



Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 26 October 2023¹

Case C-752/22

EP

v

Maahanmuuttovirasto

(Request for a preliminary ruling from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland))

(Reference for a preliminary ruling – Immigration policy – Directive 2003/109/EC – Status of third-country nationals who are long-term residents – Terms of residence of a long-term resident in another Member State – Article 22(3) – Enhanced protection against expulsion – Third-country national who is a long-term resident in one Member State staying illegally on the territory of another Member State – Return decision accompanied by an entry ban covering national territory imposed on grounds of public policy and public security – Directive 2008/115/EC – Common standards and procedures in Member States for returning illegally staying third-country nationals – Article 6(2) – Third-country national holding a valid residence permit issued by another Member State)

I. Introduction

1. Does a third-country national who has acquired long-term resident status in a Member State in accordance with Directive 2003/109/EC² benefit, in another Member State whose territory he or she has entered in breach of an entry ban imposed on him or her, from the enhanced protection against expulsion provided for by Article 12 and Article 22(3) of that directive?
2. That, in essence, is the question raised by this reference for a preliminary ruling.
3. The reference has been made in proceedings between EP, a Russian national who has acquired long-term resident status in Estonia, and the Maahanmuuttovirasto (National Immigration Service, Finland) ('the Immigration Service') concerning the legality of a decision to remove EP to the Russian Federation, accompanied by an entry ban covering the Schengen area ('the contested decision'), subsequently narrowed to the national territory. While the Immigration Service based

¹ Original language: French.

² Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1) ('Directive 2003/109').

its decision on the provisions of Directive 2008/115/EC,³ the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), is uncertain whether the Immigration Service was not required, on the contrary, to give effect to the measures concerning enhanced protection against expulsion laid down in favour of third-country nationals who are long-term residents by Article 22(3) of Directive 2003/109.

4. In the present case, the Court must therefore consider, once again, the question of the co-existence, in relation to one and the same third-country national, of an entry ban imposed by one Member State and a valid residence permit issued by another Member State.⁴ The circumstances of this case illustrate the difficulties arising in relation to the determination of the respective scopes of Directives 2003/109 and 2008/115 – which, moreover, the European Commission has identified in its current proposal to recast Directive 2003/109.⁵ Its current proposals seek to ensure that the two directives are more consistent and complement each other better.⁶

5. In this Opinion, which, as requested by the Court, will focus on the first question referred, I will explain why I consider that a third-country national who has long-term resident status in one Member State can exercise the right derived from that status to reside in another Member State, and enjoy the protection which flows from that right, only where that third-country national has obtained a residence permit in the latter Member State. I will conclude from my analysis that Article 22(3) of Directive 2003/109 must be interpreted as meaning that it does not govern the conditions under which a Member State may adopt a decision to remove a third-country national where he or she has entered the territory of that Member State in breach of an entry ban imposed on him or her for reasons of public policy and public security.

II. Legal framework

A. *European Union law*

1. *Directive 2003/109*

6. Article 1 of Directive 2003/109, headed ‘Subject matter’, provides:

‘This Directive determines:

- (a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and

³ Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

⁴ The present case belongs to the same line as that which gave rise to the judgment of 16 January 2018, *E* (C-240/17, EU:C:2018:8), which was factually similar in that the third-country national concerned held a residence permit, issued in Spain, which was valid when the Finnish authorities made a decision to return him to his country of origin and to ban him from entering the Schengen area.

⁵ Proposal for a directive of the European Parliament and of the Council, presented on 27 April 2022, concerning the status of third-country nationals who are long-term residents (COM(2022) 650 final).

⁶ The Commission states, in particular, that the recast Directive 2003/109 ‘should take into account the common standards and procedures in Member States for returning illegally staying third-country nationals introduced by [Directive 2008/115]’ (recital 21), and thus proposes to make express reference to that directive, enabling clearer delineation of the scope of each of the two directives.

(b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.’

7. Article 2(b) to (d) of that directive, headed ‘Definitions’, is worded as follows:

‘For the purposes of this Directive:

...

(b) “long-term resident” means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

(c) “first Member State” means the Member State which for the first time granted long-term resident status to a third-country national;

(d) “second Member State” means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence.’

