JUDGMENT OF THE COURT (Grand Chamber)

23 November 2010 *

In Case C-145/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgerichtshof Baden-Württemberg (Germany), made by decision of 9 April 2009, received at the Court on 24 April 2009, in the proceedings

Land Baden-Württemberg

v

Panagiotis Tsakouridis,

* Language of the case: German.

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues (Rapporteur), K. Lenaerts, J.-C. Bonichot, D. Šváby, Presidents of Chambers, A. Rosas, J. Malenovský, U. Lõhmus, E. Levits, A. Ó Caoimh, L. Bay Larsen and M. Berger, Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 20 April 2010,

after considering the observations submitted on behalf of:

— Land Baden-Württemberg, by M. Schenk, acting as Agent,

— Mr Tsakouridis, by K. Frank, Rechtsanwalt,

— the German Government, by M. Lumma, J. Möller and C. Blaschke, acting as Agents,

— the Belgian Government, by L. Van den Broeck, acting as Agent,

— the Danish Government, by B. Weis Fogh, acting as Agent,

— the Estonian Government, by L. Uibo, acting as Agent,

— the Hungarian Government, by R. Somssich, M. Fehér and K. Veres, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the United Kingdom Government, by L. Seeboruth and I. Rao, acting as Agents, and K. Beal, Barrister,

— the European Commission, by D. Maidani and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 16(4) and 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

2 The reference has been made in proceedings between Land Baden-Württemberg and Mr Tsakouridis, a Greek national, concerning the decision of that *Land* determining the loss of his right of entry and residence in the Federal Republic of Germany and the threatened decision to expel him.

Legal context

Directive 2004/38

3 Recital 3 in the preamble to Directive 2004/38 states:

'Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.'

4 According to recital 22 in the preamble to that directive:

'The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. In order to ensure a tighter definition of the circumstances and procedural safeguards subject to which Union citizens and their family members may be denied leave to enter or may be expelled, this Directive should replace 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), as amended by Council Directive 75/35/EEC of 17 December 1974 (OJ 1975 L 14, p. 14)].'

5 According to recitals 23 and 24 in the preamble to the directive:

'(23) Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the [EC] Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

(24) Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors, in order to protect their links with their family, in accordance with the United Nations Convention on the Rights of the Child, of 20 November 1989.'

6 Article 16 of the directive provides:

‘1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

…

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.’

7 Article 27(1) and (2) of the directive provide:

‘1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective

of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.'

8 Under Article 28 of the directive:

'1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous 10 years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.'

9 Article 32(1) of the directive provides:

'Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law,

by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.'

National legislation

10 Paragraph 6 of the Law on general freedom of movement of citizens of the Union (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern) of 30 July 2004 (BGBl. 2004 I, p. 1950), as amended by the Law amending the Federal Police Law and other laws (Gesetz zur Änderung des Bundespolizeigesetzes und anderer Gesetze) of 26 February 2008 (BGBl. 2008 I, p. 215) ('the FreizügG/EU'), provides:

'(1) Loss of the right under Paragraph 2(1) may, without prejudice to Paragraph 5(5), be determined and the certificate of the Community-law right of residence or permanent residence withdrawn and the residence card or permanent residence card revoked only on grounds of public policy, security or health (Articles 39(3) and 46(1) of the Treaty on the European Community). Entry may also be refused on the grounds mentioned in the first sentence. A determination on grounds of public health may be made only if the illness occurs within the first three months from entry.

(2) The fact of a criminal conviction does not in itself suffice as grounds for the decisions or measures referred to in subparagraph 1. Only criminal convictions which have not yet been deleted in the federal central register may be taken into account, and only in so far as the circumstances on which they are based disclose personal conduct which constitutes a present threat to public policy. There must be a real and sufficiently serious threat which affects a fundamental interest of society.

(3) When a decision under subparagraph 1 is taken, account must be taken in particular of the duration of the person concerned's residence in Germany, his age, his state of health, his family and economic situation, his social and cultural integration in Germany, and the extent of his ties to his State of origin.

(4) After the acquisition of the right of permanent residence, a determination under subparagraph 1 may be made only on serious grounds.

