

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

Contractor: Fondazione Giacomo Brodolini

Author: Marta Capesciotti

Reviewed by: Silvia Sansonetti

**DISCLAIMER:** This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'Living in another Member State: barriers to EU citizens' full enjoyment of their rights'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

## Contents

|                             |    |
|-----------------------------|----|
| 1. Table 1 – Case law ..... | 3  |
| 2. Table 2 – Overview ..... | 50 |

1. Table 1 – Case law

|   |   |
|---|---|
| <p><b>1.</b><br/><b>Subject matter concerned</b></p>          | <p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence<br/>- linked to which article of Directive 2004/38</p> <p><input checked="" type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p> |
| <p><b>Decision date</b></p>                                   | <p>1 March 2012</p>   |
| <p><b>Deciding body (in original language)</b></p>            | <p><i>Consiglio di Stato</i></p>  |
| <p><b>Deciding body (in English)</b></p>                      | <p>Council of State</p>   |
| <p><b>Case number (also European Case Law Identifier)</b></p> | <p>Fifth Section, Judgment No. 1193 of 1 March 2012</p>   |

|  |   |
|--|---|
| <b>(ECLI) where applicable)</b>                                |   |
| <b>Parties</b>   | <i>Two Italian citizens living in the Municipality of Trevi (Umbria) v. the Municipality of Trevi (Comune di Trevi), the Electoral Commission of the Municipality of Trevi (Commissione elettorale del Comune di Trevi), electoral list No. 3 named 'We for Trevi' (Noi per Trevi), and the Ministry of the Interior (Ministero dell'Interno)</i>   |
| <b>Web link to the decision (if available)</b>                 | <a href="http://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=FJH7Y5P4AEE3AD6VCAN5QQLMWM&amp;q">www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=FJH7Y5P4AEE3AD6VCAN5QQLMWM&amp;q</a> <sup>1</sup>   |
| <b>Legal basis in national law of the rights under dispute</b> | Articles 1 and 3 of Legislative Decree No. 197 of 12 April 1996, Implementation of Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals ( <i>Decreto legislativo 12 aprile 1996, n. 197, Attuazione della direttiva 94/80/CE concernente le modalità di esercizio del diritto di voto e di eleggibilità alle elezioni comunali per i cittadini dell'Unione Europea che risiedono in uno Stato membro di cui non hanno la cittadinanza</i> ).   |
| <b>Key facts of the case</b><br>(max. 500 chars)               | Following the municipal elections in Trevi, two Italian citizens challenged the enrolment in the local electoral register of 35 EU citizens regularly living in the municipal territory. According to the complainants, the above-mentioned EU citizens did not comply with the administrative requirements envisaged by Decree of the President of the Republic No. 223 of 20 March 1967, Approval of the consolidated act governing the right to vote, as well as the maintenance and review of electoral registers ( <i>Decreto del Presidente della Repubblica 20 marzo 1967, n. 223, Approvazione del testo unico delle leggi per la disciplina dell'elettorato attivo e per la tenuta e la revisione delle liste elettorali</i> ) and by Article 3 of Legislative Decree No. 197/1996, according to |

---

<sup>1</sup>All hyperlinks were accessed on 26 April 2017.

|  |  |
|--|--|
|  | <p>which EU citizens, willing to take part in municipal elections, have to lodge a formal request with the Mayor within five days from the publication of the formal convocation of election rallies.</p>  |
| <p><b>Main reasoning /<br/>argumentation</b><br/>(max. 500<br/>chars)</p>  | <p>The Council of State (which represents the second instance of the Italian administrative justice system) confirmed the judgment of the Umbria Regional Administrative Court (<i>Tribunale Amministrativo Regionale per l'Umbria</i>, TAR Umbria), which had been challenged by the complainants. In fact, according to the Council of State, the above-mentioned 35 EU citizens – whose right to participate in the municipal elections is not in question – had to comply with the administrative requirements envisaged by Italian legislation.</p>   |
| <p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>                      | <p>Through this judgment, the Council of State confirmed the right of EU citizens regularly living in the territory of an Italian Municipality to take part in municipal elections at the same conditions as Italian citizens. Nonetheless, the above-mentioned legislative decree – which implemented Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals – set out some specific bureaucratic requirements aimed at balancing EU citizens' right to vote with the need for transparency and clarity of electoral procedures, covering the drafting of the official electoral register.</p> |
| <p><b>Results (e.g. sanctions) and key consequences or implications of the case</b><br/>(max. 500<br/>chars)</p> | <p>According to the Council of State's reasoning, the complaint lodged by the two Italian citizens was definitely upheld and the first-level court's decision was confirmed. Consequently, the 35 EU citizens who had been allowed to vote were not entitled thereto because they were not officially enrolled in the municipal electoral register. For this reason, their vote was considered illegitimate. Since the Mayor had been elected by a margin of just 14 votes, the elections were considered invalid and had to be held again.</p>  |

|   |   |
|---|---|
| <p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p> | <p><i>"[...] il legislatore ha voluto fissare dei termini temporali invalicabili, la cui scadenza, determina il c.d. "blocco delle liste", con la conseguenza che è impedito qualsiasi intervento sulle stesse, e ciò al fine di dare certezza al voto, sicchè ammissioni di carattere eccezionale ed urgente a votare sono, sempre per espressa previsione di legge, limitate ai casi in cui l'acquisto o il riacquisto del diritto di voto è intervenuto successivamente al blocco delle liste. Nel caso dei 35 cittadini comunitari, impropriamente ammessi al voto dalla Commissione Circondariale, non solo non si verte nella casistica straordinaria [...] ma è pacifico che la residenza nel Comune di Trevi da parte degli interessati è datata nel tempo e ben poteva essere utilizzata la procedura espressamente prevista dalla legge per iscrivere gli stessi nella lista elettorale."</i></p> <p>Translation:</p> <p>"[...] the legislator has expressly set mandatory deadlines whose expiry entails the so-called 'freeze of rolls', and thus the impossibility to further modify them in any way whatsoever. All of this is aimed at ensuring certainty in relation to the voting procedure; consequently, according to applicable legislation, exceptional and urgent enrolments limited to the cases in which access or re-access to the right to vote has been obtained after the freeze of rolls. In the case of the 35 EU citizens who had been unlawfully allowed to vote by the District Commission, not only can the extraordinary enrolment procedure not be applied [...] but it is also clear that the subjects concerned had been living in the Municipality of Trevi for a long time, and thus the procedure envisaged by the applicable legislation could have been applied in order to enrol them in the electoral register."</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</b></p>                            | <p>No, it has not.</p>  |

|                                   |  |
|-----------------------------------|--|
| <b>to which specific article.</b> |  |
|-----------------------------------|--|

|   |   |
|---|---|
| <b>2.<br/>Subject matter concerned</b>      | <input type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br><input checked="" type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>                        | 30 August 2011  |
| <b>Deciding body (in original language)</b> | <i>Consiglio di Stato</i>   |
| <b>Deciding body (in English)</b>           | Council of State  |
| <b>Case number (also European)</b>          | Fifth Section, judgment No. 4863 of 30 August 2011  |

