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

# Czech Republic

# 2017

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1. Table 1 – Case law

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| **1. Subject matter concerned** | ☐ 1) non-discrimination on grounds of nationality<br>X 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38: Article 27<br>☐ 3) voting rights<br>☐ 4) diplomatic protection<br>☐ 5) the right to petition |
| **Decision date** | 26 July 2011 |
| **Deciding body (in original language)** | Nejvyšší správní soud |
| **Deciding body (in English)** | Supreme Administrative Court |
| **Case number (also European Case Law Identifier (ECLI) where applicable)** | 3 As 4/2010 - 151 |
| **Parties** | A. Ch., the applicant, v. the Police of the Czech Republic |
| **Web link to the decision (if** | http://nssoud.cz/files/SOUDNI_VYKON/2010/0004_3As__100_20110824101119_prevedeno.pdf |

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| **available)** | |
| **Legal basis in national law of the rights under dispute** | § 119, Section 2, letter b) of the Law on the Residence of Foreigners. |
| **Key facts of the case** (max. 500 chars) | The applicant, A.C., had administrative expulsion from the territory of the Czech Republic imposed on him owing to a serious violation of public order. The Police of the Czech Republic argued that the fact that the applicant had not respected previous expulsions from the territory of the Czech Republic and, despite the existence of expulsion orders, continued to reside in the Czech Republic, represents such a violation. The applicant was a family member of an EU citizen. § 119, Section 2, of the Act on the Residence of Foreign Nationals makes it possible to impose the sanction of administrative expulsion on an EU citizen or his/her relatives in the case of violation of public order. The case was submitted to the extended senate of the Supreme Administrative Court as, up to the time of the present decision, there was no uniform interpretation of the term “serious violation of public order” in the case law of the Supreme Administrative Court. |
| **Main reasoning / argumentation** (max. 500 chars) | The extended senate of the Supreme Administrative Court explained that the fact of illegally entering or illegally staying on the territory of the Czech Republic could not be considered a real, current and serious violation of some of the basic interests of society. Moreover, such conduct on its own cannot serve as the basis for such a serious intrusion into the rights of an individual as expulsion from the territory when the person at stake is a family member of an EU citizen or a family member of a citizen of the Czech Republic. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 | Furthermore, the extended senate of the Supreme Administrative Court is of the opinion that the sole fact of concluding a fake marriage cannot be understood as a violation of public order as, in most of the cases, it does not represent a real, current and sufficiently serious endangering of some of the basic interests of the society that would on its own serve as grounds for such a serious intrusion into the rights of a foreign national as expulsion from the territory of the Czech Republic. Moreover, a fake marriage cannot provide a basis for a “serious” violation of the public order in the sense of § 119, Section 2, letter b) of the Foreign |

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| chars) | Nationals Act. |
| **Results (e.g. sanctions) and key consequences or implications of the case** (max. 500 chars) | The extended senate returned the case to the third senate of the Supreme Administrative Court to decide the case in line with the legal opinion provided by the extended senate. |
| **Key quotations in original language and translated into English with reference details** (max. 500 chars) | *Při výkladu pojmů "veřejný pořádek", resp. "závažné narušení veřejného pořádku", používaných v různých kontextech zákona č. 326/1999 Sb., o pobytu cizinců na území České republiky, je třeba brát v úvahu nejen celkový smysl dané právní úpravy, ale přihlížet i k rozdílným okolnostech vzniku, původu a účelu jednotlivých ustanovení, v nichž jsou tyto pojmy užity.*<br><br>*Narušením veřejného pořádku podle § 119 odst. 2 písm. b) zákona č. 326/1999 Sb., o pobytu cizinců na území České republiky, může být jen takové jednání, které bude představovat skutečné, aktuální a dostatečně závažné ohrožení některého ze základních zájmů společnosti (viz čl. 27 odst. 2 směrnice Evropského parlamentu a Rady 2004/38/ES). I v takovém případě je však nutno zohlednit individuální okolnosti života cizince a přihlédnout k jeho celkové životní situaci.*<br><br>Translation:<br><br>When interpreting the terms ‘public order’ and ‘serious violation of public order’ that are used in various contexts of the Act 326/1999, on the Residence of Foreign Nationals on the Territory of the Czech Republic, it is necessary to take into account not only the overall meaning of the legal regulation as a whole, but also |

