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

Greece

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Contractor: Centre for European Constitutional Law (with Hellenic League for Human Rights)

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Decision date	28 February 2012
Deciding body (in original language)	Συμβούλιο της Επικρατείας
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	695/2012 ΣτΕ (586043) ECLI:EL:COS:2012:0228A695.09E5760
Parties	*Natural person v. Minister of Citizen Protection*

Web link to the decision (if available)	
Legal basis in national law of the rights under dispute	Presidential Decree 106/2007 (which transposes into the Greek legal system Directive 2004/38/EC): o Article 2 - "Union citizen" means any person having the nationality of a Member State; o Article 3 - This Presidential Decree applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members… In any case shall be undertaken an extensive examination of the personal circumstances and shall be justified any denial of entry or residence to these people; o Article 6 - Union citizens have the right of residence on the territory of Greece for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport; o Article 7 - All Union citizens have the right of residence on the territory of Greece for a period of longer than three months if they (a) are workers or self-employed persons in the host Member State; o Article 21, paragraphs 1 and 2 – It is possible to restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends. 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. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the “real life story”) 2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)

	The applicant is a Polish citizen, who legally entered the Greek territory in 2004 and was living and working in Athens for the last five years. She was married and had a child to a Georgian citizen who also legally lived and worked in Greece. In 2006, she was sentenced to eight months imprisonment (with three years suspension) for acts of insult and disobedience. Specifically, the applicant was convicted for repeatedly insulting police officers when they asked her to follow them to the police station and she refused to do so, claiming that she was in possession of all legal documentation and there was no reason for this. By decision of the Head of the Hellenic Police Immigration Department of Attica her application, submitted in 2009, for a certificate of registration as European citizen in Greece was rejected on grounds of public order and public security due to this conviction. Based on the same reasoning an appeal was also rejected. In her application to the court, she claimed the annulment of the decision of the Head of the Hellenic Police Immigration Department of Attica regarding her request for providing a certificate of recording her as a citizen of Greece according to Presidential Decree 106/2007. She claimed that the decision is unlawful because it is based only on the existence of the previous conviction whereas in accordance with article 21 of Presidential Decree 106/2007 previous criminal convictions are not independent grounds for measures of public order and public security against an EU citizen.
Main reasoning / argumentation (max. 500 chars)	According to Article 7 of Presidential Decree 106/2007, all Union citizens (and their family members) have the right of residence in the territory of another Member State for a period longer than three months, if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and provided they have comprehensive sickness insurance cover in the host Member State. Also, according to Article 21 of the same decree, it is possible to restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds cannot be invoked to serve economic ends. 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. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court held that the decision of the police department is based solely on the existence of a specific previous criminal conviction without attributing to the applicant personal conduct that constitutes a genuine, present and sufficiently serious threat against a fundamental interest of the society. The sentence was imposed for offences that cannot be considered of such gravity that can justify the rejection of the application for residence permit. According to the court, the rejection of the claimant's request is not acceptable because according to Presidential Decree 106/2007, Article 21, paragraph 2 previous convictions cannot be the only consideration for public order measures. The personal conduct of the individual concerned needs to be taken into consideration as well. The claimant's request was accepted and the police decision was cancelled.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court accepts the application and annuls the decision of the Director of the Aliens Directorate of the Hellenic Police.
Key quotations in original language and translated into English with	*Ο λόγος αυτός πρέπει να γίνει δεκτός ως βάσιμος, διότι πράγματι η προσβαλλόμενη πράξη αιτιολογείται αποκλειστικά με την επίκληση της συγκεκριμένης ποινικής καταδίκης, χωρίς να προκύπτει ή να συνάγεται από τα στοιχεία του φακέλου ότι αποδίδεται στην αιτούσα, μετά από εκτίμηση και των τελεσθέντων αδικημάτων και της επιβληθείσης ποινής, προσωπική συμπεριφορά, η οποία συνιστά πραγματική, ενεστώσα και αρκούντως σοβαρή απειλή που στρέφεται κατά θεμελιώδους συμφέροντος της κοινωνίας. Εξ άλλου η καταδίκη επιβλήθηκε*

