

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

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1. Table 1 – Case law

1. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	17 November 2010
Deciding body (in original language)	Audiencia Provincial de Barcelona. Sección tercera
Deciding body (in English)	Provincial Court Headquarter Court: Barcelona
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 76/2010 Decision No. 866/2010 No. Cendoj: 08019370032010100639 Reporting Judge: José Grau Gassó
Parties	<i>Barcelona Provincial Court, Section 3 v. Casimiro (Alias)</i>
Web link to the decision (if available)	https://www.iberley.es/jurisprudencia/sentencia-penal-n-866-2010-ap-barcelona-sec-3-rec-76-2010-17-11-2010-11449211
Legal basis in national law of the rights under dispute	Articles 137 and 143 of the Organic law 5/1985 of the General Electoral System (<i>Ley Orgánica 5/1985 del Régimen Electoral General</i>).

	Article 40 of the Organic Law 10/1995 Criminal Code (<i>Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal</i>).
Key facts of the case (max. 500 chars)	Casimiro, an Italian citizen of legal age with no criminal record, was appointed to the post of president of the polling station in District 01, Section 28 of Barcelona for the European Parliament elections (7 June 2009) and did not attend the act of constitution of the polling place (<i>mesa electoral</i>). Failure to do so and not attending of constitution of the polling place (<i>mesa electoral</i>) is considered an electoral offence according to both the Electoral Code and the Criminal Code, as the passive voting right carries with it the duty to be part of the polling stations if a citizen is designated for this purpose. The prosecutor requested a daily fine and alternatively one day of deprivation of liberty for every two unpaid daily quotas and payment of the procedural costs.
Main reasoning / argumentation (max. 500 chars)	The electoral crime defined in Article 143 of Organic Law 5/1985 of the General Electoral Regime (LOREG) constitutes a crime directly and personally committed by the offender, inasmuch as the active subject must meet the status of president or member of the electoral board.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, it must be examined not only whether the defendant - a citizen of the European Union - was appointed for those positions of the electoral board –as in the case of the President of the polling place- but also if that designation was in accordance with the electoral legislation and, more specifically, with those articles that regulate the participation of European citizens in the municipal elections. The designation of the defendant as president of the polling station is proven as it has been admitted by him and because of the documents in the proceedings. Regarding the defendant's duty to participate in the electoral administration as a member of the bureau, Article 210 of the LOREG provides that if a non-Spanish citizen of the European Union wants to exercise active voting rights in Spain, he must have previously opted to do so. One voting right is the duty to participate in the electoral administration as a member of the bureau. In this respect, the defendant is not subject to Article 143 LOREG as it has not been proven that he had chosen to vote in Spain.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>Not having been proven that the defendant had chosen to cast his vote in Spain, it is appropriate to acquit him of the electoral crime of non-compliance with its electoral obligation for which he has been charged, declaring <i>ex officio</i> the procedural costs.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"En el acusado Casimiro no se dan las condiciones que el precepto del Artículo 143 LOREG exige en el sujeto activo del delito, puesto que si formalmente fue designado miembro de la mesa electoral no existía el deber de formar parte de ella por no constar que hubiera optado votar en España, de modo que su conducta no fue ni antijurídica ni típica cuando, como se ha dicho, el delito electoral citado es un delito "de propia mano" o especial propio."</i></p> <p>Translation:</p> <p>"The accused Casimiro does not meet the conditions that the provision of Article 143 LOREG requires to be a perpetrator of the crime. He had no obligation to be a member of the polling station, even though he was formally designated, because it was not stated that he had chosen to vote in Spain. So, his behaviour was neither unlawful nor typical, although it was said electoral offense was a crime directly and personally committed by the offender."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No, the deciding body does not refer to the Charter of Fundamental Rights.</p>

2. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	27 June 2013
Deciding body (in original language)	Tribunal Supremo. Sala de lo Contencioso administrativo
Deciding body (in English)	Supreme Court (Contentious Administrative Chamber) Headquarter Court: Madrid
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 3173/2012 Roj: STS 3456/2013 Id Cendoj 280791300032013100189 ECLI: ES:TS:2013:3456 Reporting Judge: Manuel Campos Sánchez Bordona
Parties	<i>Mrs. María Virtudes v. General State Administration of Spain</i> (Administración General del Estado Español) <i>Madrid</i>
Web link to the decision (if available)	http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=6784316&links=ascendientes%20extranjer%EDa&optimize=20130708&publicinterface=true

Legal basis in national law of the rights under dispute	<p>Royal Decree 240/2007 of 16 February (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>) and, therefore, Directive 2004/38.</p> <p>Thus:</p> <ul style="list-style-type: none"> - Article 2, 2) (d) of Directive 2004/38/EC; - Article 5, 2 of Directive 2004/38/EC 2; - Article 7 of the EU Charter; - Article 8 of the ECHR.
Key facts of the case (max. 500 chars)	<p>The petitioner appeals against the decision of the High Court of Madrid, which endorsed the original decision to refuse the family reunification visa to the parents of the petitioner (an EU citizen living in Spain), a petition which she considered to be a right deriving from Directive 240/2007 and Article 7 of the EU Charter and Article 8 of the ECHR.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Supreme Court understands that in this case the concurrence of the requirement (both in the directive and in the Spanish legislation that transposes it) that the ascendants regrouped shall live in charge of the community citizen regrouping is not fulfilled.</p> <p>The contested acts deny such a visa application, in accordance with Royal Decree 240/2007, and Directive 2004/38 / EC on the grounds that economic dependence has not been proven conclusively.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>In order to determine whether the ascendants (3CN) of an EU citizen under Directive 2004/38/EC are in charge of the said EU citizen, the host Member State must assess whether, in view of their economic and social circumstances, they are unable to meet their basic needs without the EU member assistance</p>

