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

Bulgaria

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Contents

1. Table 1 – Case law

1. Subject matter concerned	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	9 March 2010
Deciding body (in original language)	Комисия за защита от дискриминация (КЗД)
Deciding body (in English)	Commission for Protection against Discrimination (CPD)
Case number (also European Case Law Identifier (ECLI) where applicable)	91/2009
Parties	Applicants v. private medical centre

Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Protection against Discrimination Act (*Закон за защита от дискриминация*), Article 4, para. 2.
Key facts of the case (max. 500 chars)	An Italian citizen and his Bulgarian wife were spending their vacation in a Bulgarian resort. (The Italian citizen was not resident in Bulgaria. He and his wife visited the country for holidays. He had no medical insurance, but he had a European Health Insurance Card). As a result of an incident, the man injured his ankle and had to visit a local private medical centre. There, he was examined by a doctor, his ankle was bandaged and he received prescription for medication. For the services the patient was charged €320. After sharing their experience with their friends, the family went back to the medical centre to check if they had been correctly charged. After asking for the price list, they obtained a document in English, in the prices were listed without an indication of the currency. The personnel of the medical centre informed them that the prices were in Euro and provided them with another copy of the same price list where the currency was added by hand. At that moment, other patients entered the centre, asked for the same services and obtained lower prices. When the family asked for an explanation, they were told that for Bulgarian citizens there was a different price list with lower prices. The family filed a complaint to the Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) claiming that the case represented discrimination on the ground of nationality.
Main reasoning / argumentation	The Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) found that the complaint contained sufficient information to conclude that there was discrimination against the applicant. Applying the shift of the burden of proof principle, the Commission requested the medical centre to present evidence that the right to equal treatment was not violated. The medical centre argued that the price list for Bulgarian citizens was in fact applicable only to persons working in the resort, but did not present

(max. 500 chars)	evidence to prove it. The centre presented only financial documents showing that similar prices were charged to other foreign nationals before, which were not considered relevant for proving that Bulgarian and foreign nationals were treated equally.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In its decision, the Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) noted that, according to the case law of the European Court of Justice, the freedom to provide services, as laid down in Article 49 of the Treaty establishing the European Community, applies also to services in the area of healthcare. The Commission also concluded that charging different prices to Bulgarian and foreign nationals for the provision of the same services was a violation not only of the national anti-discrimination legislation but also of Article 12 of the Treaty establishing the European Community.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) found the medical centre guilty of direct discrimination on the ground of citizenship and issued mandatory recommendation obliging the centre to refraining from providing medical services on different prices for Bulgarian and foreign citizens.
Key quotations in original language and translated into English with reference	*„Не на последно място следва да се отбележи също така, че свободата на предоставяне и получаване на услуги, уредена в чл. 49 ДЕО (нов чл. 56 след измененията с Договора от Лисабон), е една от четирите основни свободи в рамките на ЕС, на която се основава функционирането на вътрешния пазар. Съществува богата практика на Съда на Европейските общности (след Договора от Лисабон Съд на Европейския съюз), според която оказването на медицински услуги на пациент в здравни заведения, попада в обхвата на бившия чл. 49 ДЕО (2). Предоставянето и съответно получаването на услуги следва да се извършва без каквато и да е дискриминация на признак гражданство, особено спрямо гражданите*

details (max. 500 chars)	*на друга страна на ЕС, решили да се възползват от правото си на свободно движение в друга страна-член на Общността."* Translation: "Last but not least, it should be noted that the freedom to provide and receive services regulated by Article 49 TEC (new Article 56 as amended by the Treaty of Lisbon) is one of the four fundamental freedoms within the EU on which the functioning of the internal market is based. There is a rich case-law of the Court of Justice of the European Communities (after the Treaty of Lisbon Court of Justice of the European Union) according to which the provision of medical services to a patient in healthcare establishments falls within the scope of former Article 49 TEC (2). The provision and respectively the receipt of services should be carried out without any discrimination on grounds of nationality, especially with respect to nationals of another EU country who have decided to avail themselves of their right to free movement in another Member State of the Community." Bulgaria, Commission for Protection against Discrimination (*Комисия за защита от дискриминация*), Decision No. 54 of 9 March 2010 on Case No. 91/2009 (*Решение № 54 от 9.03.2010 г. на КЗД по преписка № 91/2009 г.*), 9 March 2010.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