|  |   |
|--|---|
| <b>Case Law Identifier (ECLI) where applicable)</b>            |   |
| <b>Parties</b>   | <i>Five Italian citizens v. the Municipality of Galeata (Emilia-Romagna) (Comune di Galeata – Emilia-Romagna)</i>   |
| <b>Web link to the decision (if available)</b>                 | <a href="http://www.miolegale.it/sentenze/consiglio-stato-v-4863-2011/">www.miolegale.it/sentenze/consiglio-stato-v-4863-2011/</a>  |
| <b>Legal basis in national law of the rights under dispute</b> | Legislative Decree No. 197/1996 on the implementation of Directive 94/80/EC on the exercise of the right to vote and on the eligibility in local elections of EU citizens living in another Member State they are not citizens of ( <i>Decreto Legislativo 12 aprile 1996, n. 197, Attuazione della direttiva 94/80/CE concernente le modalita' di esercizio del diritto di voto e di eleggibilita' alle elezioni comunali per i cittadini dell'Unione europea che risiedono in uno Stato membro di cui non hanno la cittadinanza</i> ).  |
| <b>Key facts of the case</b> (max. 500 chars)                  | Five Italian citizens living in the Municipality of Galeata had filed a complaint with the Emilia-Romagna Regional Administrative Court ( <i>Tribunale Amministrativo Regionale per l'Emilia-Romagna, TAR Emilia-Romagna</i> ), challenging the legitimacy of municipal elections for several reasons, including the inclusion in the municipal electoral register of four EU citizens who were regularly living in the municipal territory and fulfilled all the administrative requirements envisaged by the above-mentioned legislative decree, but who did not hold an Italian ID document. |
| <b>Main reasoning</b> /  | According to TAR Emilia-Romagna, the participation of the above-mentioned EU citizens in local elections was legitimate since they fulfilled the bureaucratic requirements envisaged by applicable legislation. In fact, since  |



|  |  |
|--|--|
| <b>argumentation</b><br>(max. 500 chars)   | they are not Italian citizens, they hold foreign ID documents released by their EU Member State of origin, which are automatically recognised by Italian authorities, as established by Legislative Decree No. 30 of 6 February 2007, Implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ( <i>Decreto legislativo 6 febbraio 2007, n. 30, Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri</i> ). |
| <b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)                 | This judgment of the Council of State is relevant because it confirmed the right of EU citizens living in Italy to take part in municipal elections with no additional requirements than those envisaged by applicable legislation. Moreover, the judgment stressed that ID documents released by the authorities of other EU Member States are automatically recognised by Italian authorities as long as they allow for the clear identification of the subjects concerned.  |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b><br>(max. 500 chars) | The Council of State considered the complaint lodged with TAR Emilia-Romagna to be groundless, and it confirmed the legitimacy of the municipal elections held in the Municipality of Galeata.   |
| <b>Key quotations in original language and</b>   | <i>"La normativa che concerne l'esercizio del diritto di voto dei cittadini comunitari residenti nella Repubblica italiana, e cioè il decreto legislativo 12 aprile 1996, n. 197, non individua alcuna specificità in ordine alla documentazione di identità dei soggetti da ammettere al voto, per cui vi è, al riguardo, piena libertà di forme,</i>   |

|  |  |
|--|--|
| <p><b>translated into English with reference details</b> (max. 500 chars)</p>              | <p><i>purché, naturalmente, il documento possa individuare con la necessaria esattezza il soggetto. Peraltro, è anche ampiamente giustificato che il cittadino dell'Unione europea, residente in Italia, ma non in possesso della cittadinanza italiana, sia sprovvisto di un documento di identità rilasciato in Italia, trattandosi, nella più gran parte dei casi, di soggetti ancora da poco tempo nel territorio italiano, ed in ogni caso, non può ignorarsi che, ai sensi degli artt. 4 e 5 del decreto legislativo n. 30 del 2007, i documenti rilasciati dai paesi di origine, nell'ambito dell'Unione europea, sono validi per la libera circolazione nell'ambito degli stessi paesi dell'Unione europea e, come tali, assumono necessariamente e conseguentemente una efficacia in ordine alla identificazione del soggetto titolare degli stessi."</i></p> <p>Translation:</p> <p>"The legislation concerning the right to vote of EU citizens living in the Italian Republic, i.e. Legislative Decree No. 197/1996, does not set out any specific requirements as to ID documents of the subjects entitled to vote; therefore, any forms whatsoever of ID documents shall be considered valid as long as they allow for the proper identification of the subject. Moreover, it is legitimate that EU citizens who live in Italy but are not Italian citizens do not hold an ID document released by Italian authorities, these subjects being in most cases people who have recently moved to Italy. In any case, it cannot be denied that – according to Articles 4 and 5 of Legislative Decree No. 30/2007 – the documents released by EU Member States of origin are valid for the free circulation within EU Member States themselves, and they are necessarily and consequently suitable for the identification of the subjects holding them."</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</b></p> | <p>No, it has not.</p>   |

|                                   |  |
|-----------------------------------|--|
| <b>to which specific article.</b> |  |
|-----------------------------------|--|

|   |   |
|---|---|
| <b>3.<br/>Subject matter concerned</b>      | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>                        | 30June 2016   |
| <b>Deciding body (in original language)</b> | <i>Tribunale di Udine</i>   |
| <b>Deciding body (in English)</b>           | Ordinary Court of Udine   |
| <b>Case number (also European)</b>          | Decision of 30 June 2016  |

|  |   |
|--|---|
| <b>Case Law Identifier (ECLI) where applicable)</b>            |   |
| <b>Parties</b>   | <i>A EU citizen v. Customs and Monopolies Agency (Agenzia delle Dogane e dei Monopoli)</i>  |
| <b>Web link to the decision (if available)</b>                 | <a href="http://www.asgi.it/wp-content/uploads/2016/07/ARCABA-AGENZIA-DELLE-DOGANE-ordinanza-trib-udine-rg-217-del-30-06-2016.pdf">www.asgi.it/wp-content/uploads/2016/07/ARCABA-AGENZIA-DELLE-DOGANE-ordinanza-trib-udine-rg-217-del-30-06-2016.pdf</a>  |
| <b>Legal basis in national law of the rights under dispute</b> | Article 44 of the Legislative Decree No. 286 of 25 July 1998, Immigration Act ( <i>Decreto Legislativo 25 luglio 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"</i> ).   |
| <b>Key facts of the case</b> (max. 500 chars)                  | A Croatian citizen challenged the decision of the Italian Customs and Monopolies Agency of excluding her from a job selection because of her lack of Italian citizenship. According to the complainant, this decision constitutes a discrimination on grounds of nationality and a violation of Article 44 of the Immigration Act and of Article 45 of the TFEU.  |
| <b>Main reasoning / argumentation</b> (max. 500 chars)         | First of all, the court recalls the CJEU's decisions concerning the public service exception to the right to non-discrimination which can limit the access of non-citizens to some job opportunities; these decisions strictly limit the application of this exception by EU Member States. According to the court, the job the complainant applied for is not covered by the "public service exception" as it was interpreted by the CJEU. |

|  |  |
|--|--|
| <b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)                          | <p>This decision is relevant for two main reasons. On the one hand, it contributes to the regulation of the access to the public service which is traditionally considered as a working field exclusively destined to the state's citizens. On the other hand, the court contributed to the interpretation of Article 45 of the TFEU, giving to CJEU's decisions a crucial role in the Italian legislation system.</p>   |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)              | <p>The complainant was guaranteed the right to take part to the selection for the job offer.</p>   |
| <b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars) | <p><i>“Alla situazione attuale va invece rilevato che il posto alla quale la sig.ra XXX aspira è da lei accessibile, in virtù della sua cittadinanza europea, in quanto non possono ritenersi sussistenti i presupposti per l'operatività della public service exception di cui all'art. 45 paragrafo 4 TFUE. In ogni caso, vanno condivise le considerazioni della ricorrente secondo laquale anche all'interno di uno stesso settore vi potrebbero certamente essere delle posizioni aperte ai cittadini UE, in quanto non implicanti l'esercizio di pubblici poteri, e altre che invece siano precluse ai cittadini comunitari”</i></p> <p>Translation:</p> |