	<p>In principle, at least one of the ascendants - the mother, who in her passport indicates that she is a nurse of profession - is of working age. The remittances delivered by M.V. to their parents were not enough to attend the ascendants needs. As a consequence, the dependant condition has not been proven.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court insists that the general requirement concerning the interpretation of the essential requirement ("being in charge") discussed in each of the respective assumptions has not been proven. As a consequence there is not breach of the right to family reunion according to Royal Decree 240/2007 (Directive 2004/38) neither of Article 7 of the EU Charter on Fundamental rights.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Por todo lo cual, sólo cabe concluir que en este caso no se ha acreditado la concurrencia del requisito legal de que los ascendientes reagrupados viven a cargo de la ciudadana comunitaria reagrupante, en el sentido de que dependen de forma efectiva y exclusiva de dicha hija, lo que supondría, en caso de haberse probado tal requisito, que los reagrupados son integrantes de forma real y no meramente nominal de la familia de la reagrupante, de modo que la concesión del visado sería necesaria para garantizar el derecho a la vida familiar al que se refiere el artículo 7 de la CEDH .FALLAMOS Primero.- Desestimar el recurso de casación 3173/2012 interpuesto por D^a. María Virtudes contra a sentencia dictada por la Sala de lo Contencioso-Administrativo, Sección Primera, del Tribunal Superior de Justicia de Madrid con fecha 8 de junio de 2012 en el recurso número 675 de 2011 . Segundo.- Imponemos a la parte recurrente las costas de su recurso en los términos precisados en el último de los fundamentos de la sentencia."</i></p> <p>Translation</p> <p>"For all these reasons, it can only be concluded that in this case the concurrence of the requirement legally recognised that the regrouped ascendants live in charge of the petitioner, meaning that they depend in <i>an effective and exclusive way</i> on that daughter, which would mean, if proved such requirement, that the regrouped are members of real form and not merely nominal of the family of the applicant, so that the granting of the visa would be necessary to guarantee the right to life family relationship referred to in Article 7 of the Charter is not fulfilled. The court fails first to dismiss appeal cassation 3173/2012 filed by</p>

	D ^a . M. V. against the sentence issued by the Administrative Litigation Chamber, First Section of the Superior Court of Justice of Madrid on June 8, 2012 in resource number 675 of 2011; second, we impose on the appellant the costs of his appeal in the terms specified in the last of the grounds of the judgment.”
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Yes, Article 7 of the EU Charter of Fundamental Rights.

3. Subject matter concerned	X1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	15 June 2015
Deciding body (in original language)	Audiencia Nacional. Sala de lo Contencioso
Deciding body (in English)	National Audience (Contentious-administrative Chamber)
Case number (also European Case Law)	Appeal No. 0000015/2015 Núm. Registro General: 00182/2015

Identifier (ECLI) where applicable)	Reporting Judge: Berta Santillan Pedrosa
Parties	<i>Association of Basketball Clubs (Asociación de Clubs de Baloncesto) and Mr Carlos María v. Ministry of Education, Culture and Sports (Ministerio de educación, cultura y deporte)</i>
Web link to the decision (if available)	https://www.iberley.es/jurisprudencia/sentencia-administrativo-an-sala-contencioso-sec-6-rec-15-2015-15-06-2015-47434371
Legal basis in national law of the rights under dispute	Article 28 of Royal Decree 1835/1991 of 20 December, on Spanish sports federations (<i>Real Decreto 1835/1991, de 20 de diciembre, sobre Federaciones deportivas españolas</i>).
Key facts of the case (max. 500 chars)	<p>The National Audience dismisses the contentious-administrative appeal filed by the Association of Basketball Clubs against the ruling issued by the Central Court of Contentious-Administrative No. 3 of the National Audience, on 17 December 2011 and confirms the judgment and administrative act challenged.</p> <p>The Association of Basketball Clubs considers that the rule of having four “local training players” (four from a total of 12) is contrary to EU Law (Articles 18 and 45 of the TFUE).</p>
Main reasoning / argumentation (max. 500 chars)	The main argument of the National Audience takes into account the grounds set out in the resolution adopted by the Higher Sports Council of 17 December 2011, which recalls the content of the European Commission's Communication dated 18 January 2011, paragraph 4.3 in which it is emphasised that “in cases of locally trained players' quotas, an indirect discrimination may be considered to be compatible with European Union law if it has a legitimate aim and such indirect discrimination is necessary and proportionate to that legitimate objective”.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The National Audience considers that the agreement, applied in respect of the licenses of two players (Aquilino and Carlos María) responds to a legitimate purpose such as to protect the home-grown players in the quarries of the clubs (<i>"canteras de los clubs"</i>) and the expenses and investments of the latter in the training of such players as well as in the enhancement of the national teams. Also, as training players, all EU citizens are included.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>There is no ruling on the payment of costs.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"El Tribunal (la Audiencia Nacional) considera que el Acuerdo impugnado no contradice el Derecho Comunitario respecto al principio de libre circulación de personas y trabajadores (...) por la mayor inclusión de jugadores nacionales en las plantillas de los clubs de las edades referidas en el convenio, esto es, entre 13 y 19 años Por lo cual no puede decirse que se perjudica a los jugadores de formación tardía."</i></p> <p>Translation: "The court (National Audience) considers that the contested agreement does not contradict EU law with regard to the principle of free movement of persons and workers [...] on the issue to the greater inclusion of national players in the club templates of the ages mentioned in the agreement, that is, between 13 and 19 years. Therefore, it cannot be said that it is prejudiced to (any of) the players of late formation."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No, the deciding body has not referred to the Charter of Fundamental Rights.</p>

4. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 5,7,8,14,15, 27 and of 28 Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	6 April 2017
Deciding body (in original language)	Tribunal Superior de Justicia de Madrid. Sala de lo Contencioso-Administrativo
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: Madrid
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 1025/2016 Decision No. 305/2017 Roj: STSJ M 3418/2017 - ECLI: ES:TSJM:2017:3418 Reporting Judge: Jose Arturo Fernandez Garcia
Parties	<i>Mr Sabino (Alias). v. General State Administration of Spain (Administración General del Estado Español)</i>
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&database=AN&reference=8039885&links=&optimize=20170531&publicinterface=true
Legal basis in national law of the rights under dispute	Royal Decree 240/2007 of 16 February, transposing Directive 2004/38 (following the judgment of the Supreme Court of 1 June 2010 (Appeal No. 114/2007)) (<i>Real Decreto 240/2007, de 16 de febrero, sobre</i>

	<i>entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo).</i>
Key facts of the case (max. 500 chars)	<p>The sentence is the response to the appeal of S., an English citizen who resides in Spain, against the resolutions of the Spanish Embassy in New Delhi (India) denying applications for family reunification visas in the EU Community scheme, for the applicant's parents D^a Gemma and Don Bernabe.</p> <p>The refusal is based on the following:</p> <ul style="list-style-type: none"> - The embassy-hired researcher says that the parents belong to a middle class with substantial monthly income from properties and stores, and that they do not need to be in the care of someone, since both are in good health. - In addition, there are two children living near the applicants (one of them living in the same house). <p>The appellant alleges that</p> <ul style="list-style-type: none"> - the decision was based on an investigator's report containing subjective judgments without support in objective data; - the report was not provided to the parents, which provoked defencelessness; - the son performs periodic transfers to his parents, and the brother who lives with them in Nepal is studying and has no financial means; - parents live on remittances sent by their son since the Nepal earthquake left them with no regular income.
Main reasoning / argumentation (max. 500 chars)	<p>In line with the judgment of the Supreme Court dated 1 June 2010 (114/2007), which partially modifies Article 2 of Royal Decree 240/2007, it is only necessary to examine whether visa applicants are in the care of their child.</p>