2. **Subject matter concerned**	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	9 March 2010
Deciding body (in original language)	Комисия за защита от дискриминация (КЗД)
Deciding body (in English)	Commission for Protection against Discrimination (CPD)
Case number (also European Case Law Identifier (ECLI) where applicable)	11/2007
Parties	Commission for Protection against Discrimination (CPD) v. private utility company

Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Protection against Discrimination Act (*Закон за защита от дискриминация*), Article 4, para. 2, Article 12, para. 1.
Key facts of the case (max. 500 chars)	A private utility company published a job advertisement, in which one of the language requirements for the position were defined as 'mother tongue – Bulgarian'. In addition, the advertisement used the female form of the Bulgarian word for secretary (*секретарка*). A member of the Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) saw that advertisement and suggested to the commission to open proceedings upon its own initiative for multiple discrimination on the grounds of ethnic origin and sex. During the proceedings the commission also examined the case in view of discrimination on the ground of citizenship.
Main reasoning / argumentation (max. 500 chars)	In her report to the Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД), the member of the commission argued that the requirement for Bulgarian as mother tongue makes the vacant position accessible only to Bulgarians, which represent unequal treatment of all other potential candidates meeting the other requirements. The utility company argued that the wording of the advertisement was used by mistake and that the company's internal rules explicitly prohibit the inclusion of any requirement for nationality in the job descriptions of vacant positions.
Key issues (concepts, interpretations) clarified by	In its decision, the Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) examined not only the grounds of ethnic origin and sex, but also the ground of nationality. The commission accepted the explanations provided by the utility company, but noted that, in the future, it must define the language requirements more precisely in order to prevent discrimination when recruiting personnel.

the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Commission for Protection against Discrimination (CPD) (*Комисия за защита от дискриминация*, КЗД) did not find the utility company guilty of discrimination and did not impose the requested sanctions and mandatory recommendations.
Key quotations in original language and translated into English with reference details (max. 500 chars)	*„В откритото заседание ответната страна установява, че е недопустимо според вътрешните правила на „Т. В." ЕАД, въведени от едноличния собственик ЧЕЗ А.С., Република Чехия, да се поставя като условие за заемане на съответната длъжност в дружеството критерий като „гражданство" на кандидата. Комисията кредитира обясненията за допусната техническа грешка поради недоброто познаване на българския език от съответния служител, но предупреждава, че за в бъдеще ответната страна – работодател следва прецизно да формулира обявите за вакантните длъжности с оглед изискването за владеене на един или друг език."* Translation: "During the hearing, the defendant argued that it was inadmissible under the internal rules of 'T.V.' EAD, introduced by the sole owner CEZ A.S., Czech Republic, to set as a condition for occupying the relevant position in the company a criterion such as the 'citizenship' of the applicant. The Commission has credited the explanations for a technical error because of poor knowledge of the Bulgarian language by the respective

	employee, but warns that in the future the defendant in its capacity of employer should accurately formulate job vacancy notices in view of the requirement for fluency in one language or another." Bulgaria, Commission for Protection against Discrimination (*Комисия за защита от дискриминация*), Decision No. 38 of 7 May 2007 on Case No. 11/2007 (*Решение № 38 от 7.05.2007 г. на КЗД по преписка № 11/2007 г.*), 7 May 2007.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

3. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to Article 26 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition

Decision date	6 January 2011
Deciding body (in original language)	Административен съд – София-град (АССГ)
Deciding body (in English)	Sofia City Administrative Court (SCAC)
Case number (also European Case Law Identifier (ECLI) where applicable)	Administrative case No. 6095/2010
Parties	Applicant v. Migration Directorate, Ministry of the Interior (MD-MoI) (*Дирекция „Миграция, Министерство на вътрешните работи*, ДМ-МВР)
Web link to the decision (if available)	https://legalacts.justice.bg/Search/Details?actId=%2BA%2B3ozmGOng%3D
Legal basis in national law of the rights under dispute	Entry, Stay and Departure from the Territory of the Republic of Bulgaria of Citizens of the European Union and Their Family Members (*Закон за влизането, пребиваването и напускането на територията на Република България на гражданите на Европейския съюз и членовете на техните семейства*), Article 27, para. 1, Article 23, para. 1, Article 26, paras. 1 and 2.
Key facts of the case (max. 500 chars)	In July 2010, a Greek citizen was detained at the border while trying to enter the country. In the truck he was driving, the police found 73 foreigners hidden in the cargo compartment. The Migration Directorate of the Ministry of the Interior (MD-MoI) (*Дирекция „Миграция на Министерство на вътрешните работи*, ДМ-МВР)

