

Bundesverwaltungsgericht, Urteil vom 13. September 2005, - Az. 1 C 7.04 -

The claimant, a Turkish national, was born in Germany in 1975. In 1994 he was granted a permanent residence permit. After his graduation he completed a vocational training as a carpenter and worked with different German employers from 1997 to 2000. In 2001 he was convicted of 12 offences against narcotics legislation and sentenced to two years and ten months of imprisonment without probation. In 2002 the competent authority issued an expulsion and deportation order based on the number and seriousness of the claimant's criminal offences. An additional opinion from an independent authority within the meaning of Art. 9 (1) Council Directive 64/221/EEC on the appropriateness of the expulsion order was not obtained although in the case of the claimant appeal could only be made to the administrative courts which merely review the legal validity of an administrative measure.

The claimant brought proceedings submitting that the expulsion order was unlawful because the procedural guarantee of Art. 9 (1) Directive 64/221/EEC had not been observed.

The administrative courts of first and second instance took the view that the said Directive was not applicable to Turkish nationals and confirmed the administrative act on the grounds that the claimant constituted a danger for the requirements of public policy in the sense of Article 14 of Decision 1/80.

The claimant appealed to the Federal Administrative Court submitting that the ECJ had recently confirmed the applicability of Art. 9 (1) Directive 64/221/EEC to Turkish nationals provided they have a right of residence according to Articles 6 and/or 7 of Decision 1/80 (Case C-136/03 "Dörr and Ünal", judgment of 2 June 2005).

Applying the principles laid down by the European Court of Justice in "Dörr and Ünal" the Federal Administrative Court held that the expulsion order is to be quashed for disregard of the procedural guarantee of Art. 9 (1) Directive 64/221/EEC if, firstly, the claimant fulfilled the conditions of Articles 6 and/or 7 of Decision 1/80 and, secondly, the participation of an independent authority had not been dispensable on grounds of urgency. The matter was referred back to the court of second instance in order to establish whether the said conditions were fulfilled.

Summary provided by JuriFast

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