

JUDGMENT OF THE COURT
19 January 1999 *

In Case C-348/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Arios Pagos (Greece) for a preliminary ruling in the criminal proceedings before that court against

Donatella Calfa

on the interpretation of Articles 7, 8(1) and (2), 8a(1), 48, 52 and 59 of the EC Treaty and relevant Community directives relating to freedom of movement for persons and freedom to provide services,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn and P. Jann (Presidents of Chambers), C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm (Rapporteur), L. Sevón, M. Wathelet, R. Schintgen and K. M. Ioannou, Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: Greek.

after considering the written observations submitted on behalf of:

- Ms Calfa, by Dimosthenis Skandalis, of the Athens Bar,

- the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and Claude Chavance, Secretary of Foreign Affairs in the same directorate, acting as Agents,

- the Netherlands Government, by Adriaan Bos, Legal Adviser, Ministry of Foreign Affairs, acting as Agent,

- the United Kingdom Government, by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, assisted by Stephen Richards and Mark Shaw, Barristers,

- the Commission of the European Communities, by Maria Patakia, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Greek Government, represented by Ioanna Galani-Maragkoudaki, Special Deputy Legal Adviser to the Special Department for Community Legal Matters of the Ministry of Foreign Affairs, and Stamatina Vodina, Special Academic Assistant in the same Department, acting as Agents; of the French Government, represented by Claude Chavance; of the Netherlands Government, represented by Marc Fierstra, Deputy Legal Adviser to the Ministry of Foreign

Affairs, acting as Agent; of the United Kingdom Government, represented by Philip Sales, Barrister; and of the Commission, represented by Maria Patakia, at the hearing on 13 January 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 February 1998,

gives the following

Judgment

- 1 By judgment of 27 September 1996, received at the Court on 21 October 1996, the Arios Pagos (Supreme Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 7, 8(1) and (2), 8a(1), 48, 52 and 59 of the EC Treaty and relevant Community directives relating to freedom of movement for persons and freedom to provide services, in order to assess the compatibility with those provisions of a national law providing for the expulsion for life from the national territory of nationals from other Member States found guilty on that territory of certain offences under the law on drugs.

- 2 Those questions have been raised in criminal proceedings brought against Ms Calfa, who has been found guilty of an offence under the law on drugs and sentenced to three months' imprisonment and, by way of an additional penalty, expelled for life from Greek territory.

The Community legislation

- 3 Article 1(1) of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117) provides:

‘The provisions of this Directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a recipient of services.’

- 4 Article 3 of the same directive states:

‘1. Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.

2. Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

...’

The national legislation

- 5 Under Article 12(1) of Law No 1729/1987 on drugs, as amended by Article 14 of Law No 2161/1993, it is an offence punishable by imprisonment for a person to obtain or to possess, in any way whatever, for personal use, drugs in quantities which are shown to be intended exclusively to serve personal needs, or for a person to make use of them. It is an offence punishable by the same penalty to cultivate cannabis in quantities such as to indicate that they are intended solely for personal use.

- 6 Article 17(1) of Law No 1729/1987, entitled 'Restrictions on residence', provides that where a person is sentenced to at least five years' imprisonment for an offence under that Law, the court may, if it considers that the residence of the convicted person in certain places would be injurious, either to him or to the social environment, make an order prohibiting the person from residing in those places for a period of between one and five years.

- 7 Under Article 17(2) of the same Law, foreign nationals, whether or not of the age of majority, who are convicted of an offence under that Law, are to be expelled for life unless compelling reasons, in particular family reasons, justify their continued residence in the country, in which case the provisions of paragraph 1 of that article apply to them. The enforcement and suspension of expulsion orders are governed by Article 74 of the Greek Penal Code.

- 8 Under Article 74 of that code, foreign nationals who have been expelled may return to the country only after a period of three years following their expulsion and provided that the Minister of Justice has authorised their return.

- 9 It results from the aforementioned provisions, read in conjunction, that where a foreign national is convicted of a breach of the law on drugs, and in the absence of compelling reasons, in particular family reasons, justifying his continued residence in the country, the court which passed sentence is under an obligation to order his expulsion for life, so that he will be able to return to the country only after a period of three years and provided that the Minister of Justice in his discretion gives his approval.
- 10 Greek nationals, who cannot be subject to an expulsion order, may, on the other hand, be ordered not to reside in certain parts of the territory, in cases where they have been sentenced, under Law No 1729/1987, to imprisonment of five years or more, in particular in cases of drug dealing. However, that prohibition is discretionary and may not be imposed for a period exceeding five years.