(5) In the case of Union citizens and their family members who have resided in Germany for the previous 10 years, and in the case of minors, a determination under subparagraph 1 may be made only on imperative grounds of public security. In the case of minors, this does not apply if the loss of the right of residence is necessary for the best interests of the child. Imperative grounds of public security can exist only if the person concerned has been sentenced by a binding judgment to imprisonment or youth custody of at least five years for one or more intentional criminal offences or a preventive detention order was made at the time of the last binding conviction, if the security of the Federal Republic of Germany is affected, or if the person concerned gives rise to a terrorist risk.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 Mr Tsakouridis was born in Germany on 1 March 1978. In 1996 he obtained a secondary school leaving certificate. Since October 2001 he has had an unlimited residence permit in Germany. From March to mid-October 2004 he ran a pancake stall on the island of Rhodes in Greece. He then returned to Germany, where he worked from December 2004. In mid-October 2005 he went to Rhodes and resumed running the pancake stall. On 22 November 2005 the Amtsgericht Stuttgart (Local Court, Stuttgart) issued an international arrest warrant against him. On 19 November 2006 he was arrested on Rhodes, and he was transferred to Germany on 19 March 2007.

12 Mr Tsakouridis has the following criminal record. The Amtsgericht Stuttgart-Bad Cannstatt (Local Court, Stuttgart-Bad Cannstatt) sentenced him to several fines, namely on 14 October 1998 for possession of a prohibited object, on 15 June 1999 for dangerous assault, and on 8 February 2000 for intentional assault and compulsion. The Amtsgericht Stuttgart also fined him on 5 September 2002 for compulsion and intentional assault. Finally, he was convicted by the Landgericht Stutttgart (Regional Court, Stuttgart) on 28 August 2007 on eight counts of illegal dealing in substantial quantities of narcotics as part of an organised group, and sentenced to six years and six months' imprisonment.

13 By decision of 19 August 2008, the Regierungspräsidium Stuttgart (Regional Administration, Stuttgart), after hearing Mr Tsakouridis, determined that he had lost the right of entry and residence in Germany and informed him that he was liable to be the subject of an expulsion measure to Greece, without setting a time-limit for a voluntary departure. As grounds, the Regierungspräsidium Stuttgart stated that the threshold of five years' imprisonment had been crossed by the judgment of the

Landgericht Stuttgart of 28 August 2007, so that the measures in question were justified on 'imperative grounds of public security' within the meaning of Article 28(3)(a) of Directive 2004/38 and Paragraph 6(5) of the FreizügG/EU.

14 According to the Regierungspräsidium Stuttgart, the personal conduct of Mr Tsakouridis represented a genuine threat to public policy. The offences committed by him in relation to dealing in narcotics were very serious and there was a real risk of reoffending. He had clearly been prepared to take part in illegal dealing in narcotics for financial reasons. He had been indifferent to the problems caused by that dealing for drug addicts and society in general. There was a fundamental interest of society in effectively combating, by all available means, crime connected with dealing in narcotics, which was particularly harmful from the social point of view.

15 The Regierungspräsidium Stuttgart also observed that Mr Tsakouridis was unwilling or unable to comply with the existing legal order. He had committed offences with an exceptionally high criminal intent. Possible impeccable behaviour while serving his sentence did not make it possible to conclude that there was no risk of reoffending. Since the conditions for the application of Paragraph 6 of the FreizügG/EU were satisfied, the decision was within the discretion of the authorities. Mr Tsakouridis's personal interest in not losing his right of entry and residence because of his long lawful residence in Germany did not outweigh the predominant public interest in fighting against crime connected with dealing in narcotics. There was a very high probability that he would commit further offences.

16 In the opinion of the Regierungspräsidium Stuttgart, since in the course of recent years Mr Tsakouridis had spent several months in the territory of his Member State of origin, it was not to be expected that he would encounter difficulties of integration there after being expelled from German territory. The risk of reoffending also justified the interference with his right of free access, as a citizen of the Union, to the German labour market. There were no measures less restrictive than or equally appropriate as the measures imposed, and those measures did not interfere with already established economic means of existence.