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| | the varying circumstances of the particular provisions that are using these terms, their origin and purpose.<br><br>A violation of public order according to § 119, Section 2, letter b) of the Act 326/1999 on the Residence of Foreign Nationals can only be considered such conduct that represents a real, current and sufficiently serious threat to some of the fundamental interests of society (see Article 27, Section 2 of the EU Directive 2004/38/EC). Even in such a case, it is necessary to take into account individual circumstances in the life of a specific foreigner and to consider his/her overall life situation. |
| **Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.** | No. |

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| **2. Subject matter concerned** | ☐ 1) non-discrimination on grounds of nationality<br>☐ 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br>X 3) voting rights<br>☐ 4) diplomatic protection<br>☐ 5) the right to petition |
| **Decision date** | 19 April 2010 |

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| **Deciding body (in original language)** | Ústavní soud |
| **Deciding body (in English)** | The Constitutional Court |
| **Case number (also European Case Law Identifier (ECLI) where applicable)** | IV. ÚS 1403/09<br><br>ECLI:CZ:US:2010:4US.1403.09.1 |
| **Parties** | Plaintiff: The preparatory committee for the referendum on the separation of Březhrad from the statutory city of Hradec Králové |
| **Web link to the decision (if available)** | http://nalus.usoud.cz/Search/GetText.aspx?sz=4-1403-09_1 |
| **Legal basis in national law of the rights under dispute** | The Act on Municipalities No. 128/2000 Coll. establishes the conditions by which a part of a municipality can separate and establish a new municipality if the citizens of the newly established municipality agree to this in a local referendum. According to Article 1, paragraph 21 of the act, the newly established municipality must have at least 1,000 citizens.<br><br>The Act on Local Referendum No. 22/2004 Coll. establishes the conditions for holding a local referendum. The subject of the local referendum must not be against the law. |

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| **Key facts of the case** (max. 500 chars) | The plaintiff wanted to hold a local referendum on the issue of the separation of Březhrad (part of the city Hradec Králové) from the statutory city of Hradec Králové. The local board refused to hold the referendum because the outcome of the referendum could not be legally implemented, i.e. the newly established municipality would have fewer than 1,000 citizens. The plaintiff filed a complaint and the case reached the Constitutional Court. One of the questions was whether the minimum required number of citizens had to include only Czech citizens with a permanent residence in the municipality or could also include foreign nationals that have their permanent residence there. |
| **Main reasoning / argumentation** (max. 500 chars) | The Constitutional Court stated that the interpretation of the word 'citizen' in Article 1, paragraph 21 of the Act on Municipalities as 'citizen of the Czech Republic' would be too limited. The Act on Municipalities also gives certain rights to foreign nationals with a permanent residence. Therefore, the right interpretation of 'citizen' would be 'Czech citizen and also a person that is older than 18 years and has permanent residence in the municipality; if it is set by an international treaty that the Czech Republic is bound by and that was published (in practical terms the only international treaty that comes under consideration is the TFEU). |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | The Constitutional Court affirmed the broader definition of the legal term 'citizen' in the Act on Municipalities. This broader interpretation is based on the duty to interpret the law in a manner consistent with European law. |
| **Results (e.g. sanctions) and key consequences or implications of** | The Constitutional Court stated that Article 1, paragraph 21 of the Act on Municipalities is in accordance with the Constitution, but it must be interpreted in a manner consistent with European law, e.g. EU citizens with permanent residence in the municipality must be counted among the 1,000 citizens legally required for establishing a new municipality. This also implies a broadening of the definition of 'citizen' for the whole Act on Municipalities. |