reference details (max. 500 chars)	*για αδικήματα που δεν μπορούν να θεωρηθούν τέτοιας βαρύτητας, ώστε να δικαιολογούν σε κάθε περίπτωση από μόνα τους την απόρριψη του αιτήματος της αιτούσης.* Translation: This plea must be accepted as valid since the contested act is in fact solely justified by reference to the specific criminal conviction, while it is not possible to deduct from the evidence in the file that it is attribute to the applicant, after an assessment of the offenses committed and the penalty imposed, the personal conduct, which constitutes a genuine, present and sufficiently serious threat that affects fundamental interests of society. Moreover, the conviction was imposed for offenses that cannot be considered of such gravity as to justify in every case on their own the rejection of the claim of the applicant.
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	16 June 2009
Deciding body (in original language)	Συμβούλιο της Επικρατείας
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	2053/2009 ECLI:EL:COS:2009:0616A2053.09E2879
Parties	*Natural Person v. Minister of Interior*
Web link to the decision (if available)	http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?bltId=10205759&_afrLoop=18564652523548727#!%40%40%3F_afrLoop%3D18564652523548727%26bltId%3D10205759%26centerWidth%3D65%2525%26leftWidth%3D0%2525%26npath%3D%252Fwebcenter%252Fportal%252Fste%252Fypiresies%252Fnomologies%26rigthWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3Dwxbogs1p_111
Legal basis in national law of	According to Article 8 of Presidential Decree 106/2007, for Union citizens who stay in Greece for a period longer than three months a registration certificate is required (Art. 8, para. 1). The competent authority for

the rights under dispute	registration is the police department responsible for aliens of the place of residence of the EU citizen. The Union citizens have the obligation to appear before the competent police departments in person after the expiration of the three months period. The documents necessary for the issuance of a registration certificate include a valid identity card or passport, a confirmation of engagement from the employer or other certificate of employment or proof that they are self-employed persons. Law 2196/1994 laying down procedures for the election of Greek Representatives to the European Parliament provides that EU citizens may exercise in Greece their right to vote and to stand as candidates for the EU Parliament elections in accordance with the provisions applicable for Greek citizens (Art. 3, para. 1), they can exercise their right either in Greece or in the Member State of their origin (Art. 3, para. 2). It also provides that EU citizens, in order to exercise their right, must be registered in the electoral Register of a municipality, and need to submit an application providing the necessary supporting documents to be enrolled in an electoral Register, and, also, special electoral lists are in place for EU citizens (Art. 4).
Key facts of the case (max. 500 chars)	The applicant is a French national who claims the cancellation of a decision of the Minister of Interior that did not allow him to vote in European Parliament elections because he did not previously register in an electoral register. The applicant lives and works as a merchant in Greece. The applicant claimed that he had registered in the special electoral lists of his municipality, but relied on a certificate from the Police Department of Aliens which was not submitted to court. The applicant thought that this certificate was equivalent to registering in electoral list and that it was sufficient. The court however held that the certificate was issued under Article 8 of Presidential Decree 106/2007 and does not consist a registration to the special electoral lists.
Main reasoning / argumentation (max. 500 chars)	According to law 2196/1994, art 4 the EU citizens who intended to vote in Greece for the European elections, must be registered on a special electoral list. The certificate of registration as EU citizen required by Presidential Decree 106/2007 is not sufficient to this purpose to the extent that it does not constitute registration in a special electoral list, which is the prerequisite for exercising the right to vote.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	According Law 2196/1994, the voters who intended to vote in Greece must be registered in a special electoral list. The registration as an EU citizen is not sufficient. Special procedures provided for in electoral legislation need to be followed.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant's request was rejected.
Key quotations in original language and translated into English with reference details (max. 500 chars)	*…Επειδή, ο αιτών, γάλλος υπήκοος, επικαλείται, για να θεμελιώσει το έννομο συμφέρον του για την άσκηση της κρινομένης αιτήσεως, το γεγονός ότι διαμένει μόνιμα στην Ελλάδα, …και ότι πρόσφατα ενεγράφη στους ειδικούς εκλογικούς καταλόγους υπηκόων των κρατών μελών της Ευρωπαϊκής Ένωσης του Δήμου Γλυφάδας, επικαλείται δε σχετικά την βεβαίωση … του Τμήματος Αλλοδαπών της Ελληνικής Αστυνομίας…* *Επειδή, τα ανωτέρω στοιχεία δεν αρκούν για την θεμελίωση του εννόμου συμφέροντος του αιτούντος. Διότι η μεν βεβαίωση του Τμήματος Αλλοδαπών, η οποία άλλωστε δεν προσκομίζεται, εκδόθηκε προφανώς κατά την παρατεθείσα διάταξη του άρθρου 8 του π.δ. 106/2007 και δεν πιστοποιεί την εγγραφή του αιτούντος στους ειδικούς εκλογικούς καταλόγους κοινοτικών υπηκόων, εγγραφή η οποία αποτελεί προϋπόθεση του δικαιώματος του εκλέγειν …, ενώ, εξ άλλου, ο αιτών δεν προσκομίζει κάποιο άλλο στοιχείο σχετικό με εγγραφή του στους καταλόγους αυτούς (αντίγραφο αιτήσεως ή βεβαίωση εγγραφής).* Translation:

	Since the applicant, a French citizen, invokes the fact that he has a permanent residence in Greece… and that he has recently been registered in the special electoral list for EU citizens of the Municipality of Glyfada, and invokes to this respect the certificate from the Aliens Department of the Hellenic Police… Because the aforementioned data are not sufficient to establish the applicant's legal interest… Because the certificate from the Police Department, which was not submitted (in court), was apparently issued under the provision of Article 8 of the Presidential Decree 106/2007 and does not certify that the applicant is registered in a special electoral list as an EU citizen, registration which is a prerequisite for exercising the right to vote… and moreover the applicant does not provide any other data related to his registration in the special lists (copy of the application or certificate of registration).
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 which article of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition

Decision date	4 July 2016
Deciding body (in original language)	Συμβούλιο της Επικρατείας (Α Τμήμα, επταμελής σύνθεση)
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	1485/2016 ECLI:EL:COS:2016:0706A1485.13E4987
Parties	*Natural Person v. Agricultural Insurance Organisation* (OGA)
Web link to the decision (if available)	http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?bltId=14974854&_afrLoop=18487793085020022#!%40%40%3F_afrLoop%3D18487793085020022%26bltId%3D14974854%26centerWidth%3D65%2525%26leftWidth%3D0%2525%26npath%3D%252Fwebcenter%252Fportal%252Fste%252Fypiresies%252Fnomologies%26rigthWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3D1pbbzepwd_111
Legal basis in national law of the rights under dispute	Law 1892/1990, Article 63, Law 3454/2006, Article 1 and Law 3631/2008, Article 6 regulate entitlement to family-child benefits (legislation in force during 2008 when the application for these benefits was submitted). The provisions in question were repealed by Law 4093/2012, paragraph IA 2, Case 12 & Case 14 and the relevant allowances were abolished (since December 2011).

	Presidential Decree 106/2007 (which transposes Directive 2004/38/EC): o Article 2, paragraph 1 - "Union citizen" means any person having the nationality of a Member State; o Article 2, paragraph 2 - "Family member" means (a) the spouse irrespective of nationality; o Article 2, paragraph 3 - a “Third country national” is a person who is not a Greek national or a national of any other Member State; o Article 3 - This Presidential Decree applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members irrespective of their nationality […]; o Article 20, which provides that irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in Greece are entitled to take up employment or self-employment, and, subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Presidential Decree in the territory of Greece enjoy equal treatment with the Greek nationals within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence. Treaty on the Functioning of the European Union, Articles 12, 20, 45 on non-discrimination on grounds of nationality, the introduction of the European citizenship and the free movement of workers Regulation of the Council 1408/1971 (as amended and in force) on the application of social security schemes to employed persons and their families moving within the Community European Convention on Human Rights, Article 8 on the right to respect for private and family life
Key facts of the case (max. 500 chars)	The applicant, who is not an EU citizen, was living legally in Greece with her husband, a Romanian (EU) citizen. She held a residence card for a family member of an EU citizen. The couple had three children, born in Greece in 2004, 2005 and 2008. The spouse applied to the Agricultural Insurance Organisation for a third child allowance and the one-off benefit provided for in the law. Her application was rejected on the ground that the conditions