17 In view of the seriousness of the offences found to have been committed, the Regierungspräsidium Stuttgart considered that the interference with Mr Tsakouridis's private and family life was justified in the interests of the prevention of disorder and of further crimes for the purposes of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and no equivalent private and family interests could be discerned which would require the expulsion measure to be waived on grounds of proportionality.

18 On 17 September 2008 Mr Tsakouridis brought proceedings before the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart) against the decision of the Regierungspräsidium Stuttgart of 19 August 2008, relying on the fact that most of his family were living in Germany. In addition, it could be seen from the judgment of the Landgericht Stuttgart of 28 August 2007 that he was only a subordinate member of the gang. As he had been brought up in Germany and attended school there, there was no threat within the meaning of Paragraph 6(1) of the FreizügG/EU. He had a close relationship with his father, who lived in Germany and regularly visited him in prison. He had surrendered to the police voluntarily, which showed that he would no longer represent a threat to public policy after having served his sentence, so that the determination of the loss of his right of entry and residence in Germany

was disproportionate. Finally, his mother, who was currently living with her daughter in Australia, would return to live definitively with her husband in Germany in spring 2009.

19 By judgment of 24 November 2008, the Verwaltungsgericht Stuttgart annulled the decision of the Regierungspräsidium Stuttgart of 19 August 2008. According to that court, a criminal conviction does not in itself suffice as grounds for the loss of the right of entry and residence of a Union citizen, as that loss presupposes a real and sufficiently serious danger which affects a fundamental interest of society within the meaning of Paragraph 6(2) of the FreizügG/EU. In addition, in the context of the transposition of Article 28(3) of Directive 2004/38, a determination of the loss of the right of entry and residence under Paragraph 6(1) of the FreizügG/EU could be made, in a case such as that of Mr Tsakouridis who had resided in Germany for over 10 years, only on imperative grounds of public security, as follows from the first sentence of Paragraph 6(5) of that law. The Verwaltungsgericht Stuttgart observed that Mr Tsakouridis had not lost his right of permanent residence as a result of his stays on Rhodes, the first sentence of Paragraph 6(5) not requiring uninterrupted residence in Germany for the previous 10 years.

20 The Verwaltungsgericht Stuttgart held that there were no 'imperative grounds of public security' within the meaning of the last sentence of Paragraph 6(5) of the FreizügG/EU to justify expulsion. Public security covered only the internal and external security of a Member State, and was accordingly narrower than the concept of public policy, which also covered domestic criminal law. That the minimum sentence mentioned in the last sentence of Paragraph 6(5) of the FreizügG/EU was exceeded did not make it possible to conclude that there were imperative grounds of public security for the purposes of expulsion. Mr Tsakouridis might possibly represent a substantial threat to public policy, but not to the existence of the State and its institutions or the survival of the population. Nor was any such matter relied on by the Regierungspräsidium Stuttgart.

21 The Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court of Baden-Württemberg), hearing an appeal against the judgment of the Verwaltungsgericht Stuttgart of 24 November 2008, decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is the expression "imperative grounds of public security" used in Article 28(3) of Directive 2004/38 … to be interpreted as meaning that only irrefutable threats to the external or internal security of the Member State can justify an expulsion, that is, only to the existence of the State and its essential institutions, their ability to function, the survival of the population, external relations and the peaceful coexistence of nations?

2. Under what conditions can the right to enhanced protection against expulsion achieved following 10 years of residence in the host Member State laid down in Article 28(3)(a) of Directive 2004/38 subsequently be lost? Is the condition for the loss of the right of permanent residence laid down in Article 16(4) of the directive to be applied *mutatis mutandis* in that context?

3. If Question 2 is answered in the affirmative and Article 16(4) of the directive applies *mutatis mutandis*: is the enhanced protection against expulsion lost by lapse of time alone, irrespective of the reasons for the absence?

4. Also if Question 2 is answered in the affirmative and Article 16(4) of the directive applies *mutatis mutandis*: is an enforced return to the host Member State in the context of criminal proceedings before expiry of the two-year period capable of maintaining the right to enhanced protection against expulsion, even

where following that return the fundamental freedoms cannot be exercised for a considerable time?'

