

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

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## Contents

1. Table 1 – Case law .....	3
2. Table 2 – Overview .....	57

1. Table 1 – Case law

<p><b>1.</b> <b>Subject matter concerned</b></p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality  <input checked="" type="checkbox"/> 2) freedom of movement and residence              - Articles 5, 7, 8, 14, 15, 27 and 28 of Directive 2004/38  <input type="checkbox"/> 3) voting rights  <input type="checkbox"/> 4) diplomatic protection  <input type="checkbox"/> 5) the right to petition</p>
<p><b>Decision date</b></p>	<p>10 May 2013</p>
<p><b>Deciding body (in original language)</b></p>	<p><i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i></p>
<p><b>Deciding body (in English)</b></p>	<p>Supreme Administrative Court</p>
<p><b>Case number (also European Case Law Identifier (ECLI) where applicable)</b></p>	<p>KHO 2013:88; 2969/10; 1634          ECLI:FI:KHO:2013:88</p>
<p><b>Parties</b></p>	<p>X v. the Helsinki Police Department (<i>Helsingin poliisilaitos/polisinrättningen i Helsingfors</i>)</p>

<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2013/201301634">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2013/201301634</a>
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>An Estonian citizen, who had been in Finland since 2007, wished to register his residence in 2009. The police refused the request on grounds that the applicant had been a constant danger to public order or security. During his stay in Finland he had been found guilty of petty theft, traffic violation and of drug trafficking on six occasions. The administrative court upheld the decision whereas the Supreme Administrative Court found that registration could not be refused on grounds of public order or security.</p> <p>According to Section 156(1) of the Aliens Act, a requirement for an EU citizen’s and his or her family member’s entry into and residence in the country is that they are not considered a danger to public order or security. Section 159(1) of the act provides that EU citizens residing in Finland for more than three months must register their residence. Proof required in connection with registration is specified in Section 159a which is corresponding to the provisions of Directive 2004/38/EC. In addition to the Aliens Act, the Supreme Administrative Court also took into account the TFEU, Directive 2004/38/EC and the case law of the CJEU (C-215/03 <i>Oulane</i>; C-376/89 <i>Giagounidis</i>).</p>

<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court ruled that the right of residence in another EU Member State is based on the founding Treaties, not on registration, which is just a supervisory measure. It is not explicitly provided for in the Aliens Act (as amended) that registration can be refused on grounds of public order or security. If an EU citizen is considered a danger to public order or security his or her right of residence can be challenged by means of a decision on refusal of entry or deportation. In this case no actual decision on refusal of entry had been made.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Previously, Section 159 of the Aliens Act, on registration of EU citizens' right of residence, explicitly referred to Section 156 of the act as a requirement for registration. When Directive 2004/38/EC was transposed into Finnish law through Act no. 360/2007 amending the Aliens Act, this reference was removed from Section 159 of the act. Based on the Government Bill on the amending act, the police and the administrative court both held that although the explicit reference to Section 156 was removed from Section 159, the legislator did not intend to change an already established practice. The Supreme Administrative Court took a different view and held that such a statement in the preparatory works of the amending act did not constitute sufficient grounds for refusal of registration on grounds of public order or security, in particular when the reference to public order or security had been removed from the amended provisions concerning registration and its requirements.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court quashed the decisions of the police and the administrative court and referred the case back to the police for reconsideration as a registration matter.</p>

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

*(p. 14 of the decision): Korkein hallinto-oikeus katsoo sääntelyn systematiikkaa ja ulkomaalaislain asianomaisten säännösten tulkintaa unionioikeuden sääntelyn valossa punnittuaan, että rekisteröintimenettelyn tarkoitus huomioon ottaen sen yhteydessä ei lähtökohtaisesti tule selvittää unionin kansalaisen maassa oleskelun edellytyksiä ulkomaalaislain 159a §:n mukaista hakemusta laajemmin. Unionin oikeuden kannalta rekisteröinti ei ole pakollinen järjestelmä eikä rekisteröimiseen ole liitetty oikeusvaikutuksia. Vapaan liikkuvuuden direktiivissä on vain säädetty rekisteröintiä koskevasta hallintomenettelystä siten, että se on kansallisesti tehtävä unionin kansalaisen kannalta mahdollisimman sujuvaksi.*

*Jos asianomainen unionin kansalainen ei täytä oleskelun edellytyksiä yleisen järjestyksen tai yleisen turvallisuuden vaarantamisen takia, hänen oleskeluunsa tulee puuttua käännättämis- tai karkottamispäätöksellä. Tuolloin menettelyyn liittyvät kaikki tavanomaiset oikeusturvatakeet mukaan lukien se, että yli kolme kuukautta maassa oleskelleen unionin kansalaisen käännättämisestä päättää Maahanmuuttovirasto. Käännättämispäätökseen liittyen on mahdollista evätä myös rekisteröinti.*

Translation:

Having considered the general scheme of the Aliens Act and the interpretation of the relevant provisions of the act in the light of EU law, the Supreme Administrative Court finds that, keeping in mind the purpose of registration, the assessment of proof required in connection with the registration of EU citizens' right of residence shall, as a rule, not exceed the requirements specified in section 159a of the Aliens Act. Registration is not obligatory under EU law and it produces no legal effects. The Free Movement Directive only provides for an administrative procedure of registration to the effect that, at the national level, the procedure shall be made as easy as possible for the EU citizens.

When an EU citizen does not meet the requirements for right of residence due to being considered a danger to public order or security, his or her right of residence shall be interfered with by means of a decision on refusal of entry or deportation. In that case the procedure contains all the relevant due process guarantees, including

	that the decision on refusal of entry of an EU citizen who has resided in the country for more than three months is made by the Immigration Service. In connection with the decision on refusal of entry it is possible to also refuse registration.
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	Yes, Article 45(1). The court mentions Article 45(1) of the Charter when listing the relevant provisions in EU law, but the Charter is otherwise not explicitly discussed in the decision.

<b>2. Subject matter concerned</b>	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input 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>	6 February 2017
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>

<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2017:19; 2350/3/15; 424 ECLI:FI:KHO:2017:19
<b>Parties</b>	X v. S-Bank Ltd ( <i>S-Pankki Oy/S-Banken Ab</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oiikeus/kho/vuosikirjat/2017/201700424">www.finlex.fi/fi/oiikeus/kho/vuosikirjat/2017/201700424</a>
<b>Legal basis in national law of the rights under dispute</b>	Act on Strong Electronic Identification and Electronic Signatures ( <i>laki vahvasta sähköisestä tunnistamisesta ja sähköisistä luottamuspalveluista/lag om stark autentisering och betrodda elektroniska tjänster</i> ) No. 617/2009 Non-Discrimination Act ( <i>yhdenvertaisuuslaki/lag om likabehandling</i> ) no. 21/2004 (in force when the case was initiated in 2014; the new Non-Discrimination Act 1325/2014 came into force on 1 January 2015).
<b>Key facts of the case</b> (max. 500 chars)	Note that this executive summary has the purpose to make us understand: <ol style="list-style-type: none"> <li>1. the facts of the case (so the "real life story")</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>An Estonian citizen, who lived in Finland and had a Finnish personal identity code, had applied for netbank access codes at S-Bank and had shown his Estonian passport to prove his identity. However, the bank required that the applicant also presents an identification document issued by the Finnish authorities. The bank referred to its identification principles and risk-based procedures and claimed that in case of non-Finnish customers there was a greater risk of money laundering and terrorist financing. In order to address that risk the bank</p>