The facts of the main proceedings

- 11 Ms Calfa, an Italian national, was charged with possession and use of prohibited drugs while staying as a tourist in Crete. The Plimeliodikio (Criminal Court of First Instance) at Heraklion found her guilty of an offence under the law on drugs, sentenced her to three months' imprisonment and ordered her to be expelled for life from Greek territory.
- 12 On 25 September 1995, Ms Calfa appealed to the Arios Pagos against the decision of the Plimeliodikio at Heraklion, exclusively on the point that the Heraklion court had ordered her to be expelled for life from Greece. She claimed *inter alia* that the provisions relating to European citizenship, more particularly Articles 8 and 8a of the Treaty, and the provisions relating to freedom to provide services in Article 59

of the Treaty did not allow a Member State to adopt a measure expelling a national of another Member State for life if a comparable measure could not be taken against a Greek citizen.

The questions referred for a preliminary ruling

- 13 Considering that the case before it raised a question of the compatibility of the relevant provisions of national legislation with Community law, the Arios Pagos decided to suspend proceedings and to refer the following two questions to the Court for a preliminary ruling:

‘(1) Is a provision of national law compatible with the provisions of Community law referred to in the grounds of the order for reference and, in particular, with the provisions of Articles 8(1) and (2), 8a(1), 48, 52 and 59 of the EC Treaty, the provisions of the relevant directives also referred to in the grounds thereof, or with other relevant provisions of Community law concerning freedom of movement for persons and services, and with the Community law principle of equal treatment enshrined in Article 7 of the EC Treaty, where such provision of national law requires the national court, unless there are compelling reasons, in particular family reasons, for not doing so, to order the expulsion for life of a national of another Member State for reasons of public policy and public security, solely on the ground that that national of the other Member State, whilst lawfully staying in the host state in order to receive tourist services, committed the offences of obtaining drugs for his own personal use and the use of drugs, and where such expulsion entails for the offender a legal bar on his returning to the country — unless authorised after a three-year period by the Minister for Justice in his discretion — in order to pursue the activities provided for by the abovementioned provisions of Community law, and where in the case of such offences being committed by a national of the host state the same punishment of imprisonment is imposed, though not any other analogous

penalty, such as a residence restriction, which is imposed on a national of the host state only if a term of imprisonment for a more serious offence is imposed, such as for drug dealing, and is purely discretionary?

- (2) Should expulsion by the host country under such a provision of national law (as described at 1 above) of the national of another Member State be deemed compatible with the abovementioned provisions of Community law where, in connection with expulsion, the court so ordering is left with no discretion, other than that relating to the compelling reasons, in particular family reasons, in determining whether the offender's continued residence in the host country might be justified, is such a measure to be regarded as infringing the Community principle of proportionality, that is to say as being disproportionate to the seriousness of the offences (described above at 1) committed by that person, regard being had to the fact that under national law they are tried as minor offences and are punishable as stated in the grounds of the order for reference, or to the fact that the expulsion ordered by the national court is for life, subject to authorisation by the Minister for Justice in his discretion for the offender to return after a three-year period to the host country from which he was expelled?
- 14 The national court is asking essentially whether Articles 8(1) and (2), 8a(1), 48, 52 and 59 of the Treaty and Directive 64/221 preclude legislation which, with certain exceptions, in particular where there are family reasons, requires a Member State's courts to order the expulsion for life from its territory of nationals of other Member States found guilty on that territory of the offences of obtaining and being in possession of drugs for their own personal use.
- 15 It is appropriate, first, to examine this question in the light of the Community rules relating to the freedom to provide services.
- 16 It should be remembered at the outset that the principle of freedom to provide services established in Article 59 of the Treaty, which is one of its fundamental principles, includes the freedom for the recipients of services to go to another Member State in order to receive a service there, without being obstructed by

restrictions, and that tourists must be regarded as recipients of services (see Case 186/87 *Cowan v Trésor Public* [1989] ECR 195, paragraph 15).

