

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

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1. Table 1 – Case law

<p>CASE 1 Subject matter concerned</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <p>- linked to which article of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>25 February 2015</p>
<p>Deciding body (in original language)</p>	<p>Tribunal Constitutional</p>
<p>Deciding body (in English)</p>	<p>Constitutional Court</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>141/2015</p>

Parties	Ombudsman v. Legislator (This case was brought before the Constitutional Court by the Portuguese Ombudsman under his power to request the Constitutional Court to declare the unconstitutionality or illegality of legal norms.)
Web link to the decision (if available)	www.tribunalconstitucional.pt/tc/acordaos/20150141.html
Legal basis in national law of the rights under dispute	Law 13/2003 of 21 May, as amended by Decree-Law 133/2012 of 27 June ¹ revoked the Minimum Guaranteed Income and created the Social Insertion Income. Relevant articles obliged Portuguese citizens (and their family members) and nationals of other EU Member States to legally reside in Portugal for at least one year before they were entitled to the Social Insertion Income. The same obligation was imposed to nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement of persons.
Key facts of the case (max. 500 chars)	The Ombudsman questioned the constitutionality of the legal obligation, imposed on Portuguese citizens (and their families) to reside in Portugal for a minimum period of time before they could ask for the Social Insertion Income. From the perspective of the Legislator (the Government), the norms were not unconstitutional, taking into account: 1) the nature of the benefit (social assistance benefit); 2) the need for ensuring the person's attachment to the country; 3) the respect for EU law, according to which no distinction can be made in relation to any EU citizen concerning the right of residence (EU citizens should be treated equally, regardless of whether they are from the host country or from another Member State).

¹Portugal, [Law 13/2003 as amended by Decree-Law 133/2012 of 27 June which revoked the Minimum Guaranteed Income established in Law 19-A/96 of 29 June, and created the Social Insertion Income](#) (Lei n.º 13/2003, de 21 de maio, alterada pelo Decreto-Lei n.º 133/2012, de 27 de junho, que revoga o rendimento mínimo garantido previsto na Lei n.º 19-A/96, de 29 de junho, e cria o rendimento social de inserção), 21 May.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The law required a minimum period of residence in Portugal in order to allow access to Social Insertion Income. This requirement was applied to Portuguese citizens as well to citizens of other EU Member States (for both groups, that period was one year).</p> <p>The Ombudsman considered that this requirement, imposed on Portuguese citizens, resulted in an unjustified discrimination between Portuguese citizens residing in Portugal for more than a year and Portuguese citizens residing in Portugal for less than a year (the court mentioned those who left the country and returned). So, the second group of Portuguese (those who have lived in Portugal for less than a year) was not able to ask for the Social Insertion Income until they had completed one year of residence in Portugal.</p> <p>The Ombudsman argued that excluding certain Portuguese citizens from the right to the Social Insertion Income was not in accordance with the principle of universality; it was also in breach of the principle of equality (because it illegitimately discriminated against resident Portuguese citizens) and denied the right to a minimally dignified standard of living.</p> <p>The Legislator (in this case, the Government) justified the law by two cumulative arguments: 1) the need for ensuring the person's attachment to the country; 2) the respect for EU law, according to which no distinction can be made in relation to any EU citizen concerning the right of residence (EU citizens should be treated equally, regardless of whether they are from the host country or from another Member State).</p> <p>The court agreed with the Ombudsman, saying that the law cannot discriminate between Portuguese citizens (those who have lived in Portugal for more than a year and those who have lived in Portugal for less than a year).</p> <p>Concerning the Government's argument about the comparison between Portuguese citizens and other EU Member States citizens, the court considered that EU law does not impose the uniform treatment of national citizens and citizens from other EU Member States in the particular case of social assistance benefits. For this reason, it maintained the minimum residence requirement of one year for nationals of other EU Member States.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The court underlined that EU law does not always impose the uniform treatment of national citizens and citizens of other EU Member States.</p> <p>The fundamental principle of equal treatment for these two groups of citizens is subject to limitations and derogations established by EU law, including those concerning aspects of the freedom of movement and residence. Social assistance benefits, which include the Social Insertion Income, are among these.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The court said that Portuguese citizens enjoy the fundamental right to live in the territory (the physical and geographical basis for the Portuguese community), which means that it is impossible for a Portuguese person to reside in Portugal illegally.</p> <p>The Constitutional Court declared the norms unconstitutional with generally binding force, considering that the obligation for Portuguese citizens to legally reside in Portugal for at least one year, promotes a discriminatory regime governing access to Social Insertion Income for one specific group of Portuguese citizens. So the norms violated the principle of equality.</p> <p>The court considered that EU law does not impose the uniform treatment of national citizens and citizens from other EU Member States in the particular case of social assistance benefits. For this reason, it maintained the minimum residence requirement of one year for nationals of other EU Member States.</p>
Key quotations in original language and translated into English with reference	<p><i>"(...) perante as disposições do direito da União Europeia e a interpretação que delas tem feito o TJUE, não há qualquer dúvida que o direito da União Europeia tolera um regime diferenciado entre cidadãos da União Europeia e cidadãos nacionais do Estado-Membro de acolhimento, no que respeita a prestações de um regime não contributivo que garante um mínimo de meios de subsistência".</i></p> <p>Translation:</p>