	<p>The court concludes that it is not established whether the applicants, in an effective and real, and not merely formal form, are an integral part of the family of that group with which they intend to meet in Spain.</p> <p>The court maintains that the economic dependence of the applicants on their son is not credited. In addition, compared to the data presented by the embassy, the complainant does not prove the lack of economic income of his parents. The court dismisses the application for those reasons.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>In line with the consequences of the reiterated Supreme Court Judgment dated 1 June 2010 (114/2007), which partially modifies Article 2 of Royal Decree 240/2007, a special regime cannot be applied other than the aforementioned norm to the Spanish citizens,</p> <p>That is because the right to freedom of movement and residence of citizens of the Union and of other states, is not comparable to the right to family reunification of foreign nationals, which, as will be recalled, is the subject of Council Directive 2003/86 / of September 22, 2003, on the right to family reunification and is also regulated in the general legislation on foreigners (Articles 16 and 17 of Organic Law 4/2000).</p> <p>In the present case, therefore, it is only necessary to examine whether visa applicants are in the care of their child, who is currently of British nationality and residing in Spanish territory. This requirement was questioned by the diplomatic delegation in its resolutions.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court concludes by stating that the economic dependency, effective and real, of the applicants with the son who lives in Spain was not proved. Therefore, in the absence of such a legal requirement, the appeal is dismissed.</p> <p>The plaintiff has to pay the process cost up to a maximum total amount of € 300 plus VAT.</p>
<p>Key quotations in original language and translated into English</p>	<p><i>"(Véase Tribunal de Justicia de la Unión Europa sentencia de 15 de noviembre de 2011, Murat Dereci y otros, C 256/11 , apartado 50).En el presente caso, dado que los ciudadanos de la Unión interesados nunca han ejercido su derecho de libre circulación y siempre han residido en el Estado miembro cuya nacionalidad poseen, se ha de constatar que no están comprendidos en el concepto de «beneficiario» en el sentido del</i></p>

<p>with reference details (max. 500 chars)</p>	<p><i>artículo 3, apartado 1, de la Directiva 2004/38, por lo que ésta no es aplicable a dichos ciudadanos de la Unión ni a los miembros de su familia. De ello se deduce que las Directivas 2003/86 y 2004/38 no son aplicables a los nacionales de terceros. Estados que solicitan un derecho de residencia para reunirse con ciudadanos de la Unión miembros de su familia que nunca han ejercido su derecho de libre circulación y siempre han residido en el Estado miembro cuya nacionalidad poseen."</i></p> <p>Translation: “(See CJEU, C 256/11, <i>Murat Dereci and Others</i>, Judgment of 15 November 2011, para. 50). In the present case, since the citizens of the Union concerned have never exercised their right to freedom of movement and have always resided in the Member State of which they are nationals, it must be established that they do not fall within the concept of ‘beneficiary’ within the meaning of Article 3 (1) of Directive 2004/38, so that it is not applicable to such citizens of the Union or to members of their family. It follows that Directives 2003/86 and 2004/38 are not applicable to third-country nationals. States applying for a right of residence to meet Union citizens who are members of their family who have never exercised their right to freedom of movement and who have always resided in the Member State of which they are nationals.”</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>Yes, Article 7 of the EU Charter of Fundamental Rights and Article 8 of the ECHR.</p>
<p>5.</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 5,7,8,14,15, 27 and 28 of Directive 2004/38</p>

Subject matter concerned	<input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	28 April 2017
Deciding body (in original language)	Tribunal Superior de Justicia en Burgos. Sala de lo Contencioso.
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: Burgos
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 16/2017 Decision No. 93/2017 ECLI: ES: TSJICL: 2017: 1666 Reporting Judge: María del Pilar Alonso Sotorrio
Parties	<i>Arsenio (Alias) v. Government Subsection, Immigration Area, in Burgos</i>
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&database=AN&reference=8055965&links=%2293%2F2017%22%20%22JOSE%20MATIAS%20ALONSO%20MILLAN%22&optimize=20170614&publicinterface=true
Legal basis in national law of the rights under dispute	Article 15 of Royal Decree 240/2007 of 16 February, transposing Directive 2004/38 (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los</i>

	<i>Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo).</i>
Key facts of the case (max. 500 chars)	<p>The sentence is the response to the appellation of Arsenio, an Italian citizen, pretending to demonstrate that the resolution given by the Local Court in Burgos, is not legal, according to the European Directive 38/2004/EC and the national Royal Decree 240/2007.</p> <p>He claims he has already lived for a long time in Spain, documented with a permanent residence permit and despite the crimes he has committed, he does not constitute a real, actual and serious danger to the public security. He pretends not to be expelled to Italy, his country of nationality, arguing that it would be a double sanction for him.</p> <p>The resolution argued the refusal of the appellation was based on the special severity of the crimes committed (gender based homicide).</p>
Main reasoning / argumentation (max. 500 chars)	<p>The main reasoning is based on the recommended interpretation of Directive 2004/38, according to the proportionality principle and attending to the personal behaviour of the solicitor, that constitutes a real and actual threat for the society.</p> <p>The sentence mentions that the appellant does not have any family ties in Spain, and since his entry in the country, he has committed many different crimes, one of them with very special severity and it constitutes a threat to a fundamental value of the society, such as the right to live.</p> <p>In this particular case, this threat consists in the nature of the crime, reflecting a special danger for the public order and security.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>This court discusses about the interpretation that should be given to Article 15 of Royal Decree 240/2007 according to the latest resolutions of the CJEU. It clarifies that, the restrictions of the right to reside in the EU territory for the members of the family of a European Union citizen, a careful and personal analyses should be done, attending to his personal behaviour at the present, and not only at the special severity of the committed crime.</p>

	<p>In order to analyse these circumstances, the court evaluates the general situation of the petitioner: the familiar situation, the working status and precedents and the nature of the criminal act. The fact of being currently in prison is considered an evidence of the actual risk of solicitor for the society.</p> <p>It clarifies also the "<i>non bis in idem</i>" principle. It argues that both sanctions (prison and expulsion) have different basis and nature and cannot be considered a double sanction of the same act. Meanwhile the sentence is adopted as a measure of the criminal politics of the state, the expulsion of the territory is adopted as part of the immigration politics, attending to the control of immigration and focused on a peaceful coexistence.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court refuses this appellation. He has to pay the process costs.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Realmente nada cabe decir respecto de la amenaza grave, puesto que los delitos cometidos denotan una inusitada y extrema gravedad, sin que sea precisa otra fundamentación sobre este particular. En cuanto a que es una amenaza real, basta ver que desde que llegó a España la conducta mostrada por don Arsenio es simplemente una conducta delictiva, cometiendo delito tras delito y solamente parando de delinquir al cometer un gravísimo delito de asesinato, por el que ha ingresado en prisión. También se aprecia que la amenaza es real, puesto que el hecho de que no haya cometido más delitos desde que cometió el delito de asesinato, junto con un delito de robo/hurto de uso de vehículo, sólo es debido a su ingreso en prisión. Fundamento de derecho tercero.</i></p> <p>Translation:</p> <p>"There is nothing really to be said about the serious threat, since the crimes committed show an unusual and extreme gravity, without any other reasoning being necessary on this point. As for a real threat, it is</p>

