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

Lithuania

2017

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1. **Subject matter concerned**	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of the Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	28 February 2017
Deciding body (in original language)	Lietuvos Vyriausiasis Administracinis Teismas
Deciding body (in English)	Supreme Administrative Court of Lithuania
Case number (also European Case Law Identifier (ECLI) where applicable)	A-2445-624/2017
Parties	Applicants: R. G.-M. and J. B. Respondent: Migration Board of Vilnius County Chief Police Commissariat (*Vilniaus apskrities vyriausiojo policijos komisariato Migracijos valdyba*)
Web link to the decision (if available)	http://eteismai.lt/byla/251623513182256/A-2445-624/2017

Legal basis in national law of the rights under dispute	Law on Identity Card and Passport (*Asmens tapatybės kortelės ir paso įstatymas*), 23 December 2014, No. XII-1519 (with amendments), available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/a8939f2090d811e4bb408baba2bdddf3/GRxVJrYuSj
Key facts of the case (max. 500 chars)	The applicants' daughter was born in Lithuania and on her birth certificate, first Lithuanian passport and French passport, her name and last name were spelled in original, i.e. with non-Lithuanian symbols, such as "x" and "w". The applicants requested a new Lithuanian passport for their daughter to be issued keeping the original spelling of her name and last name. The Migration Board refused to keep the original spelling and based its decision on the provisions of the Law on Identity Card and Passport, which states that information in the identity card and passport shall be spelled in Lithuanian characters („x" and „w" are not Lithuanian characters). The court of first instance quashed the decision of the Migration Board as disproportionate and discriminatory and ordered to issue a new passport with the name and last name spelled in original. The Migration Board filed an appeal complaint.
Main reasoning / argumentation (max. 500 chars)	The Court based its decision on the interpretations of the laws by the Constitutional Court and stated that according to the legislation in force, names and last names on identity card and passport can be spelled only in Lithuanian characters. However, the Court decided that the gap in legal regulation did not prevent spelling names and last names in original spellings on the part of the passport "other records".
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Even though legal regulation, which allows to spell a name and last name in non-Lithuanian characters does not exist, it, in itself, cannot constitute grounds for refusal to spell a name and last name in non-Lithuanian characters and non-grammatical form on the part of the passport "other records".
Results (e.g. sanctions) and key consequences	The appellate court partly changed the decision of the first instance court, by ordering the Migration Board to issue a Lithuanian passport to the applicants' daughter spelling her name and last name in

or implications of the case (max. 500 chars)	Lithuanian characters and at the same time spelling her name and last name in non-Lithuanian characters and non-grammatical form.
Key quotations in original language and translated into English with reference details (max. 500 chars)	*"<...> kaip matyti iš oficialios konstitucinės doktrinos, Konstitucijai neprieštarautų teisinis reglamentavimas, kuriuo būtų nustatyta ir tai, kad to paties paso kitų įrašų skyriuje asmens vardą ir pavardę galima įrašyti nelietuviškais rašmenimis ir nesugramatinta forma, kai asmuo to pageidauja. Nors tokio teisinio reglamentavimo nėra, tai savaime negali būti pagrindas atsisakyti paso kitų įrašų skyriuje asmens vardą ir pavardę įrašyti nelietuviškais rašmenimis ir nesugramatinta forma, kai asmuo to pageidauja <...>".* Translation: "[…] as it is apparent from the official constitutional doctrine, the legal regulation, which would set forth that on the part of the passport "other records" person's name and last name could be spelled in non-Lithuanian characters and non-grammatical form on the request of the person, would not contradict the Constitution. Even though such legal regulation does not exist, it in itself cannot be grounds for refusal to a spell name and last name in non-Lithuanian characters and non-grammatical form on the part of the passport "other records" […]."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Yes, Article 7.

2. **Subject matter concerned**	☒ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to which article of the Directive 2004/38: preamble, Art. 5 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	15 September 2015
Deciding body (in original language)	Lygių galimybių kontrolieriaus tarnyba
Deciding body (in English)	Office of the Equal Opportunities Ombudsperson
Case number (also European Case Law Identifier (ECLI) where applicable)	(15)SN-184)SP-146
Parties	Applicant: Italian citizen.
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Web link to the decision (if available)	Not available

Legal basis in national law of the rights under dispute	Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*), 29 April 2004, No. IX-2206 (with amendments), available in English at (version valid from 1 September 2015): https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/57df8b40839211e5bca4ce385a9b7048?jfwid=-fxdp8bjh; latest version available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/ETkplNvJny
Key facts of the case (max. 500 chars)	Applicant (Italian citizen) received a temporary residence permit certificate, issued by the Migration Department (*Migracijos departamentas*); he also had a certificate regarding his declared place of residence and Lithuanian identity code. The applicant wanted to get an e-signature, which is necessary for the banking operations and other business activities, however, the State Enterprise Centre of Registers (*Viešoji įstaiga Registrų centras*) required a temporary residence permit card (certificate was not enough) and the Migration Department refused to issue such a card. Third-country nationals do not have this issue, as they receive cards for the residence permit. Equal Opportunities Ombudsperson addressed this issue to the Minister of Interior (*Vidaus reikalų ministras*) and to the State Enterprise Centre of Registers (*Viešoji įstaiga Registrų centras*).
Main reasoning / argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	According to the Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*): "A citizen of an EU Member State shall be issued a certificate confirming his right to permanently reside in the Republic of Lithuania in the format established by the Minister of the Interior" (Art. 140, para. 3). The Ministry of Interior (*Vidaus reikalų ministerija*) informed that orders establishing the format of above mentioned certificate have been changed including data on the document, which has been submitted by the EU citizen to receive a certificate (type and number of document, name of the country, which issued document and date of issue).