8. Article 3 of that directive, headed ‘Scope’, provides in paragraph 1:

‘This Directive applies to third-country nationals residing legally in the territory of a Member State.’

9. Chapter II of Directive 2003/109 contains Articles 4 to 13. It lays down the conditions for the grant and withdrawal of long-term resident status granted by a Member State to third country-nationals staying legally on its territory, together with the associated rights, the objective being to facilitate the integration of such third-country nationals in order to promote economic and social cohesion in accordance with recitals 4 and 6 of that directive.

10. Article 12 of that directive, headed ‘Protection against expulsion’, provides 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.

...

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.

...’

11. Chapter III of Directive 2003/109, entitled ‘Residence in the other Member States’, comprises Articles 14 to 23. Its purpose is to lay down the conditions applicable to the exercise of the right of a person with long-term resident status to reside in Member States other than the one which granted him or her such status, in order to contribute, in accordance with recital 18 of that directive, to the effective attainment of an internal market as an area in which the free movement of persons is ensured.

12. Article 14(1) of that directive provides:

‘A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.’

13. Article 15 of that directive, headed ‘Conditions for residence in a second Member State’, provides, in the first subparagraph of paragraph 1:

‘As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.’

14. Article 22 of Directive 2003/109, headed ‘Withdrawal of residence permit and obligation to readmit’, provides:

‘1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

- (a) on grounds of public policy or public security as defined in Article 17;
- (b) where the conditions provided for in Articles 14, 15 and 16 are no longer met;
- (c) where the third-country national is not lawfully residing in the Member State concerned.

2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.

3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the [European] Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security.

In such cases, when adopting the said decision the second Member State shall consult the first Member State.

When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the

second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision.

...

4. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

5. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.’

2. *Directive 2008/115*

15. Article 3 of Directive 2008/115 is worded as follows:

‘For the purpose of this Directive the following definitions shall apply:

...

2. “illegal stay” means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of [Regulation (EC) No 562/2006⁷] or other conditions for entry, stay or residence in that Member State;

3. “return” means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

4. “return decision” means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

5. “removal” means the enforcement of the obligation to return, namely the physical transportation out of the Member State;

6. “entry ban” means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;

...

⁷ Regulation of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1). The Schengen Borders Code was repealed and replaced by Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

8. “voluntary departure” means compliance with the obligation to return within the time limit fixed for that purpose in the return decision;

...’

16. Article 6 of that directive, concerning return decisions terminating an illegal stay, provides:

‘1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national’s immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.

...’

B. Finnish law

17. The *ulkomaalaislaki* 301/2004 (Law on foreign nationals) of 30 April 2004 provides, in Paragraph 11(1), that a foreign national may not enter Finland if he or she is subject to an entry ban (point 4) or considered to constitute a threat to public order or public security (point 5).

18. Pursuant to Paragraph 149b of that law, a third-country national who is staying illegally in Finland, or whose application for a residence permit has been rejected, and who has a valid residence permit or other authorisation offering a right to stay issued by another Member State, is required to return immediately to the other Member State concerned. If the third-country national fails to comply with that requirement, or if his or her immediate removal is necessary to ensure public order or public security, a decision will be taken for his or her removal.

III. The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

19. The factual background relates to two distinct periods.

20. The first is the period before 12 July 2019, on which date the Republic of Estonia granted long-term resident status to the person concerned, who is a Russian national holding a valid passport.

21. It is common ground that, on numerous occasions during that period, the person concerned entered Finland, where he was subject to four decisions for his removal to Estonia, dated 9 February 2017, 16 March 2017, 26 November 2018 and 8 July 2019 respectively. Those decisions were taken following the commission by the person concerned of a number of offences, namely aggravated drink driving, driving without a driving licence and breach of an entry ban. He is also suspected of aggravated theft, forgery and providing false personal information. Having regard to the nature of his criminal activities and his recidivism, the competent national

authorities determined that the person concerned represented a threat to public order and public security, and a ban on entering Finnish territory was accordingly attached to three of those decisions.

