Judgment of the Court (Sixth Chamber) of 10 February 2000

Ömer Nazli, Caglar Nazli and Melike Nazli v Stadt Nürnberg. - Reference for a preliminary ruling: Verwaltungsgericht Ansbach – Germany

EEC-Turkey Association Agreement - Freedom of movement for workers - Articles 6(1) and 14(1) of Decision No 1/80 of the Association Council - Registration as duly belonging to the labour force of a Member State - Turkish worker detained pending trial and subsequently sentenced to a suspended term of imprisonment - Expulsion on general preventive grounds

Case C-340/97

European Court reports 2000 Page I-00957

In Case C-340/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Bayerisches Verwaltungsgericht Ansbach, Germany, for a preliminary ruling in the proceedings pending before that court between

Ömer Nazli,

Caglar Nazli,

Melike Nazli

and

Stadt Nürnberg

on the interpretation of Articles 6(1) and 14(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey,

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and G. Hirsch, Judges,

Advocate General: J. Mischo,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Ömer Nazli, Caglar Nazli and Melike Nazli, by K.-H. Becker, Rechtsanwalt, Nuremberg,

- Stadt Nürnberg, by R. Porzel, Director of Legal Affairs in the Legal Office of Stadt Nürnberg, acting as Agent,

- the German Government, by E. Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent,

- the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the same directorate, acting as Agents,

- the Commission of the European Communities, by P. Hillenkamp and P.J. Kuijper, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ömer Nazli, Caglar Nazli and Melike Nazli, represented by K.-H. Becker and G. Glupe, Rechtsanwalt, Nuremberg; Stadt Nürnberg, represented by R. Porzel; the German Government, represented by W.-D. Plessing, Ministerialrat at the Federal Ministry of Finance, acting as Agent; the French Government, represented by A. Lercher, Chargé de Mission in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by P. Hillenkamp, at the hearing on 10 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 8 July 1999,

gives the following

Judgment

Grounds

1 By order of 7 July 1997, received at the Court on 1 October 1997, the Bayerisches Verwaltungsgericht Ansbach (Bavarian Administrative Court, Ansbach) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Articles 6(1) and 14(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (hereinafter Decision No 1/80). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1, hereinafter the Association Agreement).

2 Those questions have been raised in proceedings brought by Mr Nazli and his two minor children of whom he has custody, who are all Turkish nationals, against Stadt Nürnberg (Municipality of Nuremberg) which concern a decision refusing to extend Mr Nazli's German residence permit and ordering his expulsion from Germany.

Decision No 1/80

3 Articles 6 and 14 of Decision No 1/80 are included in Section 1 (Questions relating to employment and the free movement of workers) of Chapter II (Social provisions) of that decision.

4 Article 6(1) is worded as follows:

Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

- shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

- shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

- shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.

5 Article 14(1) provides:

The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.

Main proceedings

6 It is apparent from the file in the main proceedings that Mr Nazli, who was born in 1956, was permitted to enter Germany in 1978 and that from 1979 to 24 June 1989 he was in continuous paid employment, with appropriate work and residence permits, for the same employer.

7 Since 31 May 1989 he has held a work permit which is of unlimited duration and entirely unconditional.

8 After Mr Nazli's first employment relationship ended in June 1989 he was ill or unemployed on a number of occasions but he always found work again with various employers.

9 In 1992 Mr Nazli was implicated in a case of drug trafficking in Germany.

10 He was detained pending trial for that offence from 11 December 1992 to 21 January 1994.

11 By judgment of 20 April 1994, which became final, the Landgericht Hamburg (Regional Court, Hamburg) sentenced Mr Nazli to a term of imprisonment of 21 months, suspended in full, for being an accomplice to the trafficking of 1 500 grams of heroin.

12 That court justified the suspension of the entire sentence on the basis, in particular, of its firm belief that the lapse was an isolated one and that Mr Nazli, who was feeling genuine remorse and was dismayed by what he had done and its consequences, would learn the necessary lessons and not reoffend even if the sentence were not enforced. In addition, Mr Nazli was well-integrated socially and had found work again immediately after his release. Finally, he had played a purely minor role in the commission of the offence.

