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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

3 September 2020 (\*)

(References for a preliminary ruling – Status of third-country nationals who are long-term residents – Directive 2003/109/EC – Article 6(1) – Elements to be taken into consideration – National rules – Failure to take those elements into consideration – Refusal to grant long-term resident status on the ground that the person concerned has previous convictions)

In Joined Cases C-503/19 and C-592/19,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU, from the Juzgado de lo Contencioso-Administrativo nº 17 de Barcelona (Administrative Court No 17, Barcelona, Spain) (C-503/19) and the Juzgado de lo Contencioso-Administrativo nº 5 de Barcelona (Administrative Court No 5, Barcelona, Spain) (C-592/19), by decisions of 7 June 2019 and 15 July 2019, received at the Court on 2 July 2019 and 2 August 2019 respectively, in the proceedings

**UQ** (C-503/19)

**SI** (C-592/19)

v

**Subdelegación del Gobierno en Barcelona,**

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, S. Rodin, D. Šváby, K. Jürimäe and N. Piçarra, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
- the European Commission, by S. Pardo Quintillán and C. Cattabriga, acting as Agents,

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

gives the following

### **Judgment**

1 These requests for a preliminary ruling concern the interpretation of Article 6(1) 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 requests have been made in two disputes between UQ (C-503/19) and SI (Case C-592/19) and the Subdelegación del Gobierno en Barcelona (Spanish Government Office in Barcelona, Spain), concerning the refusal of the applications for long-term resident status submitted by the persons concerned.

### **Legal context**

#### ***European Union law***

3 Directive 2003/109 contains Chapter II, entitled ‘Long-term resident status in a Member State’, which includes Articles 4 to 13 thereof. Article 4(1) of the directive states:

‘Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.’

4 Article 5 of that directive provides:

‘1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.’

5 Article 6(1) of Directive 2003/109 provides as follows:

‘Member States may refuse to grant long-term resident status on grounds of public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.’

6 Under Article 7(3) of that directive, if the conditions provided for by Articles 4 and 5 have been met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned is to grant the third-country national concerned long-term resident status.

7 According to Article 12(1) and (3) of the directive:

‘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.

...

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.’

8 Chapter III of Directive 2003/109 is entitled ‘Residence in other Member States’. Under Article 14(1) thereof, a long-term resident may acquire the right to reside in the territory of Member States other than the one which granted him or her the long-term resident status, for a period exceeding three months, provided that the conditions set out in that chapter are met.

9 Article 17(1) of that directive, which also comes under Chapter III, provides.

‘Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.’

### ***Spanish law***

#### *Organic Law 4/2000*

10 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’), includes Article 31 entitled ‘Temporary residence situation’. Article 31(7) of that law is worded as follows:

‘In order for a temporary residence permit to be renewed, the following shall be assessed, where appropriate:

- (a) any criminal record, account being taken of any pardon or conditional suspension of a sentence or any suspension of a custodial sentence;

...

With a view to this renewal, particular attention will be paid to the integration effort made by the foreign national supporting such renewal, which must be established by a favourable report from the Autonomous Community ...’

11 Article 32 of Organic Law 4/2000 concerns long-term residence. It states:

‘1. Long-term residence is the situation that allows foreign nationals to reside and work in Spain indefinitely, under the same conditions as Spanish nationals.

2. The right of long-term residence shall be granted to those who have had an uninterrupted temporary stay in Spain of at least five years and who meet the conditions established by regulation. For the purposes of long-term residence, periods of previous uninterrupted residence in other Member States as EU Blue Card holders shall be taken into account. Residence shall be considered uninterrupted even if the foreign national has left the national territory temporarily, for periods of holidays or other reasons established by regulation.

3. Foreign nationals who are long-term residents in another Member State of the European Union may apply for and obtain a long-term residence permit in Spain for themselves when they go to work as employees or self-employed persons, or for other purposes, under the conditions established by regulation. However, in the event that foreign nationals who are long-term residents in another Member State of the European Union wish to retain the long-term resident status acquired in the first Member State, they may apply for and obtain a temporary residence permit in Spain.

...’

#### *Regulation implementing Organic Law 4/2000*

12 Article 148 of the Regulation implementing Organic Law 4/2000, approved by Real Decreto 557/2011 por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, tras su reforma por Ley Orgánica 2/2009 (Royal Decree 557/2011 approving the Regulation implementing Organic Law 4/2000, as amended by Organic Law 2/2009) of 20 April 2011 (BOE No 103, of 30 April 2011, p. 43821), provides:

‘1. Foreign nationals who have resided legally and continuously in Spanish territory for five years shall be entitled to obtain a long-term residence permit.