22. The second period is that corresponding to the long-term resident status granted by the Republic of Estonia to the person concerned, together with the associated residence permit, for a period of five years, from 12 July 2019 to 12 July 2024. Long-term resident status was thus granted during the currency of a ban on entering Finnish territory which had been imposed by the Finnish State.⁸

23. On 19 November 2019, after making an overall assessment of the situation of the person concerned – the various elements of which are apparent from the national file available to the Court – the Immigration Service refused to permit him to return voluntarily to Estonia and adopted the contested decision.⁹ It is apparent from the order for reference that the contested decision incorporated an obligation to remove the person concerned to his country of origin, namely the Russian Federation, and that it is accompanied by an entry ban covering the entire Schengen area for a period of four years, having regard to the threat to public order and public security which he represents. That decision was adopted on the basis of Directive 2008/115, the Immigration Service taking the view that EP was ‘illegally staying’ on national territory within the meaning of Article 3(2) of that directive, in so far as he had entered that territory in breach of the entry bans previously imposed on him. I should state immediately that, in my view, that decision must be regarded as a ‘return decision’ within the meaning of Article 3(4) of that directive. In the context of that directive, return is defined by Article 3(3) thereof as the process by which a third-country national is obliged to go back to a third country, a country of transit or his or her country of origin, which is to say a place outside EU territory.

24. It is also apparent from the national file that, on that same date, 19 November 2019, the Immigration Service initiated the consultation process provided for by Article 25(2) of the Convention Implementing the Schengen Agreement¹⁰ with the Republic of Estonia, in which context that Member State was asked to take a position on the possible withdrawal of the long-term residence permit held by the person concerned. On 9 December 2019, the Republic of Estonia gave notice that that permit would not be withdrawn. In those circumstances, the Immigration Service converted the entry ban covering the entirety of the Schengen area into a purely national entry ban, in accordance with the second subparagraph of Article 25(2) of that convention.¹¹

25. EP was deported to the Russian Federation on 24 March 2020. He again entered Finnish territory, from where he was removed, to Estonia, on 8 August 2020 and 16 November 2020.

⁸ Under Article 11(4) of Directive 2008/115, the Estonian authorities were required, prior to granting such status, to consult the Finnish authorities in order to take account of their interests.

⁹ In the judgment of 16 January 2018, *E* (C-240/17, EU:C:2018:8, paragraph 46), the Court held that, in a situation in which a third-country national who holds a residence permit issued by a Member State is staying illegally in another Member State, he or she must be allowed to travel to the Member State which issued his or her residence permit in order to exercise his or her right to reside there instead of being obliged to return to his or her country of origin, *unless, in particular, public order or national security so requires*.

¹⁰ Convention of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders; signed at Schengen on 19 June 1990, entered into force on 26 March 1995 (OJ 2000 L 239, p. 19).

¹¹ See also judgment of 16 January 2018, *E* (C-240/17, EU:C:2018:8, paragraph 58).

26. After his action against the contested decision had been dismissed by the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), the applicant brought the matter before the Korkein hallinto-oikeus (Supreme Administrative Court) seeking annulment of that judgment.

27. Having regard to the factual background to the present case, and in particular the fact that EP has long-term resident status in Estonia, the referring court wonders whether the Immigration Service was required, in adopting the contested decision, to give effect to the measures concerning enhanced protection against expulsion which are provided for by Directive 2003/109.

28. In the first place, that court considers that Article 3(1) of Directive 2003/109 does not enable an unequivocal determination to be made as to whether a situation such as that at issue in the present case falls within the scope of that directive. While EP's stay in Estonia was lawful, given that he can rely on the long-term resident status granted to him by that Member State, his stay in Finland was not, given that he did not apply for a residence permit in accordance with the provisions of Chapter III of that directive, and that he was subject to an entry ban prohibiting him from entering the territory of that Member State.

29. In the second place, the referring court considers that the Law on foreign nationals does not contain provisions expressly transposing Article 22(3) of Directive 2003/109 as regards the removal from Finland to a place outside EU territory of a third-country national holding a long-term residence permit issued to him or her by another Member State. The question therefore arises of whether Article 12(1) and (3) and Article 22(3) of that directive are unconditional and sufficiently precise in content, within the meaning of the Court's case-law, such that a third-country national can rely on them as against a Member State.

