

# Living in another Member State: barriers to EU citizens' full enjoyment of their rights Estonia 2017

Country: Estonia

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1 Table 1 – Case law

1.1 Freedom of movement

There are no Supreme Court cases relating to the freedom of movement of EU citizens that are linked to Directive 2004/38. There is one case of the Supreme Court where the long-term resident complains of unequal treatment in comparison with an EU citizen.

The first related case is from the Tallinn Circuit Court (an appellate court, *Tallinna Ringkonnakohtus*). There are two further cases from 2016 on a county court level that are similar in their substance and argumentation; both applications ended with a similar result, both cases concerned cooperation with A. Gortšakov Public Diplomacy Fund and are reported.

<b>1. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	17 December 2010
<b>Deciding body (in original language)</b>	Tallinna Ringkonnakohtus
<b>Deciding body (in English)</b>	Tallinn Circuit Court

<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	3-09-1279/72
<b>Parties</b>	<i>Erkki Johan Bäckman v. Ministry of Internal Affairs</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=109635510">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=109635510</a>
<b>Legal basis in national law of the rights under dispute</b>	Obligation to Leave and Prohibition on Entry Act (OLPEA) ( <i>väljasõidukohustuse ja sissesõidukeelu seadus</i> ) <sup>1</sup> Article 29, Section 1, subsections 1 and 5; Article 29, <sup>1</sup> Section 1; Article 31, Section 1. Constitution of the Republic of Estonia ( <i>Eesti Vabariigi põhiseadus</i> ), <sup>2</sup> Articles 41 and 45. Charter of Fundamental Rights, Article 11. Directive 2004/38, Article 27, Sections 1 and 2. Article 39, Section 3 of the TEC.
<b>Key facts of the case (max. 500 chars)</b>	Ministry of the Interior ( <i>Siseministeerium, Mol</i> ) adopted two orders whereby a Finnish citizen, E.J. Bäckman, was temporarily prohibited from entering Estonia on the grounds of public order and public security. The Mol was on the opinion that he incites political hatred and provokes conflict; he was also suspected of cooperating with extremist groups that organise anti-government campaigns. The prohibition orders covered the time periods when the authorities expected that campaigns aimed at provoking anti-Estonian sentiment would take

<sup>1</sup> Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), [State gazette](#), 3 January 2017, 16.

<sup>2</sup> Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), [State gazette](#), 21 May 2015.

	place, which, it was feared, might result in violent clashes. According to the Minister, the decisions took into consideration the free movement rights of Union citizens and the requirements set out in Directive 2004/38.
<b>Main reasoning / argumentation</b> (max. 500 chars)	While the court of the first instance upheld the orders, they were overturned by the Circuit Court, which noted that while the appellant had expressed critical opinions about Estonian history, politics and relations between ethnic groups with which many people would disagree, these statements could not in themselves be considered to induce political hatred. Moreover, since it was not substantiated that the presence of the appellant at the planned public events would cause violent clashes, the measures taken against him were based on considerations of general prevention and therefore unlawful.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The judgment discussed what should be the considerations of the state when prohibiting the entry of an EU citizen. The Circuit Court stressed that general prevention is not an allowed consideration in such cases; free movement of an EU citizen can be limited when the threat to public security and public order is concretely and directly connected with the person in question.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The appeal of Bäckman was granted and the orders of the Ministry of Interior were deemed contrary to the law.
<b>Key quotations in original</b>	<i>"9. VSS § 29<sup>1</sup> lg 1 alusel võidakse Euroopa Liidu kodaniku suhtes kohaldada sissesõidukeeldu, kui on põhjendatult alust arvata, et nimetatud</i>

**language and translated into English with reference details** (max. 500 chars)

*isiku viibimine võib ohustada Eesti Vabariigi julgeolekut, avalikku korda või teiste isikute tervist. Euroopa Parlamendi ja nõukogu direktiivi 2004/38/EÜ art 27 lg 1 keelab liikmesriikidel piirata avaliku korra, julgeoleku või tervishoiu huvides liidu kodanike ja nende perekonnaliikmete liikumisvabadust majanduslikel eesmärkidel. Direktiivi 2004/38/EÜ art 27 lg 2 näeb ette, et avaliku korra või julgeoleku huvides võetud meetmed on kooskõlas proportsionaalsuse põhimõttega ja põhinevad eranditult asjaomase isiku isiklikul käitumisel. Varasemate süüdimõistvate kohtuotsustega ei saa selliste meetmete võtmist iseenesest põhjendada. Asjaomase isiku käitumine peab kujutama endast tõelist, vahetut ja piisavalt tõsist ohtu, mis kahjustab mõnd ühiskonna põhihuvi. Põhjendused, mis ei ole juhtumi üksikasjadega seotud või mis rajanevad üldise preventsiiooni kaalutlusel, ei ole vastuvõetavad."*

Translation:

"9. Based on Art 29,<sup>1</sup> Section 1 of the OLPEA, a European Union citizen may be subject to a refusal of access if there are reasonable grounds to believe that his presence could jeopardise the security of the Republic of Estonia, public order or health of other persons. European Parliament and Council Directive 2004/38/EC, Article 27, Section 1 allows Member States to restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on the grounds of public policy, public security or public health. Directive 2004/38/EC Article 27 Section 2 provides that, measures taken on the 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 are not accepted."

*"11. Olukorras, kus kaebaja pole varem vihkamisele üles kutsunud, ei ole põhjendatud ka arvamus, et ta õhutaks edaspidi toime panema*

	<p><i>õigusrikkumisi. Kuivõrd eeltoodust võib järeldada, et kõnealustel üritustel ei lähtunud võimalik oht Eesti Vabariigi avalikule korrale, julgeolekule ja ühiskondlikule turvalisusele mitte kaebajast, vaid üritustel osalevatest teistest isikutest, siis ei ole kaebaja suhtes sissesõidukeelu kohaldamine lisaks kooskõlas ka Euroopa Parlamendi ja nõukogu direktiivi 2004/38/EÜ art 27 lg-ga 2, sest ei põhinenud eranditult kaebaja käitumisel ja rajanes pigem üldise preventsiiooni kaalutlusel."</i></p> <p>Translation:  "11. When the applicant has not previously incited hatred, the belief that he encourages, henceforth, future offences is not grounded. Based on the above, it can be concluded that the prior events, a possible threat to Estonian public order, security and social security, were not due to the action of the complainant, but were due to other persons involved in the events. Therefore, subjecting the applicant to a prohibition of entry is not in accordance with the European Parliament and Council Directive 2004/38/EC Article 27, paragraph 2, since it is not exclusively based on the applicant's behaviour but on more general prevention considerations."</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>Reference to the Charter was made by the appellant. The court did not analyse the implementation of the Charter.</p>

