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Court of Justice of the European Union

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Judgment in Joined Cases C-316/16 and C-424/16
B v Land Baden-Württemberg and Secretary of State for the Home
Department v Franco Vomero

It is a prerequisite of eligibility for enhanced protection against expulsion that the person concerned must have a right of permanent residence

The requirement of having ‘resided in the host Member State for the previous ten years’, which is also a prerequisite of eligibility for that enhanced protection, may be satisfied where an overall assessment of the citizen’s situation leads to the conclusion that, notwithstanding his detention, the integrative links between the citizen and the host Member State have not been broken

Under the directive on free movement and residence,¹ EU citizens who have resided legally for a continuous period of five years in a Member State other than their own (the host Member State) are to acquire a right of permanent residence in that State. In that context, the host Member State may not take an expulsion decision against an EU citizen who has acquired a right of permanent residence on its territory, except on ‘serious grounds of public policy or public security’.

In addition, an EU citizen who has resided in the host Member State for ‘the previous ten years’ enjoys an even higher level of protection, and an expulsion decision may not be taken against him unless it is based on ‘imperative grounds of public security’.

Case C-424/16 Vomero

In 1985 Mr Franco Vomero, an Italian national, moved to the UK with his wife, a British national. The couple separated in 1998. Mr Vomero then left the family home and moved into accommodation with Mr M.

On 1 March 2001, Mr Vomero killed Mr M. In 2002 he was convicted of manslaughter and sentenced to eight years’ imprisonment. He was released in July 2006.

By decision of 23 March 2007, confirmed on 17 May 2007, the Secretary of State for the Home Department decided to expel Mr Vomero, under the provisions of the Immigration (European Economic Area) Regulations 2006.² Mr Vomero was detained, with a view to his expulsion, until December 2007.

The Supreme Court of the United Kingdom, before which the case is pending, considers that Mr Vomero had not acquired a right of permanent residence before the decision to expel him was adopted. However, that court notes that Mr Vomero has resided in the United Kingdom since 3 March 1985, and therefore seeks to ascertain whether he can be regarded as having resided in that Member State ‘for the previous ten years’ for the purposes of the directive, with the result that he might, where appropriate, be entitled to enhanced protection against expulsion.

The Supreme Court of the United Kingdom asks the Court of Justice, in essence, whether an EU citizen must necessarily have acquired a right of permanent residence in order to be eligible for the

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 Immigration (European Economic Area) Regulations 2006 (SI 2006/1003).

protection against expulsion provided for in the directive. In the event that the Court were to answer in the negative, the Supreme Court asks the Court to rule on the interpretation of the expression 'the previous ten years' and, in particular, to determine whether periods of absence and of imprisonment are capable of being regarded as periods of residence for the purposes of calculating those ten years.

Case C-316/16 B

B is a Greek national who was born in Greece in 1989. In 1993, following the separation of his parents, he and his mother moved to Germany. His mother has, since then, worked in that Member State and now holds German as well as Greek nationality.

Apart from a period of two months during which his father took him to Greece and a few brief holidays, B has resided continuously in Germany since 1993.

In 2013, B held up an amusement arcade, armed with a gun loaded with rubber bullets, in order to obtain money. B was sentenced to five years and eight months' imprisonment.

By decision of 25 November 2014, the Karlsruhe Regional Council decided that B had lost his right of entry to, and residence in, Germany.

B brought an action against that decision. He claims that, as he has resided in Germany since the age of three and has no ties to Greece, he qualifies for the enhanced protection against expulsion provided for by the directive. Further, he considers that the offence he committed does not fall within the scope of 'imperative grounds of public security' for the purposes of the directive.

The action having come before it, the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg, Germany) considers that the offence committed by B cannot be regarded as falling within the scope of 'imperative grounds of public security' for the purposes of the directive. From that perspective, B could therefore qualify for enhanced protection against expulsion. However, the Verwaltungsgerichtshof Baden-Württemberg is uncertain as to whether that protection can be granted to B, since he has been in prison since 12 April 2013. In those circumstances, the Verwaltungsgerichtshof Baden-Württemberg asks the Court whether the long-term settlement of a EU citizen in a host Member State and the absence of any link with the Member State of which that citizen is a national are factors of sufficient weight to establish that the person concerned may qualify for enhanced protection for the purposes of the directive.

In today's judgment, the Court notes first of all that the protection against expulsion provided for in the directive gradually increases in proportion to the degree of integration of the EU citizen concerned in the host Member State. Thus, whereas a citizen with a permanent right of residence may only be expelled on 'serious grounds of public policy or public security', a citizen who has resided in the host Member State for the previous ten years may only be expelled on 'imperative grounds of public security'. Accordingly, the Court concludes that **the enhanced protection linked to a 10-year period of residence in the host Member State is available to an EU citizen only if he first satisfies the eligibility condition for the lower level of protection, namely having a right of permanent residence after residing legally in the host Member State for a continuous period of five years.**

The Court considers that that interpretation is also supported by the fact that the directive introduced a gradual system as regards the right of residence in the host Member State. Under that system, for periods of residence in the host Member State longer than three months, the right of residence is subject to several conditions, including, amongst others, the condition that the citizen in question must be economically active so as not to become an unreasonable burden on the social assistance system of that Member State. If he has resided legally in the host Member State for a continuous period of five years, the EU citizen acquires a permanent right of residence and, accordingly, is no longer subject to those conditions. It follows that a citizen who has not acquired a right of permanent residence may be expelled from the host Member State if he becomes an unreasonable burden on the social assistance system.

The Court therefore holds that an EU citizen who, because he does not have a right of permanent residence, may be expelled if he becomes an unreasonable burden, cannot, at the same time, enjoy the considerably enhanced protection provided for in the directive, pursuant to which his expulsion could be authorised only on 'imperative grounds' of public security.

Next, the Court examines **the method of calculating the period corresponding to the 'previous ten years'** within the meaning of the directive. It notes that the 10-year period of residence must be calculated by counting back and that that period must, in principle, be continuous. It observes, however that the directive is silent as to the circumstances which are capable of interrupting the 10-year period of residence for the purposes of the acquisition of enhanced protection. The Court therefore holds that **an overall assessment must systematically be made of the situation of the person concerned at the precise time when the question of expulsion arises.**

In order to carry out that overall assessment, the national authorities are required to take all the relevant factors into consideration in each individual case and must ascertain whether the periods of absence from the host Member State involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.

As regards periods of imprisonment, the Court rules that in order to determine whether those periods have broken the integrative links previously forged with the host Member State, it is necessary to carry out an overall assessment of the situation of the person concerned at the precise time when the question of expulsion arises. Thus, **the Court considers that the fact that the person concerned was placed in custody in the host Member State does not automatically break the integrative links that that person had previously forged with that State and, accordingly, does not automatically deprive him of the enhanced protection.**

In addition, **the Court takes the view that the overall assessment of the situation of the person concerned must take into account the strength of the integrative links forged with the host Member State before his detention as well as the nature of the offence, the circumstances in which that offence was committed and the behaviour of the person concerned during the period of imprisonment.** In that respect, the Court points out that the social rehabilitation of the EU citizen in the State in which he has become genuinely integrated is not only in his interest but also in that of the EU.

Lastly, the Court holds that the question whether a person satisfies the condition of having 'resided in the host Member State for the previous ten years' must be assessed at the date on which the initial expulsion decision is adopted.

The Court notes, however, that where an expulsion decision is adopted but its enforcement is deferred for a certain period of time, it may be necessary, where appropriate, to carry out a fresh assessment of whether the person concerned represents a genuine, present threat to public security.

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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