13 It is not in dispute that Mr Nazli has been in gainful employment again following his detention pending trial and that since 2 January 1995 he has held a permanent post in Germany.

14 His last German residence permit, which was issued in 1991, expired on 31 December 1994.

15 The application submitted by Mr Nazli on 10 November 1994 for the extension of that permit was rejected in a decision dated 6 October 1995 by the department of Stadt Nürnberg responsible for the control of aliens, which simultaneously ordered his expulsion. On 21 November 1996 that decision was confirmed by the competent authorities before whom Mr Nazli had brought an administrative appeal.

16 The decision to expel Mr Nazli was adopted on the basis of Paragraph 47(2)(2) of the Ausländergesetz (German Law on Aliens), according to which aliens are in principle to be expelled when they commit offences under the Betäubungsmittelgesetz (German Law on Narcotics). In accordance with the Regelausweisung (expulsion as a rule) under that provision, the competent authorities have no discretion in the matter and are

required to expel aliens guilty of one of the offences under the Betäubungsmittelgesetz covered by Paragraph 47(2)(2) of the Ausländergesetz.

17 Following the rejection of his administrative appeal, Mr Nazli brought the case before the Bayerisches Verwaltungsgericht Ansbach, which held that the expulsion order was consistent with German law.

18 It questioned, however, whether the measure referred to in paragraph 15 of this judgment was compatible with Decision No 1/80.

19 First, the national court found that Mr Nazli had become entitled to the rights provided for by the third indent of Article 6(1) of Decision No 1/80 because he had been in uninterrupted legal employment in Germany for almost ten years.

20 However, while Mr Nazli had not forfeited those rights by reason of subsequent gaps in his work record due to illness or unemployment, since he had always found work again with other employers and held a work permit of unlimited duration, it was open to question whether he had continued to be duly registered as belonging to the labour force of the host Member State within the meaning of Article 6(1) of Decision No 1/80 while he was detained pending trial for more than a year, in particular as he was ultimately convicted to a term of imprisonment, albeit suspended, for the offence in respect of which he had been detained.

21 Second, the national court held that, having regard in particular to the favourable view formed by the Landgericht Hamburg with regard to Mr Nazli's rehabilitation, his expulsion could not be justified on special preventive grounds consisting in the risk that he would reoffend, so that it could appear lawful only if it were possible for it to be founded exclusively on general preventive grounds directed at deterring other aliens from committing similar offences.

22 In the court's view, it was not clear that Article 14(1) of Decision No 1/80 conferred on Turkish workers protection against expulsion comparable in scope to that enjoyed by nationals of the Member States, who could not be the subject of measures to expel them based on general preventive grounds.

Questions referred for a preliminary ruling

23 Since the Bayerisches Verwaltungsgericht Ansbach considered that, in those circumstances, Articles 6(1) and 14(1) of Decision No 1/80 required interpretation in order for it to dispose of the case, it decided to stay proceedings and refer the following two questions to the Court of Justice for a preliminary ruling:

(1) Does a Turkish worker who has achieved the legal status conferred by the third indent of Article 6(1) of Decision No 1/80 of the Association Council (set up by the Association Agreement between the European Economic Community and Turkey) of 19 September 1980 on the development of the Association forfeit that status subsequently if he is detained on strong suspicion of having committed a crime for which he is ultimately convicted and given a suspended prison sentence?

(2) If not:

Is the expulsion of a Turkish worker in such circumstances solely on general preventive grounds, that is to say as a deterrent to other aliens, compatible with Article 14(1) of Decision No 1/80?

Question 1

24 This question relates to the position of a Turkish worker who, because he has been in legal employment in a Member State for almost ten years without interruption, enjoys, in accordance with the third indent of Article 6(1) of Decision No 1/80, free access in that Member State to any paid employment of his choice.

25 Given the facts of the main proceedings, it is necessary to establish whether Mr Nazli retroactively forfeited the abovementioned right conferred by Decision No 1/80 because, after that period of lawful work, he was detained pending trial for more than a year in connection with an offence which he had committed and for which he was ultimately sentenced to a term of imprisonment, albeit suspended in full.