details (max. 500 chars)	<p>“In accordance with the provisions of EU law and the interpretation given to them by the CJEU, there is no doubt that, as regards to a non-contributory scheme which guarantees a minimum means of subsistence, EU law allows for a differentiated regime between citizens of the EU and nationals of the host Member State.”</p> <p>See www.tribunalconstitucional.pt/tc/acordaos/20150141.html.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>The Charter is mentioned not specifically in the court decision but in one of its judges’ vote explanation: Article 21 (2).</p>

CASE 2 Subject matter concerned	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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Decision date	25 May 2015
Deciding body (in original language)	Tribunal Constitucional
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	296/2015
Parties	Attorney-General (<i>Procurador-Geral da República</i>) v. Legislator (<i>Legislador</i>) (This case was brought before the Constitutional Court by the Portuguese Attorney-General under his power to request the Constitutional Court to declare the unconstitutionality or illegality of legal norms.)
Web link to the decision (if available)	www.tribunalconstitucional.pt/tc/acordaos/20150296.html

Legal basis in national law of the rights under dispute	<p>Law 13/2003 of 21 May, as amended by Decree-Law 133/2012 of 27 June² revoked the Minimum Guaranteed Income and created the Social Insertion Income. Relevant articles obliged Portuguese citizens (and their family members) and nationals of other EU Member States to legally reside in Portugal for at least one year before they were entitled to the Social Insertion Income. The same obligation was imposed to nationals of states that belong to the European Economic Area or with which the EU has an agreement providing for the free movement of persons. For non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the EU), the same law imposed a longer period of residence - at least the last three years – for getting the Social Insertion Income.</p>
Key facts of the case (max. 500 chars)	<p>The Attorney General questioned the illegality (when faced with the Framework Law of Social Security) of the legal obligation, imposed on Portuguese citizens (and their families), nationals of other EU Member States and nationals of states that belong to the European Economic Area or with which the EU has an agreement providing for the free movement, of legal residence in Portugal for a period of time (at least one year) before they were entitled to the Social Insertion Income. The Attorney General questioned also the unconstitutionality and the illegality of the legal obligation, imposed to non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the European Union), of legal residence in Portugal for a period of time (at least the last three years) before they were entitled to the Social Insertion Income.</p> <p>From the perspective of the Legislator (the Government), the norms were not unconstitutional, taking into account the nature of the benefit (social assistance benefit) and the need for ensuring the person´s link to the country.</p>

²Portugal, [Law 13/2003 as amended by Decree-Law 133/2012 of 27 June which revoked the Minimum Guaranteed Income established in Law 19-A/96 of 29 June, and created the Social Insertion Income](#) (Lei n.º 13/2003, de 21 de maio, alterada pelo Decreto-Lei n.º 133/2012, de 27 de junho, que revoga o rendimento mínimo garantido previsto na Lei n.º 19-A/96, de 29 de junho, e cria o rendimento social de inserção), 21 May.

Main reasoning / argumentation (max. 500 chars)	The Attorney General argued the illegality of the norms when faced with a superior law (the Framework Law of Social Security) and also the unconstitutionality because they were in breach of the principle of equality and denied the right to a minimum dignified standard of living.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Concerning Portuguese citizens, the situation was resolved by Case No. 141/2015 (mentioned above). Concerning nationals of other EU Member States, nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement, the Constitutional Court recalled its previous case law (141/2015): the EU law and the interpretation given to them by the CJEU do not impose a uniform treatment of national citizens and citizens from other EU Member States.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The court did not declare the illegality of the legal obligation (when faced with the Framework Law of Social Security) for a minimum period of residence (one year) for nationals of other EU Member States, nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement. The court did not decide the issue of the unconstitutionality of that norm on the grounds that the examination of the unconstitutionality was not expressly requested by the Attorney General in his request (the Attorney General only requested the question concerning illegality when faced with the Framework Law of the Social Security).</p> <p>The court declared the unconstitutionality with generally binding force of the norm imposing a period of residence of three years for getting the Social Insertion Income for non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the EU). The court considered that this requirement was excessive and conflicted with the right to a welfare benefit to ensure the most basic means of subsistence, so the norm was in breach of the principle of proportionality.</p>