	<p>required identification documents issued by Finnish authorities. Also, a foreign passport does not include data on a Finnish personal identity code. The National Non-Discrimination and Equality Board found that the bank's conduct amounted to indirect discrimination under the Non-Discrimination Act. The administrative court and the Supreme Administrative Court agreed with the Board.</p> <p>According to the Act on Strong Electronic Identification (617/2009) the identification service provider shall carefully check the identity of the identification device applicant, as evidenced by a valid passport or identity card issued by a government official of an EEA Member State. If the identity of an applicant cannot be reliably established, the police will perform the initial identification for the application.</p> <p>The Non-Discrimination Act prohibits discrimination on the basis of, e.g., nationality. There is also a general non-discrimination clause in the Constitution Act.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>According to the Act on Strong Electronic Identification (617/2009) and the Government Bill to the act, the identification service provider must accept as proof of identification a passport or identity card issued by a government official of an EEA Member State, unless the consideration of the matter has disclosed factors owing to which the applicant's identity cannot be reliably established.</p> <p>A passport issued by the Estonian authorities is a valid travel document within the EU and its reliability as proof of identity is equal to a passport issued by the Finnish authorities. The bank had not shown any particular risk-based factor which would have given justified cause to doubt the authenticity of the applicant's Estonian passport. Bearing in mind the harmonized EU standards for issuing passports, the court found that the bank had, without an acceptable aim, put the applicant at a disadvantage as compared to persons holding a passport issued by the Finnish authorities.</p>
<p><b>Key issues (concepts, interpretations ) clarified by</b></p>	<p>An identification service provider, such as a bank in case of netbank access codes, has a duty to carefully check the identity of the customer and may also apply its own identification principles and procedures. As a rule, a valid passport or identity card issued by a government official of an EEA Member State suffices as proof of identity. For the identification service provider to apply more rigorous identification procedures in an individual case it is required that there is a particular reason to doubt, e.g., the authenticity of an identification document or that the customer is involved in money laundering or terrorist financing.</p>

<b>the case</b> (max. 500 chars)	
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Supreme Administrative Court upheld the decisions of the administrative court and the Non-Discrimination and Equality Board. The Board had order S-Bank not to continue or repeat the conduct which had been found discriminatory and had imposed a conditional fine (EUR 5,000) in order to enforce the decision. After the decision of the Board the bank had issued the applicant with netbank access codes and had also amended its identification principles and procedures. Nevertheless, the Supreme Administrative Court did not annul the conditional fine.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>(pp. 19-20 of the decision): S-Pankki Oy on perustellut vaatimustaan Euroopan talousalueen kansalaiselta edellytettävästä suomalaisen viranomaisen myöntämästä tunnistusasiakirjasta sillä, että ulkomailta tuleviin henkilöihin kohdistuisi sen arvion mukaan lähtökohtaisesti korkeampi rahanpesun ja terrorismin rahoittamisen riski. S-Pankki Oy:n mukaan korkeampi riski ei tarkoita yksittäiseen henkilöön kohdistuvaa epäilyä, vaan kyse on kokonaisvaltaisesta S-Pankki Oy:n asiakkaisiin ja tuotteisiin liittyvästä riskistä.</i></p> <p><i>Pankin menettelylleen esittämä perustelu merkitsee, että pankin käsityksen mukaan muilla kuin suomalaisen viranomaisen myöntämällä asiakirjoilla henkilöllisyytensä todentavat asiakkaat olisivat rahanpesun ja terrorismin rahoittamisen riskin kannalta korkeariskisempiä asiakkaita. Pankin perustelu osoittaa pankin menettelyn yhdenvertaisuuslain 6 §:ssä tarkoitetun syrjinnän kiellon vastaisuutta ja osoittaa myös, että pankki on hyväksynyt verkkopankkitunnusten saamiseksi vain Suomen viranomaisen myöntämän passin tai henkilökortin.</i></p>

	<p><i>Korkein hallinto-oikeus katsoo, kuten hallinto-oikeus, että S-Pankki Oy on ilman asianmukaista perustetta asettanut T:n Euroopan unionin yhdenmukaistetut passien myöntämissäännökset huomioon ottaen epäsuotuisempaan asemaan kuin vastaavat Suomen viranomaisen myöntämien passien haltijat.</i></p> <p>Translation:</p> <p>As grounds for the requirement that citizens of EEA Member States shall present an identification document issued by the Finnish authorities, S-Bank has stated that, based on its own evaluation, foreign clients per se present a greater risk of money laundering and terrorist financing. S-Bank notes that this presumption does not mean doubts targeted at a single individual, but rather, a risk relating to the bank's clients and products overall.</p> <p>The grounds presented by the bank indicate that in the bank's opinion customers who prove their identity by presenting other identification documents than those issued by the Finnish authorities would be high-risk customers as far as risk of money laundering and terrorist financing is concerned. This shows that the bank's conduct was in violation of the prohibition of discrimination as provided for in section 6 of the Non-Discrimination Act. It also shows that as a condition for obtaining netbank access codes the bank only accepted a passport or identity card issued by the Finnish authorities.</p> <p>The Supreme Administrative Court finds, as the administrative court had done, that bearing in mind the harmonized EU standards for issuing passports, S-Bank had, without an acceptable aim, put the applicant (T) at a disadvantage as compared to persons holding a passport issued by the Finnish authorities.</p>
<p><b>Has the deciding body referred to the Charter of Fundamental</b></p>	<p>No.</p>

<b>Rights? If yes, to which specific article.</b>	
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<b>3. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 27 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>	8 February 2016
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2016:11; 1385/1/13; 340 ECLI:FI:KHO:2016:11

<b>Parties</b>	X v. The Finnish Immigration Service ( <i>Maahanmuuttovirasto/Migrationsverket</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201600340">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201600340</a>
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>An Estonian citizen had been occasionally working in Finland in 2009-2012 with several short-term employment contracts and since August 2012 with an open-ended contract. He had not registered his residence in Finland. In 2011 and 2012, he had been sentenced to imprisonment three times for aggravated drunken driving and driving without a licence. The main issue in this case was whether he could be refused entry to Finland, considering the right to free movement of EU citizens.</p> <p>The Supreme Administrative Court based its decision on the Aliens Act, Directive 2004/38/EC and the case law of the CJEU (C-30/77 <i>Bouchereau</i>; C-482/01 and 493/01 <i>Orfanopoulos and Oliveri</i>; C-50/06 <i>Commission v the Netherlands</i>). According to the Aliens Act, EU citizens can be refused entry into the country, if their right of residence has not been registered, and if they do not meet the requirements for entry laid down in the Aliens Act or are considered a danger to public order or security.</p>

<b>Main reasoning / argumentation</b> (max. 500 chars)	The Supreme Administrative Court held that road safety is a fundamental interest of society which falls within the scope of public order or security as prescribed in the Aliens Act. The applicant had been a danger to the safety of other road users. Considering the frequency and the aggravated nature of his offences, his behaviour represented a genuine, immediate and sufficiently serious threat to road safety. Based on an overall consideration the court found that the applicant had no permanent ties to Finland: he had had mostly temporary employment contracts, lived in a camping trailer and had no family in Finland.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	There had been several cases in administrative courts concerning refusal of entry of EU citizens who had been found guilty of drunken driving and other traffic violations in Finland. The Supreme Administrative Court decision gives some guidelines as to cases where drunken driving can be considered a danger to public order or security and, in an overall assessment, form sufficient grounds for refusal of entry of an EU citizen.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The court found there were sufficient grounds for refusal of entry. It upheld the decisions of the Immigration Service and the administrative court by which the applicant had been refused entry to Finland for a period of three years.
<b>Key quotations in original language and translated into</b>	<i>(p. 8 of the decision): A on teoillaan vaarantanut muiden tienkäyttäjien turvallisuutta. Korkein hallinto-oikeus katsoo, että Suomessa liikenneturvallisuutta on pidettävä sellaisena suojeltavana etuna, jota ulkomaalaislain 156 §:n 1 momentissa tarkoitetaan. Kun otetaan huomioon A:n samanlaisten tekojen toistuvuus lyhyen ajan sisällä ja rattijuopumuksen osalta niiden törkeä tekemuoto, hänen käyttäytymisensä muodostaa</i>

<b>English with reference details</b> (max. 500 chars)	<p><i>ulkomaalaislain 156 §:n 2 momentissa tarkoitetun todellisen, välittömän ja riittävän vakavan uhkan liikenneturvallisuudelle.</i></p> <p>Translation:</p> <p>Because of his acts A has been a danger to the safety of other road users. The Supreme Administrative Court finds that in Finland road safety can be considered a fundamental interest of society which falls within the scope of the protection of public order or security as prescribed in section 156(1) of the Aliens Act. Considering the frequency of A's acts within a short period of time and their aggravated nature as far as drunken driving is concerned, his behaviour represents a genuine, immediate and sufficiently serious threat to road safety, as prescribed in section 156(2) of the Aliens Act.</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	<p>No.</p>