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Since the orders of the Minister of Interior were changed and the applicant received an e-signature, the Equal Opportunities Ombudsperson decided to terminate the investigation.
Key quotations in original 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.

3. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to which article of the Directive 2004/38: Articles 5(1); 27(1; 2); 30(1; 2; 3) ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	18 January 2017
Deciding body (in original language)	Lietuvos Vyriausiasis Administracinis Teismas
Deciding body (in English)	Supreme Administrative Court of Lithuania
Case number (also European Case Law Identifier (ECLI) where applicable)	A-1048-624/2017
Parties	Applicant: I. S. Respondent: Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*)
Web link to the decision (if available)	http://eteismai.lt/byla/262212711484074/A-1048-624/2017

Legal basis in national law of the rights under dispute	Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*), 29 April 2004, No. IX-2206 (with amendments), available in English at (version valid from 1 September 2015): https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/57df8b40839211e5bca4ce385a9b7048?jfwid=-fxdp8bjh; latest version available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/ETkplNvJny
Key facts of the case (max. 500 chars)	State Security Department (*Valstybės saugumo* departamentas) informed Migration Department about the applicant's activities related to ISIS. Based on this information and following the provisions of the Law on the Legal Status of Aliens, the Migration Department issued a decision banning the entry of the applicant, who is a national of the Republic of Latvia, to Lithuania for a period of five years. Information, which would prove, that the applicant could have posed threat to the national security, was not included in the decision. The court of first instance dismissed the applicant's complaint and upheld the decision of the Migration Department. The applicant submitted an appeal requesting to quash the decision.
Main reasoning / argumentation (max. 500 chars)	The Court decided that the content of the decision of the Migration Department did not meet the requirements, set forth in the national laws, since the decision did not provide any, even most general and abstract, information, which would prove the conclusion that the presence of the applicant in Lithuania might pose a threat to the national security.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Public administration subjects are not entitled to issue decisions regarding the threat to the national security or public policy posed by the nationals of the European Union Member States based only on secret information, with which person is not allowed to get acquainted.
Results (e.g. sanctions) and key consequences	The appellate court quashed the decision of the court of first instance and the decision of the Migration Department.

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	„<…> *teisėjų kolegija pažymi, kad Europos Sąjungos valstybės narės piliečio keliamos grėsmės valstybės saugumui vertinimas kiekvienu konkrečiu atveju turi būti grindžiamas išimtinai atitinkamo asmens elgesiu, kuris turi kelti realią ir akivaizdžią grėsmę, o vertinimas negali būti grindžiamas aplinkybėmis, nesusijusiomis su konkrečiu atveju, arba bendrąja prevencija*." Translation: "[…] the panel of the judges notes that the assessment of the threat posed to the national security by the national of the European Union Member State in every particular case should be based entirely on the activities of a particular person, who should pose a real and evident threat, and assessment could not be based on the circumstances not related to the particular case or on the ground of general prevention."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Yes, Articles 47 and 52.

4.	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence

Subject matter concerned	- linked to which article of the Directive 2004/38 (Particular articles were not specified in the decision) ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	23 May 2014
Deciding body (in original language)	Lietuvos Vyriausiasis Administracinis Teismas
Deciding body (in English)	Supreme Administrative Court of Lithuania
Case number (also European Case Law Identifier (ECLI) where applicable)	A[858]-2/2014
Parties	Applicant: J. L. R. Respondent: Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*)
Web link to the decision (if available)	http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=26a39e06-7520-46ba-aa75-e24a4bbe42d9
Legal basis in national law of the rights under dispute	Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*),), 29 April 2004, No. IX-2206 (with amendments), available in English at (version valid from 1 September 2015): https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/57df8b40839211e5bca4ce385a9b7048?jfwid=-

	fxdp8bjh; latest version available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/ETkplNvJny
Key facts of the case (max. 500 chars)	The applicant (third-country national) alleged that she came to Lithuania with a valid residence permit in the Republic of Poland, as a family member of an EU citizen. The applicant, knowing that she is included in the list of undesirable persons and wishing to come legally to Lithuania to a funeral of her husband, has sent a written request to the Migration Department. The applicant claimed that the Director of the Department approved her request and allowed her to enter the Republic of Lithuania. However, the Polish institutions informed that the residence permit was annulled. The Migration Department adopted a decision to expel the applicant from the Republic of Lithuania and to ban her entry.
Main reasoning / argumentation (max. 500 chars)	The statements of the applicant were inconsistent. She did not submit any evidence, proving her statements that she received visa in the Republic of Lithuania, and her residence permit in the Republic of Poland was annulled. Moreover, the application for visa and the complaint concerning the refusal to issue one did not provide the applicant with a possibility to enter the Republic of Lithuania without visa. Therefore, the court decided that the applicant has entered the Republic of Lithuania illegally.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The visa application and complaint concerning the refusal to issue visa are not valid grounds for the person to enter the Republic of Lithuania without visa.
Results (e.g. sanctions) and key consequences	The Court dismissed the applicant's complaint and upheld the decision of the court of first instance and the Migration Department.