	imposed a ban on the Greek citizen to enter Bulgaria for a period of 10 years. He appealed the ban before the court claiming that the imposed measure was not legally justified.
Main reasoning / argumentation (max. 500 chars)	In its decision, the court referred to the Entry, Stay and Departure from the Territory of the Republic of Bulgaria of Citizens of the European Union and Their Family Members (*Закон за влизането, пребиваването и напускането на територията на Република България на гражданите на Европейския съюз и членовете на техните семейства*), which authorises the competent authorities to ban citizens of other EU Member States to enter Bulgaria for a maximum period of 10 years if "their personal conduct represents a genuine threat for national security or for whom there is information that they are acting against national security and public order". According to the court, the act of illegally transferring 73 foreigners across the border without passing the mandatory border and passport control is a violation of public order and therefore represents sufficient ground for imposing the ban.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision is related to the implementation of Article 26 of the Entry, Stay and Departure from the Territory of the Republic of Bulgaria of Citizens of the European Union and Their Family Members (*Закон за влизането, пребиваването и напускането на територията на Република България на гражданите на Европейския съюз и членовете на техните семейства*), which transposes Article 27 of Directive 2004/38/EC. The fact that the applicant was citizen of another EU Member State (Greece) justified the application of this special law instead of the general Foreigners in the Republic of Bulgaria Act (*Закон за чужденците в Република България*).
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court found the imposed ban fully justified and rejected the claims of the applicant.

Key quotations in original language and translated into English with reference details (max. 500 chars)	*„В случая е установено, че с управлявания от жалбоподателя товарен автомобил на територията на Република Б са въведени седемдесет и три чуждестранни граждани, които са били укрити в транспортното средство и по този начин са преминали границата на Република Б в нарушение на установените законови разпоредби и избягвайки граничен и паспортен контрол. Посоченото деяние нарушава установения в Република Б обществен ред, поради което извършването му е основание за приложение на разпоредбата на чл. 26, ал.1 от ЗВПНРБГЕСЧТС спрямо гръцкия гражданин, който е и гражданин на Европейския съюз."* Translation: "In the present case, it was established that the truck driven by the applicant on the territory of Republic of B has transported seventy-three foreign citizens, who have been hidden in the vehicle and thus have crossed the border of Republic of B in violation of established laws and regulations and avoiding border and passport control. The act in question violates the public order established in the Republic of B and, therefore, it gives grounds for the application of the provision of Article 26, Para (1) of the Entry, Stay and Departure from the Territory of the Republic of Bulgaria of Citizens of the European Union and Their Family Members Act as regards the Greek citizen who is also a citizen of the European Union." Bulgaria, Sofia City Administrative Court (*Административен съд – София-град*), Decision No. 59 of 6 January 2011 on Administrative case No. 6095/2010 (*Решение № 59 от 6.01.2011 г. на АдмС - София по адм. д. № 6095/2010 г.*), 6 January 2011.
Has the deciding body referred to the	No.

Charter of Fundamental Rights? If yes, to which specific article.	

4. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to Article 10 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	15 May 2015
Deciding body (in original language)	Административен съд – София-град (АССГ)
Deciding body (in English)	Sofia City Administrative Court (SCAC)
Case number (also European Case Law	Administrative case No. 1165/2015

Identifier (ECLI) where applicable)	
Parties	Applicant v. Directorate General Border Police, Ministry of the Interior (MD-MoI) (*Главна дирекция „Гранична полиция", Министерство на вътрешните работи*, ГДГП-МВР)
Web link to the decision (if available)	https://legalacts.justice.bg/?CourtId=MrtzDZnBuv0%3D&CaseKindId=fVzG5OUnT8U%3D&CaseNumber=%2B09DBeWsYmE%3D&CaseYear=b1I4DZ6AW3w%3D&ShowConnected=False&IsLuceneInUse=True&ShowResults=True&IsAdvanced=False
Legal basis in national law of the rights under dispute	Entry, Stay and Departure from the Territory of the Republic of Bulgaria of Citizens of the European Union and Their Family Members (*Закон за влизането, пребиваването и напускането на територията на Република България на гражданите на Европейския съюз и членовете на техните семейства*), Article 12, para. 1.
Key facts of the case (max. 500 chars)	In December 2014, a Iranian citizen, father of a British national living in Bulgaria, applied for a residence card of a family member of a Union citizen. The application was submitted by post to Directorate General Border Police of the Ministry of the Interior (MD-MoI) (*Главна дирекция „Гранична полиция", Министерство на вътрешните работи*, ГДГП-МВР). With the application, the applicant also requested to be provided with a certificate of application for the residence card. The certificate, also envisaged in Article 10, para. 1 of Directive 2004/38/EC, serves as a document proving that the person has applied for a residence card. Instead of issuing the requested documents, Directorate General Border Police of the Ministry of the Interior (MD-MoI) (*Главна дирекция „Гранична полиция", Министерство на вътрешните работи*, ГДГП-МВР) issued a residence permit for a family member of EU citizen and informed him that his residence card application will be issued after the conclusion of his international protection procedure. The Iranian citizen appealed the rejection to be issued a residence card before the court.
Main reasoning /	Directorate General Border Police of the Ministry of the Interior (MD-MoI) (*Главна дирекция „Гранична полиция", Министерство на вътрешните работи*, ГДГП-МВР) argued that the residence card application was

argumentation (max. 500 chars)	lawfully rejected, because the applicant was a family member of a family of an EU citizen, but had not exercised his right of free movement. Therefore, instead of a residence card, he was issued a residence permit according to Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue clarified by the case is the difference between two pieces of EU law and their corresponding national transposition provisions. In its decision, the court noted that Article 5 of Council Regulation (EC) No. 1030/2002 was not correctly transposed in Bulgarian law. According to the court, Council Regulation (EC) No 1030/2002 should not apply to third country nationals who are family members of EU citizens. For this category of persons, the applicable provision should be Article 10 of Directive 2004/38 and this provision does not require applicants to have exercised their right to free movement or to be accompanied by or uniting with a citizen of the EU. The only requirement laid down in Article 10 of Directive 2004/38 is that the person is not an EU citizen, but is a member of the family of EU citizen.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court repealed the silent refusal of Directorate General Border Police of the Ministry of the Interior (MD-MoI) (*Главна дирекция „Гранична полиция", Министерство на вътрешните работи*, ГДГП-МВР) to provide the applicant with a certificate of application for the residence card and forwarded the case to the migration authorities with mandatory instructions to immediately issue the certificate.
Key quotations in original language and translated into English with	*„Анализът на визираните разпоредби от визирания акт на вторичното право на ЕС, налага извода, че от регулацията на същия са изключени отношенията, свързани с издаването на документи за пребиваване на територията на ЕС на членовете на семействата на гражданите на ЕС, които не са граждани на съюза. Тези отношения са регламентирани в чл. 10 на Директива 2004/38 ЕО, съгласно чиято т. 1, правото на пребиваване на членове на семейството на гражданин на Съюза, които не са граждани на държава–*