Foreign nationals who demonstrate uninterrupted residence in the European Union during that period, as holders of an EU Blue Card are also entitled to obtain this permit, provided that they have resided on Spanish territory during the two years immediately preceding their application.

...’

13 Article 149 of the Regulation implementing Organic Law 4/2000 governs the procedure for obtaining a long-term residence permit. Article 149(2)(f) of that regulation provides that an application for such a permit must be accompanied, where appropriate, by an extract of the police record or an equivalent document issued by the authorities of the country of origin or the countries in which the applicant has resided during the last five years, confirming that the person concerned does not have any convictions for an offence under Spanish law.

#### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

##### ***Case C-503/19***

14 UQ is a third country national, who holds a temporary residence permit in Spain.

15 On 10 November 2014, he was sentenced to 40 days community service and his driving licence was suspended for eight months and two days for driving whilst under the influence of alcohol on 2 November 2014.

16 On 2 February 2018, UQ, who, at that date, had already been legally resident in Spain for at least five years by virtue of his residence permit, lodged an application for a long-term residence permit, within the

meaning of Article 32 of Organic Law 4/2000, at the Oficina de Extranjeros de Barcelona (Immigration Office, Barcelona, Spain).

17 By decision of 27 March 2018, the Immigration Office, Barcelona rejected that application on the ground that UQ had previous convictions, mentioned in paragraph 15 of the present judgment. UQ brought an administrative appeal against that decision, which was also rejected by decision of 6 July 2018.

18 Consequently, UQ brought an appeal before the referring court in Case C-503/19 against the decision of 6 July 2018.

19 That court states that the case-law of the different Spanish courts is confusing and contradictory as to whether the fact that the person concerned has previous criminal convictions is sufficient to refuse to grant him or her long-term resident status or whether, to the contrary, such refusal requires an assessment of the facts in each individual case in order to determine whether the person concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

20 According to the referring court in Case C-503/19, the Tribunal Supremo (Supreme Court, Spain), in a judgment of 5 July 2018, dispelled the doubts raised by the confusing case-law of the lower courts. In that judgment, the Tribunal Supremo (Supreme Court) based its judgment, in particular, on Article 149(2)(f) of the Regulation implementing Organic Law 4/2000, holding, essentially, that the sole fact that the person concerned had a criminal record prevented the grant of long-term resident status. The Tribunal Supremo (Supreme Court) also held that that interpretation does not contradict either the spirit or the purpose of Directive 2003/109.

21 In the first place, in Case C-503/19, the referring court has doubts as to the compatibility with Directive 2003/109 of the position adopted by the Tribunal Supremo (Supreme Court) in its judgment mentioned in the preceding paragraph.

22 In the second place, it also expresses doubts as to the compatibility of Spanish law with that directive, as regards the possibility to refuse to grant long-term resident status to a third-country national on grounds of public policy or public security, in accordance with Article 6(1) of that directive. That article provides the option, but not the obligation, for a Member State to refuse to grant long-term resident status on those grounds. According to the referring court in Case C-503/19, to comply with Directive 2003/109 the legislation of a Member State must be transparent and intelligible. The Kingdom of Spain has not exercised that option. Article 149(2)(f) of the Regulation implementing Organic Law 4/2000 cannot be interpreted as meaning that it provides for such a ground for refusal.

23 In the third place, the referring court in Case C-503/19 observes that the position adopted by the Tribunal Supremo (Supreme Court) in its judgment, mentioned in paragraph 20 of the present judgment, means that it is easier for a third-country national to renew his or her temporary residence permit than to be granted long-term resident status in Spain. Indeed, a criminal record is not an absolute bar to the renewal of a temporary residence permit, as Article 31(7)(a) of Organic Law 4/2000 simply states that it 'will be examined' for the purpose of such a renewal. That court wishes to know whether such a situation is compatible with EU law, in so far as a third-country national with a criminal record would be dissuaded from applying for long-term resident status and would remain indefinitely with temporary resident status.

24 In those circumstances, the Juzgado de lo Contencioso-Administrativo n° 17 de Barcelona (Administrative Court No 17, Barcelona, Spain), the referring court in Case C-503/19, decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is an interpretation by the national courts, according to which the existence of any form of criminal record is sufficient grounds for refusing long-term resident status, compatible with Article 6(1) and Article 17 of Directive 2003/109?