<p><b>2.</b></p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality  <input checked="" type="checkbox"/> 2) freedom of movement and residence</p>
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<b>Subject matter concerned</b>	- linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	1 November 2016
<b>Deciding body (in original language)</b>	Tallinna Halduskohus
<b>Deciding body (in English)</b>	Tallinn Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	3-15-2902/20, ECLI:EE:TLHK:2016:3.15.2902.4773
<b>Parties</b>	<i>V.G. v. Ministry of Interior</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=194257410">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=194257410</a>



<b>Legal basis in national law of the rights under dispute</b>	<p>Obligation to Leave and Prohibition on Entry Act (OLPEA) (<i>väljasõidukohustuse ja sissesõidukeelu seadus</i>).<sup>3</sup> Article 31, Section 1 (in force until 27 December 2005).</p> <p>Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>),<sup>4</sup> Articles 41 and 45.</p> <p>Directive 2004/38, Articles 5, 27 and 30; CJEU, Decision in C-300/11, <i>ZZ v. Secretary of State for Home Department</i>.</p> <p>Citizen of the European Union Act (CEUA) (<i>Euroopa Liidu kodaniku seadus</i>),<sup>5</sup> Articles 52,<sup>4</sup> Sections 2 and 3 (in force until 27 December 2005).</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>On 22 July 2015, the Ministry of the Interior (MoI) took a decision whereby it prohibited V.G. 's (a Latvian citizen) entry to the Republic of Estonia for five years. It was explained in the decision that V.G. was associated with the A. Gortšakov Public Diplomacy Fund. This fund was created by the Russian Ministry of Foreign Affairs and its main role is to activate Russian diaspora living outside of Russia. As V.G. had been more active in this context, he was considered to jeopardise the security and public order of Estonia. The applicant did not have any personal, economic or family connection to Estonia, nor did he have a residence permit.</p> <p>The administrative court granted the application and found that the decision of the MoI was not substantiated enough as required by the directive and subsequent court practice of the CJEU.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The MoI did not present proof neither to the applicant, nor to the court, that the mere connection of the applicant to the fund was sufficient grounds to believe that he was a threat to the public security of Estonia. Although general security analysis might be a permissible ground for prohibiting entry of EU citizens and this is a discretionary right of the MoI, the court has an obligation to control the legality of this decision. As the MoI did not provide further evidence of the threat V.G. was posing, it annulled the decision.</p>

<sup>3</sup> Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), [State gazette](#), 3 January 2017, 16.

<sup>4</sup> Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), [State gazette](#), 21 May 2015.

<sup>5</sup> Estonia, Citizen of the European Union Act (CEUA) (*Euroopa Liidu kodaniku seadus*), [State gazette](#), 16 January 2017.

<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	<p>In the centre of the dispute was a question whether the prohibition of entry has to be substantiated or whether it can be an unsubstantiated decision based on the more general security analysis.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The decision of the Ministry of the Interior was annulled.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>"11. /---/ Kohus nõustub samas vastustaja ja kaasatud haldusorganiga selles, et sissesõidukeelu olemust ja julgeolekuasutuste tegevuse iseloomu arvestades ei eelda sissesõidukeelu kohaldamine alati üksikasjalike põhjenduste ja tõendite kajastamist vastavas otsuses. Olgugi, et õiguste piiramine (milleks on ka EL liikmesriigi kodaniku sissesõidukeeld mõnda EL riiki) peab lisaks õigusliku ja faktilise aluse esinemisele olema üldjuhul ka piirangu adressaadile kontrollitavalt põhjendatud, siis teatud juhtudel võivad selle põhimõtte osas rakenduda teatavad mööndused. Selline alus on ette nähtud direktiivi 2004/38/EÜ art-s 30, mis sätestab, et asjaomasele isikule teatatakse täpselt ja täielikult, millistel avaliku korra, julgeoleku või tervishoiuga seotud kaalutlustel tema kohta otsus on tehtud, välja arvatud juhul, kui see on vastuolus riigi julgeolekuhuvidega. /---/</i></p>

*Kohus leiab, et riigi julgeolekuvahvina tuleb muu hulgas käsitada avalikku huvi riigisaladuse kaitse vastu, mis kaalub üles piirangu adreassaadi õiguse tutvuda kõigi kogutud tõenditega. Avalikuks huviks on huvi tagada julgeolekuasutuste töö efektiivsus, mis kogutud andmete avaldamisel saaks oluliselt kahjustatud, kuivõrd neist andmetest võivad selguda teabehanke meetodid ja allikad, mille kaudu teabe saamine on põhimõtteliselt võimalik vaid seni, kuni need püsivad saladuses.*

*Eeltoodust tulenevalt ei pea kohus põhjendatuks kaebaja seisukohta, et vaidlustatud otsuse õiguspärasuse eelduseks on otsuse põhjendustes kogu sellise teabe avaldamine, mis on julgeolekuasutuse poolt kogutud kaebaja tegevuse kohta ja mis ohustab otsuse tegija hinnangul EV julgeolekut ja avalikku korda.*

**12.** *Olukorras, kus haldusakti adreassaadile ei esitata otsuse aluseks olevat kogu teavet, vaid üksnes põhimotiivid, on haldusakti kontrollitavus tagatud kaebeõiguse ja kohtuliku kontrolli kaudu. Seega tuleb kohtul hinnata, kas otsuse põhimotiivid ja nende kinnituseks kohtule esitatud (konfidentsiaalne) teave on vastavuses ja toetavad otsuse järeldusi."*

Translation:

"11 / --- / The Court agrees with the respondent that the prohibition to entry initiated by the national security agencies does not always require a detailed statement of reasons and evidence. Although the restriction of fundamental rights (which includes the prohibition of entry of the EU citizen), has to include the legal and factual basis, and its reasons have to be justified to the recipients, in certain cases, this principle permits certain concessions. Article 30 of Directive 2004/38 / EC allows such limitation if it is contrary to the national security interests.