<b>4.</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 5, 7 and 8 of Directive 2004/38 <input type="checkbox"/> 3) voting rights
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<b>Subject matter concerned</b>	<input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	3 March 2015
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2015:28; 1254/3/13; 590 ECLI:FI:KHO:2015:28
<b>Parties</b>	X v. the Helsinki Police Department ( <i>Helsingin poliisilaitos/polisinrättningen i Helsingfors</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201500590">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201500590</a>
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>A Dutch citizen had arrived in Finland in 2009 to stay with his girlfriend. He wished to register his residence in 2011. The police found that the requirements for registration had not been met and refused the application. The administrative court upheld the decision. The main questions in this case were concerning the applicant’s status and the requirement of sufficient funds. The police noted that, in order to be considered a family member of his girlfriend, who was a Finn and an EU citizen, the applicant should, according to the Aliens Act, have lived with his girlfriend for at least two years. Because the applicant had not registered his residence within three months from the date of entry into the country, his illegal stay in Finland could not be taken into account when determining the period he had lived together with his girlfriend. The applicant could thus not be regarded as a family member of his girlfriend. The applicant had told that his parents and the mother of his girlfriend supported him financially. The police found that the applicant had not submitted appropriate documentary evidence of sufficient funds.</p> <p>The Supreme Administrative Court based its decision on the Aliens Act as well as the TFEU, Directive 2004/38/EC and the case law of the CJEU (C-215/03 <i>Oulane</i>; C-376/89 <i>Giagounidis</i>; C-408/03 <i>Commission v Belgium</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court noted that EU citizens’ right of free movement and residence in another EU Member State is based on the founding Treaties, not on registration which is a supervisory measure and produces no legal effects. The applicant had used his right of free movement as an EU citizen. Therefore, the applicable provisions in the Aliens Act were those concerning an EU citizen’s right of residence, not those concerning a family member of an EU citizen.</p>

	<p>Because the applicant was not engaged in economic activity, he had to show that he had sufficient funds for his residence. Evidence of the right to residence should not be subject to a specific type of documentary evidence, if it can be reliably proven by other means that the conditions of the right of residence are met. The court ruled that the police should not have refused registration solely on the ground that it found the proof brought forth by the applicant to be insufficient, without having given him the opportunity to submit additional proof of his right of residence.</p>
<p><b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)</p>	<p>The police and the administrative court had primarily regarded the applicant as a family member of an EU citizen whereas the Supreme Administrative Court ruled that this interpretation was incorrect. Under the Aliens Act, the applicant could have been regarded as a family member of an EU citizen only if his girlfriend had first exercised her right of free movement by settling in another Member State and he would then have accompanied her to Finland. It was thus the applicant, and not his girlfriend, using his right to free movement as an EU citizen.</p> <p>The conditions for evidence of sufficient funds shall not be disproportionate and subject to strict formalities, if it can be reliably proven by other means that the applicant will not become a burden on the social security system.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court quashed the decisions of the police and the administrative court and referred the case back to the police for reconsideration.</p>

<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>(p. 12 of the decision): Riittävien varojen määrästä, lähteestä tai niistä esitettävästä selvityksestä ei ole erillisiä säännöksiä. Varojen alkuperää koskevaksi vaatimuksesi ei unionin tuomioistuimen oikeuskäytännön mukaan ole voitu asettaa sitä, että toimeentuloon vaadittavat varat olisivat unionin kansalaisen henkilökohtaisia varoja tai että ne tulisivat henkilöltä, jolle on unionin kansalaiseen tietynlainen oikeussuhde. Siten varojen alkuperällä ei lähtökohtaisesti voi olla merkitystä arvioitaessa riittävien varojen olemassaoloa. Merkitystä on annettava lähinnä sille, voidaanko esitetyn selvityksen nojalla päätyä siihen lopputulokseen, että unionin kansalaisen toimeentulo on turvattu sillä tavoin, ettei hän oleskelunsa aikana muodostu rasitteeksi Suomen sosiaalihuoltojärjestelmälle. Unionin tuomioistuimen oikeuskäytännön mukaan oleskeluoikeuden olemassaolon osoittamiseksi vaadittua selvitystä ei voida tulkita sillä tavoin muodollisesti, että oleskeluoikeuden olemassaolo olisi sidottu tiettyyn asiakirjaselvitykseen, jos oleskeluoikeuden edellytykset voidaan selvittää luotettavasti jollain muulla tavoin.</i></p> <p>Translation:</p> <p>There are no specific provisions as to the amount, source or evidence of sufficient funds. According to the case law of the CJEU it cannot be laid down as a condition that the required sufficient funds are personal resources of the EU citizen concerned or that they come from a person who is connected with the EU citizen by a legal link of a certain kind. Therefore, when examining the existence of sufficient funds, the origin of those funds cannot, as a rule, be decisive. What is mainly important is whether it can be concluded, based on the evidence presented, that the EU citizen concerned has secure means of support so that he or she will not during his or her residence become a burden on Finland's social security system. According to the case law of the CJEU, evidence of the right of residence cannot be interpreted in formal terms to the effect that the right of residence is subject to specific documentary evidence, if it can be reliably proven by other means that the conditions of the right of residence are met.</p>
<p><b>Has the deciding body referred to the</b></p>	<p>Yes, Article 45(1). The court mentions Article 45(1) of the Charter when listing the relevant provisions in EU law, but the Charter is otherwise not explicitly discussed in the decision.</p>

<b>Charter of Fundamental Rights? If yes, to which specific article.</b>	
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<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 - Articles 7, 14 and 24 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>	9 December 2015
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier)</b>	KHO:2015:173; 919/2/14; 3579 ECLI:FI:KHO:2015:173

<b>(ECLI) where applicable)</b>	
<b>Parties</b>	X v. the municipal board of social affairs and health in the city of Y ( <i>Y:n kaupungin sosiaali- ja terveystalukunta/social- och hälsövårdsnämnden i staden Y</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201503579">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2015/201503579</a>
<b>Legal basis in national law of the rights under dispute</b>	Social Assistance Act ( <i>laki toimeentulotuesta/lag om utkomststöd</i> ) No. 1412/1997.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the "real life story")</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>A retired Romanian citizen had moved to Finland in 2012. When he registered his residence his daughter, who also lived in Finland, submitted a written commitment to take care of her father. In June 2013, the applicant sought social assistance from the municipality in order to pay the rent that month. Social assistance is a last-resort assistance granted to all those in need of support and unable to make a living through, e.g., paid work or in some other way. It is granted on application by the municipality where the person lives regularly.</p> <p>The municipal board on social affairs and health rejected the application. It held that the applicant did not live regularly in the municipality, because he did not yet have the right of permanent residence in Finland which according to the Aliens Act requires that the person has resided legally in the country for a continuous period</p>

	<p>of five years. Also, the applicant received a pension from his home country, a housing allowance for pensioners from the Finnish Social Security Institution and his daughter had paid the June rent. He thus had secure means of support in June and was not in need of urgent assistance. The administrative court held that because the applicant had registered his residence, he was in principle entitled to social assistance on the same grounds as Finnish citizens. The commitment made by the daughter had no legally binding effect. The Supreme Administrative Court upheld the decision of the municipal board. The court based its decision on the Social Assistance Act, Aliens Act, Directive 2004/38/EC and the case law of the CJEU (C-140/12 <i>Brey</i>; C-333/13 <i>Dano</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The municipality where an EU citizen is residing has a duty to handle that person's application for social assistance, regardless of whether or not the person has registered his or her residence or whether or not the person has a right of permanent residence. The provision in the Social Assistance Act on 'living regularly' in the municipality concerned is not decisive when assessing the extent to which an EU citizen in the applicant's situation is covered by the Finnish social assistance system.</p> <p>Registration of residence is a supervisory measure and produces no legal effects. It does not follow from registration alone that an applicant who is economically inactive and has resided in the country for more than three months but less than five years is entitled to social assistance on the same grounds and to the same extent as a Finnish citizen in a similar situation.</p> <p>An economically inactive EU citizen who resides in the country for more than three months must have sufficient resources. This is established in connection with registration. When the applicant had registered his residence his daughter had committed herself to taking care of her father. She had in fact paid her father's rent in June 2013. This payment could be taken into account when assessing the father's need for social assistance.</p>
<p><b>Key issues (concepts, interpretations)</b></p>	<p>There are no specific provisions in the Social Assistance Act concerning the right of EU citizens or immigrants to social assistance. The decision by the Supreme Administrative Court clarified the situation to the effect that the granting of social security benefits to economically inactive EU citizens who do not yet have a right of</p>