|   |   |
|---|---|
|   | <p>“Considering the current situation, it has to be noticed that the job Mrs XXX applied for is accessible, given her EU citizenship, since there are not the premises for the application of the public service exception envisaged by Article 45(4) of the TFEU. In any case, the complainant’s observations are to be shared, according to which within the same working sector there might be job opportunities accessible to EU citizens, since they do not imply the exercise of public functions, and job opportunities which are precluded to EU citizens.”</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p> | <p>No, it has not.</p>  |

|   |   |
|---|---|
| <p><b>4. Subject matter concerned</b></p> | <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</li> <li><input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> <li>- linked to which article of Directive 2004/38</li> </ul> </li> <li><input type="checkbox"/> 3) voting rights</li> <li><input type="checkbox"/> 4) diplomatic protection</li> <li><input type="checkbox"/> 5) the right to petition</li> </ul> |
|---|---|

|  |  |
|--|--|
|  |  |
| <b>Decision date</b>   | 11 June 2014   |
| <b>Deciding body (in original language)</b>                                    | <i>Corte costituzionale</i>  |
| <b>Deciding body (in English)</b>  | Constitutional Court   |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Judgment No. 168 of 11 June 2014   |
| <b>Parties</b>   | <i>Region of the Aosta Valley v. the Council of Ministers</i><br>(Regione Autonoma Valle d'Aosta v. Consiglio dei Ministri)  |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://www.asgi.it/banca-dati/corte-costituzionale-sentenza-del-11-giugno-2014-n-168/">www.asgi.it/banca-dati/corte-costituzionale-sentenza-del-11-giugno-2014-n-168/</a>                                       |
| <b>Legal basis in national law of</b>  | Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States ( <i>Decreto</i> |

|  |  |
|--|--|
| <b>the rights under dispute</b>  | <i>Legislativo 6 febbraio 2007, n. 30 “Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri”.</i>  |
| <b>Key facts of the case</b> (max. 500 chars)  | The President of the Council of Ministers raised the issue of constitutionality of Article 19, paragraph 1 of Regional Law of the Aosta Valley, No. 3 of 13 February 2013, Provisions concerning housing policies ( <i>Legge regionale 13 febbraio 2013, n.3, Disposizioni in materia di politiche abitative</i> ), which included an eight-year residence period in the regional territory among the requirements to have an access to public housing flats.  |
| <b>Main reasoning / argumentation</b> (max. 500 chars)                               | According to the Constitutional Court, national and regional public authorities can use residence as a parameter to identify the beneficiaries of public social policies with a view to guaranteeing that these beneficiaries have strong connection to the territory. Nonetheless, these residence criteria shall not entail unreasonable differentiation among potential beneficiaries. The challenged provisions set out a residence-based parameter that discriminated against both EU citizens – who should benefit from equal treatment as compared with Italian citizens in compliance with the above-mentioned directive – and third-country nationals – who are guaranteed a similar treatment according to Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. In fact, this parameter can be complied with much more easily by Italian citizens, and it is unnecessary when considering the housing policy. |
| <b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars) | The judgment is relevant because it set boundaries for the discretionary power of public authorities to limit the number of potential beneficiaries of social provisions through the establishment of extremely selective access criteria. The Constitutional Court stressed the fundamental importance of a rational balance between the necessity to limit the number of beneficiaries in order to identify those in need of the provision, on the one hand, and the necessity to comply with the non-discrimination principle protecting EU citizens as well, in accordance with EU legislation.  |
| <b>Results (e.g. sanctions) and key</b>  | The challenged regional legislative provision was considered by the Constitutional Court as unconstitutional inasmuch as it set out an eight-year residence period as a requirement to have access to public housing.  |



|   |  |
|---|--|
| <p><b>consequences or implications of the case</b><br/>(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>“Quanto ai cittadini dell’Unione, risulta evidente che la norma regionale in esame li pone in una condizione di inevitabile svantaggio in particolare rispetto alla comunità regionale, ma anche rispetto agli stessi cittadini italiani, che potrebbero più agevolmente maturare gli otto anni di residenza in maniera non consecutiva, realizzando una discriminazione vietata dal diritto comunitario [...] Non è, infatti, possibile presumere, in termini assoluti, che i cittadini dell’Unione che risiedano nel territorio regionale da meno di otto anni, ma che siano pur sempre ivi stabilmente residenti o dimoranti, e che quindi abbiano instaurato un legame con la comunità locale, persino in stato di bisogno minore rispetto a chi vi risiede o dimora da più anni e, per ciò stesso siano estromessi dalla possibilità di accedere al beneficio.”</i></p> <p>Translation:</p> <p>“As to EU citizens, it is evident that the challenged regional legislative provision puts them in a clearly disadvantaged position especially as compared with the regional community, but also as compared with Italian citizens, who might more easily fulfil the eight-year residence requirement in non-consecutive terms, thus introducing discrimination prohibited by EU legislation [...]. As a matter of fact, it is impossible to assume in absolute terms that EU citizens who have been living in the regional territory for less than eight years, but who have been residing or living there for a significant amount of time, and who consequently have developed a relationship with the local community are to a lesser extent in need than those who have been living there for more years, thus being prevented from having access to the provision.”</p> |

|  |                 |
|--|-----------------|
| <b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b> | No, it has not. |
|--|-----------------|

|                                    |   |
|------------------------------------|---|
| <b>5. Subject matter concerned</b> | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>               | 19 September 2012   |

|  |  |
|--|--|
| <b>Deciding body (in original language)</b>                                    | <i>Tribunale di Trieste</i>  |
| <b>Deciding body (in English)</b>  | Ordinary Court of Trieste  |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Decision No. RG 914/11 of 19 September 2012  |
| <b>Parties</b>   | <i>Association for Legal Studies on Immigration (Associazione per gli Studi Giuridici sull'Immigrazione, ASGI) v. the Ministries of Economy and Finances (Ministero dell'Economia e delle Finanze) and of Labour and Social Policies (Ministero del Lavoro e delle Politiche Sociali), the Region of Friuli Venezia Giulia (Regione Autonoma Friuli-Venezia Giulia), and the National Institute of Social Security (Istituto Nazionale della Previdenza Sociale, INPS)</i> |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://www.asgi.it/wp-content/uploads/public/trib_triESTE_ord_19092012.pdf">www.asgi.it/wp-content/uploads/public/trib_triESTE_ord_19092012.pdf</a>   |
| <b>Legal basis in national law of</b>  | Legislative Decree No. 215 of 9 July 2003 on the implementation of Directive 2000/43/EC concerning the equal treatment between persons irrespective of racial or ethnic origin ( <i>Decreto Legislativo 9 luglio 2003, n. 215 "Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica"</i> ).   |

