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Advocate General's Opinion in Case C-441/02

Commission of the European Communities v Federal Republic of Germany

**IN THE OPINION OF ADVOCATE GENERAL STIX-HACKL, GERMAN
PRACTICE OF DEPORTING CITIZENS OF THE UNION WHO HAVE BEEN
CONVICTED OF CRIMINAL OFFENCES IS CONTRARY TO COMMUNITY LAW**

Whilst the German law on aliens corresponds in large measure to Community law requirements, in practice deportation is, at least in individual cases, declared to be immediately enforceable automatically – that is to say, without regard for personal circumstances – for purposes of deterrence and in breach of the fundamental right to family life, and without any examination as to urgency

Citizenship of the Union in principle confers on nationals of a Member State of the European Union the right to reside in another Member State. In view of the great importance attached to freedom of movement for citizens of the Union, the Court of Justice of the European Communities has ruled in its case-law that, even in the case of citizens of the Union who have been convicted of criminal offences, automatic deportation, whereby no account is taken of the personal conduct of the perpetrator or of the threat which he or she poses to public order, is not permitted.

The Commission of the European Communities has brought a case before the Court of Justice against the Federal Republic of Germany because it takes the view that both the German law on aliens and German administrative practice with regard to the deportation of citizens of the Union who have been convicted of criminal offences are contrary to Community law. The Commission criticises what it considers to be the automatic nature of deportation in the event of a criminal conviction, without any regard being had to personal circumstances, deportation based on no more than 'mere' grounds of public safety and public order, the justification of deportation on the ground of its deterrent effect on other foreigners, inadequate consideration paid to the fundamental right to respect for family life and ordering of immediate enforcement in the absence of any urgency.

Advocate General Stix-Hackl has today delivered her Opinion in this case.

She takes the view that, with one exception, the German provisions criticised by the Commission implement the requirements of Community law¹ with sufficient clarity. It is only the German rules governing the deportation of citizens of the Union with temporary residence entitlement that do not indicate with sufficient clarity that deportation can be justified on public-policy grounds only if there is a real and sufficiently serious threat affecting a fundamental interest of society; a criminal conviction *in se* is for that reason not sufficient.

Advocate General Stix-Hackl points out that, according to the Court's more recent case-law, even in the area of the law on residence one single case of administrative practice may constitute a breach of Community law liable to be confirmed by the Court of Justice in Treaty-infringement proceedings such as those in the present case.²

The Commission rightly criticises German administrative practice – particularly in the *Land* of Baden-Württemberg – under which citizens of the Union have, on the basis of a provision applicable in terms of severity only to nationals of non-member countries, been forcibly deported or, as a general rule, forcibly deported by reason of an enforceable criminal conviction. That has demonstrably occurred in at least one instance.

In addition, the German authorities dealing with aliens have justified their decisions to deport citizens of the Union at least also with the deterrent effect. The person affected cannot, however, invalidate that justification precisely because the reason does not lie in his personal conduct, with the result that his protection as a citizen of the Union is restricted in an impermissible manner.

Furthermore, the deportation of citizens of the Union has – at least in one instance – been effected without any examination as to the proportionality of the decision and without any regard being had to the significance of the fundamental right to respect for family life, which is guaranteed in the European Convention on Human Rights and protected by Community law. In other cases, insufficient regard was had to that fundamental right. In balancing that fundamental right against the interest in maintaining public order, account must also be taken of the fact that a citizen of the Union may have a right of residence and that therefore particularly stringent standards for deportation would apply.

Finally, German administrative practice breaches Community law in that, in a variety of cases, the authorities dealing with foreigners ordered immediate implementation of deportation orders against citizens of the Union without examining whether the deportation was urgent in the sense that it was not possible to await the conclusion of the normal appeals procedure.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

¹ In particular, Council Directive 64/221/EEC of 25 February 1964 on the coordination 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).

² Judgment of 14 April 2005 in Case C-157/03 *Commission v Spain*.

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Languages available: DE, EN, ES, FR, HU, PL

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

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