<b>) clarified by the case</b> (max. 500 chars)	<p>permanent residence can be made conditional upon those citizens meeting the necessary requirements for obtaining a legal right of residence in the host state. If sufficient resources are required, these resources, as they have been established in connection with registration of residence, may be taken into account when assessing the applicant's need for social assistance also when those resources partly derive from a family member.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Supreme Administrative Court upheld the decision of the municipal board.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>(p. 13 of the decision): Euroopan unionin kansalainen saa ulkomaalaislain 158a §:n 1 momentin 2 kohdasta ja vapaan liikkuvuuden direktiivin 7 artiklan 1 kohdan b alakohdasta ilmenevällä tavalla oleskella Suomessa yli kolmen kuukauden ajan, jos hänellä on itseään ja perheenjäseniään varten riittävät varat niin, ettei hän esimerkiksi turvautumalla toistuvasti toimeentulotukeen muodostu rasitteeksi Suomen sosiaalihuoltojärjestelmälle. Oleskeluoikeus on kuitenkin rekisteröitävä ulkomaalaislain 159 §:n mukaisesti. Ulkomaalaislain 159a §:n 3 kohdasta puolestaan ilmenee, että rekisteröinnin yhteydessä hakijan on esitettävä selvitys riittävistä varoista.</i></p> <p><i>Edellä selostettu sääntely ilmentää sitä lähtökohtaa, että A:n kaltaisen unionin kansalaisen, joka on oleskellut maassa yli kolme kuukautta mutta alle viisi vuotta ja joka ei ole taloudellisesti aktiivinen, tulisi pääsääntöisesti tulla toimeen omilla tuloillaan ja varoillaan ilman toimeentulotuen tarvetta. Riittäviä tuloja ja varoja selvitetään</i></p>

*oleskeluoikeuden rekisteröinnin yhteydessä. Tässä yhteydessä esitettyä tapaa tulla toimeen on pidettävä ensisijaisena suhteessa toimeentulotukeen.*

*A:n tytär B on isänsä oleskeluoikeuden rekisteröinnin yhteydessä sitoutunut huolehtimaan isästään. Tytär on myös tosiasiallisesti maksanut isänsä vuokran kesäkuussa 2013. Suoritus voidaan ottaa huomioon arvioitaessa hakijan tuen tarvetta, siitä riippumatta, onko tytär ymmärtänyt sitoutuneensa avustamaan isäänsä myös taloudellisesti vai ei.*

Translation:

According to section 158a(1)(2) of the Aliens Act and article 7(1)(b) of the Free Movement Directive EU citizens may reside in Finland for more than three months if they have for themselves and their family members sufficient funds so that they do not become a burden on Finland's social security system by resorting repeatedly to, e.g., social assistance. However, the right of residence must be registered as provided for in section 159 of the Aliens Act. Section 159a(3) of the Aliens Act provides that in connection with registration, the applicant must present proof that he or she has sufficient funds.

Considering the regulations referred to above an EU citizen, such as the applicant, who has resided in the country for more than three months but less than five years and who is economically inactive, should as a rule live on his/her own income and assets without the need to resort to social assistance. The existence of sufficient resources is established in connection with registration. These resources must be regarded as a primary source of income as compared to social assistance.

When A registered his residence his daughter B committed herself to taking care of her father. The daughter had in fact paid her father's rent in June 2013. This payment may be taken into account when assessing the applicant's need for assistance, regardless of whether or not the daughter has understood that she had committed herself to supporting her father also financially.

<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	No.
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<b>6. Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 7, 8, 14, 16 and 28 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>	20 May 2016
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court

<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2016:75; 3018/1/14 and 3109/1/14; 2234 ECLI:FI:KHO:2016:75
<b>Parties</b>	A and B v. the Finnish Immigration Service ( <i>Maahanmuuttovirasto/Migrationsverket</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201602234">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201602234</a>
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the "real life story")</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>A, B and their four minor children, who were all German citizens, had arrived in Finland in March 2011. Both A and B had registered their residence. At the start A had worked, but her employer had not continued the employment contract after a trial period of two months. Since July 2011 A had been unable to work as a result of health problems. B had registered his residence as a family member of an EU citizen. He had been unemployed during the whole period of his residence in Finland. Both A and B had said they were taking Open University courses. However, studying was not the main purpose of their stay in Finland and the courses were</p>

	<p>not related to their previous employment. Since June 2011 the family had resorted to social assistance and other social benefits. The main issue in this case was whether the couple and their children could be deported to Germany.</p> <p>In addition to the Aliens Act the Supreme Administrative Court based its decision on Directive 2004/38/EC and the case law of the CJEU (C-456/02 <i>Trojani</i>; C-408/03 <i>Commission v Belgium</i>; C-140/12 <i>Brey</i>; C-333/13 <i>Dano</i>; C-67/14 <i>Alimanovic</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>Regarding the status of the applicants as EU citizens the Supreme Administrative Court noted that they were not employed or self-employed persons, students or persons seeking employment in Finland. A had not retained her status as an employed person, because her incapacity to work was not temporary, she had not become unemployed involuntarily and the Open University courses she had taken were not relating to vocational training. Neither A nor B had shown they would have a genuine chance of being employed. By the time the Immigration Service made the decision on deportation in 2013, neither applicant had resided in Finland legally as an EU citizen for a continuous period of five years in order to gain the right of permanent residence, in which case deportation would be possible only on serious grounds of public order or security. Neither applicant had resided in Finland legally as an EU citizen for the previous 10 years, in which case deportation would be possible only on imperative grounds of public security. Consequently, deportation was possible also on other grounds than public order or security.</p> <p>The family had resorted to social assistance immediately after their arrival in Finland and had continued to do so on a regular basis. This was not a case of temporary difficulties. The applicants could be considered to be a burden on the social assistance system, as prescribed in the Aliens Act. In its overall consideration of the case the court also took into account the duration of the applicants' residence, their age, state of health, family situation, their integration in the country and the best interests of the child. The court concluded that the arguments for deportation weighed more than those against.</p>

<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	This is an example of an overall consideration, exercised by the Supreme Administrative Court and based on the conditions prescribed in the Aliens Act and the directive. Also, court cases on deportation of EU citizens are generally concerning criminal activities and deportation on grounds of public order or security, not economic grounds.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Supreme Administrative Court ruled that the applicants and their children could be deported to Germany.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>(p. 19 of the decision): Saadun selvityksen perusteella muutoksenhakijat ovat toistuvasti turvautuneet Suomessa erityisesti toimeentulotukeen, joka on viimesijaisen toimeentuloturvan muoto. Kyse ei ole ainoastaan yksittäisistä tilanteista, vaan toiminta on ollut säännönmukaista ja jatkunut koko heidän Suomessa oleskelunsa ajan eli vuodesta 2011 lähtien. Asiassa ei ole esitetty selvitystä muusta tulosta kuin A:n kahden kuukauden ansiotuloista vuonna 2011.</i></p> <p><i>Perheen turvautuminen yhteiskunnallisiin etuuksiin alkoi välittömästi heidän saavuttuaan Suomeen ja on jatkunut keskeytyksittä. Näin ollen muutoksenhakijoiden voidaan katsoa rasittavan Suomen sosiaalihuoltojärjestelmää siten kuin ulkomaalaislain 158a §:n 1 momentin 2 kohdassa tarkoitetaan. Kysymys</i></p>

	<p><i>ei ole ollut ainoastaan väliaikaisista vaikeuksista. Edellä mainittuun nähden peruste muutoksenhakijoiden karkottamiseen on olemassa.</i></p> <p>Translation</p> <p>It has been established that the applicants have continuously resorted to particularly social assistance which is the last-resort form of income security. The recourse to social assistance has not been single incidents but regular activity which has been going on during the whole period of the applicants' residence in Finland since 2011. It has not been established that they would have had any other income than A's salary for two months' work in 2011.</p> <p>The family had resorted to social assistance immediately after their arrival in Finland and this has continued without interruptions. Consequently the applicants can be considered to be a burden on Finland's social security system as provided for in section 158a(1)(2) of the Aliens Act. It has not been a matter of temporary difficulties only. Considering what has been said above there are grounds for the applicants' deportation.</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p>	<p>Yes. Article 24 of the Charter, listed among other provisions on the best interests of the child.</p>

<b>7.</b> <b>Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 27 and 32 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>	7 June 2016
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2016:86 ECLI:FI:KHO:2016:86
<b>Parties</b>	X v. the Finnish Immigration Service ( <i>Maahanmuuttovirasto/Migrationsverket</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201602545">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201602545</a>