	<p>enough to see that since he arrived in Spain the conduct shown by Mr Arsenio is simply a criminal behaviour, committing crime after crime and only stopping to commit crime by committing a very serious crime of murder, for which he has been imprisoned. It is also noted that the threat is real, since the fact that he has not committed more crimes since committing the crime of murder, along with a crime of vehicle theft, is only due to his imprisonment."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No, the deciding body does not refer to the Charter of Fundamental Rights.</p>

<p>6. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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>Decision date</p>	<p>16 February 2016</p>
<p>Deciding body (in original language)</p>	<p>Tribunal Superior de Justicia en Sta. Cruz de Tenerife. Sala de lo Contencioso.</p>
<p>Deciding body (in English)</p>	<p>High Court of Justice (Administrative Chamber) Headquarter Court: Santa Cruz de Tenerife</p>

Case number (also European Case Law Identifier (ECLI) where applicable)	<p>Appeal No. 149/2015</p> <p>Decision No. 85/2016</p> <p>ECLI: ES: TSJICAN: 2016: 79</p> <p>Reporting Judge: María del Pilar Alonso Sotorrio</p>
Parties	<p><i>Mr Cornelio (Alias) v. Government Subsection, Immigration Area, in Tenerife</i> (Subdelegacion de Gobierno de Tenerife)</p>
Web link to the decision (if available)	<p>http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&database=AN&reference=7659425&links=%22149%2F2015%22%20%22MARIA%20DEL%20PILAR%20ALONSO%20SOTORRIO%22&optimize=20160504&publicinterface=true</p>
Legal basis in national law of the rights under dispute	<p>Article 15 of Royal Decree 240/2007 of 16 February, transposing Directive 38/2004 (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).</p>
Key facts of the case (max. 500 chars)	<p>The sentence is the response to the appeal by Cornelio, attempting to demonstrate that the resolution given by the Local Court in Tenerife, is not legal, according to European Directive 38/2004/EC and Spanish Royal Decree 240/2007.</p> <p>He is married to a British citizen, who lives in Spain, and he has lived in Spain for seven years and is integrated into Spanish society. Three and a half years ago, he was convicted of homicide and was sentenced to five years in prison. He does not constitute any danger to public security.</p> <p>The resolution argued that the refusal of the appeal was based on the police record of the solicitor and the special severity of the crime committed (homicide).</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The main reasoning is based on the recommended interpretation of Directive 2004/38, according to the proportionality principle and examining the personal behaviour of the solicitor, which constitutes a real and actual threat for the society.</p> <p>The sentence refers to the decision of the European Court of Justice of 10 July 2008, that describes the concept of public security and puts a special focus on the threat to a fundamental value of the society.</p> <p>In this particular case, this threat consists of the nature of the crime, reflecting a special danger for public order and security. The petitioner married during his stay in prison, in 2013, and he has no other links to Spain.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This Court discussed the interpretation that should be given to Article 15 of Royal Decree 240/2007 according to the latest resolutions of the European Court. It clarified that the restrictions of the right to reside in the EU territory for the members of the family of a European Union citizen, a careful and personal analysis should be carried out, attending to the person's current personal behaviour, and not only to the special severity of the crime committed.</p> <p>In order to analyse these circumstances, the court evaluated the general situation of the petitioner: the family situation, employment history, and the nature of the crime.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court refused this appeal, and the petitioner did not obtain a residence permit as a family member of a European citizen. He had to pay the legal costs.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Partiendo de lo anteriormente expuesto ha de estarse conforme con la valoración efectuada por la administración y la sentencia dictada toda vez que el recurrente fue condenado por un delito de homicidio, que evidencia relevancia social, reflejando peligrosidad tanto para el orden público como para la seguridad pública. Siendo destacable que no consta su arraigo en España, fue titular de un permiso que caducó en 2011; cometió el delito en el año 2012, contrayendo matrimonio durante su estancia en prisión en el año</i></p>

	<p><i>2013, siendo dicho matrimonio el que habilitó que pudiera solicitar el permiso que fue denegado y constituye el objeto de impugnación en el presente recurso." Fundamentos de Derecho- Cuarto</i></p> <p>Translation:</p> <p>"Based on the above, the appellant was convicted of homicide, which shows social relevance reflecting a danger to both public order and public safety, and this must be in accordance with the assessment made by the administration and the sentence handed down. He was the holder of a (residence) permit that expired in 2011 and it is noteworthy that his roots are not established in Spain. He committed the crime in 2012 and contracted a marriage during his stay in prison in 2013; this marriage enabled him to request the permission that had earlier been refused and which constitutes the subject of challenge in the present appeal." (Fourth Legal Reasoning)</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>7. Subject matter concerned</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
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Decision date	1 July 2016
Deciding body (in original language)	Tribunal Superior de Justicia en Burgos. Sala de lo Contencioso.
Deciding body (in English)	High Court of Justice (Administrative Chamber) Headquarter Court: Burgos
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 106/2016 Decision No. 145/16 ECLI: ES: TSJCL: 2016: 4008 Reporting Judge: Eusebio Revilla Revilla
Parties	<i>Mrs. María Inmaculada</i> (Alias of a Bolivian Citizen) <i>v.</i> <i>General State Administration of Spain</i> (Administración General del Estado Español)
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=7880344&links=%22106%2F2016%22%20%22EUSEBIO%20REVILLA%20REVILLA%22&optimize=20161201&publicinterface=true
Legal basis in national law of the rights under dispute	Article 7 of Royal Decree 240/2007 of 16 February, transposing Directive 38/2004 (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).