	for granting the benefits were not met because she was a national of a non-EU Member State and her children did not have Greek nationality. In her application to the court, she seeks the annulment of the decisions of the OGA. (The application was submitted in 2008 after Romania had joined the EU (2007)).
Main reasoning / argumentation (max. 500 chars)	According to Laws 1892/1990, Article 63, paragraph 1 and 3631/2008, Article 6, paragraph 1, a third child allowance is provided to the mother of the child and according to Law 3454/2006, Article 1, paragraph 1, a one-off allowance is provided for. These provisions were in force at the time when the applicant gave birth to her third child. According to Article 18 of the Treaty on the Functioning of the European Union no discrimination on the grounds of nationality is permitted. Further, Article 20 provides that family members who are not nationals of a Member State and who have the right of residence or permanent residence enjoy equal treatment with Greek nationals. The court accepted that the national legislation in question and secondary legislation making reference to “Greek citizens” as beneficiaries of the benefits are contrary to EU legislation, insofar as they exclude the allocation of welfare benefits to a third country national mother with children with the nationality of an EU Member State.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court held that family benefits are at the same time a social advantage and a social security benefit within the meaning of Regulations 1612/1968 and 1408/1971. It also held that the provisions of EU law interpreted in the light of article 8 of the ECHR and article 7 of the Charter of Fundamental Rights have the meaning that social advantages and family benefits can also be allocated to a third country national, who is a spouse of a EU citizen legally residing and working in Greece and the mother of children with EU nationality.
Results (e.g. sanctions) and key consequences or implications of the case	The court decided that legislative provisions that do not allow the allocation of family benefits to foreign nationals who are spouses or mothers of EU citizens who legally reside in Greece are contrary to EU law and therefore invalid and inapplicable.

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	*Επειδή, οι … διατάξεις …, καθ' ο μέρος δεν προβλέπουν χορήγηση των ένδικων παροχών και σε υπήκοο τρίτου κράτους που είναι σύζυγος και μητέρα υπηκόων Ε.Ε. που διαμένουν στην Ελλάδα λόγω εργασίας του συζύγου αντίκεινται στις … διατάξεις του δικαίου της Ε.Ε. και είναι ανίσχυρες και μη εφαρμοστέες για το λόγο αυτό, δεδομένου ότι άρνηση χορήγησης των παροχών αυτών στην περίπτωση αυτή θέτει σε δυσμενέστερη θέση τα πιο πάνω μέλη της οικογένειας που έχουν ιθαγένεια της Ένωσης σε σχέση με τα μέλη οικογένειας που έχουν ελληνική υπηκοότητα , κατά την άσκηση του δικαιώματός τους να διακινούνται ελεύθερα εντός της Ευρωπαϊκής Ένωσης και να διαμένουν στο έδαφος άλλου κράτους μέλους…* Translation: Since the provisions… in the part that they do not grant legal remedies to a third country national who is a spouse and a mother of EU citizens who reside in Greece because of spouse's employment are contrary to … EU law provisions and are invalid and non-applicable for this reason, given that the refusal to grant such benefits in this case places the aforementioned family members, who are EU citizens, in disadvantage compared to family members who have Greek citizenship, in the exercise of their right to move freely within the European Union and to reside in another Member State…
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Yes. The decision includes just a simple reference to Article 7 of the Charter.

