Chapter 5

Protection Against Expulsion: Article 12

1. Introduction


The two fundamental questions in this Chapter are the following: (i) on what grounds may a third-country national long-term resident be expelled? (ii) What are the factors that have to be taken into account before expelling that third-country national?

In order to answer these questions I will first look at Article 12, which provides for the possibility of expelling status-holders under certain circumstances, and I will investigate the limitations to that possibility of expulsion under the Directive. Here, the limitations will be positive for the long-term resident as they will restrict the prospect of expulsion. As this is different from the other Chapters, where the limitations always put a ceiling on the rights that third-country nationals would otherwise have, the structure of this Chapter has been slightly altered. Consequently, after analysing Article 12 of the Directive, I will scrutinise how the Commission’s proposal was worded and how Directive 2004/38 differs from Directive 2003/109 with regard to the expulsion of European citizens. I will also refer to Directive 64/221 as most of the case law on EU citizens is based on this Directive, which was repealed.
by Directive 2004/38 as of 30 April 2006. This will also allow me to briefly signal the main criticisms by other academics to these divergences. By analysing these differences it will be possible to subsequently explore how the CJEU could interpret the similar, but slightly divergent, provisions under both Directives. In this respect, it will be central to pay special attention to the Court’s prior case law on Turkish citizens. Before analysing possible interpretation by the Court, I will briefly consider the implementation of the Directive in my four case studies. I will not look at other countries, as according to my research, it seems that there are no serious problems with the implementation of these provisions. Furthermore, the most important part in this Chapter, as I have mentioned above, is to see the possible interpretation by the CJEU of these slightly differing provisions. I will end with some conclusions and closing thoughts and will also add some recommendations that could be used by the Commission.

Thus, the questions for this Chapter are as follows:

1. On what grounds may Member States take a decision to expel a long-term resident? What are the limitations to that prerogative in the Directive?
2. Are those limitations different from the ones worded in the Commission’s proposal? Are those limitations different from the ones being applied to European citizens according to Directive 2004/38 or the earlier Directive 64/221? What have been the main criticisms by other academics?
3. How are Member States implementing the Directive? Are there any changes with regard to the situation before its adoption?
4. What could be the interpretation of this Article by the CJEU? Are there any parallels that could be drawn from its previous case law on European or Turkish citizens?

2. Expulsion

Here I will describe under what circumstances Member States may take a decision to expel a long-term resident and what the limitations to that