	<p>The decision raised many dissenting opinions, especially taking into account the incongruous situation created by the confluence of the declaration of unconstitutionality with generally binding force in Case No. 141/2015 (in which the court ruled the part of the norm that required Portuguese citizens and their family members to reside in Portugal for a year before they could ask for the Social Insertion Income) and the court's decision in this case: after this decision, European citizens who apply for the Social Insertion Income are submitted to a requirement to have resided in Portugal legally for a period of time (at least one year).</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"(...) perante as disposições do direito da União Europeia e a interpretação que delas tem feito o TJUE, não há qualquer dúvida que o direito da União Europeia tolera um regime diferenciado entre cidadãos da União Europeia e cidadãos nacionais do Estado-Membro de acolhimento, no que respeita a prestações de um regime não contributivo que garante um mínimo de meios de subsistência".</i></p> <p>Translation:</p> <p>"[...] Recalling Constitutional Court case number 141/2015 mentioned above): In accordance with the provisions of EU law and the interpretation given to them by the CJEU, there is no doubt that, as regards to a non-contributory scheme which guarantees a minimum of means of subsistence, EU law allows for a differentiated regime between citizens of the EU and nationals of the host Member State."</p> <p>See www.tribunalconstitucional.pt/tc/acordaos/20150296.html.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>Articles 34 (2) and 45 (1).</p> <p>One judge also referred to Article 21 (2) in his vote explanation.</p>

CASE 3 Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	2 July 2015
Deciding body (in original language)	Tribunal Central Administrativo Norte
Deciding body (in English)	North Administrative Central Court
Case number (also European Case Law Identifier (ECLI) where applicable)	00462/06.2BEPRT

Parties	Ministry for Agriculture and Sea / Port and Maritime Transports Institute (<i>Instituto Portuário e dos Transportes Marítimos</i> , IPTM) v. nautics consulting companies (<i>empresas de consultoria náutica</i>).
Web link to the decision (if available)	www.dgsi.pt/jtcn.nsf/89d1c0288c2dd49c802575c8003279c7/7cc2dfba22422e8080257eed005d2ccd?OpenDocument&Highlight=0,Diretiva,2004%2F38%2FCE
Legal basis in national law of the rights under dispute	Decree-Law 124/2004 of 25 May ³ approves the regulation of recreational navigation. Article 29 (1) of the regulation establishes that recreational navigator cards are issued to those who have residence in national territory.
Key facts of the case (max. 500 chars)	The defendants' companies provided compulsory training for the recreational navigator's exam (the card is issued by the Port and Maritime Transports Institute) to Portuguese citizens and also to Community citizens (especially Spanish and French). In view of Article 29 (1) of the regulation approved by Decree Law 124/2004 of 25 May, the Port and Maritime Transports Institute (<i>Instituto Portuário e dos Transportes Marítimos</i> , IPTM) refused to carry out the examination to Community citizens for lack of proof of residence in Portugal. The training companies argued that this conduct of the institute was illegal and in violation of Community law and asked for a compensation for property damage and non-property damage.
Main reasoning / argumentation	The training companies said that this conduct of the institute was illegal and in violation of Community law, particularly as regards freedom to provide services, and requested a compensation for property damage and non-property damage. For its part, the IPTM argues that the Community legislation in question does not apply to the situation: the exams are supervised by a public body taking into account the public interest to ensure maritime safety. It adds that companies maintain their freedom to provide services, since their purpose is not

³ Portugal, [Decree-Law 124/2004 which approves the regulation of recreational navigation](#) (*Decreto-Lei n.º 124/2004, de 25 de maio, que aprova o Regulamento da Náutica de Recreio*), 25 May.