|  |   |
|--|---|
| <b>the rights under dispute</b>                        |   |
| <b>Key facts of the case</b> (max. 500 chars)          | <p>An EU citizen, with the support of ASGI, challenged Article 81 of Decree Law No. 112 of 25 June 2008- Urgent provisions for economic development, simplification, competitiveness, stabilisation of public finances, and tax equalisation (<i>Decreto-legge 25 giugno 2008, n. 112, Disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria</i>), converted into Law 133 of 6 August 2008- Conversion into law, with modifications of Decree Law No. 112 of 25 June 2008, Urgent provisions for economic development, simplification, competitiveness, stabilisation of public finances, and tax equalisation (<i>Legge 6 agosto 2008, n. 133, Conversione in legge, con modificazioni, del decreto-legge 25 giugno 2008, n. 112, recante disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria</i>). The above-mentioned article introduced some welfare provisions that could be accessed by Italian citizens only. The same EU citizen furthermore challenged Article 10, paragraph 78 of Regional Law of Friuli Venezia Giulia No. 17 of 30 December 2008- Provisions for the preparation of the Region's multi-annual and annual budget (Financial Law 2009) (<i>Legge regionale 30 dicembre 2008, n. 17, Disposizioni per la formazione del bilancio pluriennale ed annuale della Regione (Legge finanziaria 2009)</i>), which increased the above-mentioned financial contributions but also introduced Italian citizenship as a requirement for accessing such welfare provisions. According to the complainant, the above-mentioned legislation unlawfully discriminated between Italian and EU citizens.</p> |
| <b>Main reasoning / argumentation</b> (max. 500 chars) | <p>According to the Ordinary Court of Trieste, the above-mentioned national and regional legislative provisions were in breach of the principle of equal treatment of all EU citizens as set out in Articles 18 and 20, paragraph 2 of the TFEU, Articles 21 and 34, paragraph 3 of the EU Charter of Fundamental Rights and Article 7, paragraph 2 of Regulation (EU) No. 492/2011. As a matter of fact, the provisions introducing and governing a social benefit aimed at supporting disadvantaged people regularly living in Italy set out selective criteria</p>   |

|   |  |
|---|--|
|   | discriminating between Italian and EU citizens. Such discrimination is also prohibited by Directive 2000/43/EC, implemented in Italy through Legislative Decree No. 215/2003.  |
| <b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)             | The decision is relevant because it stressed that welfare provisions aimed at supporting disadvantaged people should be granted according to a need-based criterion and not on the grounds of nationality. Moreover, the principle of equal treatment between Italian and EU citizens was reasserted.  |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars) | The court upheld the complaint, ruling that the subject concerned was entitled to access the above-mentioned social provisions. It furthermore ruled that the subject concerned was to receive compensation for the resources she had been deprived of.  |
| <b>Key quotations in original language and translated into English with reference</b>             | <i>“Le disposizioni impugnate, laddove a parità di situazioni anagrafiche e di livello di reddito posseduto e quindi di situazioni di difficoltà economica, dispongono l’esclusione del sostegno a soggetti comunitari che esercitando il diritto di libera circolazione si trovano legalmente in Italia, creano una discriminazione diretta a loro danno fondata sul criterio della nazionalità; pertanto, in ragione della direttiva comunitaria n. 2000/43/CE del 29.6.00 attuata in Italia tramite il decreto legislativo n. 215/03 secondo cui esiste discriminazione diretta ogni qual volta una persona per la razza ed origine etnica in cui si trova è trattata meno favorevolmente di quanto sia</i> |

|  |  |
|--|--|
| <b>details</b> (max. 500 chars)  | <p><i>stata o sarebbe stata trattata altra in situazione analoga, compete ai ricorrenti la tutela di rimozione e risarcimento prevista dalla legge.</i>"</p> <p>Translation:</p> <p>"Inasmuch as the challenged provisions – in case of people featuring a similar family situation or income level, and consequently experiencing similar conditions of economic distress- prevent the provision of welfare support to EU citizens who, based on their right to free movement, regularly live in Italy, they create direct discrimination to their detriment on the grounds of nationality; consequently, in compliance with Directive 2000/43/EC implemented in Italy through Legislative Decree No. 215/2003, according to which direct discrimination occurs when a person – because of his/her race or ethnic origin – is treated less favourably than another person has been or would be treated in a comparable situation, the complainants are required to repeal the discriminatory provisions and to compensate the subject concerned in accordance with applicable legislation."</p> |
| <b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b> | <p>Yes, it has. The court referred to Articles 21 and 34, paragraph 3 of the EU Charter of Fundamental Rights.</p>   |

|  |   |
|--|---|
| <b>6.<br/>Subject matter<br/>concerned</b>   | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>   | 5 August 2011   |
| <b>Deciding body<br/>(in original<br/>language)</b>  | <i>Tribunale Ordinario di Trieste</i>   |
| <b>Deciding body<br/>(in English)</b>  | Ordinary Court of Trieste   |
| <b>Case number<br/>(also European<br/>Case Law<br/>Identifier<br/>(<a href="#">ECLI</a>) where<br/>applicable)</b> | Judgment No. 479 of 5 August 2011   |

|  |   |
|--|---|
| <b>Parties</b>   | <i>Four EU citizens and ASGI v. the Municipality of Trieste (Comune di Trieste) and the Region of Friuli Venezia Giulia (Regione Autonoma Friuli-Venezia Giulia)</i>  |
| <b>Web link to the decision (if available)</b>                 | <a href="http://www.asgi.it/wp-content/uploads/public/trib_ts_479_2011_09082011.pdf">www.asgi.it/wp-content/uploads/public/trib_ts_479_2011_09082011.pdf</a>  |
| <b>Legal basis in national law of the rights under dispute</b> | Article 44 of the Legislative Decree No. 286 of 25 July 1998, Immigration Act ( <i>Decreto Legislativo 25 luglio 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"</i> ); Article 4 of the Legislative Decree No. 215 of 9 July 2003 on the implementation of Directive 2000/43/EC concerning the equal treatment between persons irrespective of racial or ethnic origin ( <i>Decreto Legislativo 9 luglio 2003, n. 215 "Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica"</i> ).   |
| <b>Key facts of the case</b> (max. 500 chars)                  | Four EU citizens, with the support of ASGI, challenged Article 12 of Regional Law of Friuli Venezia Giulia No. 6 of 7 March 2003, Reorganisation of regional actions concerning public housing ( <i>Leggeregionale 7 marzo 2003, n. 6, Riordino degli interventi regionali in materia di edilizia residenziale pubblica</i> ), which introduced financial contributions to cover housing costs, targeted at people living in the regional territory and experiencing a difficult financial situation. The above-mentioned regional legislative provisions set out a 10-year residence period as a requirement for accessing the financial contributions. According to the complainants, these provisions introduced illegitimate discrimination between Italian and EU citizens; the subjects concerned were excluded from the possibility of benefitting from the contributions because they did not fulfil the residence requirement. |
| <b>Main reasoning / argumentation</b>                          | The Ordinary Court of Trieste recalled the above-mentioned EU legislative provisions, stressing the necessity to abide by the principle of equal treatment between Italian and EU citizens. Moreover, the court – considering EU legislation and case law of the Court of Justice of the European Union (CJEU) concerning non-discrimination issues – stressed that the challenged legislative provisions introduced indirect discrimination to the detriment   |



|   |   |
|---|---|
| (max. 500 chars)  | of the complainants and in favour of Italian applicants. As a matter of fact, the residence requirement can be complied much more easily by Italian citizens rather than EU citizens regularly living in the regional territory.  |
| <b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)             | This judgment is relevant because, on the one hand, it formally recalled the concept of indirect discrimination as defined by EU legislation and by CJEU; on the other hand, the court confirmed that the principle of equal treatment between Italian and EU citizens is mandatory, and that national, regional, and local legislators shall conform thereto, refraining from introducing provisions that might entail direct or indirect forms of discrimination.   |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars) | According to the court, the complainants were to receive compensation for the resources they had been deprived of; moreover, it ruled that the discriminatory legislative provisions were to be abolished.  |
| <b>Key quotations in original language and translated into English with reference</b>             | <i>"[...] il requisito di anzianità di residenza prescritto dalla L.R. 6/2003 crea per sua natura, e soprattutto per le caratteristiche che in questo caso lo contraddistinguono, una discriminazione indiretta o dissimulata a danno dei cittadini non italiani che risiedono in Friuli Venezia Giulia, danneggiandoli in misura sproporzionata rispetto ai cittadini nazionali. Saranno, infatti, quasi esclusivamente i cittadini italiani a possedere il requisito di residenza decennale in Italia."</i> |