30. In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Directive 2003/109 concerning the status of third-country nationals who are long-term residents apply to the deportation from the European Union of a person who entered the territory of a Member State during the period of validity of an entry ban imposed on him or her, whose stay in the Member State was therefore illegal under national law and who did not apply for a residence permit in that Member State if the person has been issued with a long-term residence permit for third-country nationals in another Member State?

If the first question is answered in the affirmative:

(2) Are Article 12(1) and (3) and Article 22(3) of Directive 2003/109 concerning the status of third-country nationals who are long-term residents, so far as their subject matter is concerned, so unconditional and sufficiently precise that they can be relied upon by a third-country national against a Member State?'

31. Written observations were submitted by the Finnish Government and the Commission.

IV. Analysis

32. By the first question referred, the referring court asks the Court, in essence, whether Article 22(3) of Directive 2003/109 – under which a third-party national who has long-term resident status in the first Member State benefits, in the second Member State, from the enhanced protection against expulsion provided for by Article 12 of that directive – is applicable where that third-country national has entered the territory of the second Member State in breach of an entry ban imposed on him or her for reasons of public policy and public security.

33. Before beginning my analysis of the terms of the first subparagraph of Article 22(3) of Directive 2003/109 and of the general scheme and purpose of Chapter III of that directive, in which that article is found, it is necessary, as a preliminary matter, to clarify the respective scopes of Directives 2008/115 and 2003/109.

A. *The respective scopes of Directives 2008/115 and 2003/109*

34. It is apparent both from its title and from the wording of Article 1 that Directive 2008/115 establishes common standards and procedures which must be applied by each Member State for returning illegally staying third-country nationals.

35. Thus, Article 2(1) of that directive is unequivocal in stating that that directive applies to ‘third-country nationals staying illegally on the territory of a Member State’.¹²

36. The concept of ‘illegal stay’ is defined in Article 3(2) of Directive 2008/115 as ‘the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of [Regulation No 562/2006¹³] or other conditions for entry, stay or residence in that Member State’. Since a third-country national who enters the territory of a Member State in breach of an entry ban is clearly present on its territory, he or she is, by virtue of that fact alone, staying there illegally, within the meaning of Article 3(2) of Directive 2008/115, and falls within the scope of that directive, in accordance with Article 2 thereof.¹⁴ Article 6 of Directive 2008/115 lays down the standards and the procedure then applicable to the ‘return decision’, which obliges the foreign national to return, either voluntarily or under compulsion, inter alia to his or her country of origin.¹⁵ Article 6(2) of that directive makes specific provision as regards third-country nationals holding a valid residence permit or other authorisation offering a right to stay issued by another Member State.

37. However, it is apparent from Article 4(2) of Directive 2008/115 that that directive applies ‘without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community *acquis* relating to immigration and asylum’. As the Court has observed, that directive is not intended to harmonise in their entirety the rules of the Member States relating to the stay of foreign nationals.¹⁶

¹² While Article 2(2) of Directive 2008/115 sets out the grounds on which the Member States may decide to exclude an illegally staying third-country national from the scope of that directive, it must be noted that those grounds do not include the possession of a valid residence permit in another Member State.

¹³ See footnote 7 to this Opinion.

¹⁴ See judgment of 7 June 2016, *Affum* (C-47/15, EU:C:2016:408, paragraph 48).

¹⁵ See Article 3(3) and (4) of Directive 2008/115.

¹⁶ See judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308, paragraph 44 and the case-law cited).

38. In that regard, there is no doubt that the rules laid down by Directive 2003/109 form part of that *acquis* and include provisions which are more favourable to third-country nationals who are long-term residents, providing them with enhanced protection against expulsion as well as a procedure for readmission between Member States in certain cases of intra-Union mobility. As the Commission has stated in its Return Handbook, that directive constitutes a *lex specialis* which '[has] to be followed in the first place in those cases expressly covered by [that directive]'.¹⁷

39. The scope of Directive 2003/109 is defined in Article 3(1) thereof, which provides that it 'applies to third-country nationals residing legally in the territory of a Member State'. As long as a third-country national has long-term resident status in a Member State, which, in addition, is attested by the associated resident permit, and as long as that status has not been formally withdrawn, he or she is residing legally in the territory of a Member State. In the present case, EP falls within the scope of that directive and is therefore entitled to the benefit, in Estonia, of the rights attaching to his status as a long-term resident, which are set out in Chapter II of that directive and include the right to enhanced protection against expulsion provided for in Article 12 thereof.¹⁸

40. As regards, on the other hand, the terms of residence of that third-country national in Member States other than the one which conferred long-term resident status on him or her, these are set out in Chapter III of Directive 2003/109. None of those terms relates to a situation such as that at issue, in which a third-country national who is a long-term resident of one Member State does not have a derived right of residence in the Member State whose territory he has entered, in breach of an entry ban imposed on him for reasons of public policy and public security.