<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) no. 301/2004, as amended
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>X, who was a third-country national, had been sentenced to several prison sentences in Finland during 2000-2007. He had been found guilty of, e.g., theft, drug offences, rape and two assaults. X had married a Finnish citizen in 2006 and the couple had moved to Sweden in 2008. In 2013, X was transferred from Sweden to Finland to serve a prison sentence. His wife also moved back to Finland. The Immigration Service had initially decided in 2009 that, because of his repeated offences and convictions in 2000-2007, X is to leave Finland for his home country (Kosovo). He was also banned from entering the Schengen area until further notice. In 2013, while serving his prison sentence in Finland, X requested that the entry ban is revoked. In November 2014, the Immigration Service decided that the prohibition of entry is restricted to Finland and is in force until 2019. At the time, X had already served his sentence and was residing in Kosovo with his wife.</p> <p>According to the Aliens Act, a third-country national who has been sentenced for an offence of aggravated or professional nature may be prohibited entry until further notice, when the person is considered a danger to public order or security. If an EU citizen or his or her family member is removed from the country on grounds of public order or security, he or she may at the same time be prohibited from entering the country for 15 years at most. A prohibition of entry may be revoked on the basis of a change in circumstances or for important personal reasons.</p>

	<p>The main issues in this case were whether X should be regarded as a third-country national or a family member of an EU citizen and whether he still constituted a danger to public order or security although he had not been engaged in criminal activities in Finland since 2007. In addition to the Aliens Act the Supreme Administrative Court based its decision on Directive 2004/38/EC and the case law of the CJEU (C-202/13 <i>McCarthy et al.</i>; C-33/07 <i>Jipa</i>; C-145/09 <i>Tsakouridis</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>When X's wife had moved to Sweden, she had exercised her right of free movement as an EU citizen by settling in Sweden. When the couple had returned to Finland, it could be said that X had accompanied his wife to Finland as a family member of an EU citizen, despite the fact that he had returned to Finland for other reasons than family life.</p> <p>Prohibition of entry of an EU citizen or a family member on grounds of public order or security cannot be based solely on criminal convictions. However, this does not mean that past convictions should not be taken into account at all. Considering the nature and frequency of X's criminal activities, it could be held that X continued to be a genuine, present and sufficiently serious threat to public order and security, as determined in the Aliens Act and CJEU case law.</p> <p>When considering the prohibition of entry account must also be taken of X's family ties in Finland. X's wife had acquired Swedish citizenship in 2012. After X has served his sentence the couple can thus live in Sweden and the wife is not obliged to leave the EU area. X's child from his previous marriage had been taken into custody in Finland and X was no longer her guardian. Despite the entry ban X could continue to keep in touch with his child, e.g., per phone as he had done before. The decision prohibiting X from entering Finland for a fixed period of time was not against the child's best interests. The court concluded that there had been no change in circumstances or important personal reasons on the basis of which the entry ban could have been revoked in full.</p>
<p><b>Key issues (concepts, interpretations)</b></p>	<p>When deciding on the entry ban, the Immigration Service had applied the provisions in the Aliens Act concerning EU-citizens' family members. X appealed against the decision to the administrative court which agreed with the Immigration Service but based its own decision on the provisions in the Aliens Act concerning</p>

<b>) clarified by the case</b> (max. 500 chars)	<p>third-country nationals. X claimed the prohibition of entry could have been revoked in full or made shorter if the court had considered the conditions under EU law concerning prohibition of entry of EU citizens' family members. The Supreme Administrative Court confirmed that the administrative court had applied incorrect provisions of the Aliens Act whereas the interpretation by the Immigration Service was correct. This did not change the outcome of the case, though.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Supreme Administrative Court upheld the decision of the Immigration Service.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>(p. 13 of the decision): Muutoksenhakijan voidaan katsoa edelleen muodostavan ulkomaalaislain 156 §:n 1 momentissa ja 170 §:n 1 momentissa sekä unionin tuomioistuimen oikeuskäytännössä tarkoitetulla tavalla todellisen, välittömän ja riittävän vakavan uhan yleiselle järjestykselle ja yleiselle turvallisuudelle. Vaikka edellä tarkoitettu arvio ei voi vapaan liikkuvuuden direktiivin ja unionin tuomioistuimen oikeuskäytännön mukaan perustua yksinomaan rikoksiin, ei tämä tarkoita, ettei muutoksenhakijan aiempaa rikollisuutta tule lainkaan huomioida päätöksenteossa. Maahanmuuttovirasto on suorittanut 18.11.2014 muutoksenhakijan asiassa tapauskohtaisen arvion, joka on perustunut ainoastaan hänen omaan käyttäytymiseensä.</i></p> <p><i>Asiassa ei ole Suomen osalta ilmennyt ulkomaalaislain 170 §:n 2 momentissa tarkoitettua muutosta oloissa tai tärkeää henkilökohtaista syytä, joiden vuoksi muutoksenhakijalle vuonna 2009 määrätty maahantulokielto olisi tullut tältä osin peruuttaa. Maahanmuuttovirasto on ottanut huomioon muutoksenhakijan aviopuolison vuonna 2012 saaman Ruotsin kansalaisuuden peruuttamalla muutoksenhakijalle koko Schengen-alueen koskevana</i></p>

	<p><i>määrätyn maahantulokiellon ja määrämällä maahantulokiellon olemaan voimassa kansallisena ainoastaan Suomea koskevana.</i></p> <p>Translation:</p> <p>The applicant can still be considered a genuine, present and sufficiently serious threat to public order and public security, as defined in sections 156(1) and 170(1) of the Aliens Act and in CJEU case law. According to the Free Movement Directive and CJEU case law, the assessment [of imposing an entry ban] cannot be based on criminal convictions alone. However, this does not mean that the applicant's past crimes should not be taken into account at all. The Immigration Service has on 18 November 2014 made an overall assessment in the applicant's case, based exclusively on his personal conduct.</p> <p>As far as entry into Finland is concerned it has not been shown that there would have been a change in circumstances or important personal reasons, as provided for in section 170(2) of the Aliens Act, on the basis of which the entry ban should be revoked in full. The Immigration Service has taken into account that the applicant's spouse has acquired Swedish citizenship in 2012, by revoking the prohibition to enter the Schengen area and by restricting the entry ban to Finland only.</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>8.</b> <b>Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 8 and 16 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>	5 July 2011
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO:2011:64 ECLI:FI:KHO:2011:64
<b>Parties</b>	X v. the Helsinki Police Department ( <i>Helsingin poliisilaitos/polisinrättningen i Helsingfors</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2011/201101898">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2011/201101898</a>

<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>The applicant was an Italian citizen and had resided lawfully in Finland since 1997. His latest residence permit had been in force during 2002-2007. He applied for a new residence permit in 2008, but this was 11 months after his previous residence permit had expired. The police requested that the applicant registers his residence.</p> <p>The Aliens Act currently in force was adopted in 2004. Its provisions on EU citizens’ right of permanent residence were amended in 2007 when Directive 2004/38/EC was transposed into Finnish law. According to the Aliens Act, EU citizens residing in Finland for more than three months must register their residence (section 159). EU citizens who have resided legally in Finland for a continuous period of five years have the right to permanent residence. The right is not subject to the requirements for short-term residence or residence for more than three months (section 161g). The police registered the applicant’s residence, without examining whether he had a right to permanent residence. Both the police and the administrative court held that the applicant had not been residing in Finland legally and continuously for five years, because he had not registered his residence in the prescribed time after his previous residence permit had expired.</p>
<b>Main reasoning / argumentation</b>	<p>With reference to Directive 2004/38/EC and the preparatory works of the amending act through which the directive was transposed, the Supreme Administrative Court noted that the right of permanent residence is not subject to any conditions or requirements for short-term residence or residence for more than three months. When the new Aliens Act entered into force on 30.4.2007, the applicant’s previous residence permit was still in</p>