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The Court finds that the national security interests of the state include the protection of state secrets, and this outweighs the restriction of the recipient's right to examine all the evidence collected. It is in the public interest of the state to ensure the effectiveness of the work of the security agencies, which could be significantly damaged by the publication of the data collected, since these data may reveal information on

	<p>methods and sources through which information if collected, they might be available only as long as they remain secret.</p> <p>Accordingly, the court did not consider the applicant's view founded that the legality of the contested decision presumes the disclosure of such information, which is collected by the security authority on the activities of the applicant that is considered to threaten the security and public order of the Republic of Estonia.</p> <p>12. In the situation where the addressee of the administrative decision has not been provided with all the information, but only the main motives, the decision can be controlled through court proceedings and judicial supervision. Thus, the court must assess whether the general basis of the administrative decision and its basic motivations and the (confidential) information support the findings of the MoI."</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>No.</p>

<p><b>3.</b></p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence</p> <p>- linked to which article of Directive 2004/38</p>
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<b>Subject matter concerned</b>	<input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	5 April 2016
<b>Deciding body (in original language)</b>	Tallinna Ringkonnakohus
<b>Deciding body (in English)</b>	Tallinn Circuit Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	2-15-1641/28
<b>Parties</b>	<i>Deutsche Lufthansa Aktiengesellschaft v. KRTS</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=179415541">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=179415541</a>

<b>Legal basis in national law of the rights under dispute</b>	<p>Law of Obligations Act<sup>6</sup> (<i>Võlaõigusseadus</i>) Articles 841, 842, 127, Sections 1 and 3 and 128.          Directive 2004/38, Article 5, Section 1.          Identity Documents Act<sup>7</sup> (<i>Isikut tõendavate dokumentide seadus</i>), Articles 19, point 2; Article 3, Section 2 and Article 16.</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>Deutsche Lufthansa Aktiengesellschaft (plaintiff) filed a claim against KRTS (a German citizen, the defendant) to Harju County Court and claimed damages. The defendant purchased through its franchise a plane ticket to Bulgaria. A Bulgarian border guard refused admission of the defendant to the country because the defendant lacked the necessary documents to enter the country as he only held an Estonian ID card that granted him a residence permit.</p> <p>Bulgaria's Ministry of Interior issued a penalty decision No. 204 to Lufthansa AG, which required the applicant to pay 6000 leva (EUR 3,067.75) for the fact that the applicant had not checked the travel documents of the defendant before providing him travel services, allowing the defendant to travel to Bulgaria only with a residence permit. The fine was based on the Article 51 of the Bulgarian Aliens Act. The applicant paid the fine.</p> <p>The defendant did not agree with the claim and found that the fine paid was not directed towards him. Moreover, the Bulgarian authorities had misinterpreted the legal meaning of the Estonian ID card – it was a valid identification document. The fact, that it included a remark on the permission to live in Estonia did not mean that it ceased to be an identification document.</p> <p>The applicant noted that as Bulgaria is not part of the Schengen treaty, therefore, it has a right to impose additional limitations on the permissible travel documents in accordance with Directive 2004/38/EC. Estonian ID card is only an official identity document for Estonian citizens.</p>

<sup>6</sup> Estonia, Law of Obligations Act<sup>6</sup> (*Võlaõigusseadus*), State Gazette 24.01.2017, [www.riigiteataja.ee/en/eli/524012017002/consolide](http://www.riigiteataja.ee/en/eli/524012017002/consolide)

<sup>7</sup> Estonia, Identity Documents Act (*Isikut tõendavate dokumentide seadus*), State Gazette 28.03.2017, [www.riigiteataja.ee/en/eli/528032017002/consolide](http://www.riigiteataja.ee/en/eli/528032017002/consolide)

<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The county court did not grant the claim. It found that residence permits are clearly separate documents and they are not granted to EU citizens. EU citizens receive Estonian ID cards that are legal identification documents. The defendant carried an Estonian ID card that was entered into PRADO system as an official ID card granted to EU citizens and it was a formal identification document that granted a right to enter to Bulgaria. Therefore, the county court did not find it proven that there was a causal link between the fine and the actions of the defendant.</p> <p>The Tallinn Circuit Court agreed with the county court and found that the defendant was carrying a legal identification document and that the Bulgarian authorities mistakenly decided that it was a living permit. Therefore, the actions of the defendant did not cause the damages to the applicant.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>What is the legal meaning of the Estonian ID card which is granted to EU citizens –whether it corresponds with the ID card registered in the PRADO database, or it is a legal identification and travel document within the EU</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The claim of Lufthansa was dismissed.</p>

**Key quotations in original language and translated into English with reference details** (max. 500 chars)

*"56. Hageja tüüptingimuste p 13.1.1 näeb ette reisija kohustuse kanda kaasas sihtriigis sätestatud nõuetele vastavaid dokumente. Seega ei saa kostja reisidokumendi nõuetelevastavust hinnata Eesti seaduse alusel, vaid seda tuleb teha Bulgaaria seaduste alusel.*

*57. Bulgaaria Vabariigi välismaalaste seaduse (BVMS) § 19 lg 1 p 1 kohaselt peab iga isik, kes ei ole Bulgaaria kodanik, esitama välisriigi standardreisidokumendi või muu seda asendava dokumendi ja vajadusel viisa. Euroopa Liidu kodanike ning nende perekonnaliikmete Bulgaariasse sisenemise ja sealt väljumise seaduse (ELBS) § 4 lg 1 kohaselt on EL kodanikel õigus siseneda Bulgaaria Vabariigi territooriumile kehtiva ID-kaardi või passiga. Ringkonnakohus nõustub kostja seisukohaga, et ELBS on BVMS suhtes eriseadus, kuivõrd reguleerib konkreetse isikute grupi (EL kodanike) õigusi ja kohustusi Bulgaariasse sisenemisel, kelleks kostja antud juhul oli.*

*58. Seega on maakohus õigesti tuginenud ELBS § 4 lg-le 1, mis lubab EL kodanikel Bulgaariasse siseneda ID-kaardi alusel. ELBS-ist ei tulene, nagu oleks BVMS § 19 lg-s 1 silmas peetud kitsalt kodakondsusjärgset ID-kaarti. Eeltoodust tulenevalt on maakohus õigesti tuvastanud, et vastustajal kaasas olnud ID-kaart oli nõuetekohane ning ta ei ole rikkunud reisijaveolepingu tüüptingimuste p 13.1.1.*