reference details (max. 500 chars)	*членка, се доказва чрез издаването на документ, наричан „Карта за пребиваване на член на семейството на гражданин на Съюза", не по-късно от шест месеца от датата на внасяне на молбата. Удостоверение за това, че лицето е подало молба за карта за пребиваване се издава незабавно. Директивата не поставя никакви допълнителни изисквания за това дали лицето е упражнило правото си на свободно движение или дали се придружава или се присъединява към гражданин на Европейския съюз, така както е записано в чл. 9а и чл. 12 от Закона. […] Издаването на двата документа по никакъв начин не е обвързано с процедурите по предоставяне на закрила, открити по отношение на лицето."* Translation: "The analysis of the envisaged provisions of the EU secondary law act calls for the conclusion that its regulation excludes relations related to the issuance of EU residence documents to family members of EU citizens who are not citizens of the Union. These relations are regulated in Article 10 of Directive 2004/38 EC, under which the right of residence of family members of a Union citizen who are not nationals of a Member State is proved by the issue of a document known as 'residence card of a family member of a Union citizen' no later than six months from the date of filing of the application. A certificate that the person has applied for a residence card is issued immediately. The Directive does not impose any additional requirements on whether the person has exercised their right to free movement or whether they are accompanied by or are uniting with a citizen of the European Union as set out in Articles 9a and 12 of the [Bulgarian] law […] The issue of the two documents is in no way tied to the procedures for granting protection opened in respect to the same person." Bulgaria, Sofia City Administrative Court (*Административен съд – София-град*), Decision No. 3402 of 15 May 2015 on Administrative case No. 1165/2015 (*Решение № 3402 от 15.05.2015 г. на АдмС - София по адм. д. № 1165/2015 г.*), 15 May 2015.
Has the deciding body referred to the	No.

Charter of Fundamental Rights? If yes, to which specific article.	

5. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to Article 27 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	22 March 2011
Deciding body (in original language)	Върховен административен съд (ВАС)
Deciding body (in English)	Supreme Administrative Court (SCAC)
Case number (also European Case Law	Interpretative case No. 6/2010

Identifier (ECLI) where applicable)	
Parties	Not applicable. Interpretative cases have no parties.
Web link to the decision (if available)	www.sac.government.bg/TD_VAS.nsf/d6397429a99ee2afc225661e00383a86/e71585c9264812f9c2257e4c0023b7f4?OpenDocument
Legal basis in national law of the rights under dispute	Bulgarian Identity Documents Act (*Закон за българските документи за самоличност*), Article 75(6).
Key facts of the case (max. 500 chars)	Upon initiative of its chair, the Supreme Administrative Court (SAC) (*Върховен административен съд*, BAC) opened an interpretative case (*тълкувателно дело*) to examine whether the ban to leave the country, imposed on persons with outstanding financial obligations, corresponded to Article 27 of Directive 2004/38. According to Article 75(6) of the Bulgarian Identity Documents Act (*Закон за българските документи за самоличност*), a ban to leave the country shall be imposed on any person, who "does not comply with an enforceable court decision, by which they have been sentenced to pay a financial obligation in large amounts to Bulgarian natural or legal persons or foreign persons, unless they provide an adequate security".
Main reasoning / argumentation (max. 500 chars)	In its decision, the court referred to the direct effect of EU directives and the supremacy of EU law before any piece of national legislation that is not in line with it. According to the court, the ban restricted the right to free movement and residence on the territory of EU Member States. According to Article 27 of Directive 2004/38, Member States were allowed to impose such restrictions, but only on the grounds of public policy, public security or public health. The scope of these grounds is not defined in EU law, but can be derived from the case law of the Court of Justice of the European Union. In addition to that, Directive 2004/38 introduces clear rules for the application of these restrictions: they shall not be invoked to serve economic ends, they shall

	comply with the principle of proportionality, they shall be based exclusively on the personal conduct of the individual concerned, etc. According to EU law and the case law of the Court of Justice of the European Union, when applying a restriction on the right to free movement, national authorities should assess the personal conduct of the individual concerned taking into account the particulars of each case. On the contrary, according the Bulgarian law, national authorities are not allowed to assess the particulars of the case, but are rather bound by the imperative nature of the legal provision.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision evaluates the compliance of a national legal provision to the provision of Article 27 Directive 2004/38 and elaborates on the direct effect of the directive and on the supremacy of EU law before national law. It also refers to a number of the decisions of the Court of Justice of the European Union, where these issues have been discussed.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court found that the provision of Article 75(6) of the Bulgarian Identity Documents Act (*Закон за българските документи за самоличност*) was not fully compliant with Directive 2004/38. Therefore, national courts are authorised to directly apply the directive and repeal any ban for leaving the country, which contradicts to its provisions. Two months after the decision of the court was published, the Constitutional Court declared the provision of Article 75(6) of the Bulgarian Identity Documents Act (*Закон за българските документи за самоличност*) unconstitutional. In its decision, the Constitutional Court stated that by declaring the provision unconstitutional "favourable prerequisites will be created for the more comprehensive and precise transposition of the provision of Article 27 of Directive 2004/38/EC".
Key quotations in original language and translated into	*„12. Европейското законодателство и практиката на Съда на Европейския съюз изискват дерогацията на правото на свободно движение да бъде функция на преценката на компетентния национален орган на конкретните релевантни факти по отношение на конкретното лице. Те не допускат налагане на ограничение при условията на обвързана компетентност, тъй като това прави невъзможна преценката за*