	<p>Article 3.2 (c) of Order PRE 1490/2012 for the implementation of the Royal Decree 240/2007 of 16 February, transposing Directive 38/2004 (<i>Orden PRE/1490/2012, de 9 de julio, por la que se dictan normas para la aplicación del artículo 7 del Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The sentence is the response to the appeal attempting to demonstrate that the resolution given by the Local Court in Burgos is not in accordance with law, more specifically, Article 7 of the Royal Decree 240/2007 transposing Directive 38/2004 and the Article 3.2 (c) of Order PRE 1490/2012 for the implementation of this royal decree. Thus, the purpose of this appeal is the revocation of the decision of the Government in Burgos recognising the right of the permanent residence permit of the petitioner as a family member of an EU citizen.</p> <p>María Inmaculada, a citizen from Bolivia, is the daughter of a Bolivian citizen married to Alexander, a Portuguese citizen, and she has a residence permit granted to her as a family member of a European citizen. When she asked for permanent residence, the Government determined that, as she is a family member of a European citizen, if her relative maintains the requirements of Article 7, related to proving he is employed or has other economic means, permanent residence could be granted. But here, Alexander is receiving social benefits, making him not meet the requirements and consequently she is not qualified to receive permanent residence.</p> <p>The local court found that as Alexander is already documented and has documented proof, economic means should not be requested, according to Royal Decree 240/2007. However, the State Attorney defending the General State Administration of Spain finds this decision is contrary to the law and raises an appeal with the Burgos High Court of Justice (Administrative Chamber) against that decision and subsidiary, if the appeal is refused, to be acquitted to cover the legal costs.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The State Attorney finds that, under Articles 7.1 and 2. and Article 14.1 of Royal Decree 14/2007, in order to obtain the right of permanent residence, the requirements of Article 7 should be complied during the whole previous period. In this sense, he references the interpretation of CJEU in decisions dated 21 November 2011, <i>Joined cases, C-424/10 and C-425/10, Ziolkowski and Szeja</i>.</p> <p>The court argues with same interpretation, thus neither the worker status as a family member of an EU citizen nor the health insurance cover and adequate means have been accredited. In this sense, the facts of this case are as follows: María Inmaculada has been living in Spain since she was 10 years old. Her petition for a permanent residence permit was refused because her mother's husband does not have sufficient economic means to prove she is not going to be a social charge. Nevertheless, one month later she obtained a temporary residence permit under Royal Decree 240/2007, from the same Government Office, specifically under Articles 2 and 8, interpreting not only that she lives with Alexander, but also that she has an economic situation that covers her residence in Spain. There is no evidence to consider she will be a burden for the Spanish social system, as she has already been living here since she was 10.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarifies some relevant aspects. The interpretation of Directive 38/2004/CE in reference to the concept of legal residence prevails. To obtain permanent residence, one is required to have lived for the previous five years with a legal residence, which involves maintaining the access conditions to the residence status during the whole period.</p> <p>Directive 38/2004/CE gives a special character to the permanent residence right, as an integration instrument, which gives more cohesion to European citizenship. This status of permanent residence should not be conditioned to other requirements after its achievement. In this sense, the focal point on this case is not whether Alexander should be asked to compliment the economic requirements to keep his status, but whether María Inmaculada in attempting to get this status for the first time, should be required to prove her economic position.</p> <p>The coherence in the activity of the administration is also clarified by the case, as two different decisions of the same government office cannot interpret the same economic situation to bring two opposite results.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The appeal is partially admitted, accepting that no one has to pay legal costs.</p> <p>The main petition is refused, confirming the resolution of the local court and granting the petitioner her right to permanent residence, under Article 10 of Royal Decree 240/2007.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Así las cosas, si la solicitante pide la citada tarjeta de residencia permanente de familiar de ciudadano de la Unión Europea por llevar viviendo en España de forma legal y continuada más de cinco años, haciéndolo en compañía de su madre, pero sobre todo en compañía y a cargo del esposo de su madre el ciudadano comunitario Sr. Alexander ; si además este tiene reconocida la residencia comunitaria en España con carácter permanente desde el 2 de febrero de 2.005; y en tercer lugar, si tenemos en cuenta que la propia Administración al otorgar a la apelante mediante resolución de 28.8.2015 una tarjeta de residencia de familiar de ciudadano de la Unión Europea para residir en España junto a su familiar Sr. Alexander está reconociendo implícitamente que éste posee medios económicos para que la solicitante pueda vivir a cargo del mismo, es por lo que necesariamente hemos de concluir que las resoluciones administrativas impugnadas no son conformes a derecho y que infringen lo dispuesto en el art. 10.1 en relación con el art. 7.1 del RD 240/2007 ..."</i> Fundamentos de Derecho- Quinto</p> <p>Translation:</p> <p>"Thus, if the petitioner asks for the above-mentioned permanent residence card as a family member of a citizen of the European Union for having lived in Spain legally and continually for more than five years, doing so in the company of her mother, and especially in the company of her mother's husband, the EU citizen Alexander; if, in addition, this EU citizen has been given permanent community residence in Spain from 2 February 2005; and thirdly, if we take into account that the administration itself, by granting the appellant by a resolution of 28 August 2015 a residence card for a family member of a European Union citizen to reside in Spain with her family member, Mr Alexander, the administration is implicitly acknowledging that he possesses sufficient economic means for the applicant to live under his charge, it is</p>

	for that reason that we must necessarily conclude that the administrative decisions challenged are not in accordance with law and that they violate the provisions of Article 10.1 in relation to Article 7.1 of Royal Decree 240/2007 [...]." (Fifth Legal Reasoning)
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

8. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	28 May 2015
Deciding body (in original language)	Tribunal Superior de Justicia de La Rioja. Sala de lo Contencioso.
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: La Rioja
Case number (also European Case Law)	Appeal No. 56/2015 Decision No. 163/2015

Identifier (ECLI) where applicable)	ECLI: ES: TSJLR: 2015: 2832 Reporting Judge: Alejandro Valentín Sastre
Parties	<i>Alonso (Alias) v. Government Delegation in La Rioja</i> (Delegación del gobierno en La Rioja)
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&database=AN&reference=7406555&links=%22163%2F2015%22%20%22ALEJANDRO%20VALENTIN%20SASTRE%22&optimize=20150615&publicinterface=true
Legal basis in national law of the rights under dispute	Article 15 of Royal Decree 240/2007 of 16 February, transposing Directive 2004/38 (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).
Key facts of the case (max. 500 chars)	The sentence is in response to the appeal of Alonso, a Polish citizen, against the resolution given by the Local Court in La Rioja, according to his deportation to Poland and the prohibition of entry for five years. He considers it is not legal, according to the European Directive 38/2004/EC and the national Royal Decree 240/2007. He had committed four different criminal acts, three of them against traffic security and one of attempt. He had no familiar links in Spain, neither had any social ones.
Main reasoning / argumentation (max. 500 chars)	The main reasoning is based on the recommended interpretation of Directive 2004/38, according to the proportionality principle and attending to the personal behaviour of the solicitor that constitutes a real and actual threat for the society. In order to analyse these circumstances, the court evaluates the general situation of the petitioner: the familiar situation, the working status and precedents, and the nature of the crime. Relating to the first three points, it means the solicitor does not have enough links with the country, and relating to the last