26 As is apparent from the order for reference, the national court is uncertain whether Mr Nazli continued, while he was detained pending trial, to be duly registered as belonging to the labour force of the host Member State within the meaning of Article 6(1) of Decision No 1/80 notwithstanding the fact that he was not working or available for work during the period of his detention. According to the national court, its doubts in that regard are reinforced by the fact that Mr Nazli was convicted of the offence for which he had been detained.

27 First, it is evident from the express terms of Article 6(1) that, in contrast to the first two indents, which merely set out the arrangements under which a Turkish national who has lawfully entered the territory of a Member State and has been authorised there to engage in employment may work in the host Member State, by continuing to work for the same employer after one year's legal employment (first indent) or by responding, after three years of legal employment and subject to the priority to be given to workers from the Member States, to an offer of employment made by another employer for the same occupation (second indent), the third indent confers on a Turkish worker not only the right to respond to a prior offer but also the unconditional right to seek and take up any employment freely chosen by him (Case C-171/95 Tetik v Land Berlin [1997] ECR I-329, paragraph 26).

28 From the moment that the Turkish worker referred to in Article 6(1) enjoys in the host Member State, after four years of legal employment, free access to any paid employment of his choice in accordance with the third indent of that provision, not only does the direct effect attaching to Article 6(1) mean that he derives an individual employment right directly from Decision No 1/80 but also, in order for that right to be fully effective, there is necessarily a corresponding right of residence founded likewise on Community law (Case C-192/89

Sevince v Staatssecretaris van Justitie [1990] ECR I-3461, paragraphs 29 and 31, Case C-237/91 Kus v Landeshauptstadt Wiesbaden [1992] ECR I-6781, paragraph 33, and Tetik, cited above, paragraphs 26, 30 and 31).

29 It is true that, as Community law currently stands, Decision No 1/80 does not in any way encroach upon the competence of the Member States to refuse Turkish nationals the right to enter their territories and to take up first employment there and does not preclude those States, in principle, from regulating the conditions under which Turkish nationals work for up to one year as provided for in the first indent of Article 6(1) of that decision.

30 However, it is settled case-law that Article 6(1) cannot be construed as permitting a Member State to modify unilaterally the scope of the system of gradually integrating Turkish workers into the host State's labour force (see, most recently, Case C-1/97 Birden v Stadtgemeinde Bremen [1998] ECR I-7747, paragraph 37), so that that State no longer has the power to adopt measures regarding residence which are such as to impede the exercise of the rights expressly granted by Decision No 1/80 to someone who fulfils its conditions and, by the same token, is already duly integrated in the host Member State.

31 Second, it should be noted, having regard to the reasoning of the national court, that, as is apparent from the case-law, the concept of being duly registered as belonging to the labour force referred to in Article 6(1) of Decision No 1/80 must be regarded as applying to all workers who have complied with the conditions laid down by law and regulation in the host Member State and are thus entitled to pursue an occupation in its territory (Birden, cited above, paragraph 51).

32 Entitlement to the rights enshrined in the three indents of Article 6(1) is therefore subject only to the condition that the worker has complied with the legislation of the host Member State governing entry into its territory and pursuit of employment.

33 There is no doubt that a Turkish worker such as Mr Nazli satisfies those requirements, since it is not disputed that he legally entered the territory of the Member State concerned and has been in uninterrupted legal employment there for more than four years.

34 Since those conditions are met, entitlement to the rights directly granted by the said provision of Decision No 1/80 cannot be dependent on other requirements.

35 Third, in order not to negate the right of a Turkish worker to free access to any paid employment of his choice within the meaning of the third indent of Article 6(1) of Decision No 1/80, that provision must be interpreted as not relating merely to engaging in employment but as granting a Turkish worker already duly integrated into the labour force of the host Member State an unconditional right to employment which implies the right to give up one job in order to seek another which he may freely choose.

36 Also, it is clear from the case-law that any absence of a Turkish worker from the labour force of a Member State does not automatically lead to the loss of the rights acquired under Article 6(1).

37 It is true that a Turkish national is not entitled to remain in the host Member State if he has reached retirement age or has suffered an industrial accident as a result of which he is totally and permanently unfit for further employment. In cases of that kind, the person concerned must be regarded as having left the labour force of that Member State for good, so that the right of residence which he claims has no link even with future employment (see Case C-434/93 Bozkurt v Staatssecretaris van Justitie [1995] ECR I-1475, paragraphs 39 and 40).