|  |   |
|--|---|
| <b>details</b> (max. 500 chars)  | <p>Translation:</p> <p>"[...] the length-of-residence requirement envisaged by Regional Law No. 6/2003 introduces, by its nature and above all due to its features in the case at hand, indirect or dissimulated discrimination to the detriment of non-Italian citizens living in Friuli Venezia Giulia, thus having a disproportionate negative impact on them as compared with national citizens. Almost only Italian citizens are likely to comply with the 10-year residence requirement."</p> |
| <b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b> | <p>Yes, it has. The court referred to Article 21 of the EU Charter of Fundamental Rights.</p>   |

|                                    |  |
|------------------------------------|--|
| <b>7. Subject matter concerned</b> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 1) non-discrimination on grounds of nationality</li> <li><input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> <li>- linked to which article of Directive 2004/38: Art. 27</li> </ul> </li> <li><input type="checkbox"/> 3) voting rights</li> <li><input type="checkbox"/> 4) diplomatic protection</li> <li><input type="checkbox"/> 5) the right to petition</li> </ul> |
|------------------------------------|--|

|  |  |
|--|--|
|  |  |
| <b>Decision date</b>   | 10 February 2009   |
| <b>Deciding body (in original language)</b>                                    | <i>Tribunale Amministrativo Regionale per l'Abruzzo</i>  |
| <b>Deciding body (in English)</b>  | Abruzzo Regional Administrative Court (TAR Abruzzo)  |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Judgment No. 00062 of 10 February 2009   |
| <b>Parties</b>   | <i>An EU citizen v. the Police Commissioner of L'Aquila (Questore di L'Aquila) and the Ministry of the Interior (Ministero dell'Interno)</i>   |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=TXTV2NLZ7ZAVFYEATQOGNIFWFU&amp;q=residenza%20or%20cittadini%20or%20ue">www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=TXTV2NLZ7ZAVFYEATQOGNIFWFU&amp;q=residenza%20or%20cittadini%20or%20ue</a> |
| <b>Legal basis in national law of</b>  | Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States ( <i>Decreto</i>   |

|  |   |
|--|---|
| <b>the rights under dispute</b>  | <i>Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri").</i>  |
| <b>Key facts of the case</b> (max. 500 chars)  | A Lithuanian citizen challenged the decision of the Police Commissioner of L'Aquila to deny a tourism visa to the complainant because she could not be found at the address she had communicated to the authorities and owing to her irregular working status ascertained in 2003 by the Police Headquarters of Sulmona (Abruzzo).  |
| <b>Main reasoning / argumentation</b> (max. 500 chars)                               | TAR Abruzzo recalled the right to free movement of EU citizens, enshrined in Directive 2004/38/EC as implemented by Legislative Decree No. 30/2007; this right entails the possibility to move to and live in all the other EU Member States without complying with specific administrative requirements. This right can be limited only in case of relevant and objective dangers for public security. According to the court, the Police Commissioner's decision was to be considered invalid because Lithuania – the country of origin of the complainant – has been an EU Member State since 1 May 2004, and thus its citizens can enjoy the rights envisaged by EU legislation, including the above-mentioned directive. |
| <b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars) | The judgment is relevant because it stressed the effects of the right to move to and live in another EU Member State established by EU legislation and the above-mentioned directive; based on this right, EU citizens can move freely without having to comply with specific and strict bureaucratic and administrative requirements.  |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b>     | The Police Commissioner's decision was considered invalid by TAR Abruzzo because it was in breach of EU legislation and, consequently, of Legislative Decree No. 30/2007. For this reason, the complainant was to be guaranteed the right to enter and move freely within the Italian territory.  |

|  |   |
|--|---|
| (max. 500 chars)   |   |
| <b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars) | <p><i>“Il cittadino lituano, come tutti i cittadini UE, ha ora il diritto di recarsi in tutti gli altri paesi dell’UE senza dover assolvere formalità particolari, posto che il diritto di viaggiare e di soggiornare potrà essere limitato solo per motivi di ordine pubblico, di pubblica sicurezza o di sanità pubblica e non dipendenti più dalla particolare situazione del cittadino straniero [...]”</i></p> <p>Translation:</p> <p>“The Lithuanian citizen, like all other EU citizens, is now entitled to move to all other EU Member States without having to go through specific procedures, given that the right to travel and reside can be limited only for reasons related to public order, public security, or public health, and no longer hinging upon the specific situation of the foreign citizen [...]”</p> |
| <b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b> | No, it has not.   |

|  |   |
|--|---|
| <b>8.</b><br><b>Subject matter concerned</b>                                   | <input type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input checked="" type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38: Art. 8<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>   | 13 May 2011   |
| <b>Deciding body (in original language)</b>                                    | <i>Tribunale Amministrativo Regionale per la Lombardia</i>  |
| <b>Deciding body (in English)</b>  | Lombardy Regional Administrative Court (TAR Lombardy)   |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Judgment No. 01238 of 13 May 2011   |

|  |   |
|--|---|
| <b>Parties</b>   | <i>Three EU and non-EU foreign citizens, and two NGOs - National Association Beyond Borders, Lombardy (ANOLF Lombardy) (Associazione Nazionale Oltre Le Frontiere Lombardia, Anolf Lombardia), National Association Beyond Borders Brianza (ANOLF Brianza) (Associazione Nazionale Oltre Le Frontiere Brianza, Anolf Brianza) v. the Mayors of six Municipalities (Sindaci di Lissone, Biassono, Seregno, Lazzate, Cogliate, and Lesmo – Lombardia) and the Ministry of the Interior (Ministero dell’Interno)</i> |
| <b>Web link to the decision (if available)</b>                 | <a href="http://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=HGZIBWV AZ6PV3XZI4TQSENSGIM&amp;q=residenza%20or%20cittadini%20or%20ue">www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=HGZIBWV AZ6PV3XZI4TQSENSGIM&amp;q=residenza%20or%20cittadini%20or%20ue</a>  |
| <b>Legal basis in national law of the rights under dispute</b> | Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States ( <i>Decreto Legislativo 6 febbraio 2007, n. 30 “Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell’Unione europea e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri”</i> ).   |
| <b>Key facts of the case</b> (max. 500 chars)                  | Between 2007 and 2010, the mayors of six Lombard municipalities adopted several ordinances containing provisions that affected foreign citizens’ right of residence in the municipal territory. <sup>2</sup> These ordinances established some strict income and housing requirements, making it mandatory for foreign citizens – including EU ones – to enrol in municipal civil registries: the rationale behind this decision was that the introduction of   |

<sup>2</sup>Ordinance No. 107 dated 6 December 2007 (*Ordinanza n. 107 del 6/12/2007*) of the Mayor of Biassono, Ordinance No. 563 dated 12 December 2007 (*Ordinanza n. 563 del 12/12/2007*) of the Mayor of Seregno, Ordinance No. 851 dated 7 December 2007 (*Ordinanza n. 851 del 7/12/2007*) of the Mayor of Lissone, and the ordinances adopted by the Mayors of Lesmo, Lazzate, and Cogliate, which were unknown at the time of the release of the judgment. The case also concerned the ordinance adopted by the Mayor of Lissone on 13 October 2010 (the number was not reported in the text of the judgment), Ordinance No. 124 dated 14 October 2010 (*Ordinanza n. 124 in data 14/10/2010*) of the Mayor of Biassono, Ordinance No. 37 dated 12 October 2007 (*Ordinanza n. 37 del 12/10/2007*) of the Mayor of Cogliate, Ordinance No. 11 dated 12 December 2010 (*Ordinanza n. 11 del 12/12/2010*) of the Mayor of Lesmo, the ordinance adopted by the Mayor of Seregno on 12 October 2010 (the number was not reported in the text of the judgment), and Ordinance No. 7 dated 11 October 2010 (*Ordinanza n. 7 del 11/10/2010*) of the Mayor of Lazzate.