- 17 Although in principle criminal legislation is a matter for which the Member States are responsible, the Court has consistently held that Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law (*Cowan*, paragraph 19).
- 18 In the present case, the penalty of expulsion for life from the territory, which is applicable to the nationals of other Member States in the event of conviction for obtaining and being in possession of drugs for their own use, clearly constitutes an obstacle to the freedom to provide services recognised in Article 59 of the Treaty, since it is the very negation of that freedom. This would also be true for the other fundamental freedoms laid down in Articles 48 and 52 of the Treaty and referred to by the national court.
- 19 It is none the less necessary to consider whether such a penalty could be justified by the public policy exception provided for in *inter alia* Article 56 of the Treaty, which is relied upon by the Member State in question.
- 20 Article 56 permits Member States to adopt, with respect to nationals of other Member States, and in particular on the grounds of public policy, measures which they cannot apply to their own nationals, inasmuch as they have no authority to expel the latter from the territory or to deny them access thereto (see Case 41/74 *Van Duyn v Home Office* [1974] ECR 1337, paragraphs 22 and 23, Joined Cases 115/81 and 116/81 *Adoui and Cornuaille v Belgium* [1982] ECR 1665, paragraph 7, and Joined Cases C-65/95 and C-111/95 *Shingara and Radiom* [1997] ECR I-3343, paragraph 28).

- 21 Under the Court's case-law, the concept of public policy may be relied upon in the event of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society (see Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 35).
- 22 In this respect, it must be accepted that a Member State may consider that the use of drugs constitutes a danger for society such as to justify special measures against foreign nationals who contravene its laws on drugs, in order to maintain public order.
- 23 However, as the Court has repeatedly stated, the public policy exception, like all derogations from a fundamental principle of the Treaty, must be interpreted restrictively.
- 24 In that regard, Directive 64/221, Article 1(1) of which provides that the directive is to apply to *inter alia* any national of a Member State who travels to another Member State as a recipient of services, sets certain limits on the right of Member States to expel foreign nationals on the grounds of public policy. Article 3 of that directive states that measures taken on grounds of public policy or of public security that have the effect of restricting the residence of a national of another Member State must be based exclusively on the personal conduct of the individual concerned. In addition, previous criminal convictions cannot in themselves constitute grounds for the taking of such measures. It follows that the existence of a previous criminal conviction can, therefore, only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy (*Bouchereau*, paragraph 28).
- 25 It follows that an expulsion order could be made against a Community national such as Ms Calfa only if, besides her having committed an offence under drugs laws,

her personal conduct created a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

- 26 In the present case, the legislation at issue in the main proceedings requires nationals of other Member States found guilty, on the national territory in which that legislation applies, of an offence under the drugs laws, to be expelled for life from that territory, unless compelling reasons, in particular family reasons, justify their continued residence in the country. The penalty can be revoked only by a decision taken at the discretion of the Minister for Justice after a period of three years.
- 27 Therefore, expulsion for life automatically follows a criminal conviction, without any account being taken of the personal conduct of the offender or of the danger which that person represents for the requirements of public policy.
- 28 It follows that the conditions for the application of the public policy exception provided for in Directive 64/221, as interpreted by the Court of Justice, are not fulfilled and that the public policy exception cannot be successfully relied upon to justify a restriction on the freedom to provide services, such as that imposed by the legislation at issue in the main proceedings.
- 29 In view of the foregoing considerations, the answer to be given to the national court's questions must be that Articles 48, 52 and 59 of the Treaty and Article 3 of Directive 64/221 preclude legislation which, with certain exceptions, in particular where there are family reasons, requires a Member State's courts to order expulsion for life from its territory of nationals of other Member States found guilty on that territory of the offences of obtaining and being in possession of drugs for their own personal use.

30 In those circumstances, it is no longer necessary for the Court to consider the question of the compatibility of legislation such as that applicable in the main proceedings with Articles 8 and 8a of the Treaty.

Costs

31 The costs incurred by the Greek, French, Netherlands and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Arios Pagos by judgment of 27 September 1996, hereby rules:

Articles 48, 52 and 59 of the EC Treaty and Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health preclude legislation which, with certain exceptions, in particular where there are family reasons,

requires a Member State's courts to order expulsion for life from its territory of nationals of other Member States found guilty on that territory of the offences of obtaining and being in possession of drugs for their own personal use.

Rodríguez Iglesias

Kapteyn

Jann

Gulmann

Murray

Edward

Ragnemalm

Sevón

Wathelet

Schintgen

Ioannou

Delivered in open court in Luxembourg on 19 January 1999.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President