- (2) In addition to the existence of a criminal record, must the national courts take account of other factors, such as the severity and length of the sentence, the threat that the applicant represents to society, the duration of the applicant's prior legal residence and the links he or she has with the country, and carry out an assessment that takes all those elements into account?
- (3) Must Article 6(1) of the directive be interpreted as precluding a rule of national law that allows long-term resident status under Article 4 to be refused on grounds of public policy or public security without establishing the assessment criteria included in Article 6(1) and Article 17 [of Directive 2003/109]?
- (4) Must Article 6(1) and Article 17 of Directive 2003/109 be interpreted as meaning, in accordance with the case-law laid down by the Court of Justice that directives have vertical direct effect, that the national court may apply Article 6(1) and Article 17 thereof directly, and may do so in order to assess previous convictions, having regard to the gravity of the offence, the length of the sentence, and the threat represented by the applicant?
- (5) Must EU law, in particular the right to obtain long-term resident status and the principles of clarity, transparency and intelligibility, be interpreted as precluding an interpretation by the Spanish courts of Articles 147 to 149 of [the Regulation implementing Organic Law 4/2000] and Article 32 of [Organic Law 4/2000], according to which long-term resident status may be refused on grounds of public policy and public security, even though those provisions do not set out clearly and transparently that they are grounds for refusal?
- (6) Is a rule of national law and its interpretation by the courts [which has the result] that obtaining long-term resident status is more difficult whereas obtaining temporary residence is easier, compatible with the principle that Directive 2003/109, and Article 6(1) in particular, have direct effect?'

### ***Case C-592/19***

- 25 SI is a third-country national. He is the holder of a temporary residence permit in Spain, where he has a permanent employment contract and where he is registered for social security.
- 26 By judgment of 17 October 2016 of the Juzgado de lo Penal n° 18 de Barcelona (Criminal Court No 18, Barcelona, Spain), SI was sentenced to 11 months in prison for forgery of public documents, which was suspended for two years with effect from 17 October 2016, for the offences committed on 30 November 2011.
- 27 SI lodged an application for long-term resident status with the Spanish Government Office in Barcelona. That application was rejected by decision of the Spanish Government Office in Barcelona on 30 October 2017 on the ground, in particular, that SI had previous criminal convictions. SI brought an administrative action against that decision, which was also rejected by decision of 13 March 2018.
- 28 Consequently, SI brought an appeal before the referring court in Case C-592/19 against the decision of 13 March 2018.
- 29 That court, repeats, in substance, the information given by the referring court in Case C-503/19, set out in paragraphs 19 and 20 of the present judgment. It states that, if it were to apply Spanish law as interpreted by the judgment of the Tribunal Supremo (Supreme Court), mentioned in paragraph 20 of the present judgment, it could not carry out any assessment of SI's personal circumstances or his integration into Spanish society, or the enforcement status of the sentence imposed by the Juzgado de lo Penal n° 18 (Provincial Criminal Court No 18, Barcelona), mentioned in paragraph 26 of the present judgment, for the offence committed, or any other circumstances, because it is dealing with a case concerning previous convictions which have not been expunged from the police record of the person concerned. That court has doubts as to the compatibility of such an approach with EU law and, in particular, with Directive 2003/109.

30 In those circumstances, the Juzgado de lo Contencioso-Administrativo n° 5de Barcelona (Administrative Court No 5, Barcelona, Spain), the referring court in Case C–592/19, decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 4 and Article 6(1) of Directive 2003/109 be interpreted as meaning that a criminal record, of any nature, is sufficient grounds for refusing access to long-term resident status, without any requirement to assess the duration of residence and the existence of links with the country of residence?’

### **Consideration of the questions referred**

31 As a preliminary point, since the referring court in Case C-503/19 mentioned Article 17 of Directive 2003/109 in its first, third and fourth questions, it must be stated that that article, which is in Chapter III of that directive, entitled ‘Residence in other Member States’, covers the situation of a third-country national who has obtained the status of long-term resident in one Member State and who wishes to reside in another Member State.

32 That article is, thus, irrelevant in a situation such as that which is the origin of the disputes in the main proceedings, concerning the refusal by a Member State to grant long-term resident status to a third-country national who has resided in the territory of that Member State legally and continuously for five years immediately preceding the submission of his or her application.