*59. Seega tuleneb Bulgaaria seadusest, et EL kodanikel on õigus riiki siseneda kehtiva ID-kaardiga. Seadus ei kitsenda sisenemise õigust lähtuvalt sellest, kas tegemist on kodakondsusjärgse riigi väljaantud ID-kaardiga või mitte. Tegemist peab olema vaid kehtiva ID-kaardiga. Kostja esitas Bulgaaria ametnikele kehtiva ID-kaardi. Seega jõudis maakohus õigele järeldusele, et kostja ei ole oma kohustusi hageja ees rikkunud, mistõttu ei saanud kostja tegevusest hagejale kahju tekkida. Seega puudub hagejale kahju tekkimise ning kostja tegevuse vahel põhjuslik seos."*

Translation:

*"56. General terms and conditions of carriage, point 13.1.1 of the applicant provides an obligation of the passengers to carry the identity documents required by the destination country. Consequently, the defendant's travel documents had to meet the requirements of the Bulgarian law.*



	<p>57. The Aliens Act of the Republic of Bulgaria, Article 19, Section 1, subsection 1 states that every person who is not a Bulgarian citizen, has to submit a standard foreign travel document or other equivalent document and visa if required. Entry and exit of the European Union citizens and their family members to Bulgaria is regulated by a separate legal act (EUCRE), and its Article 4, Section 1 grants the EU citizens a right to enter the territory of the Republic of Bulgaria when presenting a valid identity card or passport. The Court of Appeal agrees with the defendant's position that the latter law is a specific law that is directed to a specific group`s (EU citizens) rights and obligations when entering Bulgaria, the defendant fall under this category of persons.</p> <p>58. Therefore, the county court correctly relied on EUCRE, Article 4 that allows EU citizens to enter Bulgaria with an ID card. EUCRE does not only refer to the ID card of the country of origin of the person, i.e. the country of the citizenship. Therefore, the County Court correctly held that the respondent had a valid ID card and he has not violated the general terms and conditions of carriage point 13.1.1.</p> <p>59. Thus, under Bulgarian law, EU citizens have the right to enter with a valid ID card. The law does not restrict the right of entry based on whether the ID card is issued by the country of citizenship or not. It must only be a valid ID card. The defendant submitted a valid ID card to the Bulgarian authorities. Thus, the County Court reached the correct conclusion that the defendant had not violated its obligations towards the applicant. Thus, the defendant has not caused any damage to the applicant, and there is no causal link between his activities and the damages occurred to the applicant."</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</b></p>	<p>No.</p>

<b>to which specific article.</b>	
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<b>4. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	15 December 2014
<b>Deciding body (in original language)</b>	Tallinna Halduskohus
<b>Deciding body (in English)</b>	Tallinn Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	3-13-1650/33

<b>Parties</b>	<i>R.J. v. Police and Border Guard Board</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=165014055">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=165014055</a>
<b>Legal basis in national law of the rights under dispute</b>	Obligation to Leave and Prohibition on Entry Act (OLPEA) ( <i>väljasõidukohustuse ja sissesõidukeelu seadus</i> ), <sup>8</sup> Article 2, Section 1. Citizen of the European Union Act (CEUA) ( <i>Euroopa Liidu kodaniku seadus</i> ), <sup>9</sup> Article 7, Section 1, Article 8, Section 1 and Article 9, Sections 1 and 3. Aliens Act ( <i>Välismaalaste seadus</i> ), <sup>10</sup> Article 52, Section 1, subsection 7 and Section 4, subsection 1.
<b>Key facts of the case</b> (max. 500 chars)	The Police and Border Guard Board (PBGB) detained R.J. (a citizen of Lithuania) after he was released from the Tallinn Prison. The PBGB issued a precept to leave and applied the prohibition to enter for five years; after that R.J. was sent out of the state. R.J. appealed the decisions of the PBGB and claimed that the orders of the PBGB were illegal and violated his rights as an EU citizen. Tallinn Administrative Court found that the PBGB issued the precepts without a legal ground and annulled all the decisions of the PBGB relating R.J.'s obligation to leave and the prohibition of entry.
<b>Main reasoning / argumentation</b> (max. 500 chars)	The court analysed the arguments and reasoning presented in the decisions of the PBGB and found that the reasoning of the obligation to leave incorrectly referred to the illegality of stay of R.J. in Estonia. R.J. had a right to stay in Estonia, as he was a Lithuanian citizen whose right to stay in Estonia came from CEUA, Article 7, Section 6. The law foresees concrete reasons based on which such a stay can be limited. The orders did not show that such circumstances were present in the current case.

<sup>8</sup> Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), [State gazette](#), 3 January 2017, 16.

<sup>9</sup> Estonia, Citizen of the European Union Act (CEUA) (*Euroopa Liidu kodaniku seadus*), [State gazette](#), 16 January 2017.

<sup>10</sup> Estonia, Aliens Act (*Välismaalaste seadus*), [State gazette](#), 6 July 2017.

<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	<p>What reasoning and analysis should be provided by the PBGB for issuing an obligation to leave and prohibition to enter for an EU citizen who has served a sentence for a serious offence</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Court annulled both the precepts of the PBGB concerning R.J.'s obligation to leave and prohibition to enter. The PBGB had to cover the legal fees of the applicant.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>"5.1 Kaevatavat ettekirjutust on põhjendatud sellega, et kaebaja „viibib Eesti Vabariigis ilma seadusliku aluseta, rikkudes sellega väljasõidukohustuse ja sissesõidukeelu seaduse § 2 lg 1 sätteid“ (tl 12). VSS § 2 lg 1 sätestab järgmist: „Eestis viibimiseks peab välismaalasel olema seaduslik alus. Välismaalasel on keelatud viibida Eestis ilma seadusliku aluseta“. Samas on kaevatavas ettekirjutuses sedastatud, ja selle asjaolu üle puudub ka vaidlus, et kaebaja on Leedu kodanik. Euroopa Liidu riigi kodaniku Eestis viibimise ja elamise seaduslikud alused sätestab ELKS (VSS § 2 lg 3). ELKS § 7 lg 6 1 kohaselt on Euroopa Liidu kodanikul õigus Eestis viibida kehtiva reisidokumendi või isikutunnistuse alusel. Seega oli kaebajal õigus Eestis viibida ELKS § 7 lg 1 alusel, kui vastavat õigust ei olnud sama seaduse § 8 lg 1 alusel piiratud. Käesolevas asjas pole tuvastatud, et kaebaja viibimisõigust oleks ELKS § 8 lg-s 1 alusel piiratud.</i></p>