4. **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	2 February 2010
Deciding body (in original language)	Συμβούλιο της Επικρατείας (Επιτροπή Αναστολών)
Deciding body (in English)	Council of State (Committee of Suspensions)
Case number (also European Case Law Identifier (ECLI) where applicable)	118/2010 ECLI:EL:COS:2010:0202N118.09ED1552
Parties	*Natural Person v. Ministry of Interior*

Web link to the decision (if available)	http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?bltId=10254048&_afrLoop=18564831376204806#!%40%40%3F_afrLoop%3D18564831376204806%26bltId%3D10254048%26centerWidth%3D65%2525%26leftWidth%3D0%2525%26npath%3D%252Fwebcenter%252Fportal%252Fste%252Fypiresies%252Fnomologies%26rigthWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3Dwxbogs1p_172
Legal basis in national law of the rights under dispute	Presidential Decree 106/2007: o Article 8, according to which Union citizens who stay in Greece for a period longer than three months need a registration certificate; o Article 21, paragraphs 1 & 2 according to which the freedom of movement and residence of Union citizens may be restricted on grounds of public policy, public security or public health [...]. 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. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted; o Article 23, according to which the persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.
Key facts of the case (max. 500 chars)	The applicant, a Romanian citizen, was sentenced in 2002 to imprisonment of four years and nine months for distinguished theft (as a person committing theft on professional basis and by habit). The offence was committed in 2001, when Romania was not yet an EU Member State. By order of the Council Misdemeanours the applicant, in 2003, was released from the special detention facility for young criminals were he was held, provided that he did not enter the Greek territory for a period of three years, and his deportation from the country was ordered. Indeed, he was deported and left the country in 2003. Later he entered again the Greek territory and acquired a certificate of registration as an EU citizen in 2008 after Romania had become an EU Member State. The certificate was revoked by decision of the Head of the Alien Police Department of West Attica in 2009.

	The applicant claimed the suspension of the execution of the decision revoking the certificate of registration as an EU citizen. The competent Police Department took this decision on the grounds that the applicant was sentenced to imprisonment of four years and nine months for distinguished theft (as a person committing theft on professional basis and by habit) and because he had entered the country illegally (when he was convicted, in 2002, Romania was not an EU Member State). The applicant claimed that there was no reason for suspension of his certificate of registration because the period of probation had passed and later he resided in Greece where he rented an apartment and worked. He provided to the court his tenancy agreement, a certificate from his employer and income tax bills of the years 2008 and 2009. He also claimed that if the decision revoking his registration as an EU citizen was executed and he would be forced to leave the country he would suffer irreparable or hardly reparable damage as this would affect his living conditions and his professional activity in Greece.
Main reasoning / argumentation (max. 500 chars)	The court took into consideration the former conviction of the applicant for distinguished theft and the sentence imposed and the fact that the claimant did not appear to have particular personal or family ties with Greece. On these grounds he was considered a threat to public order and his application was rejected.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court considered that the existence of previous criminal convictions in combination with the fact that the claimant did not have any particular personal or family ties with Greece may make the applicant a threat to the public security.
Results (e.g. sanctions) and key consequences	The applicant's request for the suspension of the execution of the decision with which the certificate of registration as an EU citizen was revoked was rejected by the court.

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	*… Επειδή, η Επιτροπή, συνεκτιμώντας την καταδίκη του αιτούντος για τα αδικήματα των διακεκριμένων κλοπών και της σύστασης, καθώς και την ποινή που του επιβλήθηκε, και λαμβάνοντας περαιτέρω υπόψη ότι δεν προκύπτει ή ύπαρξη ιδιαιτέρων προσωπικών ή οικογενειακών δεσμών του με την Ελλάδα, κρίνει ότι η αίτηση πρέπει να απορριφθεί δεδομένου, άλλωστε, ότι δεν παρίστανται ως προδήλως βάσιμοι οι προβαλλόμενοι λόγοι ακυρώσεως.* Translation: Because the Commission, taking into account the conviction of the applicant for the offenses of distinguished thefts and the sentence imposed, and taking further into account the fact that there is no proof of particular personal or family ties with Greece, considers that the application must be rejected on the ground that the pleas in law are not manifestly well founded.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

5. **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	3 April 2012
Deciding body (in original language)	Συμβούλιο της Επικρατείας
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	1304/2012 ECLI:EL:COS:2012:0320A1034.07E2812
Parties	*Natural Person v. Ministry of Interior and Civil Protection*

