhine-Westphalia, Germany), hearing the case on appeal, is, in essence, asking the Court of Justice whether the sexual abuse of a minor, sexual coercion and rape constitute 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State (Germany) for more than 10 years.

Advocate General Yves Bot firstly draws attention to the case-law of the Court², according to which actions which reach a level of intensity that might directly threaten the calm and physical security of the population as a whole or a large part of it are capable of being covered by the concept of 'imperative grounds of public security'.

According to the Advocate General, although it is indisputable in the present case that the sexual abuse of a minor, sexual coercion and rape in the family sphere constitute a particularly serious

¹ Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004, L 229, p. 35, corrigenda OJ L 229, p. 35 and OJ 2005, L 197, p. 34).

² Case [C-145/09 Tsakouridis](#) of 23 November 2010. That case concerned the fight against crime in connection with dealing in narcotics as part of an organised group.

threat to one of the fundamental interests of society, that type of act is not, however, covered by the concept of 'public security' within the meaning of the directive³.

The directive establishes a clear distinction between the concept of public policy and that of public security, the second having a higher degree of seriousness than the first, as regards preventing the enhanced protection granted to a Union citizen. Those two concepts correspond to different criminological realities. An infringement of the rules of criminal law causes a disturbance to the public policy established by the Member State, whereas the reference to the concept of public security does not derive automatically merely from the fact of having committed an offence, but from criminal conduct which is particularly serious in principle and also in its effects, which go beyond the individual harm caused to the victim or victims. Those two concepts are therefore not the same: although any conduct which creates a threat to public security by definition contravenes public policy, the opposite is not true, even if an act committed may give rise in public opinion to feelings which reflect the disturbance caused by the offence.

The Advocate General considers that the question of whether an offender, by his conduct, constitutes a threat to public security therefore depends not only on the gravity of the offence committed – which is indicated by the penalty incurred or imposed – but above all on its nature. Therefore, although Mr I. is undoubtedly a threat in the family sphere, it has not been established, by the nature of the act committed, that he is a threat to the security of the citizens of the Union, as would be the case of a particularly dangerous sexual and criminal predator, characterised by conduct such as that in the Dutroux and Fourniret cases. To decide otherwise would amount to acknowledging that only the objective seriousness of a criminal offence, determined by its penalty, constitutes justification of an expulsion measure on 'imperative grounds of public security', which would not accord with the philosophy of the directive.

Nevertheless, in the present case, Mr I. is not protected from an expulsion measure.

The Advocate General goes on to explain that **Mr I. cannot benefit from the enhanced protection against expulsion provided for by the directive, since he was not actually integrated into the society of the host Member State.**

In that respect, he states that the 'imperative grounds of public security' constitute the only exception to the protection against expulsion to which a Union citizen who has resided on the territory of the host Member State during the ten years preceding the expulsion measure is entitled. The directive contains a simple presumption of integration, which is rebutted in the present case by the acts committed by Mr I., which show that he was not actually integrated and that he cannot, therefore, benefit from that enhanced protection.

It is indisputable that if the acts, having regard to their date, had been known about since they began, Mr I. would have been prosecuted and expelled without being able to benefit from the protection provided for by the directive. The integration of a Union citizen is also based on qualitative elements and it is clear to the Advocate General that Mr I.'s conduct shows a total lack of desire to integrate into the society of the host Member State. He cannot therefore rely on the protection granted after a stay of ten years, which was not interrupted because his conduct remained hidden.

Advocate General Bot considers that an offence of that nature cannot create a right just because it has lasted a long time. Furthermore, the directive itself provides that the Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by the directive in the case of abuse of rights or fraud. It is for the Court to draw the appropriate conclusions from such fraud.

The Advocate General concludes therefore that **a Union citizen cannot rely on the right to enhanced protection against expulsion provided for by the directive where it is shown that**

³ Article 28(3) of Directive 2004/38/EC.

he is deriving that right from criminal conduct constituting a serious disturbance of the public policy of the host Member State.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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