|   |   |
|---|---|
|   | <p>EU citizenship and the right for EU citizens to move freely and live in other EU Member States entailed a massive increase in the number of foreign citizens' applications for enrolment in municipal civil registries, with a negative impact on public security and health since the houses where these people live are often unsuitable from a hygienic point of view. As to EU citizens, the above-mentioned ordinances set out the obligation to resubmit the residence application for those who were already enrolled in the municipal civil registry of other Italian Municipalities. They furthermore set out the obligation for those EU citizens willing to enrol in municipal civil registries for the first time to demonstrate that their income is higher than the annual threshold exempting individuals from healthcare fees, as established in Italian legislation. Finally, the above-mentioned ordinances made it compulsory for those EU citizens willing to enrol in municipal civil registries for the first time to undergo administrative checks to assess the lawfulness of their source of income.</p>  |
| <p><b>Main reasoning /<br/>argumentation</b><br/>(max. 500<br/>chars)</p> | <p>According to TAR Lombardy, the requirements imposed on EU citizens willing to live in the territory of the Municipalities concerned by the judgment at hand were to be considered illegitimate. In fact, the court recalled EU legislative provisions concerning the right to move freely and live in other EU Member States, set out in Directive 2004/38/EC (implemented with Legislative Decree No. 30/2007). First of all, according to such legislation, the enrolment of EU citizens in municipal civil registries is a mandatory requirement in order to live in another EU Member State; however, it concerns a national-level enrolment procedure, which needs to be accomplished just once and not every time the EU citizen moves to another Municipality. Secondly, the assessment of the EU citizen's income is permitted by EU legislation if she/he wants to live in another Member State for more than three months for reasons different from study or work; nonetheless, this requirement cannot be based on a specific income criterion, and it has to consider the EU citizen's personal situation. The challenged ordinances, instead, set forth fixed and strict income criteria. Administrative checks might be legitimate, but they cannot result in a discriminatory administrative delay jeopardising EU citizens' right to free movement.</p> |
| <p><b>Key issues<br/>(concepts,<br/>interpretations)</b></p>              | <p>The judgment is relevant because the court contributed to better defining the right of EU citizens to live in the Italian territory, limiting the discretionary power of local mayors, who shall respect EU and Italian legislation, without imposing additional administrative requirements actually jeopardising this right in addition to</p>   |



|  |  |
|--|--|
| <b>) clarified by the case</b> (max. 500 chars)  | abstaining from introducing indirect discrimination in favour of Italian citizens or openly against foreign nationals.   |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)              | For the reasons mentioned above, the court considered the mayors' ordinances illegitimate, and ordered compensation to be paid to the complainants.  |
| <b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars) | <p><i>“La normativa interna che ha recepito la direttiva CE relativa al diritto di soggiorno e circolazione dei cittadini comunitari e dei loro familiari fa coincidere l’iscrizione presso le autorità competenti prevista dall’art. 8 della direttiva medesima con l’iscrizione nei registri anagrafici [...] In conseguenza di ciò l’iscrizione nei predetti registri dei cittadini UE e dei loro familiari viene subordinata al possesso di requisiti ulteriori rispetto allo stabilimento della dimora abituale nel comune ove essa viene richiesta. Ciò non significa, tuttavia, che i comuni abbiano acquisito una potestà normativa che li abiliti a disciplinare sul piano sostanziale o su quello procedurale la registrazione negli elenchi anagrafici dei cittadini comunitari. L’anagrafe è, infatti, un servizio di competenza statale che non rientra nelle attribuzioni delle amministrazioni locali, le quali ne hanno unicamente la gestione.”</i></p> <p>Translation:</p> |

|   |   |
|---|---|
|   | <p>“The national legislation implementing the EC directive concerning EU citizens’ and their family members’ right to reside and move freely overlaps the ‘registration with the relevant authorities’ – envisaged by Article 8 of the directive itself – with the enrolment in municipal civil registries [...]. Consequently, EU citizens’ and their family members’ enrolment in these registries is conditional upon compliance with additional requirements to establishing their habitual abode in the Municipality where the enrolment is applied for. This does not mean, however, that the Municipalities now have the legislative power to adopt substantive or procedural rules on EU citizens’ enrolment in municipal civil registries. The municipal civil registry is, in fact, a service that falls under the competence of national authorities and not of local administrations, which are solely in charge of managing it.”</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p> | <p>No, it has not.</p>  |

|  |   |
|--|---|
| <p><b>9.</b><br/><b>Subject matter concerned</b></p> | <p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence<br/>- linked to [... which ] Article [xx] of Directive 2004/38: Art. 14</p> |
|--|---|

|  |   |
|--|---|
|  | <input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>   | 22 April 2009   |
| <b>Deciding body (in original language)</b>                                    | <i>Corte d'Appello di Venezia</i>   |
| <b>Deciding body (in English)</b>  | Venice Court of Appeal  |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Decision No. 112/2009   |
| <b>Parties</b>   | <i>An Albanian Citizen v. the Ministry of the Interior (Ministero dell'Interno) and the Police Headquarters of Padua (Questura di Padova)</i>       |

|  |  |
|--|--|
| <b>Web link to the decision (if available)</b>                 | <a href="http://old.asgi.it/public/parser_download/save/corte_appello_venezia_112_2009.pdf">http://old.asgi.it/public/parser_download/save/corte_appello_venezia_112_2009.pdf</a>  |
| <b>Legal basis in national law of the rights under dispute</b> | Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States ( <i>Decreto Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione Europea e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri"</i> ).  |
| <b>Key facts of the case</b> (max. 500 chars)                  | The complainant – who is the husband of a Romanian citizen regularly living in Italy – was refused by the Police Headquarters of Padua the residence permit he had the right to being the spouse of an EU citizen. According to the Police Headquarters, the residence permit had to be denied because the complainant could not provide a regular entry visa and was irregularly living in Italy at the moment of the marriage. According to the complainant, the police's refusal to release his residence permit constitutes a violation of the above mentioned Legislative Decree and of the CJEU's decision C-127-08 of 25 July 2008. |
| <b>Main reasoning / argumentation</b> (max. 500 chars)         | The Court recalled the decision No. C-127-08 of the CJEU which established the illegitimacy of Member States' legislation which prevents the access to a regular residence permit for the spouse of an EU citizen because of his/her lack of a regular residence permit at the moment of the marriage. This kind of illegitimate legislation was introduced in Italy through the Legislative Decree No. 30 of 6 February 2007 which implements Directive 2004/38/EC; despite the choice of the Italian legislator, according to the Court the CJEU's decision has to be considered mandatory and directly applicable to the case.          |
| <b>Key issues (concepts, interpretations ) clarified by</b>    | This decision is crucial for the interpretation of Italian legislation in compliance with EU legislation. With its reasoning, the Court stressed the illegitimacy of some dispositions of the Legislative Decree No. 30 of 6 February 2007 and imposed the CJEU's interpretation of the EU Directive.  |