Consideration of the questions referred

Questions 2 to 4

22 By Questions 2 to 4, which should be considered first, the referring court asks essentially to what extent absences from the host Member State during the period referred to in Article 28(3)(a) of Directive 2004/38, that is, during the 10 years preceding the decision to expel the person concerned, prevent that person from enjoying the enhanced protection laid down in that provision.

23 According to the Court's case-law, Directive 2004/38 aims to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States that is conferred directly on Union citizens by the Treaty, and it aims in particular to strengthen that right, so that Union citizens cannot derive less rights from that directive than from the instruments of secondary legislation which it amends or repeals (see Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraphs 59 and 82, and Case C-162/09 *Lassal* [2010] ECR I-9217, paragraph 30).

24 According to recital 23 in the preamble to Directive 2004/38, the expulsion of Union citizens and their family members on grounds of public policy or public security can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State.

25 That is why Directive 2004/38, as follows from recital 24 in the preamble, establishes a system of protection against expulsion measures which is based on the degree of integration of those persons in the host Member State, so that the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be.

26 In this context, Article 28(1) of that directive provides generally that, before taking an expulsion decision on grounds of public policy or public security, the host Member State must take account in particular of considerations such as how long the individual concerned has resided on its territory, his or her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his or her links with the country of origin.

27 Under Article 28(2), Union citizens or their family members, irrespective of nationality, who have the right of permanent residence in the territory of the host Member State pursuant to Article 16 of the directive cannot be the subject of an expulsion decision 'except on serious grounds of public policy or public security'.

28 In the case of Union citizens who have resided in the host Member State for the previous 10 years, Article 28(3) of Directive 2004/38 considerably strengthens their protection against expulsion by providing that such a measure may not be taken except where the decision is based on 'imperative grounds of public security, as defined by Member States'.

29 Article 28(3)(a) of Directive 2004/38, while making the enjoyment of enhanced protection subject to the person's presence in the Member State concerned for 10 years preceding the expulsion measure, is silent as to the circumstances which are capable of interrupting the period of 10 years' residence for the purposes of the acquisition of the right to enhanced protection against expulsion laid down in that provision.

30 Starting from the premiss that, like the right of permanent residence, enhanced protection is acquired after a certain length of residence in the host Member State and can subsequently be lost, the referring court considers that it may be possible to apply by analogy the criteria in Article 16(4) of Directive 2004/38.

31 While recitals 23 and 24 in the preamble to Directive 2004/38 certainly refer to special protection for persons who are genuinely integrated into the host Member State, in particular when they were born there and have spent all their life there, the fact remains that, in view of the wording of Article 28(3) of that directive, the decisive criterion is whether the Union citizen has lived in that Member State for the 10 years preceding the expulsion decision.

32 As to the question of the extent to which absences from the host Member State during the period referred to in Article 28(3)(a) of Directive 2004/38, namely the 10 years preceding the decision to expel the person concerned, prevent him from enjoying enhanced protection, an overall assessment must be made of the person's situation on each occasion at the precise time when the question of expulsion arises.

33 The national authorities responsible for applying Article 28(3) of Directive 2004/38 are required to take all the relevant factors into consideration in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State. It must be ascertained whether those absences involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.

34 The fact that the person in question has been the subject of a forced return to the host Member State in order to serve a term of imprisonment there and the time spent in prison may, together with the factors listed in the preceding paragraph, be taken into account as part of the overall assessment required for determining whether the integrating links previously forged with the host Member State have been broken.

35 It is for the national court to assess whether that is the case in the main proceedings. If that court were to reach the conclusion that Mr Tsakouridis's absences from the host Member State are not such as to prevent him from enjoying enhanced protection, it would then have to examine whether the expulsion decision was based on imperative grounds of public security within the meaning of Article 28(3) of Directive 2004/38.