English with reference details (max. 500 chars)	*наличието на достатъчно сериозна и актуална заплаха, която съответното лице представлява за някой от фундаменталните интереси на обществото.* *13. По силата на българската правна норма компетентният национален орган няма право да извършва индивидуална преценка на изключително личното поведение на лицето, както и да установи съществуването на истинска, реална и достатъчно сериозна заплаха, която засяга някой от основните интереси на обществото. Налице е законово установен автоматизъм на налагане на принудителната административна мярка."* Translation: "12. The European legislation and the case-law of the Court of Justice of the European Union require that the derogation of the right to free movement be a function of the assessment of the relevant national authority of the particular facts relevant to the individual concerned. They do not allow the imposition of a constraint under a constrained jurisdiction as this makes it impossible to judge the existence of a sufficiently serious and current threat that the person concerned represents for one of the fundamental interests of society. 13. Under the Bulgarian law, the competent national authority is not entitled to make an individual assessment of the individual's personal behaviour and to establish the existence of a genuine, real and sufficiently serious threat affecting one of the fundamental interests of society. There is a legally established automatism of imposing the compulsory administrative measure." Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Interpretative decision No. 2 of 22 March 2011 on Interpretative case No. 6/2010 (*Тълкувателно решение № 2 от 22.03.2011 г. на ВАС по тълк. д. № 6/2010 г.*), 22 March 2011.
Has the deciding body referred to the Charter of	No.

Fundamental Rights? If yes, to which specific article.	

6. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of Directive 2004/38 ☒ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	4 May 2011
Deciding body (in original language)	Конституционен съд на Република България (КСРБ)
Deciding body (in English)	Constitutional Court of the Republic of Bulgaria (CCRB)
Case number (also European Case Law Identifier	Constitutional case No. 4/2011

(ECLI) where applicable)	
Parties	53 Members of Parliament
Web link to the decision (if available)	www.constcourt.bg/bg/Acts/GetHtmlContent/2c0ed83d-bae1-41c0-a60c-e79e90a6b31b
Legal basis in national law of the rights under dispute	Constitution of the Republic of Bulgaria (*Конституция на Република България*), Article 42, para. 1.
Key facts of the case (max. 500 chars)	In December 2010, the parliament adopted a new Election Code (*Изборен кодекс*). The new legislation envisaged certain restrictions to the right to vote and stand as candidate in local elections and elections to the European Parliament. The restrictions applied also to citizens of other EU Member States. In order to vote and stand as candidates in local elections, citizens of EU Member States had to have lived in the respective locality during the last 12 months. In order to stand as candidates in elections to the European Parliament, citizens of EU Member States had to have lived in Bulgaria or another EU Member State during the last two years. The same restrictions were envisaged for Bulgarian citizens as well. A group of 53 Members of Parliament sent a complaint to the Constitutional Court of the Republic of Bulgaria (CCRB) (*Конституционен съд на Република България*, КСРБ) claiming that these restrictions violated the voting rights of Bulgarian citizens and citizens of other EU Member States and asking the court to declare the respective provisions unconstitutional.
Main reasoning / argumentation (max. 500 chars)	In their complaint, the Members of Parliament argued that, in the Constitution, there were no 'settlement' requirements (requirements for living in a certain place for a certain period of time) restricting the participation in elections. Therefore, adding such restrictions by a law was a form of 'supplementing' the Constitution. The applicants also claimed that such restrictions infringed upon the voting rights of individuals and violated a number of international legal instruments, including the Universal Declaration of Human Rights, the Covenant