	<p><i>Sellist otsust pole esitatud kohtule, ega teatavaks tehtud kaebajale. Kaevatavast ettekirjutusest sellist otsust ei nähtu. /.../</i></p> <p>Translation:</p> <p>"5.1. The precept to leave was based on the fact that the applicant "is in Estonia without a legal ground, therefore, violating the provisions of OLPEA Article 2, Section 1". Article 2, Section 1 of OLPEA provides that "A legal basis must exist for an alien to stay in Estonia. Aliens are prohibited to stay in Estonia without a legal basis". There is no dispute over the fact that the applicant is a citizen of Lithuania. CEUA provides the legal basis for staying and residing in Estonia of a citizen of a European Union (Article 2, Section 3 of OLPEA). Article 7, Section 6 of the CEUA provides that an EU citizen has the right to stay in Estonia on the basis of a valid travel document or identity card. Thus, the applicant had the right to stay in Estonia when this right had not been limited in accordance with Article 8, Section 1 of the same law. In the present case, it was not established if the applicant's right of residence was limited on the basis of Article 8, Section 1 of the CEUA. Such a decision has not been submitted to the court nor has the complainant been notified of such a decision. /.../ "</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>No.</p>

<b>5. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	12 May 2016
<b>Deciding body (in original language)</b>	Tallinna Halduskohus
<b>Deciding body (in English)</b>	Tallinn Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	3-15-2785/11
<b>Parties</b>	<i>A.J. v. Ministry of Interior</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=182807298">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=182807298</a>

<b>Legal basis in national law of the rights under dispute</b>	<p>Obligation to Leave and Prohibition on Entry Act (OLPEA) (<i>väljasõidukohustuse ja sissesõidukeelu seadus</i>),<sup>11</sup> Article 31, Section 1 (in force until 27 December 2005).</p> <p>Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>),<sup>12</sup> Articles 41 and 45.</p> <p>Directive 2004/38, Articles 5, 27 and 30; CJEU, Decision in C-300/11, <i>ZZ v. Secretary of State for Home Department</i>.</p> <p>Citizen of the European Union Act (CEUA) (<i>Euroopa Liidu kodaniku seadus</i>),<sup>13</sup> Article 52,<sup>4</sup> Sections 2 and 3 (in force until 27 December 2005).</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>On 22 July 2015, the Ministry of the Interior (MoI) took a decision whereby it prohibited A.J. 's (an EU citizen) entry to the Republic of Estonia for five years. It was explained in the decision that A.J. was associated with the A. Gortšakov Public Diplomacy Fund. This fund was created by the Russian Ministry of Foreign Affairs and its main role is to activate Russian diaspora living outside of Russia. The MoI based its decision on the fact that A.J. participated in the activities of the fund and therefore, he was considered to jeopardise the security and public order of Estonia. The applicant did not have any personal, economic or family connection to Estonia, nor did he have a residence permit.</p> <p>The administrative court granted the application and found that the decision of the MoI did not show that A.J. had been an active member of the Fund. Therefore, the decision of the MoI was not substantiated enough as required by the directive and subsequent court practice of the CJEU.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The MoI did not present sufficient proof neither to the applicant nor to the court; the MoI found that the connection of the applicant to the fund was sufficient grounds to believe that he is a threat to the public security of Estonia. Although general security analysis might be a permissible ground for prohibiting entry of EU citizens, and this is a discretionary right of the MoI, the court has an obligation to control the legality of this</p>

<sup>11</sup> Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), [State gazette](#), 3 January 2017, 16.

<sup>12</sup> Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), [State gazette](#), 21 May 2015.

<sup>13</sup> Estonia, Citizen of the European Union Act (CEUA) (*Euroopa Liidu kodaniku seadus*), [State gazette](#) 16 January 2017.

	<p>decision. As the MoI did not provide further evidence of the threat A.J. was posing, the court annulled the decision of the MoI.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>In the centre of the dispute was the question whether the prohibition of entry has to be substantiated, or whether it can be an unsubstantiated decision based on the more general security analysis.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The decision of the Ministry of the Interior was annulled.</p>
<p><b>Key quotations in original language and translated into English with reference</b></p>	<p><i>"12.9 Kohus märgib, et haldusakti tühistamine ei tähenda, et haldusorgan ei võiks uuesti sissesõidukeeldu kehtestada. Haldusaktis või selle andmise aluseks olevas valitsusasutuse ettepanekus tuleks põhistada A.Gortšakovi Nimelise Avaliku Diplomaatia Toetamise Fondiga seotust ja/või esitada ja põhistada muud asjaolud, mis Kaitsepolitseiameti vastuses on märgitud. Haldusaktis saab esitada asjaolud ja põhistada faktilisi väiteid määral, mida ei takista julgeolekuhuvid. Kui mõni faktiline põhjendus esitatakse üksnes ettepanekus, siis tuleks haldusaktis märkida, millisest dokumendist on täiendavad põhjendused leitavad, et kohus saaks kohtulikku kontrolli läbi viia.</i></p>



**details** (max. 500 chars)

*Kohtumenetluses peab olema kontrollitav, miks konkreetset isikut on põhjust pidada avalikku korda ja julgeolekut ohustavaks. St, millistest tema tegevustest, organisatsioonilisest kuuluvusest või sidemetest selline järeldus tuleneb. Kohus möönab, et selliseid faktilisi asjaolusid ei ole tihti võimalik tavapärasel viisil tõendada, kuid haldusaktis ja/või kohtule konfidentsiaalsena esitatavas arvamuses tuleb sisulise kohtuliku kontrolli võimaldamiseks esitada põhistused, mis veenaksid kohut sellistele faktilistele asjaoludele tugineva väite usutavuses. Kuna haldusakti õiguspärasust hinnatakse selle andmise aja seisuga, siis peab olema kohtul võimalik veenduda, millised olid haldusakti andmise põhjendused selle andmise hetkel. EK eelnevalt käsitletud lahendist võib järeldada, et ei ole mõeldav olukord, kus liikumisvabaduse piirang EL kodanikule seatakse ilma ühtegi põhjendust esitamata.”*

Translation:

“12.9. The Court notes that revocation of an administrative decision does not mean that the administrative body could not issue a new precept. Such administrative decision of the MoI should substantively show the association of a person with the A. Gorštakov's Fund and/or present and substantiate other facts that are indicated in the response of the Security Police Board. An administrative decision can set out facts and substantiate factual claims to the extent that it is not impeded by security interests. If some of the factual arguments are only set out in the proposal, then the administrative act should indicate in which of the documents these additional justifications for the judicial review can be found.

