



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 66/12

Luxembourg, 22 May 2012

Judgment in Case C-348/09

I. v Oberbürgermeisterin der Stadt Remscheid

Criminal offences covered by the concept of “particularly serious crime” referred to in the Treaty on the Functioning of the European Union may justify deporting an EU citizen, even if that person has lived for more than ten years in the host Member State

However, the issue of such a deportation order is conditional on the requirement that the personal conduct of the individual concerned must represent a genuine, present threat affecting one of the fundamental interests of that State

The directive on free movement of EU citizens¹ lays down the conditions under which that right may be exercised and the limitations which may be imposed on that right on grounds of public policy, public security or public health. Thus, the host Member State can take a decision to deport an EU citizen who has acquired a right of permanent residence (after completing a continuous period of at least five years) only on serious grounds of public policy or public security. Where a Union citizen has resided in the host Member State for the previous ten years, an expulsion decision can be taken only on imperative grounds of public security.

Mr I., an Italian national, has lived in Germany since 1987. He is single and has no children. He has never gained a school-leaving certificate or professional qualifications and has been employed in Germany only occasionally.

In 2006, the Landgericht Köln (Regional Court, Cologne) sentenced Mr I. to a term of imprisonment of seven years and six months for the sexual assault, sexual coercion and rape of a young girl, who was eight years old when the offences commenced. The acts which gave rise to the conviction took place between 1990 and 2001. Mr I., who has been in custody since 2006, is due to complete his sentence in July 2013.

By decision of 6 May 2008, the German authorities determined that Mr I. had lost the right of entry and residence under German law, on grounds relating in particular to the serious nature of the offences committed and the risk of re-offending, and ordered him to leave Germany, failing which he would be deported to Italy. Mr I. brought an action against the expulsion decision.

The Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court of North Rhine-Westphalia), before which an appeal was brought, asks the Court of Justice to interpret the term ‘imperative grounds of public security’, which may justify the expulsion of an EU citizen who has been resident in the host Member State for more than ten years.

In its judgment today, the Court points out, first of all, that it has already held² that the fight against crime in connection with dealings in narcotics as part of an organised group is capable of being covered by the concept of ‘imperative grounds of public security’.

¹ Directive 2004/38/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, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

² Case [C-145/09 Tsakouridis](#).

Next, the Court states that the concept of ‘imperative grounds of public security’ presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as reflected by the use of the words ‘imperative grounds’.

Member States essentially retain the freedom to determine the requirements of public security in accordance with their national needs – which can vary from one Member State to another and from one era to another – particularly as justification for a derogation from the fundamental principle of free movement of persons. However, those requirements must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by EU institutions.

The Court points out that, in order to determine whether offences such as those committed by Mr I. may be covered by the concept of ‘imperative grounds of public security’, account must be taken of the fact that the sexual exploitation of children is one of the areas of particularly serious crime with a cross-border dimension for which express provision is made in the Treaty³ and in which the EU legislature may intervene.

According to the Court, it is open to the Member States to regard criminal offences such as those referred to in Article 83 TFEU as constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of ‘imperative grounds of public security’. However, such offences may justify an expulsion measure only if the manner in which they were committed discloses particularly serious characteristics, which is a matter for the national court to determine on the basis of an individual examination of the particular case before it.

However, should the national court find that, according to the particular values of the legal order of the Member State in which it has jurisdiction, offences such as those committed by Mr I. pose a direct threat to the calm and physical security of the population, that should not necessarily lead to the expulsion of the person concerned.

Under EU law, the issue of any expulsion measure is conditional on the requirement that the personal conduct of the individual concerned must represent a genuine, present threat affecting one of the fundamental interests of society or of the host Member State, which implies, in general, the existence in the individual concerned of a propensity to act in the same way in the future. Moreover, where an expulsion measure has been adopted as a penalty or legal consequence of a custodial penalty, but is enforced more than two years after it was issued, the Member States must check that the individual concerned is currently and genuinely a threat to public security and assess whether there has been any material change in the circumstances since the expulsion order was issued.

Lastly, the Court points out that, before taking an expulsion decision on grounds of public policy or public security, the host Member State must take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into that State and the extent of his/her links with the country of origin.

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

³ The second subparagraph of Article 83(1) TFEU provides that those areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106