<b>(max. 500 chars)</b>	force. The applicant had acquired a right of permanent residence directly on the basis of section 161g of the Aliens Act, having met the condition of five years of lawful and continuous residence. A new registration of the right of residence was not necessary.
<b>Key issues (concepts, interpretations ) clarified by the case (max. 500 chars)</b>	The decision clarified the provisions in the Aliens Act on the duty to register on the one hand and the right of permanent residence on the other.
<b>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The court ordered that the registration fee (EUR 40) is refunded and the state is to pay for the applicant's legal costs.
<b>Key quotations in original language and translated into English with reference</b>	<i>(pp. 5-6 of the decision): Kun myös otetaan huomioon, että direktiivin 2004/38/EY 16 artiklan 1 kohdan mukaan pysyvä oleskeluoikeus ei riipu direktiivin III luvussa säädetyistä edellytyksistä, joihin kuuluu muun muassa 8 artiklan 1 kohdassa säädetty rekisteröintivelvollisuus, ulkomaalaislain 161g §:ää on tulkittava siten, että oikeus unionin kansalaisen pysyvään oleskeluun syntyy suoraan lain nojalla säädetyin viiden vuoden yhtäjaksoisen laillisen oleskelun täytyttyä eikä se edellytä uutta oleskeluoikeuden rekisteröintiä. Rekisteröintivelvollisuus liittyy vain maahan vastikään saapuneisiin, mutta ei Suomessa jo vähintään viiden</i>

<b>details (max. 500 chars)</b>	<p><i>vuoden ajan asuneisiin unionin kansalaisiin, jotka ovat jo täyttäneet rekisteröintivelvollisuutensa kolmen kuukauden kuluessa maahan saapumisesta.</i></p> <p>Translation:</p> <p>According to Article 16(1) of Directive 2004/38/EC the right to permanent residence is not subject to the conditions provided for in Chapter III of the Directive, among them the duty to register in Article 8(1). Therefore, section 161g of the Aliens Act must be interpreted to the effect that an EU citizen's right to permanent residence derives directly from the Act after the prescribed period of five years of legal and continuous residence and is not subject to a new registration of the right of residence. The duty to register only applies to those who have recently arrived in the country, but not to those EU citizens who have lived in Finland for at least five years and who have already fulfilled their duty to register within three months from entry into the country.</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	<p>No.</p>

<b>9.</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 7, 8 and 9 of Directive 2004/38
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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>	6 April 2016
<b>Deciding body (in original language)</b>	<i>Vaasan hallinto-oikeus/Vasa förvaltningsdomstol</i>
<b>Deciding body (in English)</b>	Vaasa Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	Vaasan HAO 06.04.2016 16/0151/3 ECLI:FI:VAAHAO:2016:16.0151.3
<b>Parties</b>	B et al. V. the Pohjanmaa Police Department ( <i>Pohjanmaan poliisilaitos/polisinrättningen i Österbotten</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/hao/2016/vaasan_hao20160151">www.finlex.fi/fi/oikeus/hao/2016/vaasan_hao20160151</a> (summary of the case)
<b>Legal basis in national law of</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.

<b>the rights under dispute</b>	
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>An Estonian citizen had worked in Finland for almost two years. When his fixed-term contract ended on 30 August 2013, he had been registered as a jobseeker with the employment office on 2 September 2013. His wife, who was stateless, had applied for a residence card on 15 August 2013, and his two children, who were EU citizens, had submitted applications for registering their right of residence, on 15 August 2013 and 11 October 2013. The wife and the children intended to stay in Finland for one year. The police rejected the applications in February 2014, on grounds that the father was at the time economically inactive and did not have sufficient funds.</p> <p>According to the Aliens Act family members of EU citizens, who are not themselves EU citizens, are issued with a residence card, if the sponsor has a right of residence and the family member is planning to stay in Finland for more than three months. An EU citizen may reside in Finland for more than three months if he/she is a paid employee or a self-employed person or a family member of an employed or self-employed EU citizen. The right of residence also applies to family members of an EU citizen, who are not themselves EU citizens, if the EU citizen and the sponsor has a right of residence.</p>
<b>Main reasoning / argumentation</b>	<p>According to the Aliens Act an EU citizen who has been but is no longer an employed or self-employed person, retains his/her status as employed or self-employed person if after having been employed for more than one year he/she becomes unemployed involuntarily and is registered as a jobseeker with the relevant employment office. The administrative court held that in this case the father had become unemployed involuntarily. Because he had retained his right of residence under the Aliens Act, also the wife had a right of residence and</p>

(max. 500 chars)	the police should not have rejected her application for a residence card. Similarly, the two children were family members of an EU citizen who had a right of residence in Finland. They were themselves EU citizens, had valid passports, and were planning to stay in Finland for over three months. The police should have registered their right of residence.
<b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)	The police acknowledged that the father had a right of residence as a jobseeker, but held that as long as the father was economically inactive, the family members did not meet the requirements for right of residence. The administrative court corrected this interpretation by confirming that despite unemployment the father had retained his status as an employed person and his right of residence and consequently, the family members also had a right of residence.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The administrative court referred the matter back to the police for a new consideration.
<b>Key quotations in original language and translated into English with reference</b>	<i>(p. 3 and 4 of the decision): Edellä mainitun perusteella hallinto-oikeus katsoo, että A, työskenneltyään Suomessa miltei kaksi vuotta, on joutunut työttömäksi tahtomattaan. Hän on siten säilyttänyt ulkomaalaislain 160 §:n 2 kohdan nojalla lain 158a §:n 1 momentin 1 kohdassa tarkoitetun työntekijän aseman. Näin ollen myös B:llä on katsottava olleen lain 158a §:n 2 momenttiin perustuva oleskeluoikeus. Lisäksi kun B:n tarkoituksena on ollut oleskella Suomessa yli kolme kuukautta, poliisilaitoksen ei olisi tullut hylätä B:n oleskelukorttihakemusta sillä perusteella, ettei perheen kokoaja tällä hetkellä harjoita taloudellista toimintaa</i>

<p><b>details</b> (max. 500 chars)</p>	<p><i>palkattuna työntekijänä tai itsenäisenä ammatinharjoittajana ja että perheen kokoajalla tai hakijalla ei ole riittäviä varoja maassa oleskeluun.</i></p> <p>...</p> <p><i>C on hakemusta vireille pantaessa oleskellut Suomessa 4,5 kuukautta ja D noin 2 kuukautta, minkä lisäksi lasten hakemuksissa on ilmoitettu aiotun Suomessa oleskeluajan olevan yhden vuoden. Näin ollen ja kun poliisilla on valituksenalaisia päätöksiä tehdessään ollut käytettävissä C:n ja D:n voimassa olevat passit, olisi poliisilaitoksen tullut antaa lapsille unionin kansalaisen oleskeluoikeutta koskevat rekisteröintitodistukset.</i></p> <p>Translation:</p> <p>On the basis of the above, the administrative court finds that after having worked in Finland for almost two years, A has become unemployed involuntarily. Based on section 160(2) of the Aliens Act he has thus retained his status as an employed person as prescribed in section 158a(1)(1) of the Act. Therefore, B also has a right of residence based on section 158a(2) of the Act. Moreover, because B has planned to stay in Finland for more than three months, the police should not have rejected her application for a residence card on the grounds that the sponsor was not at the time engaged in economic activity as a paid employee or self-employed person and that the sponsor or the applicant did not have sufficient funds for their residence in the country.</p> <p>...</p> <p>When the applications for registration of the right of residence were submitted to the police C had been residing in Finland for four and a half months and D for approximately two months. In addition, as stated in their applications the children were planning to stay in Finland for one year. Considering this, and the fact that when making the impugned decisions the police had had at their disposal C's and D's valid passports, the police should have issued the children with registration certificates as proof of EU citizens' right of residence.</p>
<p><b>Has the deciding body</b></p>	<p>No.</p>

referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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<b>10.</b> <b>Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 7 and 8 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>	25 January 2016
<b>Deciding body (in original language)</b>	<i>Helsingin hallinto-oikeus/Helsingfors förvaltningsdomstol</i>
<b>Deciding body (in English)</b>	Helsinki Administrative Court
<b>Case number (also European Case Law)</b>	Helsingin HAO 25.01.2016 16/0082/6 ECLI:FI:HELHAO:2016:16.0082.6

<b>Identifier (ECLI) where applicable)</b>	
<b>Parties</b>	X v. the Helsinki Police Department ( <i>Helsingin poliisilaitos/polisinrättningen i Helsingfors</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/hao/2016/helsingin_hao20160082">www.finlex.fi/fi/oikeus/hao/2016/helsingin_hao20160082</a> (summary of the case)
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the "real life story")</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>A Spanish citizen had arrived in Finland in order to work, study and learn the language. He intended to stay in the country permanently and wished to register his right of residence. The police rejected the application for registration on grounds that the applicant did not have sufficient funds for his residence. In making its decision, the police took into account the applicant's income from part-time work and the funds in his bank account at the time.</p> <p>According to the Aliens Act, EU citizens may reside in Finland for more than three months if they are paid employees or self-employed persons or have sufficient funds during their time of residence. They must also register their residence and in that connection present proof of sufficient funds, if they are economically</p>