(max. 500 chars)	to carry out exams but rather nautical training. Therefore, these companies can give nautical training to EU citizens who are not resident in Portugal, regardless of whether these citizens carry out the said exam in Portugal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The legislation of a Member State imposing the requirement of residence on national territory for EU citizens wishing to obtain a recreational navigator license issued by that Member State is in violation of Articles 18, 45, 52 and 56 of the TFEU. In this regard, the court ruled in the same way as the CJEU in the context of the reference for a preliminary ruling.</p> <p>The legal acts of refusing EU citizens the admission to examination for lack of proof of residence in Portuguese national territory, practiced under Article 29 (1) of the regulation approved by Decree-Law 124/2004 of 25 May, infringe Community law.</p> <p>CJEU has ruled on several occasions that the treaty rules on European citizenship, the prohibition of discrimination on grounds of nationality and also the freedoms of movement of persons and services have direct effect, giving individuals the right of demanding compliance with those Community regulations. A Member State is obliged to restoring damage caused by a breach of Community law if the following conditions are met: 1) the legal norm confers individual rights; 2) the breach is sufficiently serious; 3) there is a direct causal link between that breach and the damage suffered by individuals.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The refusal of the institute occurred until the date on which the precautionary measure attached to this case was decided, and which gave reason to the nautical training companies. In this decision, the court essentially upheld the decision that had already been given on a precautionary basis: there is a very close relationship between the nautical training provided by the companies and the obtaining of the recreational navigation card issued by the Institute (EU citizens will only attend the training course if they can take the exam in Portugal). Therefore, the activities of the institute promote a restriction which infringes the principle of freedom to provide services in the EU and the Community principle of non-discrimination. In this case, the state may be subject to non-contractual civil liability for breach of Community law.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)

“ O disposto no artigo 29.º, n.º 1 do RNR ao introduzir um requisito de residência em território nacional para a emissão de cartas de navegador de recreio conflitua com o direito comunitário. Em suma: - viola o artigo 12.º do TCE (actualmente artigo 18.º do TFUE) que confere o direito de não discriminação entre cidadãos da União em razão da nacionalidade, porquanto estabelece uma condição de residência em território nacional que é mais facilmente preenchida pelos cidadãos nacionais do que pelos cidadãos de outros Estados-Membros; - interfere com a liberdade de circulação de pessoas (artigo 39.º do TCE, actualmente artigo 45.º do TFUE,), pois reduz a possibilidade de os cidadãos de outros Estados-Membros se deslocarem a Portugal com o intuito de obterem, em igualdade de circunstâncias com os residentes, o título de navegador de recreio; - conflitua com a liberdade de prestação de serviços (artigo 49.º do TCE, actualmente artigo 56.º TFUE), na medida em que, em razão da “indivisibilidade” ou “unicidade” entre a actividade de formação das AA. e o fim ao qual a mesma é dirigida – a obtenção das cartas de navegador de recreio - acarreta uma restrição (ainda que indirecta) quer à possibilidade de entidades formadoras nacionais prestarem os seus serviços de formação a cidadãos comunitários não residentes, quer ao acesso desses cidadãos aos serviços por aquelas prestados”.

Translation:

“Introducing a requirement of residence in national territory for the issue of recreational navigator cards conflicts with Community law: infringes Article 12 of TFEU (now Article 18) which confers to EU citizens, the right of non-discrimination on the grounds of nationality, since it establishes a residence requirement on national territory which is more easily met by national citizens; interferes with the freedom of movement of persons (Article 39 of TFEU, now Article 45), since it reduces the possibility for citizens of other Member States to travel to Portugal with a view to obtaining, in equality of circumstances with residents, the title of recreational navigator; conflicts with the freedom to provide services (Article 49 of TFEU, now Article 56), because it represents a restriction (although indirect) on the freedom to provide services to non-resident Community citizens, and also a restriction imposed to these citizens on access to those services.”

	<p>See www.dgsi.pt/jtcn.nsf/89d1c0288c2dd49c802575c8003279c7/7cc2dfba22422e8080257eed005d2ccd?OpenDocument&Highlight=0,Directiva,2004%2F38%2FCE.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>CASE 4 Subject matter concerned</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> - linked to Article 13 of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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Decision date	2 December 2014
Deciding body (in original language)	Tribunal da Relação de Coimbra
Deciding body (in English)	Coimbra Appeal Court
Case number (also European Case Law Identifier (ECLI) where applicable)	1045/12.3TBCLD-A.C1
Parties	Appeal against a decision of a lower court (<i>Tribunal da Comarca das Caldas da Rainha</i>). Parental responsibilities. Mother of the child v. Father of the child (<i>Mãe do menor versus Pai do menor</i>).
Web link to the decision (if available)	www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/fe5158f6de2d757880257daa004d04d2?OpenDocument