|  |   |
|--|---|
| <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>Considering the reported argumentation, the Court decided to nullify the decision of the Police Headquarters of Padua and guarantee the complaint the release of a regular residence permit as spouse of an EU citizen.</p>  |
| <b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars) | <p><i>“ritenuto che il rifiuto opposto, con decreto in data 30.7.2008. dalla Questura di Padova alla istanza del reclamante di rilascio di una carta di soggiorno in qualità di coniuge di cittadina comunitaria in seguito a matrimonio contratto in data 28.9,2007 con la cittadina rumena xxxxxxxx, sebbene confortato dalle richiamate disposizioni degli artt. 4, 3° c e 5, 2° c, 6, 2° c e 10, 3° c lett “a” del D.Lgs 30/07 relative rispettivamente alle condizioni di rilascio di permesso e di carta di soggiorno e dalla condivisione del primo giudice che ha evidenziato la circostanza, ostativa, che il ricorrente era privo del visto di ingresso in Italia, è illegittimo in quanto l’enunciata disciplina del D. Lgs 30/07, laddove subordina il rilascio al ricorrente, cittadina albanese, di carta di soggiorno in qualità di coniuge di cittadina comunitaria, al possesso di un originario visto di ingresso in Italia, si pone in contrasto con la disciplina dettata dalla direttiva 2004/38/CE”</i></p> <p>Translation:</p> |

|   |   |
|---|---|
|   | <p>“[c]onsidering that the refusal of the Police Headquarters of Padua to release a residence permit to the complainant who is the spouse of an EU citizen, due to a marriage celebrated on 28 September 2007 with the Romanian citizen XXXXX, despite established on the basis of Article 4.3, 5.2, 6.2 and 6.3 of the Legislative Decree No. 30/2007 ruling the conditions of release of a residence permit and of a residence card and despite the fact that the first-grade judge confirmed the denial, stressing that the complainant did not have a regular entry visa for Italy, has to be considered illegitimate since the discipline envisaged by the Legislative Decree No. 30/2007 – which subordinates the release of a residence permit to an Albanian citizen who is the spouse of an EU citizen to the regular entry visa to Italy – is in contrast with the discipline entailed by the Directive 2004/38/EC [...]”</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p> | <p>No, it has not.</p>  |

|                   |   |
|-------------------|---|
| <p><b>10.</b></p> | <p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence</p> <p>- linked to which article of Directive 2004/38: art. 6</p> |
|-------------------|---|

|  |   |
|--|---|
| <b>Subject matter concerned</b>  | <input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>   | 13 February 2012  |
| <b>Deciding body (in original language)</b>                                    | <i>Tribunale di Reggio Emilia</i>   |
| <b>Deciding body (in English)</b>  | Ordinary Court of Reggio Emilia   |
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Proceeding No. 1401/2011  |
| <b>Parties</b>   | <i>A third-country citizen v. the Police Headquarters of Reggio Emilia</i> (Questura di Reggio Emilia)  |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://www.meltingpot.org/IMG/pdf/trib-re-coniuge-omosex.pdf">www.meltingpot.org/IMG/pdf/trib-re-coniuge-omosex.pdf</a>                    |

|  |   |
|--|---|
| <b>Legal basis in national law of the rights under dispute</b>                       | <p>Article 2 of Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States (<i>Decreto Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri"</i>).</p>   |
| <b>Key facts of the case</b> (max. 500 chars)  | <p>This case concerns the regulation of same-sex marriages celebrated abroad. The complainant is the spouse of an Italian citizen. They got married in Spain in 2010 and decided to move their residence to Italy. The Police Headquarters of Reggio Emilia, though, denied the release of the EU long-term residence permit. The complainant decided to challenge the decision, claiming to be the spouse of an EU citizen.</p>  |
| <b>Main reasoning / argumentation</b> (max. 500 chars)                               | <p>According to the Ordinary Court of Reggio Emilia, the complainant was to be recognised as the legitimate spouse of the Italian citizen willing to move his residence back to Italy together with his spouse. This right – which is recognised by Directive 2004/38/EC and Legislative Decree No. 30/2007 – has to be guaranteed even though the Italian legislation at the time did not allow for same-sex marriages. For this reason, the challenged decision to deny the long-term residence permit to the EU citizen's spouse was to be considered invalid and in breach of EU and national legislation.</p>  |
| <b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars) | <p>The decision of the Ordinary Court of Reggio Emilia is relevant because it provided an interpretation of the categories of relatives entitled to family reunification with EU citizens living in another EU Member State; in particular, the category of 'spouse' cannot be interpreted according to national legislation, but each Member State shall respect the legislation on marriage adopted by other EU Member States. In this case, the interpretation at hand was crucial because, at the time, the Italian legislation – unlike the Spanish one – did not allow for same-sex marriages.</p> <p>Moreover, this court decision is relevant because it stressed that, if they are more favourable, the provisions contained in Legislative Decree No. 30/2007 are to be applied to non-Italian relatives of Italian citizens.</p> |



|  |   |
|--|---|
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b><br>(max. 500 chars)           | The challenged decision adopted by the Police Headquarters of Reggio Emilia was considered invalid, and the complainant was entitled to receive compensation for legal costs.   |
| <b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars) | <p><i>“Occorre rilevare, infine, come il D.Ivo. n. 30 del 2007, al fine di favorire la libera circolazione, riconosca il diritto a soggiornare tutelando la conservazione dell’unione familiare così come si è formata nel Paese di provenienza (nella specie, la Spagna); non emerge dalla normativa alcuna disposizione che consenta di limitare tale diritto tenendo conto della legge nazionale dei coniugi (nel caso di specie, né l’Uruguay né l’Italia riconoscono l’accesso delle coppie dello stesso sesso al matrimonio);”</i></p> <p>Translation:</p> <p>“Finally, it is necessary to stress that Legislative Decree No. 30/2007, in order to guarantee free movement, recognises the right of residence, protecting the preservation of the family union as in the country where it was formed (in this case, Spain); considering the national legislation of the countries of origin of the spouses – in this case, neither the Uruguayan nor the Italian legislation recognises the possibility for same-sex couples to access marriage – there is no legislative provision limiting the right referred to above [;]”</p> |
| <b>Has the deciding body referred to the</b>   | Yes, it has. The court referred to Articles 9 and 21 of the EU Charter of Fundamental Rights.   |

|  |  |
|--|--|
| <b>Charter of Fundamental Rights. If yes, to which specific article.</b> |  |
|--|--|

|   |  |
|---|--|
| <b>11.<br/>Subject matter concerned</b>     | <input type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input checked="" type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38: art. 28<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>                        | 16 January 2008  |
| <b>Deciding body (in original language)</b> | <i>Tribunale di Bologna</i>  |
| <b>Deciding body (in English)</b>           | Ordinary Court of Bologna  |

|  |  |
|--|--|
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Decree of 16 January 2008  |
| <b>Parties</b>   | <i>A Romanian citizen v. Prefecture of Bologna (Prefettura di Bologna) and Ministry of the Interior (Ministero dell'Interno)</i>   |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://old.asgi.it/home_asgi.php%3Fn=documenti&amp;id=467&amp;l=it.html">http://old.asgi.it/home_asgi.php%3Fn=documenti&amp;id=467&amp;l=it.html</a>  |
| <b>Legal basis in national law of the rights under dispute</b>                 | Article 20 (1) of Legislative Decree No. 30 of 6 February 2007 on the implementation of Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States ( <i>Decreto Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri"</i> ).  |
| <b>Key facts of the case</b> (max. 500 chars)                                  | On 14 November 2007, the complainant – a Romanian citizen - challenged the expulsion order issued on 3 November 2007 by the Prefect of Bologna. The expulsion order was based on the assumption that the complainant was a threat to public security due to his criminal record (he was condemned for robbery in 2000 and reported to the police for a fight and for driving under the effect of alcohol), to the lack of a stable employment or sufficient economic resources. According to the prefect who issued the expulsion order, he neither was a family member of an EU citizen having the right to live in Italy. The prefect, considering the length of the complainant's stay, his health conditions, his social and cultural integration, decided that he had |

