

JUDGMENT OF THE COURT (Eighth Chamber)

7 December 2017 (\*)

(Reference for a preliminary ruling — Status of third-country nationals who are long-term residents — Directive 2003/109/EC — Article 12 — Adoption of a decision to expel a long-term resident — Matters to be taken into consideration — National legislation — Failure to take those matters into consideration — Whether compatible)

In Case C-636/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Administrative Court No 1, Pamplona, Spain), made by decision of 2 December 2016, received at the Court on 9 December 2016, in the proceedings

**Wilber López Pastuzano**

v

**Delegación del Gobierno en Navarra,**

THE COURT (Eighth Chamber),

composed of J. Malenovský, President of the Chamber, M. Safjan and M. Vilaras (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Wilber López Pastuzano, by E. Santos Huamán and J. L. Rodríguez Candela, abogados,
- the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,
- the European Commission, by C. Cattabriga and S. Pardo Quintillán, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

**Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).
- 2 The request has been made in proceedings between Mr Wilber López Pastuzano and the Delegación del Gobierno en Navarra (Government Delegation in Navarra, Spain) concerning a decision adopted by the latter, on 29 June 2015, ordering the expulsion of Mr López Pastuzano from Spanish territory ('the decision of 29 June 2015').

## **Legal context**

### ***EU law***

3 According to recital 16 of Directive 2003/109:

‘Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion Member States should provide for effective legal redress.’

4 Article 12(1) to (3) of Directive 2003/109 is worded as follows:

‘1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

...’

### ***Spanish law***

5 The Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social (Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration) of 11 January 2000 (BOE No 10 of 12 January 2000), in the version applicable to the main proceedings (‘Organic Law 4/2000’), governs, in Title III thereof, ‘offences committed by foreign nationals and associated penalties’.

6 Article 57, contained in Title III, is worded as follows:

‘1. When an offender is a foreign national and commits offences which may be classified as “very serious” or “serious”, within the meaning of Article 53(1)(a), (b), (c), (d) and (f) of this law, having regard to the principle of proportionality, removal from Spanish territory may be ordered, instead of a fine, following the appropriate administrative procedure and by means of a reasoned decision which includes an assessment of the facts which constitute the offence.

2. Likewise, the foreign national’s conviction, in Spain or abroad, of wilful misconduct constituting in Spain a criminal offence punishable by a term of imprisonment of more than one year shall constitute a legal basis for expulsion, after the relevant procedure has been brought to a close, unless the conviction is spent.

3. In no circumstances may the penalties of expulsion and a fine be imposed concurrently.

4. Expulsion will entail, in any event, the termination of any authorisation to remain legally in Spain, as well as the termination of any procedure by which the foreign national who has been removed is seeking authorisation to reside or work in Spain. However, the expulsion order may be revoked in certain cases established by law.

...

5. Unless the offence committed is that laid down in Article 54(1)(a), or consists in the repetition, within a period of one year, of an offence of the same nature punishable by expulsion, the sanction of expulsion may not be imposed on foreign nationals who are in the following situations:

...

(b) Long-term residents: Before a decision is taken to expel a long-term resident, consideration should be given to the length of time they have resided in Spain and the links created [with Spain], their age, the consequences for the person concerned and the members of their family, and the links with the country to which they are to be removed.

...'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 7 According to the information provided by the referring court, Mr López Pastuzano, a Colombian national, was granted, on 13 October 2013, a long-term residence permit in Spain. On 29 April 2014, he was sentenced to two prison sentences, one of 12 months and one of 3 months. On 27 January 2015, he was imprisoned in the Centro Penitenciario Pamplona I (Pamplona Prison No I, Spain). Subsequently, administrative expulsion proceedings were initiated against him.
- 8 After conducting the administrative expulsion proceedings, the Government Delegation in Navarra adopted its decision of 29 June 2015. That decision was accompanied by a ban on entry into Spain for a period of five years and the withdrawal of Mr López Pastuzano's long-term residence permit. It was based on the conditions for the application of the basis for expulsion laid down by Article 57(2) of Organic Law 4/2000.
- 9 On 28 September 2015, Mr López Pastuzano initiated judicial proceedings against that decision before the Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Administrative Court No 1, Pamplona, Spain).
- 10 The referring court notes that, in the Spanish legal system, there are two different sets of rules relating to the administrative expulsion of a foreign national, namely, first, expulsion as a sanction imposed on a person committing certain administrative offences, provided for by Article 57(1) of Organic Law 4/2000, and, second, expulsion as a legal consequence stemming from a conviction for wilful misconduct to a term of imprisonment of more than one year, in accordance with Article 57(2) of Organic Law 4/2000.
- 11 According to the referring court, Article 57(5) of Organic Law 4/2000 transposes Article 12 of Directive 2003/109 into Spanish law and establishes the requirement to take into consideration, before a decision to expel a long-term resident is adopted, the personal circumstances of that resident, namely, the length of time they have resided in Spain and the links established with that Member State, their age, the consequences for the person concerned and the members of their family, and the links with the country to which they are to be removed.
- 12 The referring court notes that the term 'penalty of expulsion' used in Article 57(5) of Organic Law 4/2000 has been interpreted by the greater part of the case-law of the Tribunales Superiores de Justicia (High Courts of Justice, Spain) as covering solely decisions to expel adopted as a penalty for certain administrative offences and not decisions adopted against a long-term resident sentenced to a term of imprisonment of more than one year.
- 13 In the present case, Mr López Pastuzano having been sentenced to a term of imprisonment of more than one year, the decision of 29 June 2015 points out that, in such a case, the expulsion does not constitute a penalty for the commission of an administrative offence, so that Article 57(5) of Organic Law 4/2000 is not applicable.
- 14 The referring court accordingly takes the view that, in order to resolve the case before it, it must know the scope of the protection against expulsion for long-term residents laid down by Article 12 of Directive 2003/109. More specifically, it must know whether the concept of 'decision to expel' within the meaning of that article must be construed as covering any administrative decision to expel, whatever its nature may be, and the legal rules

governing its adoption, and whether that article is compatible with a provision, such as Article 57(5) of Organic Law 4/2000, which circumscribes the protection against expulsion for long-term residents to a specific type of administrative decision to expel, to the exclusion of other types.