	<p>point, there is a real risk for the social security and public order, attending to the repeated criminal acts, the short time in which they were committed, and the special relevance of the criminal behaviour of the solicitor, driving a car under the influence of alcohol and drugs and risking people security.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This Court discusses about the interpretation that should be given to Article 15 of Royal Decree 240/2007 according to the latest resolutions of the European Court. It clarifies that, to adopt restrictions of the right to reside in the EU territory for the members of the family of European Union citizen, a careful and personal analysis should be done, attending to the concrete circumstances of any case.</p> <p>In this case it was clarified that a European citizen who has committed different crimes and has been sentenced for them, can be expelled to his country if he cannot prove special links in Spain, and the evaluation of the risk would be done attending to the repetition of the acts and to the legal good attacked by his acts.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court refuses this appellation. He has to pay the process costs.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"A la vista de la reiteración en la comisión de los delitos, comisión de delitos que se inicia prácticamente desde la llegada a España del recurrente, el escaso tiempo que media entre la comisión de los delitos y la importancia de éstos delitos, que comprometen la seguridad de la colectividad, no cabe sino concluir, como hace acertadamente la juez de instancia, que el apelante constituye una amenaza real, actual y suficientemente grave que afecta a la seguridad pública, por lo que está justificada la aplicación de la medida de expulsión."</i></p> <p>Translation:</p>

	<p>"In view of the reiteration in the commission of crimes, a commission of offenses that began practically since the arrival in Spain of the appellant, the short time between the commission of the crimes and the importance of these crimes, which compromise security of the collectivity, it can only be concluded, as the appellate court rightly points out, that the appellant constitutes a real, present and sufficiently serious threat to public security, and that the application of the expulsion measure is therefore justified."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No, the deciding body does not refer to the Charter of Fundamental Rights.</p>

<p>9. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>23 October 2015</p>
<p>Deciding body (in original language)</p>	<p>Tribunal Superior de Justicia de Castilla y León . Sala de lo contencioso Administrativo. Sede de Valladolid</p>
<p>Deciding body (in English)</p>	<p>High Court of Justice of Castilla y León. Administrative Litigation Chamber. Headquarters of Valladolid</p>
<p>Case number (also European Case Law)</p>	<p>Sentencia . 02390/2015 NIG 4718633 3 2015 0103020</p>

Identifier (ECLI) where applicable)	
Parties	<i>D. XXX v. General State Administration of Spain (Administración General del Estado Español)</i>
Web link to the decision (if available)	
Legal basis in national law of the rights under dispute	Royal Decree 240/2007 of 16 February, transposing Directive 2004/38 (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).
Key facts of the case (max. 500 chars)	Expulsion of D. XXX , with Romanian nationality, resident in Spain and a citizen of the EU The decisions to remove this Union citizen was based on serious reasons related to public order and public safety that have taken its case within the exceptions to protection against expulsion of EU citizens. In this context, D XXX has ignored the order of removal (<i>orden de alejamiento</i>) of the temporary restraining order (<i>orden de alejamiento</i>) of his ex-partner and moreover, he has committed offences being prosecuted by the Criminal Court No. 4 of Valladolid. All these facts are serious reasons for public order and public safety.
Main reasoning / argumentation (max. 500 chars)	Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned

	must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued. All these issues have been under consideration; the decision is that Mr XXX shall be expelled from the Spanish territory.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Mr XXX is to be expelled from the Spanish territory (the decision seems not to be coherent with Articles 27 and 28 of Directive 2004/38).
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Esta sala viene aplicando con rigor tanto a comunitarios como extranjeros en general la procedencia de la expulsión con prohibición de entrada en casos de violencia de género en atención a la a la normativa sobre violencia de género y a la alarma social que este tipo de delitos crea en la sociedad española muy sensibilizada por este tipo de delitos que violentan la paz social y el orden público. Primero orden de alejamiento desobedecida y luego prisión por ser desobedecida , hay un claro peligro, como se sigue del uso de armas blancas por el hoy apelante."</i></p> <p>Translation:</p> <p>"This chamber has been rigorously applying to both EU and other foreigners in general the provenance of the expulsion with entry ban in cases of gender violence in attention to the Spanish legislation against gender violence and to the social alarm that this type of crimes creates in the Spanish society very sensitised by this type of crimes that violate the social peace and public order; first, a move away order (<i>alejamiento</i>) not obeyed, and then a prison for not obeying the former order, there is a clear danger, as follows from the use of white weapons by the appellant."</p>

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No, no Article of the EU Charter on fundamental rights has been quoted.
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10. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	3. 12. 2014
Deciding body (in original language)	Tribunal Superior de Justicia en la Comunidad Valenciana. Sala de lo Contencioso.
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: Valencia
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 481/2012 Decision No. 1017/2014 ECLI: ES: TSJCV: 2014: 10000 Reporting Judge: Begoña García Meléndez
Parties	<i>Segundo (Alias) v. Government Subsection, Immigration Area, in Valencia</i>

Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=7330688&links=&optimize=20150320&publicinterface=true
Legal basis in national law of the rights under dispute	Royal Decree 240/2007 of 16 February, Article 8 and Article 10 (and therefore Directive 2004/38).
Key facts of the case (max. 500 chars)	The sentence is in response to the appeal of Segundo, a third country national married to a German woman. The couple have one child that holds a German nationality. The husband applied to the Spanish Government for a permanent residence permit according to Royal Decree 240/2007. This application was refused by the authorities arguing that he had not shown sufficient documents to prove that his wife had a valid EU citizen resident permit, according to Article 8 of the Royal Decree 240/2007. He firstly appealed to the local court who reaffirmed the refusal. He then appealed to the Regional Court which revoked the resolution giving him the long term residence permit, as a family member of an EU citizen.
Main reasoning / argumentation (max. 500 chars)	The required document (the valid residence permit of his wife) was not necessary, insofar as the appellant proved his residence in Spain for more than five years and the marriage and coexistence with his wife, of German nationality, for more than thirty years. That is, his situation does not fall under Article 8 (application of residence permit as a family member of an EU citizen, that should be requested after the first three months of his/her entry into Spain), but under Article 10 (permanent residence), so this case must lead to dismissal of the filed appeal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, what is being requested is a permanent residence in accordance with Article 10, and not an initial application for a family member's card (Article 8). In this respect, evidence is provided by the appellant through his 30-year marriage and coexistence with his German partner, and his 5-year residence in Spain with the initial card of a family member. According to Article 10, the TCN that are family members

	of an EU citizen, are entitled to reside on a permanent basis as long as they have resided legally in Spain for a continuous period of five years.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The immediate consequence of the case is that the appellant is entitled to the permanent residence for EU citizens' family card, without court costs.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Que por ello (...) el citado documento, del que fue objeto de requerimiento el actor, no era uno de los documentos de aportación preceptiva máxime cuando el recurrente aportó y acreditó el matrimonio y la convivencia con su esposa, de nacionalidad alemana, durante más de treinta años, y no se encuentra, obviamente, en el supuesto regulado por el art. 8 precitado, y todo lo expuesto debe conducir sin más a la desestimación del recurso de apelación formulado confirmando la sentencia de la instancia por ser acorde a derecho."</i></p> <p>Translation:</p> <p>"For that reason, [...] this document, which was the subject of the petition, was not one of the documents of mandatory contribution, insofar as the appellant contributed and proved the marriage and coexistence with his wife, of German nationality, for more than thirty years, and such case is not under Article 8. All of the above must lead to a dismissal of the appeal, confirming the judgment of the court to be in accordance with the law."</p>
Has the deciding body referred to the Charter of Fundamental Rights?	No, the deciding body does not refer to the Charter of Fundamental Rights.