Legal basis in national law of the rights under dispute	Law on jurisdictional organisation of minors. ⁴
Key facts of the case (max. 500 chars)	A minor, son of a German father and a Brazilian mother, and holder of both nationalities, was living in Portugal with his mother when a Portuguese court decided on the regulation of parental responsibilities. In disrespect of this agreement, without the father's permission, the mother took the child to live with her in Brazil. The father appealed to the court. The Court of First Instance decided to declare: 1) the international jurisdiction of the Portuguese courts; 2) the illegality of the minor's move to another country; 3) the immediate return of the child to Portugal; 4) the payment (by the mother) of an amount for each day of delay. The mother contested this decision (her appeal is the object of this decision).
Main reasoning / argumentation (max. 500 chars)	<p>The mother of the child claimed in this judicial review: 1) that the competent courts became the Brazilians, not the Portuguese; 2) the loss of the right of residence in Portugal, for her and for the child, after the divorce; 3) the injustice of the immediate return decision of the minor; 4) the disproportionality of the pecuniary sanction imposed on her.</p> <p>The minor's father said that the agreement on parental responsibility does not provide for the child to go to another country on the basis of a unilateral decision by one of the parents. Therefore, since the mother does not have the consent of the father for this move, the mother is in breach of that agreement.</p>

⁴ Portugal, [Decree-Law 314/78 on the law on jurisdictional organisation of minors, which was repealed by Law 141/2015 of 8 of September](#) (*Decreto-Lei n.º 314/78, de 27 de outubro, lei da organização tutelar de menores, entretanto revogada pela Lei n.º 141/2015, de 8 de setembro*), 27 of October.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The residence in Portugal of a minor, who is a national of an EU Member State, in the company of the mother (a national of a non-Member State), subsequent to the divorce of the parents, is legally supported by a direct effect of Article 21 (1) of the TFEU, and the continuing legitimacy of that residence covers the minor's mother to whom he is entrusted.</p> <p>The Portuguese Court that defined the regulation of parental responsibilities maintains the competence to assess the non-compliance of the parental responsibility under Article 181 of law on jurisdictional organisation of minors (and also implicitly on the basis of Article 15 of the Hague Convention).</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court ruled against the mother of the child, maintaining in its fullness the lower court's decision referring to: 1) the international jurisdiction of the Portuguese courts; 2) the illegality of the minor's move to another country; 3) the immediate return of the child to Portugal; 3) the payment (by the mother) of an amount for each day of delay.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>“A residência em Portugal de um menor, nacional de um Estado da União Europeia, na companhia da mãe (nacional de um Estado não membro), subsequentemente ao divórcio dos pais, tem suporte legal, por via do efeito directo do artigo 21º, nº 1 do Tratado sobre o funcionamento da União Europeia, sendo que a subsistente legitimidade dessa residência abrange a mãe do menor ao qual este se encontra confiado. Trata-se nesta asserção (relativa à residência da mãe) da realização efectiva desse efeito directo nos termos em que o Tribunal de Justiça o entendeu no Acórdão Baumbast de 17/09/2002, referido à necessária residência do menor com o progenitor ao qual se encontra confiado”.</i></p> <p>Translation:</p>

	<p>“The residence in Portugal of a minor, who is a national of a Member State of the EU, in the company of the mother (a national of a non-Member State), subsequent to the divorce of the parents, is legally supported by direct effect of Article 21 (1) of the TFEU and the continuing legitimacy of that residence covers the minor's mother to whom he is entrusted (as considered by CJEU in the <i>Baumbast</i> judgment of 17/09/2002, referring to the necessary residence of the minor with the parent to whom he is entrusted).”</p> <p>See: www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/fe5158f6de2d757880257daa004d04d2?OpenDocument.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>CASE 5</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to Articles 33, 27 and 28 of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	29 October 2009
Deciding body (in original language)	Supremo Tribunal de Justiça
Deciding body (in English)	Supreme Court of Justice
Case number (also European Case Law Identifier (ECLI) where applicable)	508/05.1GBLLE.S1
Parties	Defendants 'appeal (two Romanian citizens) against the decision of the Court of Appeal (<i>Tribunal da Relação de Évora</i>)

Web link to the decision (if available)	www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/0ed5241cccc6824b8025766300303e3b?OpenDocument
Legal basis in national law of the rights under dispute	Decree-Law 244/98 of 8 August regulates the entry, stay, exit and removal of foreigners (this Decree-Law has been repealed by Law 23/2007 of 4 July) ⁵ and Criminal Code ⁶ and Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the national legal system. ⁷
Key facts of the case (max. 500 chars)	Two Romanian citizens were sentenced (for theft and murder) to 18 years' imprisonment and to the accessory penalty of expulsion from Portuguese territory for a period of 10 years. The defendants appealed for a reduction of this sentence.
Main reasoning / argumentation	The Prosecutor's Office of Supreme Court invoked that Romania is a Member State of the EU, so the accused cannot be charged with an additional penalty of expulsion under Decree-Law 244/98 of 8 August. The applicable sanction is the removal from the national territory, in accordance with Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the national legal order.