	<p>inactive. In this case, the applicant had presented proof of his savings and had later submitted further proof of his income from work. The applicant was working on a task-based employment contract with a Finnish company. The main issue was whether the applicant's right of residence should have been registered on the basis of his status as an employed person or on the basis of the assessment of sufficient funds. In its decision the administrative court relied on the Aliens Act, Directive 2004/38/EC and the case law of the CJEU (<i>C-408/03 Commission v. Belgium</i>).</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>The administrative court held that because of the applicant's small and irregular income, his right to residence could not be registered on the basis of his being an employed person.</p> <p>The administrative court noted that according to the Free Movement Directive, the Member States may not lay down a fixed amount which they regard as "sufficient resources" but they must take into account the personal situation of the applicant. The Member States may monitor whether EU citizens who enjoy a right of residence continue to meet the conditions for that right throughout the period of their residence. There are no specific rules as to the amount of funds which could be regarded as sufficient or how long, as a minimum, these funds should last. The applicant planned to stay in Finland for an indefinite period of time and had so far covered his living expenses with his savings and his income from part-time work. The court concluded that the applicant's right of residence should have been registered on the basis of sufficient funds.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The decision clarified the interpretation of the concept of "sufficient funds" to the effect that no fixed amount can be set on sufficient funds. The required funds shall be sufficient to cover living expenses for the time being. The applicant enjoys the right of residence as long as he/she has sufficient funds. The host state can monitor whether the requirements for a right of residence are met throughout the period of the applicant's residence.</p>
<p><b>Results (e.g. sanctions) and key</b></p>	<p>The matter was referred back to the police for a new consideration.</p>

<p><b>consequences or implications of the case</b> (max. 500 chars)</p>	
<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>(pp. 3-4 of the decision): Hallinto-oikeus toteaa, että riittävien varojen määrästä, lähteestä tai niistä esitettävästä selvityksestä ei ole erillisiä säännöksiä. Hallinto-oikeus viittaa myös Euroopan yhteisöjen tuomioistuimen tuomioon C-408/03 (Euroopan yhteisöjen komission vastaan Belgian kuningaskunta), jossa on todettu, että direktiivin 90/364 3 artiklassa säädetään siten, että oleskeluoikeus on voimassa niin kauan kuin edunsaajat täyttävät kyseisen direktiivin 1 artiklassa olevat edellytykset. Kyseisen säännöksen perusteella vastaanottava jäsenvaltio voi valvoa, että unionin kansalaiset, joille on myönnetty oleskeluoikeus, täyttävät direktiivissä 90/364 tältä osin säädetyt edellytykset koko oleskelunsa ajan. Hallinto-oikeus toteaa, että oleskeluoikeuden rekisteröintiä hakevalla ei voida olettaa olevan varoja koko oletetun loppuelämänsä ajaksi, jos hän on saapunut maahan toistaiseksi. Edelleen hallinto-oikeus toteaa, että laissa ei ole asetettu määrää riittäviksi varoiksi eikä säädetty siitä, kuinka kauan varojen tulisi vähintään riittää.</i></p> <p><i>Kun otetaan huomioon mitä vapaan liikkuvuuden direktiivissä on sanottu riittävistä varoista, mitä edellä mainitussa Euroopan yhteisöjen tuomioistuimen tuomiossa on lausuttu ja se, että A on tullut Suomeen ilmoituksensa mukaan asumaan toistaiseksi, sekä se, että A on kattanut elantomenojaan säästöjensä lisäksi työtuloillaan, hallinto-oikeus katsoo, että hänen oleskeluoikeutensa olisi tullut rekisteröidä ulkomaalaislain 158a §:n 1 momentin 2 kohdan mukaan.</i></p> <p>Translation:</p>

	<p>The administrative court notes that there are no specific provisions as to the amount or source of sufficient funds or the required proof of such funds. The administrative court also refers to the judgment of the CJEU in the case of C-408/03 (Commission v Belgium) in which the CJEU has held that Article 3 of Directive 90/364 provides that the right of residence is to remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1 of that directive. That provision enables the host Member State to monitor whether EU citizens who enjoy a right of residence continue to meet the conditions laid down for that purpose by Directive 90/364 throughout the period of their residence. The administrative court finds that a person who applies for a registration of the right of residence cannot be expected to have sufficient funds for the rest of his or her life if that person plans to stay in the country for now. Furthermore, the administrative court notes that there is no statutory fixed amount of sufficient funds and there are no provisions as to how long, as a minimum, those funds should last.</p> <p>Considering what is said in the Free Movement Directive on sufficient funds, the views of the CJEU in the judgment referred to above, the fact that A has said he has come to Finland to live here for now and the fact that A has covered his living expenses not only with his savings but also with his income from work, the administrative court finds that the applicant's right of residence should have been registered on the basis of section 158a(1)(2) of the Aliens Act [i.e., sufficient funds].</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>11.</b> <b>Subject matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 2, 9, 10, 11, 13, 14 and 35 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>	29 April 2015
<b>Deciding body (in original language)</b>	<i>Hämeenlinnan hallinto-oikeus/Tavastehus förvaltningsdomstol</i>
<b>Deciding body (in English)</b>	Hämeenlinna Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	Hämeenlinnan HAO 29.04.2015 15/0359/3 ECLI:FI:HAMHAO:2015:15.0359.3
<b>Parties</b>	A et al. V. the Central Finland Police Department ( <i>Keski-Suomen poliisilaitos/polisinrättningen i Mellersta Finland</i> )

<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/hao/2015/hameenlinnan_hao20150359">www.finlex.fi/fi/oikeus/hao/2015/hameenlinnan_hao20150359</a> (summary of the case)
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) No. 301/2004, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the “real life story”)</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>A, who was a third-country national, was married to B, who was an Estonian citizen and lived in Finland. The couple had met and later married in A’s home country. At the time of their marriage, B had already lived in Finland for several years and had also registered his right of residence. After the marriage A and her son moved to Finland and were issued with residence cards for a family member of an EU citizen for five years. Having lived together in Finland for three months, A and B had separated. The police cancelled the residence cards because it held that the couple’s family life had ended and the requirements for obtaining a residence card were no longer met. The police also suspected that the marriage had been contracted in order to circumvent immigration regulations.</p> <p>According to the Aliens Act a fixed-term residence card is cancelled if the grounds for issuing the card no longer exist, or the card was obtained by knowingly providing false information about relevant facts, or by other abuse of rights. Section 161e of the Aliens Act contains provisions on retaining the right of residence of family members in the event of divorce.</p>

	The administrative court based its decision on the Aliens Act, Directive 2004/38/EC and the case law of the CJEU (C-40/11 <i>Iida</i> ; C-244/13 <i>Ogieriakhi</i> ).
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>Although A and B lived separately, their marriage had not been officially terminated by a decision of the competent authority, and, in fact, there was no longer any divorce petition pending. A was thus still regarded as a family member of an EU citizen and the residence cards could not be cancelled solely on grounds that the couple no longer led a family life. The provisions in the Aliens Act on the conditions for retaining the right of residence of a family member in the event of divorce were not applicable in this case.</p> <p>Considering that the couple had known each other for 18 months before their marriage, that B had supported A financially when A was still living in her home country, and also considering the reasons for their separation (i.e., quarrels between the spouses, B's heavy use of alcohol and his criminal activities), the administrative court held that the marriage had not been contracted solely for the purpose of obtaining the right of residence of a family member of an EU citizen. A's and her son's residence cards could not be cancelled on grounds of abuse of rights.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The decision clarified the rules as to how separation or divorce affects the right of residence of a family member. As long as the marriage is in force, a residence card cannot be cancelled solely on grounds that the family life has ended because of separation.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b>	The administrative court quashed the decision made by the police.