Web link to the decision (if available)	http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?bltId=10412036&_afrLoop=18565213517537814#!%40%40%3F_afrLoop%3D18565213517537814%26bltId%3D10412036%26centerWidth%3D65%2525%26leftWidth%3D0%2525%26npath%3D%252Fwebcenter%252Fportal%252Fste%252Fypiresies%252Fnomologies%26rigthWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3Dwxbogs1p_197
Legal basis in national law of the rights under dispute	Presidential Decree 106/2007: o Article 8, according to which for Union citizens who stay in Greece for a period longer than three months a registration certificate is required (Art. 8, para. 1). The competent authority for registration is the police department responsible for aliens of the place of residence of the EU citizen. The Union citizens have the obligation to appear before competent police departments in person after the expiration of the three months period. The documents necessary for the issuance of a registration certificate include: o copy of a valid identity card or passport; a confirmation of engagement from the employer or other certificate of employment or proof that they are self-employed persons; o Article 16, according to which upon application submitted in person, after having verified duration of residence with a document certifying permanent residence, the competent police authorities of the place of residence issue Union citizens entitlements to permanent residence; o Article 21, sets out the conditions under which competent authorities may impose restrictions on the right of entry and residence in Greece. Specifically, competent authorities may restrict the freedom of movement and residence of Union citizens on grounds of public policy, public security or public health. 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. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted; o Article 22, sets out the conditions under which an expulsion decision on grounds of public policy or public security may be issued for an EU citizen.

Key facts of the case (max. 500 chars)	The applicant, a Romanian citizen, was sentenced in 1998 to four years imprisonment for repeated theft. The sentence was suspended and immediate expulsion from Greece was ordered, which was executed the same year. Later, the applicant illegally returned to Greece and, in 2000, was sentenced to six months and 15 days imprisonment, was imprisoned and released in February 2002. The applicant claimed to have returned to Romania immediately after his release. In 2008 the applicant applied for a certificate of registration as an EU citizen at the Attica Aliens Department of the Greek Police. While the application was examined, he was found to be included in the list of undesirable aliens and was arrested again in order to be deported. The competent authority took into account former convictions in Greece, and the request for registration as an EU citizen was rejected on the grounds of public order and security reasons. The applicant appealed to the court for the annulment of the relevant administrative decisions based on the claim that public order and security reasons required by the law are not met in his case.
Main reasoning / argumentation (max. 500 chars)	The court took into consideration the justification of the decision of the Police and held that reasons of public order prevent the acceptance of the application for a certificate of registration as an EU citizen. The court held that the police considered previous convictions and the personal conduct of the applicant and its decision is legally and adequately reasoned, based both on the actions for which he had been convicted (repeated thefts, illegal entry to the country despite his judicial deportation, violation of judicial suspension of the execution of his sentence) and repeated offenses.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Based on the provisions of Articles 8, 13, 16 of Presidential Decree 106/2007, the court considered that the rejection of the application for registration as an EU citizen does not initiate the legal residence period required in order to obtain a right of permanent residence. Also the court noted that, according to Article 21 of Presidential Decree 106/2007, measures taken on grounds of public policy or public security need to comply with the principle of proportionality and to be based exclusively on the personal conduct of the individual concerned. Reasoning based on general considerations cannot be accepted. Therefore a lawful refusal of registration as an EU citizen can only be based on an individual examination of the case in question. When an EU citizen is involved in criminal offenses, the seriousness of the breach of public order or security due to the individual's behaviour needs to be assessed in particular with regard to the sentence imposed, the degree of