36 It should be recalled that, in order to provide the national court with an answer which will be of use to it and enable it to determine the case before it, the Court may find it necessary to consider provisions of European Union law which the national court has not referred to in its questions (see, to that effect, Case C-374/05 *Gintec* [2007] ECR I-9517, paragraph 48).

37 If it were concluded that a person in Mr Tsakouridis's situation who has acquired a right of permanent residence in the host Member State does not satisfy the residence condition laid down in Article 28(3) of Directive 2004/38, an expulsion measure could in an appropriate case be justified on 'serious grounds of public policy or public security' as laid down in Article 28(2) of Directive 2004/38.

38 In the light of the foregoing, the answer to Questions 2 to 4 is that Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that, in order to determine whether a Union citizen has resided in the host Member State for the 10 years preceding the expulsion decision, which is the decisive criterion for granting enhanced protection under that provision, all the relevant factors must be taken into account in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State, reasons which may establish whether those absences involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.

Question 1

39 In view of the answer which has been given to Questions 2 to 4, Question 1 must be understood to the effect that the referring court seeks essentially to know whether and to what extent criminal offences in connection with dealing in narcotics as part of an organised group can be covered by the concept of 'imperative grounds of public security', should that court conclude that the Union citizen concerned enjoys the protection of Article 28(3) of Directive 2004/38, or the concept of 'serious grounds of public policy or public security', should it conclude that that citizen enjoys the protection of Article 28(2) of that directive.

40 It follows from the wording and scheme of Article 28 of Directive 2004/38, as explained in paragraphs 24 to 28 above, that by subjecting all expulsion measures in the cases referred to in Article 28(3) of that directive to the existence of 'imperative grounds' of public security, a concept which is considerably stricter than that of 'serious grounds' within the meaning of Article 28(2), the European Union legislature clearly intended to limit measures based on Article 28(3) to 'exceptional circumstances', as set out in recital 24 in the preamble to that directive.

41 The concept of 'imperative grounds of public security' presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as is reflected by the use of the words 'imperative reasons'.

42 It is in this context that the concept of 'public security' in Article 28(3) of Directive 2004/38 should also be interpreted.

43 As regards public security, the Court has held that this covers both a Member State's internal and its external security (see, inter alia, Case C-273/97 *Sirdar* [1999] ECR I-7403, paragraph 17; Case C-285/98 *Kreil* [2000] ECR I-69, paragraph 17; Case C-423/98 *Albore* [2000] ECR I-5965, paragraph 18; and Case C-186/01 *Dory* [2003] ECR I-2479, paragraph 32).

44 The Court has also held that a threat to the functioning of the institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security (see, inter alia, Case 72/83 *Campus Oil and Others* [1984] ECR 2727, paragraphs 34 and 35; Case C-70/94 *Werner* [1995] ECR I-3189, paragraph 27; *Albore*, paragraph 22; and Case C-398/98 *Commission* v *Greece* [2001] ECR I-7915, paragraph 29).

45 It does not follow that objectives such as the fight against crime in connection with dealing in narcotics as part of an organised group are necessarily excluded from that concept.

46 Dealing in narcotics as part of an organised group is a diffuse form of crime with impressive economic and operational resources and frequently with transnational connections. In view of the devastating effects of crimes linked to drug trafficking, Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum

provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8) states in recital 1 that illicit drug trafficking poses a threat to health, safety and the quality of life of citizens of the Union, and to the legal economy, stability and security of the Member States.

47 Since drug addiction represents a serious evil for the individual and is fraught with social and economic danger to mankind (see, to that effect, inter alia, Case 221/81 *Wolf* [1982] ECR 3681, paragraph 9, and Eur. Court H.R., *Aoulmi v. France*, no. 50278/99, § 86, ECHR 2006-I), trafficking in narcotics as part of an organised group could reach a level of intensity that might directly threaten the calm and physical security of the population as a whole or a large part of it.

48 It should be added that Article 27(2) of Directive 2004/38 emphasises that the conduct of the person concerned must represent a genuine and present threat to a fundamental interest of society or of the Member State concerned, that previous criminal convictions cannot in themselves constitute grounds for taking public policy or public security measures, and that justifications that are isolated from the particulars of the case or that rely on considerations of general prevention cannot be accepted.