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	„*Vien tai, kad pareiškėja sprendime įtvirtintą įpareigojimą savanoriškai de facto įvykdė, t. y. pati išvyko nelaukdama, kol bus išsiųsta iš Lietuvos Respublikos, savaime nedaro įtakos šio sprendimo teisėtumui ir pagrįstumui*.“ Translation: “The mere fact that the applicant voluntary *de facto* implemented the obligation set in the decision, i.e. left the country without waiting until she is expelled from the Republic of Lithuania, does not influence the legality and validity of the decision.”
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 the Directive 2004/38 ☒ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition

Decision date	30 January 2015
Deciding body (in original language)	Lietuvos Vyriausiasis Administracinis Teismas
Deciding body (in English)	Supreme Administrative Court of Lithuania
Case number (also European Case Law Identifier (ECLI) where applicable)	R-1-602/2015
Parties	Applicant: M. A. H. Respondent: The Central Electoral Commission (*Vyriausioji rinkimų komisija*)
Web link to the decision (if available)	https://www.e-tar.lt/portal/lt/legalActPrint?documentId=LITEKO.1FA243AFFEF8
Legal basis in national law of the rights under dispute	Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992 (with amendments), available in English at: http://www3.lrs.lt/home/Konstitucija/Constitution.htm Law on Elections to Municipal Councils (*Savivaldybių tarybų rinkimų įstatymas*), 6 November 2014, No. XII-1313 (with amendments), available in English at: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0a26164076f911e496d1f482b62f41cd?jfwid=rivwzvpvg; latest version available in Lithuanian at: https://www.e-tar.lt/portal/lt/legalAct/TAR.336A4B109EBC/HEexqWkxmV

Key facts of the case (max. 500 chars)	The applicant, who holds a British citizenship, was nominated by his political party as a candidate in the elections for the Vilnius City Municipal Council, but the Central Electoral Commission refused to register him as a candidate, since he did not declare his place of residence on time. The applicant applied to the court stating that, earlier, he has twice declared his place of residence in Vilnius. Last time he did it in 2014 so that he could vote in the elections to the European Parliament. The applicant claimed that he presumed that the declaration of his place of residence was done in a proper way, and that the Commission did not assess these circumstances by formally stating that the applicant did not meet the requirements to stand as a candidate in the elections.
Main reasoning / argumentation (max. 500 chars)	The court indicated that the applicant, by participating in the elections to the European Parliament in 2014 and being confirmed by the Commission that he met the requirements, could have expected that his declaration of place of residence would be appropriate in 2015. Even though in the first case, the applicant wanted to implement the active right to vote, and in the second case-the passive right to stand as a candidate, the analogous requirement on the declaration of the place of residence was assessed differently by the same institution. The court stated that the provision on the requirement cannot be interpreted formally as not allowing to take into consideration any relevant circumstances.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The requirement to declare the place of residence should be assessed similarly despite the fact whether the persons are willing to participate in elections as passive voters or as active candidates. Errors in the electronic systems or limited technical capabilities, which are directly related to the implementation of person's rights and duties, could not be an obstacle to ensure rights guaranteed by the laws.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court quashed the decision of the Central Electoral Commission not to register the applicant as a candidate in the Vilnius city municipal elections.

Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Vyriausioji rinkimų komisija, kaip viešojo administravimo subjektas, priimdama administracinį sprendimą visais atvejais turėtų surinkti pakankamai faktinių duomenų, turinčių užtikrinti sprendimo teisėtumą. Dėl to Vyriausioji rinkimų komisija, gavusi per posėdį papildomus duomenis, turėjo juos vertinti priimdama ginčijamą sprendimą. Priešingu atveju galėtų susidaryti situacija, kad net techninės klaidos atveju pareiškėjas neturėtų jokių galimybių ginčyti jo atžvilgiu priimtą sprendimą, atimantį teisę dalyvauti savivaldybių tarybų rinkimuose*." Translation: "The Central Electoral Commission, as a public authority, by adopting an administrative decision should always gather enough facts, which would ensure the legitimacy of the decision. Therefore, the Central Electoral Commission while getting additional information during the hearing had to assess it while adopting the disputed decision. Otherwise, the situation might occur, that even in case of technical errors, the applicant would have no access to dispute decision adopted in his respect, depriving him of the right to take part in the elections to municipal councils."
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)					