38 The Court has held, however, that Article 6 of Decision No 1/80 relates not only to the situation where a Turkish worker is in active employment but also to the situation where he is incapacitated for work, provided that his incapacity is only temporary, that is to say it does not affect his fitness to continue exercising his right to employment granted by that decision, albeit after a temporary break in his employment relationship (see Bozkurt, cited above, paragraphs 38 and 39).

39 Thus, while the right of residence as a corollary of the right to join the labour force and to be actually employed is not unlimited, the rights granted by Article 6(1) of Decision No 1/80 are necessarily lost only if the worker's inactive status is permanent.

40 In particular, while legal employment for an uninterrupted period of one, three or four years respectively is in principle required in order for the rights provided for in the three indents of Article 6(1) to be established, the third indent of that provision implies the right for the worker concerned, who is already duly integrated into the labour force of the host Member State, to take a temporary break from work. Such a worker thus continues to be duly registered as belonging to the labour force of that State provided that he actually finds another job within a reasonable period, and therefore enjoys a right to reside there during that period.

41 It follows from the foregoing considerations that the temporary break in the period of active employment of a Turkish worker such as Mr Nazli while he is detained pending trial is not in itself capable of causing him to forfeit the rights which he derives directly from the third indent of Article 6(1) of Decision No 1/80, provided that he finds a new job within a reasonable period after his release.

42 A person's temporary absence as a result of detention of that kind does not in any way call into question his subsequent participation in working life, as is moreover demonstrated by the main proceedings, where Mr Nazli looked for work and indeed found a steady job after his release.

43 Accordingly, the authorities of the host Member State cannot deny a Turkish worker such as Mr Nazli his right of residence after he has been in uninterrupted legal employment for more than four years on the ground that, while he is detained pending trial, he no longer satisfies the condition that he must be duly registered as belonging to the labour force of that Member State.

44 Except where the person concerned has definitively ceased to be duly registered as belonging to the labour force of the host Member State or has exceeded a reasonable time-limit for entering into a new employment

relationship after a temporary period without work, the national authorities are unable to restrict the rights which Decision No 1/80 confers directly on Turkish workers already duly integrated in the host Member State save, where appropriate, on the basis of Article 14(1) of that decision, whose interpretation is the subject of the second question referred for a preliminary ruling.

45 Finally, the fact that the person concerned has ultimately been convicted in respect of the acts for which he was detained pending trial cannot affect the foregoing interpretation, in accordance with which a Turkish worker such as Mr Nazli has not definitively left the lawful labour force of the host Member State during the 13 months he has spent in custody pending trial and the fact that he has not been in paid employment during that period does not cause him to forfeit the rights as to employment and residence which he derives directly from the third indent of Article 6(1) of Decision No 1/80 for the purposes of continuing to exercise his right of free access to any paid employment of his choice under that provision.

46 In that regard, it is sufficient to note that the term of imprisonment to which Mr Nazli was sentenced by the criminal court was suspended by the latter in full.

47 A sentence of that kind does not result in the person concerned being absent, even temporarily, from the labour force of the host Member State.

48 Moreover, as the French Government and the Commission have rightly submitted and the Advocate General has stated in point 49 of his Opinion, the very purpose of suspending a sentence is to reintegrate the convicted person into society, in particular by his pursuit of an occupation. It would therefore be contradictory to hold that sentencing a Turkish worker to a term of imprisonment which is suspended in full has the effect of excluding him from the labour force of the host Member State.

49 In view of all of the foregoing considerations, the answer to the first question must be that a Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80.

Question 2

50 In order to answer this question, it should be remembered first of all that under Article 12 of the Association Agreement the Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.

51 Article 36 of the Additional Protocol, signed on 23 November 1970, annexed to the Association Agreement and concluded by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17, hereinafter the Additional Protocol) lays down the timetable for the progressive attainment of freedom of movement for workers between the Member States of the Community and Turkey and states that the Council of Association shall decide on the rules necessary to that end.

52 On the basis of Article 12 of the Association Agreement and Article 36 of the Additional Protocol, the Association Council, which was established by the Association Agreement in order to ensure the implementation and progressive development of the Association, first adopted, on 20 December 1976, Decision No 2/76, which is presented in Article 1 thereof as constituting a first stage in securing freedom of movement for workers between the Community and Turkey.