	on Political and Civil Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. For example, Article 7 of the Universal Declaration of Human Rights prohibits discrimination in any form; Article 2 proclaims the equality between the citizens, and Article 21, para. 3 explicitly states that there must be "genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms goes in the same direction. Article 25b of the International Covenant on Civil and Political Rights states that every citizen has the right "to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors". In the opinion of the applicants, none of these basic principles and norms of international law was reflected in the contested provisions.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In its decision, the Constitutional Court of the Republic of Bulgaria (CCRB) (*Конституционен съд на Република България,* КСРБ) noted that the link between a person and a certain community is a legitimate precondition for the exercise of his/her electoral rights. Traditionally, that link is ensured by introducing a requirement for the person to be citizen of the country in which elections take place, or of an EU Member State in local elections and elections to the European Parliament. The requirement for the person to have lived in a certain locality is considered legitimate also by the Venice Commission and the European Court for Human Rights. At the same time, the court found that the introduction of an excessively long period, during which the person must have lived in a certain location, can turn the requirement into an obstacle to the effective exercise of electoral rights. According to the Venice Commission, such a requirement should not exceed a maximum of six months.
Results (e.g. sanctions) and key consequences or implications of the case	The Constitutional Court of the Republic of Bulgaria (CCRB) (*Конституционен съд на Република България*, КСРБ) declared as unconstitutional the duration of the two settlement requirements as defined in the Election Code (*Изборен кодекс*). As a result of this decision, the parliament amended the law and decreased down to six months all the settlement requirements which were declared unconstitutional. In the new Election Code (*Изборен кодекс*), which was adopted in February 2014, the six-month periods were not changed.

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	*„Конституционният съд преценява такова изискване за „живеене" като прекомерно, защото превръща допустимите и разумни изисквания към носителя на избирателното право в ограничение и ценз и в този смисъл противоречи на чл. 10 от Конституцията. Срокове от „12 месеца" и „2 години" нарушават и конституционния принцип за пропорционалност при поставянето на допустими изисквания към упражняването на основни права, каквото е избирателното право – не е налице сериозно оправдание за наложителност на толкова дълъг период, който да е необходим за упражняването на избирателното право по предназначението му. В Изборния кодекс не се съдържа измерител или сравнение, което да осмисля и оправдава срока „12 месеца" или „2 години". Конституционният съд констатира и несъразмерност с оглед продължителността на мандата на органите, за чието избиране се произвеждат въпросните избори и съответно се упражняват избирателните права – общински съвети и кметове се избират за 4 години (чл. 138 и чл. 139, ал. 1 от Конституцията), 1/4 от това време избирател и избираем трябва да е живял в населеното място; членове на ЕП се избират за 5 години – за да си избираем, трябва съответно 2 години „живеене" в държава-членка."* Translation: "The Constitutional Court considers such a requirement for 'living' to be excessive because it makes the permissible and reasonable requirements to the holder of the electoral right in a limitation and threshold, and in this sense contradicts Article 10 of the Constitution. Durations of '12 months' and '2 years' also violate the constitutional principle of proportionality in imposing admissible requirements on the exercise of fundamental rights such as the right to vote - there is no serious justification for the need for such a long period as a necessary precondition for duly exercising the right to vote. The Election Code does not contain a measure or a comparison that would make sense and justify the term of '12 months' or '2 years'. The Constitutional Court

	also finds a disproportion in terms of the length of the mandate of the bodies for which the elections in question are held and, accordingly, electoral rights are exercised - municipal councils and mayors are elected for four years (Articles 138 and 139 (1) of the Constitution), 1/4 of this time the voter and the candidate should have lived in the locality; MEPs are elected for 5 years - in order to be an eligible candidate, one needs 2 years of 'living' in a Member State respectively." Bulgaria, Constitutional Court of the Republic of Bulgaria (*Конституционен съд на Република България*), Decision No. 4 of 4 May 2011 on Constitutional case No. 4/2011 (*Решение № 4 от 4.05.2011 г. на КС по конституционно дело № 4/2011 г.*), 9 May 2011.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

7. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to Article 4 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition

Decision date	11 July 2011
Deciding body (in original language)	Административен съд – София-град (АССГ)
Deciding body (in English)	Sofia City Administrative Court (SCAC)
Case number (also European Case Law Identifier (ECLI) where applicable)	Administrative case No. 3882/2011
Parties	Applicant vs Migration Directorate, Ministry of the Interior (MD-MoI) (*Дирекция „Миграция", Министерство на вътрешните работи*, ДМ-МВР)
Web link to the decision (if available)	https://legalacts.justice.bg/Search/Details?actId=PnkiF215jyw%3D
Legal basis in national law of the rights under dispute	Foreigners in the Republic of Bulgaria Act (*Закон за чужденците в Република България*), Article 75.