The court proceeding has to be able to verify what particular reasons were considered a threat to public order and security, i.e. which activities and organisational affiliations are a threat. The court admits that such factual circumstances can sometimes not be ascertained in the usual manner, but in an administrative decision and /or in a confidential opinion submitted to the court; an administrative body has to give justifications to enable substantive judicial review and convince the court of the plausibility of such claims. Since the legality of an administrative decision is assessed at the time of its issuance, it must be possible for the court to satisfy itself as to the reasons for the provision of the administrative decision at the time it was granted. It can be

	concluded from the previous practice of the CJEU, that it is not conceivable that the freedom of movement of an EU citizen is restricted without any justification.”
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	Yes, to Article 47.

## 1.2 Non-discrimination

There are no non-discrimination cases that include EU citizens to be reported. The only case that might relate to non-discrimination concerns recognition of a same-sex marriage concluded in Sweden. It has to be noted that although the applicant made reference to Directive 2004/38, together with the claim that her free movement rights had been violated, the court did not discuss possible relevance of the directive, nor found the free movement argument relevant.

<b>6. Subject matter concerned</b>	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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<b>Decision date</b>	24 November 2016 (entered into force 24 December 2016)
<b>Deciding body (in original language)</b>	Tallinna Ringkonnakohus
<b>Deciding body (in English)</b>	Tallinn Circuit Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	3-15-2355/24, ECLI:EE:TLRK:2016:3.15.2355.6513
<b>Parties</b>	<i>XX v. Harju Maavalitsus</i>
<b>Web link to the decision (if available)</b>	<a href="https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=195899991">https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=195899991</a>
<b>Legal basis in national law of</b>	Private International Law Act (PILA, <i>Rahvusvahelise eraõiguse seadus</i> ), <sup>14</sup> Article 7, Article 55, Section 2, Article 58, Section 1 and Article 60, Section 1. Family Law Act (FLA, <i>Perekonnaseadus</i> ), <sup>15</sup> Article 1, Section 1 and Article 10.

<sup>14</sup> Estonia, Private International Law Act (*Rahvusvahelise eraõiguse seadus*), [State gazette](#), 14 March 2016.

<sup>15</sup> Estonia, Family Law Act (*Perekonnaseadus*), [State gazette](#), 27 December 2016.

<b>the rights under dispute</b>	Registered Partnership Act (RPA, <i>Kooseluseadus</i> ), <sup>16</sup> Article 7, Section 2. Directive 2004/38, Article 2, Section 2 (a). Vital Statistics Registration Act (VSRA, <i>Perekonnaseisutoimingute seadus</i> ), <sup>17</sup> Article 50, Section 1. Population Register Act (PRA, <i>Rahvastikuregistri seadus</i> ), <sup>18</sup> Article 21, Section 1 (10) and (6), Article 25. <sup>1</sup>
<b>Key facts of the case</b> (max. 500 chars)	The Estonian legal system (FLA, Article 10) recognises marriage only between a man and a woman; it does not recognise same-sex marriage. However, Estonia has adopted RPA that among other types of partnerships accepts registered partnerships between same-sex couples. As of June 2017, Estonia has not adopted specific national implementation acts that would allow official registration of such partnerships in the population register. XX (female) registered her marriage with a woman in Sweden. She wanted Harju County Government ( <i>Harju Maavalitsus</i> ) to recognise her marriage and register it in the population register so that her partner can use the benefits granted through marriage. The Harju County Government refused the application stating that there is no legal ground for such registration. This decision was upheld by the Tallinn Administrative Court that questioned the application of EU law in the current situation. As the applicant was not an Estonian citizen since 1994 and as the main place of residence of the couple seemed to be Sweden, there was no need to register them in the Estonian registry. XX appealed this decision claiming, among other things, that such refusal violates free movement of persons of the EU. The Tallinn Circuit Court applied the PILA and found that same-sex marriage is not contrary to the values of the Estonian legal order and, therefore, such marriage has to be recognised as legal under the private international law and should be entered into the Estonian population register as a registered partnership.
<b>Main reasoning / argumentation</b>	The Circuit Court found that when person's data have been entered into the Estonian population register, a person has the right to demand that the information entered is correct. The private international law requires that if marriage is legal under the laws of the country where it was concluded, such marriage should also be considered legal in Estonia, when it does not violate Estonian public order. Although Estonian constitution and

<sup>16</sup> Estonia, Registered Partnership Act (*Kooseluseadus*), [State gazette](#), 27 November 2014.

<sup>17</sup> Estonia, Vital Statistics Registration Act (*Perekonnaseisutoimingute seadus*), [State gazette](#), 13 June 2016.

<sup>18</sup> Estonia, Population Register Act (*Rahvastikuregistri seadus*), [State gazette](#), 23 March 2017.