⁵ Portugal, [Decree-Law 244/98 regulating the entry, stay, exit and removal of foreigners](#). This Decree-Law has been repealed by Law 23/2007 of 4 July. (*Decreto-Lei n.º 244/98, de 8 de agosto, que regula a entrada, saída, permanência e afastamento de estrangeiros do território nacional. Este Decreto-Lei foi entretanto revogado pela Lei n.º 23/2007, de 4 de julho*), 8 August.

⁶ Available at the following [link](#).

⁷ Available at the following [link](#).

(max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Romania is a Member State of the EU. Accordingly, the accused cannot be charged with an additional penalty of expulsion under Decree-Law 244/98 of 8 August. The penalty of removal from the national territory should be applied, in accordance with Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the national legal order.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court considered that the defendants were dangerous. So, after serving the sentence, they were likely to disturb public safety and public order again. Hence the need to decree their move away from the national territory. The court upheld the main criminal sanction but replaced the accessory sentence of expulsion with the penalty of removal from the national territory with the guarantees contained in Directive 2004/38/EC and Law 37/2006 of 9 August which transposed it into the legal system national. These guarantees include the possibility for the accused to submit a request to lift the ban in the terms and deadlines defined by law.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"A Roménia, país de onde são originários os recorrentes, pertence à União Europeia desde 1 de Janeiro de 2007, pelo que não se lhes pode aplicar a pena acessória de expulsão nos termos apontados, mas a de afastamento do território nacional, nos termos do art.º 28.º da Lei n.º 37/2006, de 9 de Agosto".</i></p> <p>Translation:</p> <p>"Romania, the defendants 'country, has been a member of the EU since 1 January 2007. So, an additional penalty of expulsion cannot be imposed on the accused. The appropriate measure is the removal from the national territory, in accordance with Article 28 of Law 37/2006 of 9 August."</p>

	<p>See: www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/0ed5241cccc6824b8025766300303e3b?OpenDocument.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>CASE 6 Subject matter concerned</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <p style="padding-left: 40px;">- linked to which articles of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p>
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	<input type="checkbox"/> 5) the right to petition
Decision date	2007 (day and month of the decision are not available)
Deciding body (in original language)	Provedor de Justiça
Deciding body (in English)	Portuguese Ombudsman
Case number (also European Case Law Identifier (ECLI) where applicable)	R-1879/07
Parties	Complaint by a Human Rights Association (unidentified in the Ombudsman's Report) against the parish council of Coração de Jesus (in Viseu, a city in the north of Portugal). The Portuguese media have also reported this situation.
Web link to the decision (if available)	Available at the Ombudsman's Report of 2007, Vol. II, p. 812 and 813. See: www.provedor-jus.pt/site/public/archive/doc/Relatorio2007_vol_II.pdf .

Legal basis in national law of the rights under dispute	<p>Law 53-E/2006 of 29 December (General Regime of Municipalities Taxes); Decree-Law 135/99 of 22 April (administrative modernisation measures); Article 15 of the Portuguese Constitution (concerning the equality of rights of foreigners, stateless persons and European citizens).</p>
Key facts of the case (max. 500 chars)	<p>The parish council charged a different value for issuing a residence certificate, depending on the nationality of the applicant. The value was higher for foreigners, including nationals of EU Member States (€20) than for Portuguese citizens (€5).</p>
Main reasoning / argumentation (max. 500 chars)	<p>The parish council invoked the added cost of proving the residence of the foreigners, especially when there was no document that would support this proof. The Ombudsman considered this argument unacceptable, considering that the administrative service provided was the same, and that the difference in treatment was based exclusively on nationality.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Although the local authority (in case, the parish council) has the autonomy to establish its own taxes (under the general regime), it cannot use this autonomy in a way that leads to the violation of the principle of equality of rights and duties of foreigners. The Ombudsman speaks of the added problems that this differentiation can bring where applied to EU citizens, although it does not realise them.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Ombudsman recommended the parish council to change the scale of fees in accordance with the principle of equality and equal treatment of foreigners. The Ombudsman also recommended returning the money to the injured applicants.</p> <p>The parish council accepted the Ombudsman's recommendation: the scale of fees was changed and the money returned to the injured applicants.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“[O Provedor de Justiça] fez notar a impossibilidade de, com base na nacionalidade, se discriminar a taxa recebida pelo mesmo serviço que era prestado, qual seja o da certificação da residência. (...) Para além dos problemas específicos que suscitaria esta norma quando aplicada a cidadãos comunitários, mesmo para os demais não se vislumbrava fundamento racional que pudesse ser tido como bom pela ordem jurídica para permitir esta diferenciação de custos”.</i></p> <p>Translation:</p> <p>“The Ombudsman noted the impossibility to discriminate on the grounds of nationality. In fact, the service that was provided to Portuguese citizens and to foreigners (the certification of residence) was the same. In addition to the specific problems this rule would bring to EU citizens, even for others foreigner citizens there was no rational argument which could support such differentiation of costs.”</p> <p>See (specifically p. 812): www.provedor-jus.pt/site/public/archive/doc/Relatorio2007_vol_II.pdf.</p>
Has the deciding body referred to the Charter of	No.