41. This assessment is based on both an examination of the literal terms of the first subparagraph of Article 22(3) of Directive 2003/109 and a systemic, contextual and purposive analysis of that directive.

B. The wording of the first subparagraph of Article 22(3) of Directive 2003/109

42. The first subparagraph of Article 22(3) of Directive 2003/109 sets out the principle that 'until the third-country *national* [¹⁹] has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, [²⁰] the second Member State may adopt a

¹⁷ See point 5.8 of the Return Handbook, which is annexed to Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks (OJ 2017 L 339, p. 83). As is apparent from paragraph 2 of that recommendation, the Return Handbook is the main tool which should be used by the authorities of the Member States competent for carrying out tasks related to returning illegally staying third-country nationals.

¹⁸ See also recital 16 of Directive 2003/109.

¹⁹ My italics. The French-language version of that provision uses the expression '*résident de pays tiers*' (my italics), while referring to a '*ressortissant d'un pays tiers*' in Article 22(1) of that directive. The other language versions use the same expression in both of those paragraphs, including the versions in Spanish ('el nacional de un tercer país'), German ('Drittstaatsangehörige', English ('the third-country national'), Italian ('il cittadino di un paese terzo'), and Slovenian ('državljan tretje države').

²⁰ The Commission has pointed out, in its Report to the European Parliament and to the Council on the application of [Directive 2003/109] of 28 September 2011 (COM(2011) 585 final) that 'Directive [2008/115] had an impact on Article 22(2) and (3) as, according to Article 6 of this Directive, third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit issued by another Member State must be required to go to the territory of that other Member State immediately. It is only in the event of non-compliance by the third-country national concerned with this requirement that Member States can issue a return decision' (point 3.9).

decision to remove the third-country national from the territory of the Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security’.

43. The use of the conjunction ‘until’ in the expression ‘until the third-country national has obtained long-term resident status’ does not enable the scope *ratione personae* of the first subparagraph of Article 22(3) of Directive 2003/109 to be determined with precision.

44. Undoubtedly, that expression shows a clear intention on the part of the EU legislature to exclude from the scope of that provision a third-country national who has long-term resident status in the first Member State, and obtains that status in the second Member State.²¹ However, that expression does not enable the moment from which the third-country national benefits from that protection in the territory of the second Member State to be determined. Is it sufficient for him or her to be a long-term resident in the first Member State, irrespective of the duration and circumstances of the stay in the territory of the other Member State, or, by contrast, is it necessary for him or her to have applied for or obtained a residence permit in that Member State?

45. I consider that the scope *ratione personae* of the first subparagraph of Article 22(3) of that directive must also be interpreted in that way.

46. First, in the wording of that provision, the EU legislature refers to the obligations of ‘the second Member State’. That expression is defined in Article 2(d) of Directive 2003/109, as meaning ‘any Member State other than the one which for the first time granted long-term resident status to a third-country national and *in which that long-term resident exercises the right of residence*’.²² The use of the indicative present (‘exercises’) and not the conditional form (‘would exercise’) indicates that the third-country national must be currently exercising his or her derived right of residence in the second Member State. It is clear from Article 14(1), and from recital 21 of that directive, that the exercise of that right of residence presupposes that the third-country national satisfies the conditions set out in Chapter III of that directive.²³