53 According to the third recital in its preamble, Decision No 1/80 is designed to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76.

54 The provisions of Section 1 of Chapter II of Decision No 1/80 thus constitute a further stage in securing freedom of movement for workers on the basis of Articles 48 and 49 of the EC Treaty (now, after amendment, Articles 39 EC and 40 EC) and Article 50 of the EC Treaty (now Article 41 EC) (Bozkurt, cited above, paragraphs 14 and 19, Tetik, cited above, paragraph 20, and Case C-210/97 Akman v Oberkreisdirektor des Rheinisch-Bergischen-Kreises [1998] ECR I-7519, paragraph 20).

55 The Court has consistently inferred from the wording of Article 12 of the Association Agreement and Article 36 of the Additional Protocol, as well as from the objective of Decision No 1/80, that the principles enshrined in Articles 48, 49 and 50 of the Treaty must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80 (see, to that effect, Bozkurt, paragraphs 14, 19 and 20, Tetik, paragraphs 20 and 28, Birden, paragraph 23, Case C-36/96 Günaydin v Freistaat Bayern [1997] ECR I-5143, paragraph 21, and Case C-98/96 Ertanir v Land Hessen [1997] ECR I-5179, paragraph 21).

56 It follows that, when determining the scope of the public policy exception provided for by Article 14(1) of Decision No 1/80, reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Community. Such an approach is all the more justified because Article 14(1) is formulated in almost identical terms to Article 48(3) of the Treaty.

57 In the context of Community law and, in particular, of Article 48(3) of the Treaty, it has been consistently held that the concept of public policy presupposes, in addition to the disturbance of the social order which any infringement of the law involves, the existence of a genuine and sufficiently serious threat to one of the fundamental interests of society (see, for example, Case 30/77 Regina v Bouchereau [1977] ECR 1999, paragraph 35).

58 While a Member State may consider that the use of drugs constitutes a danger for society such as to justify, in order to maintain public order, special measures against aliens who contravene its laws on drugs, the public policy exception, like all derogations from a fundamental principle of the Treaty, must nevertheless be interpreted restrictively, so that the existence of a criminal conviction can justify expulsion only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy (see, most recently, Case C-348/96 Calfa [1999] ECR I-11, paragraphs 22, 23 and 24).

59 The Court has thus concluded that Community law precludes the expulsion of a national of a Member State on general preventive grounds, that is to say an expulsion ordered for the purpose of deterring other aliens (see, in particular, Case 67/74 Bonsignore v Stadt Köln [1975] ECR 297, paragraph 7), especially where that measure has automatically followed a criminal conviction, without any account being taken of the personal conduct of the offender or of the danger which that conduct represents for the requirements of public policy (Calfa, cited above, paragraph 27).

60 As has already been pointed out in paragraph 56 of this judgment, Article 14(1) of Decision No 1/80 imposes on the competent national authorities limits analogous to those which apply in the case of a measure of that kind against a national of a Member State.

61 Accordingly, a Turkish national can be denied, by means of expulsion, the rights which he derives directly from Decision No 1/80 only if that measure is justified because his personal conduct indicates a specific risk of new and serious prejudice to the requirements of public policy.

62 In the main proceedings, however, it is clear from both the grounds of the order for reference and the very wording of the second question submitted that, in the view of the national court, the measure adopted to expel Mr Nazli is capable of justification only on the basis of general preventive grounds having the sole objective of deterring other aliens.

63 Thus, having regard to the principles which have been laid down in the context of freedom of movement for workers who are nationals of a Member State and which are applicable by analogy to Turkish workers enjoying the rights accorded by Decision No 1/80, a measure expelling an alien as a matter of principle ordered on general preventive grounds following a criminal conviction for a specific offence must be considered to be incompatible with Article 14(1) of that decision.

64 The answer to the second question must therefore be that Article 14(1) of Decision No 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.

Decision on costs

Costs

65 The costs incurred by the German and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Bayerisches Verwaltungsgericht Ansbach by order of 7 July 1997, hereby rules:

1. A Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey.

2. Article 14(1) of Decision No 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.