Key facts of the case (max. 500 chars)	In April 2010, a citizen of Kosovo married to a Bulgarian citizen was imposed a ban to leave Bulgaria due to unsettled financial debts and a pending enforcement procedure in relation to these debts. The ban was imposed by an order of the Director of Migration Directorate of the Ministry of the Interior (MD-MoI) (*Дирекция „Миграция", Министерство на вътрешните работи*, ДМ-МВР). The citizen of Kosovo appealed against the ban before the court, claiming that it violated his right as a family member of an EU citizen to leave the territory of a Member State and to travel to another Member State stipulated in Article 4 of Directive 2004/38/EC.
Main reasoning / argumentation (max. 500 chars)	According to the court, the ban to leave the country, imposed on the foreign citizen, restricts his right to leave a Member State stipulated in Article 4 of Directive 2004/38/EC. The provisions of EU law are superior to those of national law when there is contradiction between them. Article 27 of Directive 2004/38/EC allows Member States to restrict this right, but only on the grounds of public policy, security and health and in compliance with the principle of proportionality. The imposed ban contradicts these provisions and should therefore be repealed.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The case is an example of incorrect interpretation by Bulgarian courts of the scope of application of Directive 2004/38/EC. According to the court, the directive applies to all family members of EU citizens, irrespective of whether the latter are in their own country or in another Member State. In this case, the court applies Article 4 and Article 27 of the directive on a family member of a Bulgarian citizen residing in Bulgaria, i.e. who has not exercised their right to free movement.
Results (e.g. sanctions) and key consequences or implications of the case	The court repealed the order of the Director of Migration Directorate of the Ministry of the Interior (MD-MoI) (*Дирекция „Миграция", Министерство на вътрешните работи*, ДМ-МВР), by which the foreign citizen was banned from leaving Bulgaria.

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	*„Пребиваващ на законно основание в РБ чужденец, който е съпруг на български гражданин се определя като член на семейството на гражданин - член на Съюза (чл. 2, пар. 2, б. "а", вр. пар. 1 от Директива 2004/38/ЕО). Поради това, жалбоподателят, за когото ответникът не оспорва да е съпруг на български гражданин също се ползва от установените в Директива 2004/38/ЕО на Европейския парламент и на Съвета, от 29 април 2004 г. относно правото на граждани на Съюза и на членове на техните семейства да се движат и да пребивават свободно на територията на държавите - членове на ЕС. Забраната чужденецът да напуска РБ пряко ограничават правото му на излизане, прогласено с чл. 4, пар. 1 от Директивата.* Translation: “A foreigner, legally residing in the Republic of Bulgaria, who is spouse of a Bulgarian citizen, is defined as a member of the family of a citizen - member of the Union (Article 2, paragraph 2, sub-paragraph "a", in relation to paragraph 1 of Directive 2004/38/EC). Therefore, the applicant, who is spouse of a Bulgarian citizen and this is not disputed by the defendant, also benefits from the provisions laid down in Directive 2004/38 /EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The banning of the foreigner to leave the Republic of Bulgaria directly limits his right of exit, proclaimed in Article 4, paragraph 1 of the Directive.” Bulgaria, Sofia City Administrative Court (*Административен съд – София-град*), Decision No. 3413 of 11 July 2011 on Administrative case No. 3882/2011 (*Решение № 3413 от 11.07.2015 г. на АдмС - София по адм. д. № 3882/2011 г.*), 11 July 2015.

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	The court has not referred to a specific article of the Charter of Fundamental Rights but to the Charter in general, stating that the right of movement and of residence are guaranteed by the Charter.

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	n.a.	n.a.	n.a.	n.a.	n.a.

if this data is available (covering the reference period)					