- 15 In those circumstances, the Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Administrative Court No 1, Pamplona) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 12 of Directive 2003/109 be interpreted as precluding national legislation, such as that at issue in the main proceedings, and the case-law interpreting it, which does not provide for the application of the requirements of protection against the expulsion of a long-term resident [third-country] national to all administrative expulsion decisions regardless of the legal nature or type thereof, but instead restricts the application of those requirements to a specific type of expulsion?’

### **Consideration of the question referred**

#### *Admissibility*

- 16 In its written observations to the Court, the Spanish Government argued that the national case-law cited by the referring court is a minority view and that most of the Tribunales Superiores de Justicia (High Courts of Justice) take the view that the expulsion measure laid down by Article 57(2) of Organic Law 4/2000 may in no circumstances be imposed automatically on foreign nationals possessing a long-term residence permit, but that it is necessary, before the adoption of such a measure, to assess the criteria laid down by Article 57(5)(b) of that law. The Spanish Government added that it follows from two recent judgments delivered by the Tribunal Constitucional (Constitutional Court, Spain) that the protection of the fundamental rights of the person concerned, required under the Spanish constitution, requires regard to be had, before the adoption of an expulsion measure concerning a foreign national who is a long-term resident, to his or her personal and family situation.
- 17 In those circumstances, the Spanish Government takes the view that, in fact, the question referred by the national court concerns the interpretation not of EU law, but rather of national law.
- 18 In that regard, it must, however, be stated that the question referred for a preliminary ruling, as formulated by the referring court, does not concern the interpretation of Spanish law, for which the Court has no jurisdiction, but rather concerns the interpretation of EU law, which does fall within the Court’s jurisdiction.
- 19 It should be recalled that, according to the Court’s settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 30 and the case-law cited, and of 21 May 2015, *Verder LabTec*, C-657/13, EU:C:2015:331, paragraph 29).
- 20 In the present case, it is clear from the information provided by the referring court, first, that, in order to adopt the decision of 29 June 2015, the competent national authority based its decision on an interpretation of Article 57(5) of Organic Law 4/2000 according to which that provision is not applicable in a case such as that of Mr López Pastuzano and, second, that that interpretation is that supported by at least some of the national courts with jurisdiction.
- 21 In those circumstances, it is not manifestly evident that the interpretation of EU law sought is unrelated to the actual facts of the main action or its purpose or that the problem is hypothetical. Consequently, the question referred for a preliminary ruling is admissible.

## *Substance*

- 22 By its question, the referring court asks, in essence, whether Article 12(3) of Directive 2003/109 must be interpreted as precluding legislation of a Member State which, as interpreted by some of the courts of that Member State, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.
- 23 It should be noted that, according to the case-law of the Court, the principal purpose of Directive 2003/109 is the integration of third-country nationals who are settled on a long-term basis in the Member States (judgments of 26 April 2012, *Commission v Netherlands*, C-508/10, EU:C:2012:243, paragraph 66, and of 2 September 2015, *CGIL and INCA*, C-309/14, EU:C:2015:523, paragraph 21).
- 24 To that end, as stated in recital 16 of Directive 2003/109, the EU legislature takes the view that long-term residents should enjoy reinforced protection against expulsion.
- 25 Accordingly, under Article 12(1) of Directive 2003/109, Member States may take a decision to expel a long-term resident solely where he or she constitutes an actual and sufficiently serious threat to public policy or public security.
- 26 Furthermore, Article 12(3) of that directive states that, before taking a decision to expel a third-country national who is a long-term resident, Member States are to have regard to the duration of residence in their territory, the age of the person concerned, the consequences for the person concerned and family members and links with the country of residence or absence of links with the country of origin. It is therefore irrelevant whether such a measure has been delivered in the form of an administrative penalty or whether it is the result of a criminal conviction.
- 27 Moreover, the Court has already pointed out in its judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809, paragraphs 82 and 83) that the adoption of such a measure may not be ordered automatically following a criminal conviction, but rather requires a case-by-case assessment which must, in particular, have regard to the elements mentioned in Article 12(3) of Directive 2003/109.
- 28 Consequently, a decision to expel may not be adopted against a third-country national who is a long-term resident for the sole reason that he or she has been sentenced to a term of imprisonment of more than one year in duration.
- 29 In the light of all the foregoing, the answer to the question referred is that Article 12 of Directive 2003/109 must be interpreted as precluding legislation of a Member State which, as interpreted by some of the courts of that Member State, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.

## **Costs**

- 30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

**Article 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding legislation of a Member State which, as interpreted by some of the courts of that Member State, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.**

[Signatures]

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\* Language of the case: Spanish.