(max. 500 chars)	
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>(p. 8 of the decision): Ulkomaalaislain 154 §:n 1 momentin 1 kohdan mukaan aviopuoliso on unionin kansalaisen perheenjäsen. Lainkohta vastaa perheenyhdistämisdirektiivin (2004/38/EY) 2 artiklan 2 kohdan a alakohtaa. Unionin tuomioistuimen oikeuskäytännön perusteella aviopuolisostaan pysyvästi erillään asuvaa kolmannen maan kansalaista pidetään unionin kansalaisen perheenjäsenenä, jos toimivaltainen viranomais ei ole päättänyt heidän avioliittoaan. A:n ja B:n yhteinen perhe-elämä on päättynyt A:n muutettua B:n luota kesällä 2013, mutta heitä ei ole tuomittu avioeroon, eikä tällaista hakemusta ole edes esitetty olevan enää vireillä. Unionin tuomioistuimen oikeuskäytäntö huomioon ottaen valittajien oleskelukortteja ei ole voitu avioliiton voimassa ollessa peruuttaa ulkomaalaislain 165 §:n 1 momentin 3 kohdan nojalla pelkästään sillä perusteella, että A:n ja B:n yhteinen perhe-elämä on päättynyt. Näin ollen myöskään ulkomaalaislain 161e §:n säännökset oleskeluoikeuden säilymisestä avioliiton purkautumisen yhteydessä eivät tule tässä asiassa sovellettaviksi.</i></p> <p>Translation:</p> <p>According to section 154(1)(1) of the Aliens Act a spouse is a family member of an EU citizen. The provision corresponds to Article 2(2)(a) of Directive 2004/38/EC. According to the case law of the CJEU, a third-country national who lives permanently separated from his or her spouse, is regarded as a family member of an EU citizen, if their marriage has not been terminated by the competent authority. The family life between A and B had ended when A had moved away in the summer of 2013. However, the couple had not been granted a divorce, and, in fact, there was no longer any divorce petition pending. Bearing in mind the case law of the CJEU, while the marriage is in force, the applicants' residence cards could not be cancelled on the basis of section 165(1)(3) of the Aliens Act solely on grounds that A and B no longer led a family life. Consequently,</p>

	section 161e of the Aliens Act on retaining the right of residence in the event of divorce was not applicable in this case.
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b>	No.

<b>12. Subject matter concerned</b>	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality 2) freedom of movement and residence - 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>	8 April 2014
<b>Deciding body (in original language)</b>	<i>Vakuutusosikeus/Försäkringsdomstolen</i>

<b>Deciding body (in English)</b>	Insurance Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	VakO 8.4.2014/3913: 2013 ECLI:FI:VAKO:2013:3913
<b>Parties</b>	A v. the Social Insurance Institution of Finland ( <i>Kansaneläkelaitos/Folkpensionsanstalten</i> )
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/vako/2014/20140408_2013_003913">www.finlex.fi/fi/oikeus/vako/2014/20140408_2013_003913</a>
<b>Legal basis in national law of the rights under dispute</b>	Act on Student Financial Aid ( <i>opintotukilaki/lag om studiestöd</i> ) No. 65/1994, as amended.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>1. the facts of the case (so the "real life story")</li> <li>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</li> </ol> <p>An Estonian citizen A had come to Finland in August 2011 in order to study. In July 2012, A started to work part-time while continuing his studies. A also applied for study grant at the Social Insurance Institution of Finland, but the application was denied, on grounds that A was residing in Finland as a student and foreign students are not in general eligible for financial aid for studies in Finland. Also the Student Financial Aid Review</p>

	<p>Board held that although A had started to work while studying, he was residing in Finland with a student status and did therefore not qualify for study grant.</p> <p>According to section 1(2) of the Act on Student Financial Aid, the provisions concerning Finnish citizens are also applicable to persons who, under EU law, are eligible for study grant or who, under the Aliens Act, have a right to permanent residence in Finland. According to section 1(3), an alien, who does not live in Finland permanently and who is residing in the country for some other reason than studying (e.g. for family or work), is eligible for study grant, if he/she is an EU citizen who has registered his/her residence, or is a family member of an EU citizen and has been granted a residence card.</p> <p>In its decision on A's appeal, the Insurance Court found that A is to be regarded as a worker and, being an EU citizen, shall not be set in an unequal position as compared to Finnish citizens in decisions concerning study grant. The Insurance Court based its decision on the right to free movement of EU citizens and the prohibition of discrimination on the basis of nationality in the TFEU as well as the judgment of the CJEU in the case of <i>L.N.</i> (C-46/12), concerning the interpretation of Directive 2004/38/EC and the derogation to the principle of equal treatment concerning maintenance aid for studies, before the acquisition of the right of permanent residence, as provided for in Article 24(2) of the directive.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>EU citizens may rely on the prohibition of discrimination on the basis of nationality, as prescribed in the TFEU and Directive 2004/38/EU, in situations where they exercise their right to move and reside freely in the territory of other EU member states. EU citizens have a right to reside in another member state for more than three months, provided they are enrolled at an educational institution for the principal purpose of following a course of study. However, it does not follow from this provision that an EU citizen who fulfils this condition is automatically precluded from having the status of a 'worker' within the meaning of EU law.</p> <p>The concept of 'worker' has an autonomous meaning in EU law, and the concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. Factors relating to the conduct of the person concerned before and after the period of employment are not relevant. Bearing in mind the case law of the CJEU, when assessing whether an EU citizen</p>

	<p>has the status of a 'worker', it is not relevant whether that person has originally arrived in the country for the purpose of study. The Insurance Court concluded that taking into account the information presented on A's employment, he should be regarded as a worker and must not be set in an unequal position as compared to Finnish citizens in decisions concerning study grant.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The fact that an EU citizen has arrived in Finland with the principal intention of studying is not relevant for determining whether that person is a 'worker', within the meaning of EU law and, accordingly, whether he or she is entitled to student financial aid under the same terms as a Finnish citizen.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>In the opinion of the Insurance Court, the applicant, in his position as an EU citizen and a worker, qualified for student financial aid. Therefore, the case was referred back to the Social Insurance Institution of Finland for a reconsideration of whether the applicant otherwise meets the eligibility requirements for study grant.</p>
<p><b>Key quotations in original language and translated into English with reference</b></p>	<p><i>(p. 3 of the decision): Vakuutusoiikeus toteaa, että Euroopan unionin tuomioistuimen asiassa C-46/12 antaman tuomion perusteella arvioitaessa sitä, onko unionin kansalaista pidettävä SEUT 45 artiklassa tarkoitettuna työntekijänä, ei ole merkitystä, onko henkilö saapunut maahan alun perin opiskelutarkoituksessa. Ottaen huomioon A:n työnteosta esitetty selvitys, vakuutusoiikeus katsoo, että häntä on pidettävä Suomessa SEUT 18 ja 45 artikloissa tarkoitettuna työntekijänä. Tällöin häntä ei saa opintotukea myönnettäessä asettaa eri asemaan Suomen kansalaisiin nähden. Vakuutusoiikeus toteaa vielä, että koska EU:n jäsenvaltion kansalaisella</i></p>

<p><b>details</b> (max. 500 chars)</p>	<p><i>on oikeus vapaasti liikkua ja oleskella unionin alueella muun muassa työtä hakiessaan, työskennellessään tai opiskellessaan, A:n mahdollisen oleskeluoikeuden rekisteröinnin tai oleskeluluvan puuttumisella ei ole tässä käsiteltävänä olevassa asiassa merkitystä. Näin ollen A on oikeutettu opintotukeen 13.8.2012 alkaen, mikäli hän muutoin täyttää sen saamisen edellytykset.</i></p> <p>Translation:</p> <p>The Insurance Court finds that when assessing, in the light of the judgment of the CJEU in the case of C-46/12, whether an EU citizen is to be regarded as a worker under article 45 of the TFEU, it is not relevant, whether that person has originally arrived in Finland for the purpose of study. Taking into account the evidence presented on A's employment, the Insurance Court finds that A is to be regarded in Finland as a worker within the meaning of articles 18 and 45 of the TFEU. Therefore he shall not be set in an unequal position as compared to Finnish citizens in decisions concerning study grant. Moreover, the Insurance Court notes that because an EU citizen has a right to reside and move freely in the territory of EU member states when seeking employment, working or studying, it is not relevant in this case whether A has registered his residence or not and whether he has a residence permit or not. Therefore, A qualifies for study grant as from 13 August 2012, provided he otherwise meets the eligibility requirements for study grant.</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>

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 objective of the research if this data is available (covering the reference period)</b>	Not available	Not available	Not available	Not available	Not available