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| **the case** (max. 500 chars) | |
| **Key quotations in original language and translated into English with reference details** (max. 500 chars) | *36. Zůstává otevřen prostor i pro druhou, širší interpretaci pojmu občan ve smyslu § 21 odst. 1 obecního zřízení, na kterou byl krajský soud upozorňován stěžovatelem (srov. str. 3 napadeného rozsudku, v němž stěžovatel uváděl, že s cizinci hlášenými tam k trvalému pobytu by oddělená obec podmínku 1 000 občanů splňovala), a k níž se kloní i Ústavní soud. Podle tohoto výkladu musejí být pod interpretovaný pojem "občan" zahrnuty i osoby zmiňované v § 17 obecního zřízení, podle něhož "Oprávnění uvedená v § 16 má i fyzická osoba, která dosáhla věku 18 let, je cizím státním občanem a je v obci hlášena k trvalému pobytu, stanoví-li tak mezinárodní smlouva, kterou je Česká republika vázána a která byla vyhlášena.". Takovou mezinárodní smlouvou je pak Smlouva o fungování Evropské unie (v konsolidovaném znění), konkrétně její ustanovení čl. 22 odst. 1 (zaručující aktivní a pasivní volební právo v komunálních volbách, publ. in. Úřední věstník Evropské unie ze dne 9. 5. 2008, C 115/57); dále srov. i čl. 40 Listiny základních práv Evropské unie. Tato výkladová alternativa se tudíž opírá o skutečnost, že obecní zřízení ve vazbě na mezinárodní smlouvy přiznává právo podílet se na samosprávě i některým cizím státním příslušníkům. Komentářová literatura přitom oprávnění cizinců podle § 17 obecního zřízení vykládá poměrně extenzivně, neboť by bylo "nevyvážené, aby občané, cizí státní příslušníci, měli možnost kandidovat například do zastupitelstva obce, ale neměli by například právo podávat orgánům obce podněty."*<br><br>*Vedral, J., Váňa, L., Břeň, J., Pšenička, S. Zákon o obcích (obecní zřízení), 1. vydání, Praha 2008, str. 138.*<br><br>Translation:<br>36. There is the possibility of another, broader interpretation of the term citizen in the terms of Article 1, paragraph 21 of the Act on Municipalities, which was presented by the plaintiff in front of the regional court (page 3 of the challenged judgement; the plaintiff claimed that by including foreigners with permanent residence the newly established municipality would have 1,000 citizens), and which the Constitutional Court |

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| | also favours. According to that interpretation, the term 'citizen' would include also persons mentioned in paragraph 17 of the Act on Municipalities, according to which "The rights set out in paragraph 16 concern also a person that is older than 18 years and has permanent residence in the municipality, if these rights are set out by an international treaty that is binding for the Czech Republic, and that has been published." This international treaty is the Treaty on the Functioning of the European Union (consolidated version), specifically Article 22/1 (granting an active and passive voting right in municipal elections, published in the Official Journal of the European Union from 9 May 2008, C 115/57); also in Article 40 of the Charter. This alternative interpretation is based on the fact that the Act on Municipalities in relation to international treaties grants the right to participate in territorial autonomy to some foreign nationals. Legal literature interprets the rights of foreign nationals in paragraph 17 of the Act on Municipalities broadly, since "it would not be consistent if citizens-foreigners had the right to stand as a candidate in the municipal elections but did not have the right to make suggestions to the municipal authorities."<br><br>Vedral, J., Váňa, L., Břeň, J., Pšenička, S. (2008), *The Act on Municipalities*, 1st edition, Prague, p. 138. |
| **Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.** | Yes, Article 40. |

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| **3.** | ☐ 1) non-discrimination on grounds of nationality<br>☐ 2) freedom of movement and residence |