If yes, to which specific article.	
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11. Subject matter concerned	X1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	30 June 2011
Deciding body (in original language)	Tribunal Superior de Justicia en Valencia. Sala de lo Contencioso.
Deciding body (in English)	High Court of Justice (Administrative Chamber) Headquarter Court: Valencia
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 3916/2008 Decision No. 796/11 ECLI: ES: TSJCV:2011:5906 Reporting Judge: Juan Luis Lorente Almiñana
Parties	<i>Eutimio and Marcelina (Alias) v. Spanish Tax Administration Agency</i>

Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=6179416&links=%223916%2F2008%22%20%22JUAN%20LUIS%20LORENTE%20ALMI%C3%91ANA%22&optimize=20111115&publicinterface=true
Legal basis in national law of the rights under dispute	<p>Royal Decree 5/2004 of 5 March on non-residents tax (<i>Real Decreto Legislativo 5/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley del Impuesto sobre la Renta de no Residentes</i>).</p>
Key facts of the case (max. 500 chars)	<p>Both actors, British citizens, sold a property after more than a year in ownership. They earned € 8,643.53 with this operation and were expected to pay income tax as non-resident European citizens in Spain. This increase of their patrimony on Spanish territory converted them into passive taxation subjects. As a consequence of this, they had to pay the tax in Spain only on the acquisition of assets and rights as non-resident taxpayers and under regulation of Royal Decree 5/2004 of 5 March on non-residents tax. Under this norm, the claimant was expected to pay 35 % tax, unlike the 15 % tax corresponding to the European Union citizens residents in Spain.</p> <p>The actors considered they had been discriminated against on grounds of their nationality, contradicting the European Union Treaty.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The court considers that the different tax rates for the same situations could be contrary to the European Union Treaty, especially to Articles 12 and 18, which forbid the discrimination on grounds of nationality and grant the right to move and reside freely within the territory of the EU Member States, because it could discourage the use of the right to move and reside freely granted by the directive.</p> <p>It is suggested by the State Attorney from the previous case that there is no discrimination as the ECJ has not made pronouncements stating any contradiction between Article 25.1.f of Royal Decree 5/2004 and the European Union Law. But the Spanish Court considers the primacy of the European Union Law and finds that there is discrimination, but it is not necessary to propose a preliminary ruling, as this is a “clear act”.</p> <p>Nevertheless, other preliminary rulings have already been proposed to determine the financial situation of European citizens in other countries, in cases <i>Asscher</i> (C-107/94) and <i>Gerritse</i>, confirming the illegality of</p>

	<p>this discrimination. Following the previous approach, and according to the primacy of the European Law, this law should be revoked, ordering the difference of amount to be given back to the actors. This is also in line with the Spanish Constitutional Court doctrine.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The primacy effect of the European law has been invoked by the Spanish Court in order to avoid discrimination on grounds of nationality that the Spanish law permits.</p> <p>The theory of the "clear acts" was also clarified, declaring that it was not necessary to state a preliminary ruling against a national law that is apparently contrary to the European law, if the primacy effect is clear enough in the particular case.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The resolution was revoked and the administration had to pay back all the additional money the claimants had paid, according to the tax rates and the legal interests.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"En consecuencia, y siguiendo la doctrina del Tribunal Constitucional (sentencias de 14-2-1991 y 22-3-1992), partiendo de la primacía del derecho comunitario y a la vista de la discriminación que las mencionadas normas fiscales implican para los actores, con abierta contravención del derecho comunitario, esta Sala deberá dejarlas inaplicadas, más teniendo en cuenta que ya han sido derogadas por la Ley 35/2006 con efectos desde el 1-1-2007, lo que debe suponer la estimación del recurso contencioso-administrativo, reconociendo el derecho de los demandantes a la rectificación pretendida, con devolución de lo indebidamente pagado (11.678,23 euros), con sus intereses desde la fecha de la reclamación (22-7-2007) hasta su completo abono."</i> Fundamentos de Derecho- Segundo</p> <p><i>"La Comisión considera que la diferencia de trato fiscal de las dos categorías de contribuyentes, en la medida que genera una carga fiscal superior para las personas no residentes en situaciones objetivamente similares a las de los residentes, constituye una discriminación indirecta por razón de nacionalidad prohibida por el Tratado. La carga fiscal superior que soportan los no residentes puede disuadir a las</i></p>

	<p><i>personas de aceptar un trabajo o comprar propiedad inmobiliaria en España al mismo tiempo que siguen siendo residentes fiscales en otro Estado miembro." Fundamentos de Derecho- Tercero</i></p> <p>Translation:</p> <p>"Consequently, and following the doctrine of the Constitutional Court (judgments of 14 February 1991 and 22 March 1992), starting from the primacy of Community law and in view of the discrimination that the aforementioned fiscal rules imply for the actors, in open contravention of Community law, this chamber must declare them to be inapplicable, especially when taking into account that they have already been repealed by Law 35/2006 with effect from 17 January 2007, showing respect for the contentious-administrative appeal, and recognising the right of the claimants to the rectification sought, with repayment of the unduly paid amount (€11,678.23), including interest accruing from the date of the claim (22 July 2007) up to their full payment." (Second Legal Reasoning)</p> <p>"The Commission considers that the difference in tax treatment of the two categories of taxpayers, since it creates a higher tax burden for non-residents in situations which are objectively similar to those of residents, constitutes indirect discrimination on the grounds of nationality prohibited by the treaty. The higher tax burden borne by non-residents may discourage people from taking up work or buying property in Spain while still being tax residents in another Member State." (Third Legal Reasoning)</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

12. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 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
Decision date	21 January 2011
Deciding body (in original language)	Tribunal Superior de Justicia de Asturias (Oviedo), Sala de lo Social
Deciding body (in English)	High Court of Justice of Asturias (Oviedo), Labour Chamber
Case number (also European Case Law Identifier (ECLI) where applicable)	168/2011 Appeal No. 0002496 /2010
Parties	<i>Eusebio (Alias) Official for coal removing of the company Mecanizaciones Carboníferas S.A. v. National Social Security Institute (Instituto Nacional de la Seguridad Social, INSS by its Spanish acronym) and Tesorería General de la Seguridad Social (Social Security Fund, TGSS by its Spanish acronym)</i>
Web link to the decision (if available)	https://tsj.vlex.es/vid/343419866
Legal basis in national law of the rights under dispute	Legal basis in national law of the rights under dispute are the following: <ul style="list-style-type: none"> - Article 191 of the Labour Proceedings Law (<i>Real Decreto Legislativo 2/1995, de 7 de abril, por el que se aprueba el Texto Refundido de la Ley de Procedimiento Labora</i>) (<i>Vigente hasta el 11 de Diciembre</i>

	<p><i>de 2011</i>) - grounds of this specific appeal under employment law: the supplication appeal (<i>recurso de suplicación</i>);</p> <ul style="list-style-type: none"> - Article 24 of the Spanish Constitution (<i>Constitucion Española</i>) - the right to a fair trial; - Article 9 of Decree 298/1973 of 8 February, on the updating of the Special Social Security Scheme for Coal Mining, in accordance with Law No. 24/1972 of 21 June on the financing and improvement of the General Social Security Scheme (<i>Decreto 298/1973, de 8 de febrero, sobre actualización del Régimen Especial de la Seguridad Social para la Minería del Carbón, de acuerdo con la Ley 24/1972, de 21 de junio, de financiación y perfeccionamiento del Régimen General de la Seguridad Social</i>) - pensionable age; - Article 21 of the Order of 3 April 1973 on the Special Social Security Scheme for Coal Mining (<i>Orden de 3 de abril de 1973 reguladora del Régimen Especial de la Seguridad Social de la Minería del Carbón</i>) - the allowance in relation to the pensionable age.
<p>Key facts of the case (max. 500 chars)</p>	<p>Appeal made by Eusebio (an EU citizen living in and working in Spain), an official for coal removing of the company Mecanizaciones Carboníferas S.A against the Judgment 427/2010 of the Court of Oviedo (Labour Chamber) of 26 May 2010 (reference for the Claim 0000037/2009 by Eusebio in the face of the Instituto Nacional de la Seguridad Social (INSS) and the Social Security Fund (TGSS)) with regards to the recognition of pension, and according to which the Instituto Nacional de la Seguridad Social (INSS) recognises the applicant's right to retirement pension on the basis of IMSS contribution days in Spain (having at least 5,031 insurance days) under the Special Scheme for Miners (a monthly pension of EUR 624.46). This INSS Resolution, however, did not recognise the applicant's right to receive the benefits for retirement through the EU regulation (specifically, Regulations 1408/71, 574/72 and 883/2004 of the European Union) despite having at least 8,997 insurance days in Czechoslovakia, resulting from working time (days intermittently throughout the years 1968,1969, 1979 and 1983) in mines of Czechoslovakia.</p>

	<p>According to the jurisprudence of the Spanish Constitutional Court the right to receive the benefits for retirement of insurance periods completed in other Member States is directly linked to the implementation of Directive 2004/38 on free movement of workers.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Judgment's comments focus on two main arguments.</p> <ul style="list-style-type: none"> - The argumentation concerning the appropriateness or inappropriateness of the declaration of invalidity to the Judgment 427/2010 of the Court of Oviedo (Labour Chamber) of 26 May 2010 requested by the supplication appeal on the basis of the here elements as defined in the Article 191 of the Labour Proceedings Law; these three reasons are directly related with the adequacy of the proofing media. - The second block of arguments answers to the infringements of law related with the EU regulations. More specifically within the EU regulations reference has been made to Articles 3 (1) and 45 (2) of the CEE Regulation 1408/71; Article 45 (1) of the CEE Regulation 574/72; and Article 5 (b) of the EU Regulation 883/2004. Similarly, this part of the judgment refers to the case law of the European Court of Justice on (C-70/88; C-265/95, <i>European Commission v. France</i>; C-426/93; and C-131/96, <i>Romero</i>) on the acquiring and retaining the right to benefit and of calculating the amount of benefits of all periods taken into account under the laws of the several countries, as is the case here in Spain and Czechoslovakia.
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Key issues clarified by the case are as follows:</p> <ul style="list-style-type: none"> - The right to retirement pension and the calculation of the amount of the benefits under the special schemes. In this respect, the court reiterates the requirement in Article 45 (2) of the Regulation CEE 1408/1917 establishing "where the legislation of a Member State makes the granting of certain benefits conditional upon the insurance periods having been completed in an occupation subject to a

	<p>special scheme or, where appropriate, in a specific employment, periods completed under the legislations of other Member States shall be taken into account for the granting of such benefits only if completed under such a scheme or, failing this, in the same occupation or, where appropriate, in the same employment".</p> <ul style="list-style-type: none"> - The accumulation of all the periods taken into consideration by the different national legislations to acquire and retain the right to social benefits, as well as the calculation of these amounts constitutes one of the pillars of the free movement of workers as described in Articles 48 to 52 of the Treaty on the Functioning of the European Union.
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The High Court of Justice of Asturias (Oviedo) considers the supplication appeal made by the applicant Eusebio against the Instituto Nacional de la Seguridad Social (INSS) and revokes the INSS Resolution and declares the appellant's right to receive a pension for an initial amount of EUR 880.01 a month equivalent to a percentage of 56% of the regulatory base that is EUR ,.585, 74. Additionally, the High Court of Justice orders that the Tesorería General de la Seguridad Social (TGSS) - the responsible entity for the payments- to pay the defendant this amounts of money.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"La proyeccion al supuesto enjuiciado de la normativa citada permite computar éstas bonificaciones para el calculo de la edad de jubilación, encontrándonos así con que a la fecha del hecho causante de la prestación de jubilación reclamada el accionante, nacido el día 11 de febrero de 1950, cumplía el requisito de 65 años de edad ficticios para acceder a ella con cargo exclusivo a la Seguridad Social Española, no siendo preciso acudir al mecanismo de totalización de períodos previstos en el artículo 46 del reiterado Reglamento CEE 1408/1917."</i> (Fundamento de Derecho 3º).</p> <p>Translation:</p> <p>"The application of the law alleging to the prosecuted case allows computing these bonuses for the calculation of the age of retirement, where we encounter that the date of the event causing the retirement</p>

	benefits claimed by the applicant, born on 11 February 1950, meets the requirement of 65 fictitious years to access these benefits with exclusive charge to the Spanish Social Security, not being necessary to go to the mechanism of aggregation of periods provided in Article 46 of the repeated Regulation EEC 1408 / 1917." (Legal reasoning 3 ^a).
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	The deciding body does not refer to the Charter of Fundamental Rights.

2. Table 2 – Overview

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases decided and relevant for the objective of the research if this data is	2	9	1	Not available	Not available

available (covering the reference period)					
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