33 Having said that, it must be stated that, by their questions, which it is appropriate to consider together, the referring courts ask essentially whether Article 6(1) of Directive 2003/109 must be interpreted as precluding the legislation of a Member State, as interpreted by certain courts in that State, which provides that a third-country national may be refused long-term resident status in that Member State on the sole ground that he or she has previous convictions, without a specific assessment of his or her situation with regard, in particular, to the nature of the offence committed by that national, the threat that he or she represents to public policy or public security, the length of his or her residence in the territory of that Member State and the existence of links with that State.

34 In that connection, it must be recalled, first of all, that Article 6(1), first subparagraph, of Directive 2003/109 provides for the option, and not the obligation, for Member States to refuse to grant long-term resident status on grounds of public policy or public security.

35 According to settled case-law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 11 September 2014, *Commission v Portugal*, C-277/13, EU:C:2014:2208, paragraph 43 and the case-law cited).

36 It follows that in order to implement Article 6(1), first subparagraph, of Directive 2003/109 correctly, a Member State must provide for the possibility to refuse the grant of long-term resident status to a third-country national on grounds of public policy or public security, with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.

37 Therefore, it is for the national courts, which alone have jurisdiction to interpret national law in accordance with the procedure laid down in Article 267 TFEU (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 28, and of 21 November 2018, *De Diego Porras*, C-619/17, EU:C:2018:936, paragraph 80), to ascertain whether Spanish law contains a provision with the characteristics mentioned in the preceding paragraph of the present judgment.

38 As regards the question whether such a provision may provide that the fact that the person concerned has previous convictions may be sufficient in itself to refuse to grant him or her long-term resident status on grounds of public policy and public security, it is clear from the wording of Article 6(1),

second subparagraph, of Directive 2003/109, that such a refusal requires the consideration and weighing up of a certain number of factors, that is to say, first, the seriousness or nature of the offence committed by the person concerned, the threat that he or she represents to public policy or public security and, second, the length of his or her residence in the host Member State and any ties he or she has with that Member State.

39 The consideration of all the elements involves a case-by-case assessment, which precludes a refusal to grant long-term resident status to the person concerned solely on the ground that he or she has previous convictions, whatever their nature.

40 Such an interpretation of Article 6(1) of Directive 2003/109 is confirmed by the settled case-law of the Court, according to which measures justified on grounds of public policy or public security may be taken only if, following a case-by-case assessment by the competent national authorities, it is shown that the personal conduct of the individual concerned currently constitutes a genuine and sufficiently serious threat to a fundamental interest of society (judgment of 2 May 2018, *K and H.F. (Right of residence and allegations of war crimes)*, C-331/16 and C-366/16, EU:C:2018:296, paragraph 52 and the case-law cited).

41 As regards Article 12(3) of Directive 2003/109, whose wording is very similar to that of Article 6(1), second subparagraph, of that directive, it has thus been held that a decision to expel may not be adopted against a third-country national for the sole reason that he or she has been sentenced to a term of imprisonment of more than one year in duration (judgment of 7 December 2017, *López Pastuzano*, C-636/16, EU:C:2017:949, paragraph 28).

42 It follows that the competent authorities of a Member State cannot automatically take the view that a third-country national must be refused long-term resident status on grounds of public policy, in accordance with Article 6(1) of Directive 2003/109, merely because he or she has been convicted of some or other criminal offence (see, by analogy, judgment of 12 December 2019, *G.S. and V.G. (Threat to public policy)*, C-381/18 and C-382/18, EU:C:2019:1072, paragraph 65).

43 Taking account of all of the foregoing considerations, the answer to the questions referred is that Article 6(1) of Directive 2003/109 must be interpreted as precluding the legislation of a Member State as it is interpreted by some of the courts of that State, which provides that a third-country national may be refused long-term resident status for the sole reason that he or she has previous criminal convictions, without a specific assessment of his or her situation, in particular, the nature of the offence committed by that national, the threat he or she may pose to public policy or public security, the length of his or her residence on the territory of that Member State and the links he or she has with that State.

#### **Costs**

44 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 (Fourth Chamber) hereby rules:

**Article 6(1) 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 the legislation of a Member State as it is interpreted by some of the courts of that State, which provides that a third-country national may be refused long-term resident status for the sole reason that he or she has previous criminal convictions, without a specific assessment of his or her situation, in particular, the nature of the offence committed by that national, the threat he or she may pose to public policy or public security, the length of his or her residence on the territory of that Member State and the links he or she has with that State.**



[Signatures]

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\* Language of the case: Spanish.

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