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| **Subject matter concerned** | - linked to which article of Directive 2004/38<br>X 3) voting rights<br>☐ 4) diplomatic protection<br>☐ 5) the right to petition |
| **Decision date** | 19 September 2014 |
| **Deciding body (in original language)** | *Krajský soud v. Brně* |
| **Deciding body (in English)** | The Regional Court in Brno |
| **Case number (also European Case Law Identifier (ECLI) where applicable)** | 64 A 6/2014 - 20<br><br>(does not have ECLI) |
| **Parties** | Plaintiff: P. N.<br>Defendant: Municipal Office of the City of Brno - Královo Pole |
| **Web link to the decision (if available)** | http://www.nssoud.cz/files/EVIDENCNI_LIST/2014/64A_6_2014_20140919133208_prevedeno.pdf |
| **Legal basis in national law of** | The Act on Elections to Municipal Councils No. 491/2001 Coll. in its paragraph 4 grants the right to vote to "another country's citizen that by the election day has reached 18 years of age, has a permanent residence in |

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| **the rights under dispute** | this municipality on the election day and is entitled to vote according to an international treaty that is binding for the Czech Republic and that has been published". |
| **Key facts of the case** (max. 500 chars) | The plaintiff, a citizen of Slovakia who had a temporary residence in the municipality, demanded to be registered in an electoral register. The Municipal Office refused to register him, since he did not have permanent residence, but only temporary one. He, therefore, approached the court. |
| **Main reasoning / argumentation** (max. 500 chars) | The plaintiff claimed that according to Article 22 of the TFEU he has a "right to vote in the municipal election in the Member State in which he resides". The TFEU does not distinguish permanent and temporary residence, but the Act on Elections to Municipal Councils does. The fact that the Act on Elections to Municipal Councils requires a certain type of residence is discriminatory, especially if a foreign national may receive permanent residence after 5 years of residence in the Czech Republic. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | The court stated that according to the Article 20, paragraph 1 and Article 22 paragraph 1 of the TFEU and Council Directive 94/80/EC, EU citizens have the right to vote in the Member State in which they reside under the same conditions as the state's citizens. The Act on Elections to Municipal Councils sets the same conditions for citizens of the Czech Republic and other EU citizens (with permanent residence), but this term has a different meaning for each. The permanent residence of the citizens of the Czech Republic is regulated by the Act on the Register of the Population and Birth Numbers No. 133/2000 Coll. and is purely about registration. On the other hand, the permanent residence of other EU citizens is regulated by the Act on the Residence of Foreign Nationals No. 326/1999 Coll., and it is more difficult to obtain (e.g. long-term residence in the Czech Republic is required). In conclusion, the term is the same, but for each category has substantially a different meaning, which is obviously discriminatory. |
| **Results (e.g. sanctions) and key consequences or** | The court stated that the citizens of an EU Member State have the right to vote in municipal elections even if they only have a temporary residence in the Czech Republic. According to the court, Council Directive 94/80/EC has been incorrectly transposed. It is not possible to interpret the Act on Elections to Municipal Councils in a manner inconsistent with EU law, and the directive has a direct effect in this case. |

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| **implications of the case** (max. 500 chars) | |
| **Key quotations in original language and translated into English with reference details** (max. 500 chars) | *Z porovnání úprav týkajících se evidence trvalého pobytu občana České republiky a občana Evropské unie vyplývá, že se jedná o dvě zcela nesouměřitelné kategorie, neboť pro získání povolení k trvalému pobytu na území České republiky musí občan Evropské unie z jiného členského státu splnit přísnější podmínky než občan České republiky (zejména mj. ve většině případů je podmínkou dlouhodobý pobyt na území České republiky). Zákon o pobytu cizinců nekonstruuje trvalý pobyt, resp. povolení k trvalému pobytu jako evidenční záležitost. Vnitrostátní úprava je proto v rozporu se Smlouvou o fungování EU, podle níž zejména platí, že občané Unie mají mj. právo volit a být voleni v obecních volbách v členském státě, v němž mají bydliště, za stejných podmínek jako státní příslušníci tohoto státu.*<br><br>Translation:<br>From a comparison of the legal regulations concerning the registration of permanent residence of a citizen of the Czech Republic and an EU citizen, it is apparent that the two are completely incommensurable categories, since an EU citizen must meet stricter conditions than a citizen of the Czech Republic (e.g. long-term residence in the Czech Republic). The Act on the Residence of Foreign Nationals does not construct permanent residence or permission thereof as a registration issue. Czech legislation is therefore in conflict with the TFEU according to which EU citizens have the right to vote and to stand as a candidate in municipal elections in the Member State in which they reside under the same conditions as nationals of that state. |
| **Has the deciding body referred to the Charter of Fundamental Rights? If yes, to** | No. |