47. Secondly, it is apparent from the wording of the first subparagraph of Article 22(3) of Directive 2003/109 that the ‘decision to remove the third-country national from the territory of the Union’ must be adopted ‘in accordance with and under the guarantees of Article 12 [of that directive], on serious grounds of public policy or public security’. That means that the third-country national can be removed only if he or she constitutes a genuine and sufficiently serious threat to public policy or public security, that the decision to expel cannot be founded on economic considerations, and that the competent authorities of the second Member State are required, before adopting any such decision, to take account of the duration of residence of the person concerned in the territory of that Member State, his or her age, the consequences of expulsion for him or her and his or her family members, and his or her links with the country of residence, or the absence of links with the country of origin.²⁴ Consequently, the grant of this considerably enhanced level of protection against expulsion is based on objective justifications relating to the degree of integration of the long-term resident in the first Member State concerned, referable to his or her long-term resident status (Article 12 of Directive 2003/109)

²¹ Such a person has the benefit of the protection attaching to long-term resident status, provided for in Article 12 of Directive 2003/109.

²² My italics.

²³ See my Opinion in Joined Cases *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)* (C-829/21 and C-129/22, EU:C:2023:244, points 40 and 41), and judgment of 29 June 2023, *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)* (C-829/21 and C-129/22, EU:C:2023:525, paragraph 57 and the case-law cited).

²⁴ See judgment of 9 February 2023, *Staatssecretaris van Justitie en Veiligheid and Others (Withdrawal of the right of residence of a Turkish worker)* (C-402/21, EU:C:2023:77, paragraph 71 and the case-law cited).

and in the second Member State, referable to the derived right of residence based on that status (Article 22 of that directive). Such protection cannot therefore be justified in relation to a third-country national who is a long-term resident but does not have such a derived right of residence in the Member State whose territory he or she has entered, because of an entry ban imposed on him or her for reasons of public policy and public security.

48. That interpretation is supported by the general scheme and purpose of the provisions contained in Chapter III of Directive 2003/109.

C. The general scheme and purpose of Chapter III of Directive 2003/109

49. As its title indicates, the purpose of Chapter III of Directive 2003/109 is to lay down the conditions applicable to the exercise of the right of a third-country national with long-term resident status to reside in Member States other than the one which granted that status, in order to contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured.²⁵ It establishes an incremental system as regards the entitlement of such a third-country national in the other Member States, which may lead to a permanent right of residence through the grant of such status in one of those States.

50. The right to reside for a period of more than three months²⁶ granted in the second Member State is a right derived from the long-term resident status obtained in the first Member State. Thus, it is precisely because one Member State has granted such status to the person concerned, pursuant to Article 4 of Directive 2003/109, that a second Member State can give concrete effect to that derived right of residence by issuing a residence permit to that person, pursuant to Article 14(1) of that directive.²⁷ To that end, the long-term resident must make an application in accordance with Article 15 of that directive and meet the conditions set out in Articles 16 to 19 of that directive. One of those conditions is that the person concerned must not constitute a threat to public policy or public security.²⁸ Article 20 of Directive 2003/109 sets out the procedural guarantees to be accorded to a long-term resident in the event of his or her application for a residence permit being rejected, while Article 21 of that directive makes provision as to the treatment he or she is to receive in the second Member State in the event of the permit being granted.

51. Article 22 of Directive 2003/109, which has the unequivocal heading ‘Withdrawal of residence permit and obligation to readmit’, follows logically from those provisions. The Commission states, in its report on the implementation of that directive, that that article sets out the circumstances in which the second Member State may adopt a decision to expel a long-term resident who has been granted a residence permit in that Member State, but has not yet obtained long-term resident status²⁹ as provided for by Article 23 of that directive.

²⁵ See recital 18 of that directive.

²⁶ See Article 14(1) of Directive 2003/109.

²⁷ See my Opinion in Joined Cases *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)* (C-829/21 and C-129/22, EU:C:2023:244, points 40 and 41), and judgment of 29 June 2023, *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)* (C-829/21 and C-129/22, EU:C:2023:525, paragraph 57 and the case-law cited).

²⁸ As the EU legislature has indicated in recital 21 of Directive 2003/109, the Member State in which the long-term resident intends to exercise his or her right of residence should be able to check that the person concerned meets the conditions for residing in its territory and that he or she does not constitute a threat to public policy, public security or public health.

²⁹ See the report cited in footnote 20 to this Opinion, point 3.9.