Fundamental Rights? If yes, to which specific article.	
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CASE 7 Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which articles of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	6 October 2008 (date of Ombudsman's Recommendation)
Deciding body (in original language)	Provedor de Justiça
Deciding body (in English)	Portuguese Ombudsman

Case number (also European Case Law Identifier (ECLI) where applicable)	R-3682/08 (Recommendation 11/B/2008)
Parties	Complaint concerning a young German football player (the Ombudsman's Report does not identify the complainant) against the Portuguese Football Federation.
Web link to the decision (if available)	Available at the Ombudsman's Report of 2008, p. 686-693. See (specifically p. 686-693): www.provedor-jus.pt/site/public/archive/doc/Relatorio_Assembleia_2008.pdf .
Legal basis in national law of the rights under dispute	Law 5/2007 ⁸ of 16 January, defining the basis for the policies for the promotion of sports and physical activity (<i>Lei de Bases da Atividade Física e do Desporto</i>); Regulation of the Portuguese Football Federation regarding the registration and transfer of players; Article 70 of the Portuguese Constitution (youth); Article 15 of the Portuguese Constitution (concerning the equality of rights of foreigners, stateless persons and European citizens).
Key facts of the case (max. 500 chars)	The Portuguese Football Federation established differentiated quotas, according to nationality, for the registration and transfer of amateur players. Quotas were much higher in registration and transfers of players from foreign clubs (including players from European Union countries) to national clubs than in transfers of players between national clubs.

⁸ Portugal, [Law 5/2007 defining the basis for the policies for the promotion of sports and physical activity](#) (*Lei 5/2007 de 16 de Janeiro, que define as bases das políticas de desenvolvimento da actividade física e do desporto*), 16 January.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Ombudsman argued that the amount required of a foreign practitioner is disproportionate to the service provided. On the other hand, there is an unacceptable inequality between the values charged to the athletes that move within the national territory and the amounts charged to foreign athletes. The Ombudsman refers a discriminations on grounds of nationality, intolerable within the context of the European Union. In addition, they are junior amateur players (not included in the recruitment market with a professional nature and where economic interests have another meaning). In accordance with FIFA rules, international transfers are only allowed when the player reaches the age of 18. So, in the concrete case, there is not really a player transfer but only the registration of a player who, because of his parents' change of residence, will move to another country (where he intends to continue practicing the sport). Finally, the German Football Association does not charge, in a similar context, any fee for the registration of foreign players.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>FIFA does not permit the transfer of players under the age of 18. This case concerns the registration in the Portuguese Football Federation of a young German player who came to live with his parents in Portugal and intends to continue practising the sport. Collecting very different amounts for the registration of foreign players and for the registration of players who already practice in national territory is a discrimination based on nationality, which is inadmissible in the light of the Portuguese legal framework and the rules of Community law.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Ombudsman agreed with the complainant. It recommended the Portuguese Football Federation to apply the same registration fee to all players of another nationality who, because of international commitments undertaken by Portugal, should benefit from equal treatment as players of Portuguese nationality. The Ombudsman also recommended that membership fees be changed in accordance with the principle of proportionality and the situation of non-professional players.</p> <p>The Portuguese Football Federation has complied with these recommendations.</p>

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>“Ocorre aqui uma discriminação em função da nacionalidade que suscita óbvias críticas, muito especialmente no contexto da União Europeia.</i></p> <p>(...)</p> <p><i>Um jogador menor de 16 anos não pode proceder à sua inscrição como transferência internacional a não ser quando a mesma for consequência da mudança de residência do agregado familiar no qual aquele se encontra inserido, nunca como fim principal mas sempre como garantia acessória da liberdade de circulação e de estabelecimento”.</i></p> <p>Translation:</p> <p>“There is a discrimination on the basis of nationality, which gives rise to obvious criticisms, especially in the context of the European Union.</p> <p>[...]</p> <p>A player under 16 years of age cannot register with the Portuguese Football Federation as an international transfer unless it is a consequence of the change of residence of his family. This registration is not the main purpose but always an accessory guarantee of freedom of movement and establishment.”</p> <p>See: (specifically p. 691 and 692): www.provedor-jus.pt/site/public/archive/doc/Relatorio Assembleia 2008.pdf.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p>	<p>No.</p>

to which specific article.	
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CASE 8 Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	14 March 2002 (approved by the Government on 6 May 2002)
Deciding body (in original language)	Conselho Consultivo da Procuradoria-Geral da República