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| **which specific article.** | |

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| **4.**<br>**Subject matter concerned** | ☐ 1) non-discrimination on grounds of nationality<br>☐ 2) freedom of movement and residence<br>- linked to which article of Directive 2004/38<br>X 3) voting rights<br>☐ 4) diplomatic protection<br>☐ 5) the right to petition |
| **Decision date** | 19 September 2014 |
| **Deciding body (in original language)** | Krajský soud v Brně |
| **Deciding body (in English)** | The Regional Court in Brno |
| **Case number (also European Case Law Identifier (ECLI))** | (does not have an ECLI) |

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| **where applicable)** | |
| **Parties** | Plaintiff: Alena Š.<br>Defendant: Masaryk University in Brno |
| **Web link to the decision (if available)** | http://sbirka.nssoud.cz/cz/skolstvi-zadost-o-priznani-socialniho-stipendia-hodnoceni-miry-integrace-studenta-v-ramci-ceske-republiky.p3136.html?q= |
| **Legal basis in national law of the rights under dispute** | § 91 of the Law on Universities makes it possible for students to obtain scholarship. It further stipulates the conditions under which scholarships may be awarded. |
| **Key facts of the case** (max. 500 chars) | The plaintiff, a citizen of Slovakia, was a student of Masaryk University in Brno and demanded that scholarship was granted to her based on her social situation. Her application was refused on the basis of her being insufficiently integrated in the Czech Republic, i.e. she was not fulfilling the eligibility conditions for state social subsidies (child benefits according to Law No. 117/1995, on State Social Support) mainly because she was not residing in the Czech Republic permanently (*trvalý pobyt*). |
| **Main reasoning / argumentation** (max. 500 chars) | The Court argued that the case was not similar to case of the European Court of Justice, C-209/03, *Bidar*, as, in this particular case, the condition of being integrated and settled in the state where the applicant asked for support was assessed by the court according to the current state of affairs (to date). In the case of *Bidar*, a three-year stay on the UK territory was required. |
| **Key issues (concepts, interpretations) clarified by the** | The Law on Universities links the fact that the applicant did not fulfil the condition of permanent residence on the territory of the Czech Republic to a fiction of not being integrated sufficiently into the Czech society. This is in line with Article 24/2 of Directive 2004/38/EC, according to which the EU Member State acting as a 'host state' is not entitled to grant maintenance subsidy during studies before the right to a permanent residence. |

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| **case** (max. 500 chars) | |
| **Results (e.g. sanctions) and key consequences or implications of the case** (max. 500 chars) | The court concluded that the refusal to grant scholarship was not discriminatory on the basis of the student's nationality. |
| **Key quotations in original language and translated into English with reference details** (max. 500 chars) | *Ze zásady zákazu diskriminace (článek 18 Smlouvy o fungování EU, respektive článek 24 směrnice Evropského parlamentu a Rady 2004/38/ES o právu občanů Unie a jejich rodinných příslušníků svobodně se pohybovat a pobývat na území členských států) nevybočuje, pokud Česká republika jako členský stát Evropské unie v postavení "hostitelského státu" váže vznik nároku na sociální stipendium při vysokoškolském studiu na dosažení dostatečné míry integrace studenta v rámci České republiky.*<br><br>Translation:<br>It does not fall outside the scope of the principle of non-discrimination (Article 18 of the Treaty on the Functioning of the EU, or Article 24 of the Directive 2004/38/EC) if the Czech Republic as a Member State of the EU, in the position of the 'host state' links the entitlement to social scholarship at a university to a sufficient level of integration of a student in the Czech Republic. |
| **Has the deciding body referred to the Charter of Fundamental** | No. |

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| **Rights? If yes, to which specific article.** | |

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** |
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| **Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)** | 0 | 1 | 3 | 0 | 0 |