52. Article 22 of Directive 2003/109 is thus clearly contemplating a long-term resident who has begun a genuine process of integration in the second Member State in the exercise of the derived right of residence based on his or her status. The purpose of Article 22(3) is, moreover, to ensure the effectiveness of that right of residence, by requiring the second Member State to grant that resident enhanced protection against expulsion in cases where he or she constitutes a threat to public policy and public security, mirroring the protection enjoyed by virtue of long-term resident status in the first Member State.

53. In a situation such as that at issue in the main proceedings, the third-country national who is a long-term resident does not have the right to enter the Member State concerned because of the legal effects of an entry ban imposed on him. A fortiori, he is not entitled to a derived residence permit in that Member State because of the threat he constitutes to public policy and public security, in accordance with Article 17 of Directive 2003/109. In those circumstances, I consider that he cannot have the benefit of the considerably enhanced protection against expulsion provided for by Article 22(3) of that directive.

54. That interpretation seems to me to accord with the purpose of Directive 2003/109. As is apparent from recitals 4, 6 and 12 of that directive, long-term resident status must constitute a genuine instrument for integration into the society in which the third-country national is living, such integration being a key element in promoting economic and social cohesion, a fundamental objective of the Union.³⁰ I would also observe that, in accordance with recital 18 of that directive, the right of a long-term resident to reside in a Member State other than that which granted him or her long-term resident status should contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured.

55. It is clear that, in the situation at issue in the main proceedings, the grant of long-term resident status to the person concerned by the Estonian authorities cannot entitle that person, as against the Finnish authorities, to demand the considerably enhanced level of protection against expulsion provided for by Article 22(3) of that directive, when he entered Finnish territory in flagrant breach of an entry ban imposed on him on grounds of public policy and public security, and hence does not have a right of residence in that Member State. To hold that it did would run counter not only to the system established by Directive 2003/109, under which a third-country national enjoys rights and privileges which are a function of his or her integration into society in both the first Member State and the second Member State, but also to the legal effects attaching to entry bans issued by a Member State.

56. With all of the foregoing in mind, I consider that Article 22(3) of Directive 2003/109 is to be interpreted as meaning that it is not applicable to a third-country national who, while enjoying long-term resident status in one Member State, does not have a right of residence in the Member State whose territory he or she enters in breach of an entry ban imposed on him or her for reasons of public policy and public security.

57. Such a third-country national remains entitled to rely on the rights deriving from his or her long-term residence permit by subsequently entering the territory of the first Member State.

³⁰ It is apparent from recital 22 of Directive 2003/109 that it is with a view to guaranteeing the effectiveness of that derived right of residence that the EU legislature requires the second Member State to guarantee the long-term resident the same treatment that he or she would receive in the first Member State. See also judgment of 4 June 2015, *P and S* (C-579/13, EU:C:2015:369, paragraph 46 and the case-law cited).

58. The Member State in whose territory that third-country national is present must, in such circumstances, implement the return procedure provided for by Directive 2008/115, in particular by Article 6(2) of that directive.

59. I would observe that the purpose of Article 6 of that directive is to lay down the standards and procedure applicable to return decisions made in respect of a third-country national staying illegally in the territory of a Member State. Article 6(2) of that directive specifically concerns the situation in which the third-country national holds a valid residence permit or other authorisation offering a right to stay issued by another Member State. Under that provision, the Member State in whose territory the third-country national is illegally staying is required to adopt a return decision only where the person concerned refuses to go immediately to the Member State which issued the residence permit or where his or her immediate departure is required for reasons of public policy or national security.³¹

V. Conclusion

60. In the light of all the foregoing, I propose that the Court should answer the first question referred for a preliminary ruling by the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) as follows:

Article 22(3) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011,

is to be interpreted as meaning that:

- it is not applicable to a third-country national who, while enjoying long-term resident status in one Member State, does not have a right of residence in the Member State whose territory he or she enters in breach of an entry ban imposed on him or her for reasons of public policy and public security;
- such a third-country national remains entitled to rely on the rights deriving from his or her long-term residence permit by subsequently entering the territory of the first Member State.

³¹ See, in that regard, judgment of 16 January 2018, *E* (C-240/17, EU:C:2018:8, paragraph 45), and order of 26 April 2023, *Migrationsverket* (C-629/22, EU:C:2023:365, paragraphs 20, 22 and 33 and the case-law cited).