49 Consequently, an expulsion measure must be based on an individual examination of the specific case (see, inter alia, *Metock and Others*, paragraph 74), and can be justified on imperative grounds of public security within the meaning of Article 28(3) of Directive 2004/38 only if, having regard to the exceptional seriousness of the threat, such a measure is necessary for the protection of the interests it aims to secure, provided that that objective cannot be attained by less strict means, having regard to the

length of residence of the Union citizen in the host Member State and in particular to the serious negative consequences such a measure may have for Union citizens who have become genuinely integrated into the host Member State.

50 In the application of Directive 2004/38, a balance must be struck more particularly between the exceptional nature of the threat to public security as a result of the personal conduct of the person concerned, assessed if necessary at the time when the expulsion decision is to be made (see, inter alia, Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraphs 77 to 79), by reference in particular to the possible penalties and the sentences imposed, the degree of involvement in the criminal activity, and, if appropriate, the risk of reoffending (see, to that effect, inter alia, Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 29), on the one hand, and, on the other hand, the risk of compromising the social rehabilitation of the Union citizen in the State in which he has become genuinely integrated, which, as the Advocate General observes in point 95 of his Opinion, is not only in his interest but also in that of the European Union in general.

51 The sentence passed must be taken into account as one element in that complex of factors. A sentence of five years' imprisonment cannot lead to an expulsion decision, as provided for in national law, without the factors described in the preceding paragraph being taken into account, which is for the national court to verify.

52 In that assessment, account must be taken of the fundamental rights whose observance the Court ensures, in so far as reasons of public interest may be relied on to justify a national measure which is liable to obstruct the exercise of freedom of movement for persons only if the measure in question takes account of such rights (see, inter alia, *Orfanopoulos and Oliveri*, paragraphs 97 to 99), in particular the right to

respect for private and family life as set forth in Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see, inter alia, Case C-400/10 PPU *McB* [2010] ECR I-8965, paragraph 53, and Eur. Court H.R., *Maslov v. Austria* [GC], no. 1638/03, § 61 et seq., 23 June 2008).

53 To assess whether the interference contemplated is proportionate to the legitimate aim pursued, in this case the protection of public security, account must be taken in particular of the nature and seriousness of the offence committed, the duration of residence of the person concerned in the host Member State, the period which has passed since the offence was committed and the conduct of the person concerned during that period, and the solidity of the social, cultural and family ties with the host Member State. In the case of a Union citizen who has lawfully spent most or even all of his childhood and youth in the host Member State, very good reasons would have to be put forward to justify the expulsion measure (see, to that effect, in particular, *Maslov v. Austria*, §§ 71 to 75).

54 In any event, since the Court has held that a Member State may, in the interests of public policy, 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 (see Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 22, and *Orfanopoulos and Oliveri*, paragraph 67), it must follow that dealing in narcotics as part of an organised group is *a fortiori* covered by the concept of 'public policy' for the purposes of Article 28(2) of Directive 2004/38.

55 It is for the referring court to ascertain, taking into consideration all the factors mentioned above, whether Mr Tsakouridis's conduct is covered by 'serious grounds of public policy or public security' within the meaning of Article 28(2) of Directive 2004/38 or 'imperative grounds of public security' within the meaning of Article 28(3) of that directive, and whether the proposed expulsion measure satisfies the conditions referred to above.

56 In the light of the foregoing, the answer to Question 1 is that, should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(3) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State for the preceding 10 years. Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(2) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is covered by the concept of 'serious grounds of public policy or public security'.

Costs

57 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 (Grand Chamber) hereby rules:

1. **Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that, in order to determine whether a Union citizen has resided in the host Member State for the 10 years preceding the expulsion decision, which is the decisive criterion for granting enhanced protection under that provision, all the relevant factors must be taken into account in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State, reasons which may establish whether those absences involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.**

2. **Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(3) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State for the preceding 10 years. Should the referring court conclude that**

the Union citizen concerned enjoys the protection of Article 28(2) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is covered by the concept of 'serious grounds of public policy or public security'

[Signatures]