Deciding body (in English)	Consultative Council of the Attorney General's Office
Case number (also European Case Law Identifier (ECLI) where applicable)	Opinion 7/2002
Parties	Government's request to the Consultative Council of the Attorney General's Office for an opinion on the irregular situation of a foreigner.
Web link to the decision (if available)	www.dgsi.pt/pgrp.nsf/7fc0bd52c6f5cd5a802568c0003fb410/101ad66dc324041a80256b530053c273?OpenDocument
Legal basis in national law of the rights under dispute	Decree-Law 244/98 of 8 August (legal regime of entry, stay and removal of foreigners); Decree-Law 60/93 of 3 March (previous legal regime of entry and stay of EU citizens, revoked by Law 37/2006 of 9 August; this Decree-Law realised EU legislation prior to Directive 2004/38); Code of Criminal Procedure.
Key facts of the case (max. 500 chars)	As a result of some penal situations involving a foreigner (including a request for extradition from Spain), a foreigner was found by the Portuguese authorities without a residence permit and without any valid identification documents (only an expired Spanish identity card). The foreigner invoked the impossibility of presenting a valid identification document. In view of this, the Government requested an opinion from the Consultative Council of the Attorney General's Office on whether it would be possible to initiate an administrative expulsion procedure and, if not, how the authorities should proceed in this case.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Consultative Council of the Attorney General's Office considered that EU citizens were not in the same situation as non-EU foreigners. A non-EU citizen found in Portugal without any identification document could be expelled from the country by an administrative authority. EU citizens, as holders of the right of free movement within the European Union, may be expelled only where there are reasons of public policy, public security or public health which justify it. The irregular situation of an EU citizen in the national territory, because he does not have a valid identity card or passport, nor any residence permit, is not in itself enough to justify the derogation of the principle of the free movement of persons. So, the administrative expulsion is not possible based only on the lack of those documents. As long as the situation concerning the difficulty of obtaining the identification title is not resolved, the Portuguese authorities can only impose on EU citizens the identification procedure for persons who do not have valid identification documents (the Portuguese Code of Criminal Procedure has got some specific procedures for people who do not have any identification title). On the other hand, that procedure cannot be translated into an intolerable restriction on the principle of free movement of persons within the European Union.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>EU citizens may be expelled only where there are reasons of public policy, public security or public health which justify it. Considering the principle of the free movement of persons, a citizen from another EU Member State who does not have an identity card, passport or residence permit, cannot be expelled from that EU Member State only because of that. In this case, the authorities should impose on the foreigner a specific legal identification procedure until he can get his identification documents.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The Government approved the opinion of the Consultative Council of the Attorney General's Office, which means that all public services should interpret the law as interpreted in the opinion, and should adopt the procedures therein, including in that particular case.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Os nacionais de Estados-membros da União Europeia, enquanto titulares do direito de livre circulação no espaço comunitário, apenas poderão ser objeto de expulsão, nos termos referidos na conclusão anterior, quando ocorrerem razões de ordem pública, segurança pública ou saúde pública que a justifiquem. (...) A situação de permanência irregular em que se encontra um estrangeiro comunitário em território nacional, devido a não possuir bilhete de identidade ou passaporte válidos, nem qualquer título de residência, não é por si bastante para integrar as cláusulas de ordem pública ou de segurança pública que fundamentam a derrogação do princípio da livre circulação de pessoas”.</i></p> <p>Translation:</p> <p>“Nationals of Member States of the European Union, as holders of the right of free movement within the Community, may only be expelled when reasons of public order, public security or public health justify it . [...] The situation of irregular residence of a EU foreigner, because he does not have a valid identity card or passport, nor any residence permit, is not enough in itself to support the derogation of the principle of the free movement of persons.”</p> <p>See: www.dgsi.pt/pggrp.nsf/7fc0bd52c6f5cd5a802568c0003fb410/101ad66dc324041a80256b530053c273?OpenDocument.</p>
Has the deciding body	No.

referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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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	6	3	0	0	0

data is available (covering the reference period)					
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