	involvement in the criminal activity, the extent of the damage caused by the crime, the risk and/or the possibility of repetition.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant's request for annulment of the decision of the relevant police department rejecting his registration as an EU citizen was rejected by the court.
Key quotations in original language and translated into English with reference details (max. 500 chars)	*…Συνεπώς, η άρνηση βεβαίωσης εγγραφής πολίτη της Ένωσης, πρέπει να βασίζεται σε ατομική εξέταση της συγκεκριμένης περιπτώσεως, στη δε περίπτωση που αλλοδαπός, πολίτης της Ένωσης, ενέχεται σε εγκληματικές πράξεις, η σοβαρότητα της επαπειλούμενης προσβολής της δημόσιας τάξης ή ασφάλειας, λόγω της ατομικής συμπεριφοράς του ενδιαφερομένου, εκτιμάται με γνώμονα κυρίως τις επαπειλούμενες ή τις επιβληθείσες ποινές, τον βαθμό συμμετοχής στην εγκληματική δραστηριότητα, το μέγεθος της βλάβης ή της ζημίας, τον κίνδυνο ή και την τυχόν ύπαρξη υποτροπής.* Translation: …Therefore, the refusal to register an EU citizen must be based on an individual examination of the case in question. In case that a non-national, citizen of the EU, is involved in criminal offenses, the seriousness of the threatened breach of public order or security due to the individual behaviour is assessed using as criteria the sentences that can be imposed or the sentences imposed, the degree of involvement in the criminal activity, the extent of the damage, the risk and/or the possibility of repetition.

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

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	2013
Deciding body (in original language)	Συνήγορος του Πολίτη
Deciding body (in English)	Ombudsman
Case number (also European Case Law Identifier	Cases 153559/2012, 158851/2012, 166356/2013 For which reference is made to the Annual Report 2013 / Section 'Employment'

(ECLI) where applicable)	Greece, Greek Ombudsman (Συνήγορος του Πολίτη) Annual Report 2013 (Ετήσια Έκθεση 2013), available at (in Greek) https://www.synigoros.gr/resources/docs/03-parembaseis.pdf
Parties	*EU citizens v. Employment Promotion Centres / Manpower Employment Agency* (OAED) Complaints submitted to the Ombudsman
Web link to the decision (if available)	Greece, Greek Ombudsman (Συνήγορος του Πολίτη) Annual Report 2013 (Ετήσια Έκθεση 2013), available at https://www.synigoros.gr/resources/docs/03-parembaseis.pdf (in Greek)
Legal basis in national law of the rights under dispute	Presidential Decree 106/2007: o Article 20, paragraph 4, according to which the possession of a registration certificate […], of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.
Key facts of the case (max. 500 chars)	EU citizens, residents, in Greece submitted complaints to the Ombudsman on the supporting documents required by the Employment Promotion Centres of the Manpower Employment Agency for registering as unemployed and receiving unemployment benefits. As reported by the applicants, according to a circular, for the registration of EU citizens in the unemployment registry, in addition to the supporting documents required for other unemployed, the registration certificate as an EU citizen or the certificate of permanent residence in the country (issued by the competent police authorities) is required. The wording of the circular indicated that the above mentioned documents should be sought by the Employment Promotion Centres in addition to the register or work permit certificates.

Main reasoning / argumentation (max. 500 chars)	The Ombudsman intervened and pointed out to the Manpower Employment Agency (OAED) that although the provisions of the decision of the organisation's board, which laid down the required documents for registration in the unemployment registry, are in line with European and national legislation, this is not the case with regard to the circular detailing its application. The Ombudsman pointed out to OAED that the requirement included in the circular for the submission of the registration certificate or certificate of permanent residence in the country contradicts the explicit provisions of Article 25, paragraph 1 of Directive 2004/38/EC and Article 20, paragraph 4 of the Presidential Decree 106/2007.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Based on the provisions of Article 25, paragraph 1 of Directive 2004/38/EC and Article 20, paragraph 4 of the Presidential Decree 106/2007, the Ombudsman considered that having a certificate of registration or a certificate of permanent residence cannot be a precondition for exercising a right or carrying out an administrative procedure for EU citizens. Moreover a "residence or work permit" is not issued for EU citizens, because their right to take up employment derives directly from the EC Treaty and it is not subject to any administrative authorisation.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Ombudsman's proposals were accepted by Manpower Employment Agency, and the Employment Directorate of the Organisation issued a document to inform its services that the registration of EU citizens in the unemployment registers will take place in accordance with the relevant decision of organisation's board without additional documents (the certificate of registration or a document that certifies permanent residence).
Key quotations in original	The texts of the Ombudsman decisions on the above mentioned cases are not available.

language and translated into English with reference details (max. 500 chars)	
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

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 available (covering the reference period)					

Note:
The total number of national cases decided and relevant for the objective of the research is not available.