|   |  |
|---|--|
|   | to be expelled from the Italian territory. According to the complainant, such expulsion order was to be considered illegitimate considering that he regularly worked and lived with his wife on the Italian territory.   |
| <b>Main reasoning /<br/>argumentation</b><br>(max. 500<br>chars)  | The court considered the complaint as legitimate. In fact, the reasons on which the expulsion order was based are not sufficient to sustain that the complainant constitutes a real threat to public security of the Italian state. Moreover, the court confirmed that the complainant had been regularly working in Italy since 2005 as labourer, and that he regularly resided in Italy with his wife and three children. Eventually, the Court recalled the above-mentioned EU Directive to stress that the level of cultural and social integration of the complainant could be considered sufficient. |
| <b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)                    | This decision is relevant because it contributes in establishing boundaries to the discretionary power of Italian Prefects of issuing expulsion orders and in fostering the right of EU citizens to freely move and live in other EU Member States. In this case, the decision interpreted the criteria established by Directive and by the Italian Legislative Decree ruling the possibility to return an EU citizen to his/her country of origin and the concept of threat to the State's public security.   |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b><br>(max. 500<br>chars) | According to the court, the expulsion order issued by the Ordinary Court of Bologna was to be considered illegitimate. The complainant had consequently the right to live on the Italian territory.  |

|   |  |
|---|--|
| <p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p> | <p><i>“Per quanto concerne, infine l'ultima parte della motivazione del decreto impugnato, laddove si considera che “quanto emerso in ordine alla durata del soggiorno in Italia, alla sua età, alle sue condizioni di salute, alla sua integrazione sociale e culturale e ai suoi legami con il paese d'origine, non introduceva elementi sufficienti a derogare a quanto previsto dalla vigente normativa”, se ne rileva l'infondatezza, rilevato invece come, anche in applicazione di quanto previsto dall'art. 28 della direttiva 2004/38/CE del 29.4.2004 [...] in ordine agli elementi dei quali tenere conto “a protezione contro l'allontanamento”, è necessario considerare che nel caso di specie il ricorrente vive da ormai 10 anni insieme a tutta la sua famiglia in Italia dove, almeno per quanto concerne gli ultimi anni, pare avere raggiunto un buon livello di integrazione sociale e culturale, atteso il regolare inserimento nel mondo del lavoro e considerata la compiuta integrazione nel luogo di residenza da parte del medesimo”</i></p> <p>Translation:</p> <p>“As to the last part of the contested decree - which reports that, considering the length of the stay in Italy, the age, the health conditions, the social and cultural integration and the ties to the country of origin, there are not sufficient elements to make an exception to the in-force legislation- it has to be considered unfounded since, in compliance with Article 28 of Directive 2004/38/EC [...], as to the elements to consider to protect the individuals from the expulsion, it is necessary to consider that in the considered case the complainant has been living for 10 years with his family in Italy where, at least in recent years, he seems to have attained a good level of social and cultural integration, considering his participation to the labour market and his integration in the place of residence [...].”</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental</b></p>  | <p>No, it has not.</p>   |

|   |  |
|---|--|
| <b>Rights? If yes, to which specific article.</b> |  |
|---|--|

|   |  |
|---|--|
| <b>12.<br/>Subject matter concerned</b>     | <input type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input checked="" type="checkbox"/> 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38: In this case it is not possible to report the article of directive indirectly mentioned by the court since this case concerns the identification of the national authority responsible of the implementation of the EU Directive.<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition |
| <b>Decision date</b>                        | 7 July 2010  |
| <b>Deciding body (in original language)</b> | <i>Corte costituzionale</i>  |
| <b>Deciding body (in English)</b>           | Constitutional Court   |

|  |   |
|--|---|
| <b>Case number (also European Case Law Identifier (ECLI) where applicable)</b> | Judgment No. 269 of 7 July 2010   |
| <b>Parties</b>   | <i>Region of Tuscany (Regione Toscana) v. the Council of Ministers (Consiglio dei Ministri)</i>   |
| <b>Web link to the decision (if available)</b>                                 | <a href="http://www.giurcost.org/decisioni/2010/0269s-10.html">www.giurcost.org/decisioni/2010/0269s-10.html</a>  |
| <b>Legal basis in national law of the rights under dispute</b>                 | Article 12 of the TFEU; Legislative Decree No. 30/2007, which implements Directive 2004/38/EC.  |
| <b>Key facts of the case</b> (max. 500 chars)                                  | The Italian government raised the issue of constitutionality of Articles 2 and 6 of Regional Law of Tuscany No. 29 of 9 June 2009, Provisions for reception, participatory integration, and protection of foreign citizens in the Region of Tuscany ( <i>Legge regionale 9 giugno 2009, n. 29, Norme per l'accoglienza, l'integrazione partecipe e la tutela dei cittadini stranieri nella Regione Toscana</i> ). According to the government, these legislative provisions are in breach of the exclusive competence of the state on the status of foreign citizens and on the relationships with the EU. More specifically, the Italian government raised the constitutionality question about Article 2(4) of the Regional Law, which extends the benefits and provisions which the Regional Law guarantees to foreign citizens living in the regional territory also to EU citizens, according to the government, this provision violates |

|  |   |
|--|---|
|  | the state's exclusive competence in ruling the relationship with the EU which includes also the status of EU citizens living in Italy.  |
| <b>Main reasoning /<br/>argumentation</b><br>(max. 500 chars)  | According to the Constitutional Court, the government's complaint could not be upheld because the challenged regional law does not infringe upon the competence of the State on migration management, but it only implements in full EU legislation, which has been transposed into the national legislative system through the approval of the above-mentioned legislative decree. The protection of the status of the EU citizens and their rights is mandatory for all Italian public authorities which all have to cooperate to guarantee the respect of such rights and of EU legislation. |
| <b>Key issues (concepts, interpretations ) clarified by the case</b> (max. 500 chars)                | The case contributed to the clarification of the competences' distribution among different national authorities which is an issue that has a direct impact on the possibility for EU citizens to actually benefit from the rights and protection envisaged by EU legislation.   |
| <b>Results (e.g. sanctions) and key consequences or implications of the case</b><br>(max. 500 chars) | This case is really relevant because it concerns the actual implementation of EU legislation concerning the protection of EU citizens and their family members. The court has rejected the request of national authorities to be the only public authorities in charge of implementing EU legislation and considered constitutionally legitimate the actions and measures adopted by regional authorities to guarantee EU citizens' rights in the fields they are competent for (such as education, healthcare etc.).   |



|   |   |
|---|---|
| <p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p> | <p><i>"[...] la norma regionale in esame non determina alcuna lesione delle competenze legislative statali in tema di rapporti con l'Unione europea, limitandosi ad assicurare anche ai cittadini neocomunitari quelle prestazioni ad essi dovute nell'osservanza di obblighi comunitari e riguardanti settori di propria competenza [...] riconducibili al settore sanitario, dell'istruzione, dell'accesso al lavoro ed all'edilizia abitativa e della formazione professionale."</i></p> <p>Translation:</p> <p>"[...] the concerned regional legislative provision does not entail any violation of the legislative competences of the state on the relationships with the EU since it only ensures that citizens of new EU Member States have access to those provisions they are entitled to in compliance with EU legislation, and which fall under its competence [...] and pertain to the healthcare, education, labour market access, social housing, and vocational training sectors."</p> |
| <p><b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</b></p> | <p>No, it has not.</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> | This information is not available.                  | This information is not available.                                 | This information is not available.                         | This information is not available.                                  | This information is not available. |