(max. 500 chars)	international treaties protect marriage between a man and a woman, Estonian legislator has accepted other forms of partnership. Therefore, such partnerships concluded in a foreign country, should also be acceptable under Estonian legislation. However, this does not mean that such a partnership would be given equal legal status to a marriage concluded in Estonia and under Estonian legislation.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<ul style="list-style-type: none"> <li>- Whether Estonian public order prohibits acceptance of same-sex marriage if such a marriage is not recognised in Estonian legislation, but when Estonian legislation accepts registered partnerships of same-sex couples;</li> <li>- The right to have correct data entered into the Estonian public register;</li> <li>- What the legal meaning of entries to the Estonian public register that are based on foreign law is.</li> </ul>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Tallinn Circuit Court partially annulled the decision of the Tallinn Administrative Court. It also annulled the decision of the Harju County Government ( <i>Harju Maavalitsus</i> ) and obliged it to enter correct data relating to the applicant civil status into the Estonian public register.
<b>Key quotations in original language and translated into English with reference</b>	<i>"10. Välisriigis sõlmitud samasooliste isikute abielu, mis sõlmiti vastavalt abielu sõlmimise riigis kehtivale korrale ja vastas sisuliste eelduste poolest mõlema abikaasa elukohariigi õigusele (nende nõuete täidetuses ei ole vastustaja praeguses asjas kahelnud – vt Harju Maavalitsuse 16.09.2015 otsus nr 14-4-/3 – tl 21-21p), Eestis tunnustamisest keeldumiseks (ja sellega seoses vastavate andmete PKTS § 50 lg 1 alusel rahvastikuregistrisse kandmisest keeldumiseks) ei piisa REÕS §-st 7, § 55 lg-st 2, § 56 lg-st 1, § 57 lg-st 1 ja § 60 lg-st 3 tulenevalt ainuüksi sellest, et Eesti õiguse kohaselt on abielu võimalik sõlmida üksnes mehe ja</i>

**details** (max. 500 chars)

naise vahel (PKS § 1 lg 1) ning samast soost isikute sõlmitud abielu on tühine (PKS § 10 p 1). Välisriigi õiguse kohaldamisest keeldumiseks peaks välisriigi õiguse kohaldamise tagajärg, mitte aga välisriigi õigus ise, olema vastuolus Eesti avaliku korraga. Eesti seadusandjal on küll valikuvõimalus, kas lubada samasoolistel isikutel Eesti õiguse järgi sõlmida abielu või muu registreeritud partnerlussuhe (nt kooseluleping), kuid see ei tähenda, et seadusandja poolt n-ö kõrvale jäetud valikuvõimalused oleksid automaatselt vastuolus Eesti avaliku korraga REÕS § 7 tähenduses. Vastupidist järeldust ei tulene ka sellest, et põhiseaduse kommentaaride kohaselt on PS § 27 lg-s 2 ja EIÕK art-s 12 peetud eriliselt kaitstava abielu all silmas traditsioonilist abielu mehe ja naise vahel (vt Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne, Tallinn, 2012, lk 355, p 24.1).

[...]

12. Korrakaitseaduse § 4 lg 1 kohaselt on avalik kord ühiskonna seisund, milles on tagatud õigusnormide järgimine ning õigushüvede ja isikute subjektiivsete õiguste kaitstus (vt selle kohta täpsemalt nt I. Pärnamägi. Avaliku korra mõiste Eesti ohutõrjeõiguses – Juridica, 2016, nr 4, lk 241–251). Isegi juhul, kui abielu sõlmimist samasooliste isikute vahel oleks põhjust hinnata Eesti tavade ja moraalipõhimõtetega vastuolus olevaks, ei järelduks sellest taolise välisriigis kehtivalt sõlmitud abielu Eestis tunnustamise vastuolu avaliku korraga, sest see ei seaks ohtu ühtegi olulist õigushüve ega kahjustaks kellegi subjektiivseid õigusi. Seda eriti olukorras, kus Eesti seadusandja on kooseluseaduse kehtestamisega juba asunud reguleerima muu hulgas samast soost isikute registreeritud partnerlussuhet.

Ringkonnakohus peab siiski vajalikuks täiendavalt rõhutada, et Rootsi õiguse kohaselt sõlmitud abielu Eestis tunnustamisega ei muutu kõnealune õigussuhe Eesti õiguse kohaselt sõlmitud abieluks, olenemata sellest, et nimetatud abielu suhtes (nt varaliste õiguste osas) võidakse REÕS § 57 lg 1, § 58 lg 1 ja § 60 lg 1 järgi kohaldada ka Eesti õigust. Sellele viitab muu hulgas PKTS § 50 lg 5, mis sätestab, et välisriigis registreeritud perekonnaseisuandmetel põhinevad andmed tähistatakse Eesti perekonnaseisuasutuse kinnitatud või tuvastatud asjaoludest erinevalt ning väljavõtte tegemisel viidatakse, et kande aluseks olev perekonnasündmus on aset leidnud välisriigis.

13. Kaebaja taotletud rahvastikuregistri kandega seoses ei oma ka tähtsust, et tema abikaasa on Rootsi kodanik ning seetõttu ei ole perekonna taasühinemine õiguslikult ega faktiliselt takistatud. RRS § 21 lg 1 p 10 ja lg 6 kohaselt kantakse rahvastikuregistrisse muu hulgas andmed isiku perekonnaseisu kohta ning RRS § 251

*kohaselt on perekonnaseisuakti alusel rahvastikuregistrisse kantud andmetel sama õiguslik tähendus kui perekonnaseisuakti kandel. Isikul on õigus nõuda, et rahvastikuregistris kajastataks tema perekonnaseisu andmeid õigesti (vt ka isikuandmete kaitse seaduse § 21 lg 1 ja § 24 p 3).*

*14. Ringkonnakohus ei nõustu halduskohtuga ka selles, et praegusel juhul võiks kaebuse jätta rahuldamata seoses kaebeõiguse puudumisega, kuna halduskohtu hinnangul esineb tõsine kahtlus, kas kaebaja elukohaks on ka tegelikult Eesti ehk kas Rootsi kodanikust kaebaja peaks üldse olema Eesti rahvastikuregistri objektiks (RRS § 4). Kuna kaebaja andmed on alates 30.07.2015 kantud rahvastikuregistrisse, siis on tal õigus nõuda ka registrisse kantud andmete parandamist, kui need on ebaõiged. Praeguses asjas ei saa vaielda selle üle, kas kaebaja andmete rahvastikuregistrisse kandmine oli põhjendatud või mitte. Seetõttu ei ole ka määrav, et kaebaja esitatud täiendav tõend (tl 80), mille kohaselt töötab XX alates 15.09.2015 AS-s XXX ja tema töötasult tasutakse maksud Eestis, ei kinnita iseenesest kaebaja Eestis elamist. Nimelt maksustatakse tulumaksuseaduse (TuMS) § 29 lg 1 kohaselt Eestis tulumaksuga muu hulgas tulu, mida mitteresidendist füüsilise isik sai Eestis töötamisest, kui väljamakse tegija on Eesti resident (sh Eesti seaduse alusel asutatud juriidiline isik – vt TuMS § 6 lg 2)."*

Translation:

"10. It is not sufficient in accordance with PILA Article 7, Article 55, Section 2, Article 56, Section 1, Article 57, Section 1 and Article 60, Section 3 to refuse a recognition (and entry of such data into the public registry in accordance with PRA, Article 50, Section 1) of a same-sex marriage concluded abroad in accordance with the procedure in force in the country of marriage and corresponding to the substantive assumptions of the law applicable in the countries of residence of both of the spouses (the fulfilment of these requirements have not been doubted in the present case (see Harju County Government, Decision No. 14-4-/3, 16 September 2015, p. 21) only on the ground that Estonian legislation allows marriage only between man and a women (FLA, Article 1, Section 1) and same-sex marriage is null and void (FLA, Article 10, Section 1). Such refusal is possible when the result of applying foreign law, and not the foreign law itself, is in conflict with Estonian public order. The Estonian legislator has the choice whether to allow same-sex persons to enter into marriage or to other registered partnerships (for example, a cohabitation agreement), but this does not mean that the

choices that were set aside by the legislator would automatically be in conflict with Estonian public order within the meaning of Article 7 of the PILA. The opposite conclusion does not follow from the fact that according to the constitutional comments, Article 27, Section 2 of the Constitution and Article 12 of the ECHR specially protect marriages that are considered as a traditional marriage between a man and a woman (see Commentaries to the Constitution of Estonia (*Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne*), Tallinn, 2012, Section 24.1, p. 355).

[...]

12. According to Article 4, Section 1 of the Law Enforcement Act, the public order is the state of society, which ensures observance of legal provisions and the protection of legal rights and the rights of individuals (see, for example, I. Pärnamägi (2016), 'Definition of public order in the Estonian danger aversion law' (*'Avaliku korra mõiste Eesti ohutõrjeõiguses'*), *Juridica*, 2016, No. 4, pp. 241-251). Even if the conclusion of a marriage between same-sex persons had to be assessed as contradictory to Estonian practices and moral principles, it would not follow that the recognition of such a foreign marriage contract in Estonia would be contrary to public order, since it would not endanger any fundamental legal interest and would not harm any person's subjective rights. This is especially the case when the Estonian legislator has already begun to regulate, among other things, the registered partnerships of the same sex couples.

However, the Circuit Court considers it necessary to further emphasise that the recognition of a marriage contracted under Swedish law in Estonia does not change this legal relationship into a marriage contracted under Estonian law, regardless of the fact that in accordance with PILA, Article 57, Section 1, Article 58, Section 1 and Article 60, Section 1, Estonian law could be applied to this marriage (for example, with respect to property rights). This is indicated, among other things, by Article 50, Section 5 of the VSRA, which provides that data based on vital statistics recorded in a foreign state is marked differently from the data confirmed or established by the Estonian vital statistics office, and it is indicated in the extracts that the family event underlying the entry has taken place in a foreign state.



	<p>13. In relation to the applicant's application for a population register, it is also irrelevant that her wife is a Swedish national and, therefore, family reunification is not legally or factually impeded. According to Article 21, Section 1, p. 10 and Section 6 of the PRA, also data on the civil status of a person are entered in the population register; according to Article 251 of the PRA, the data entered in the Population Register on the basis of a vital statistics act have the same legal significance as entries concerning vital statistics acts. A person has the right to demand that his or her family status data be accurately recorded in the population register (see also Article 21, Section 1 and Article 24, Section 3 of the Personal Data Protection Act).</p> <p>14. The circuit court also disagrees with the administrative court that in the present case the appeal could be dismissed as a result of the lack of a right of appeal, since, according to the administrative court, there is a serious doubt as to whether the applicant's place of residence is, in fact, Estonia or whether the applicant as a Swedish citizen should at all be the subject of the Estonian Population Register (PRA, Article 4). Since the applicant's data have been entered in the population register since 30 July 2015, she has the right to demand the correction of the data entered in the register if they are incorrect. The current dispute does not concern the question whether the entry of the applicant's data in the population register was justified or not. Therefore, it is also not decisive that the additional evidence presented by the applicant (p. 80), according to which XX works from 15 September 2015 in AS XXX and her taxes are paid in Estonia does not in itself confirm the applicant's residence in Estonia. Under Article 29, Section 1 of the Income Tax Act, income tax is charged on income derived by a non-resident natural person from work in Estonia if the payment was made by a resident operating in Estonia (including a legal person established under Estonian law – ITA, Article 6, Section 2)."</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</b></p>	<p>No.</p>

<b>to which specific article.</b>	
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2 Table 2 – Overview

	<b>non-discrimination on grounds of nationality</b>	the right to <b>move and reside freely</b> in another Member State	the right to <b>vote</b> and to <b>stand as candidates</b>	the right to enjoy <b>diplomatic protection</b> of any Member State	the <b>right to petition</b>
<b>Please provide the total number of national cases decided and relevant for the</b>	1 <sup>19</sup> Supreme Court 1 District Court 0 County Court	2 <sup>20</sup> Supreme Court 4 <sup>21</sup> District Court 5 <sup>22</sup> County Court	1 Supreme Court <sup>23</sup>	0	0

<sup>19</sup> This decision does not talk about EU citizens' rights but deals with the rights of long-term residents and whether their rights should be equal to the rights of EU citizens. There is no precise reference to the directive nor to other EU law.

<sup>20</sup> These decisions do not talk about EU citizens' rights but deals with the rights of long-term residents and whether their rights should be equal to the rights of EU citizens. There is no precise reference to the directive nor to other EU law.

<sup>21</sup> Three of these cases concerned living permits of non-citizens who considered that they were treated unequally with EU citizens; one decision concerned a penalty paid by Lufthansa as it brought to Bulgaria a German citizen who had brought only Estonian ID card with him/her and was unable to cross the border in Bulgaria.

<sup>22</sup> Three of the cases concerned EU citizens who were suspected of co-operating with Russian NGOs and who were regarded as a threat to security; one case concerned a prohibition to enter to a person who had committed crimes in Estonia and the last case was a similar Lufthansa case (see footnote 21).

<sup>23</sup> This decision does not talk about EU citizens' rights but deals with the rights of long-term residents and whether their rights should be equal to the rights of EU citizens. There is no precise reference to the directive nor to other EU law.

<b>objective of the research if this data is available (covering the reference period)</b>					
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