

<b>Subject-matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 5, 7, 8, 14, 15, 27 and 28 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	10.05.2013
<b>Deciding body (in original language)</b>	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
<b>Deciding body (in English)</b>	Supreme Administrative Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	KHO 2013:88; 2969/10; 1634 ECLI:FI:KHO:2013:88
<b>Parties</b>	X v the Helsinki Police Department [ <i>Helsingin poliisilaitos/polisinrättningen i Helsingfors</i> ]
<b>Web link to the decision (if available)</b>	<a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2013/201301634">www.finlex.fi/fi/oikeus/kho/vuosikirjat/2013/201301634</a>
<b>Legal basis in national law of the rights under dispute</b>	Aliens Act ( <i>ulkomaalaislaki/utlänningslag</i> ) no. 301/2004, as amended
<b>Key facts of the case</b> (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”)

	<p>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>An Estonian citizen, who had been in Finland since 2007, wished to register his residence in 2009. The police refused the request on grounds that the applicant had been a constant danger to public order or security. During his stay in Finland he had been found guilty of petty theft, traffic violation and of drug trafficking on six occasions. The administrative court upheld the decision whereas the Supreme Administrative Court found that registration could not be refused on grounds of public order or security.</p> <p>According to section 156(1) of the Aliens Act, a requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered a danger to public order or security. Section 159(1) of the Act provides that EU citizens residing in Finland for more than three months must register their residence. Proof required in connection with registration is specified in section 159a which is corresponding to the provisions of Directive 2004/38/EC. In addition to the Aliens Act, the Supreme Administrative Court also took into account the TFEU, Directive 2004/38/EC and the case law of the CJEU (C-215/03 <i>Oulane</i>; C-376/89 <i>Giagounidis</i>).</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	The Supreme Administrative Court ruled that the right of residence in another EU Member State is based on the founding Treaties, not on registration, which is just a supervisory measure. It is not explicitly provided for in the Aliens Act (as amended) that registration can be refused on grounds of public order or security. If an EU citizen is considered a danger to public order or security his or her right of residence can be challenged by means of a decision on refusal of entry or deportation. In this case no actual decision on refusal of entry had been made.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Previously, section 159 of the Aliens Act, on registration of EU citizens' right of residence, explicitly referred to section 156 of the Act as a requirement for registration. When Directive 2004/38/EC was transposed into Finnish law through Act no. 360/2007 amending the Aliens Act, this reference was removed from section 159 of the Act. Based on the Government Bill on the amending Act, the police and the administrative court both held that although the explicit reference to section 156 was removed from section 159, the legislator did not intend to change an already established practice. The Supreme Administrative Court took a different view and held that such a statement in the preparatory works of the amending Act did not constitute sufficient grounds for refusal of registration on grounds of public order or security, in particular when the reference to public order or security had been removed from the amended provisions concerning registration and its requirements.
<b>Results (e.g. sanctions) and key consequences or implications of the</b>	The Supreme Administrative Court quashed the decisions of the police and the administrative court and referred the case back to the police for reconsideration as a registration matter.

<p>case (max. 500 chars)</p>	
<p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>(p. 14 of the decision): Korkein hallinto-oikeus katsoo sääntelyn systematiikkaa ja ulkomaalaislain asianomaisten säännösten tulkintaa unionioikeuden sääntelyn valossa punnittuaan, että rekisteröintimenettelyn tarkoitus huomioon ottaen sen yhteydessä ei lähtökohtaisesti tule selvittää unionin kansalaisen maassa oleskelun edellytyksiä ulkomaalaislain 159a §:n mukaista hakemusta laajemmin. Unionin oikeuden kannalta rekisteröinti ei ole pakollinen järjestelmä eikä rekisteröimiseen ole liitetty oikeusvaikutuksia. Vapaan liikkuvuuden direktiivissä on vain säädetty rekisteröintiä koskevasta hallintomenettelystä siten, että se on kansallisesti tehtävä unionin kansalaisen kannalta mahdollisimman sujuvaksi.</p> <p>Jos asianomainen unionin kansalainen ei täytä oleskelun edellytyksiä yleisen järjestyksen tai yleisen turvallisuuden vaarantamisen takia, hänen oleskeluunsa tulee puuttua käännättämis- tai karkottamispäätöksellä. Tuolloin menettelyyn liittyvät kaikki tavanomaiset oikeusturvatakeet mukaan lukien se, että yli kolme kuukautta maassa oleskelleen unionin kansalaisen käännättämisestä päättää Maahanmuuttovirasto. Käännättämispäätökseen liittyen on mahdollista evätä myös rekisteröinti.</p> <p>Having considered the general scheme of the Aliens Act and the interpretation of the relevant provisions of the Act in the light of EU law, the Supreme Administrative Court finds that, keeping in mind the purpose of registration, the assessment of proof required in connection with the registration of EU citizens' right of residence shall, as a rule, not exceed the requirements specified in section 159a of the Aliens Act. Registration is not obligatory under EU law and it produces no legal effects. The Free Movement Directive only provides for an administrative procedure of registration to the effect that, at the national level, the procedure shall be made as easy as possible for the EU citizens.</p> <p>When an EU citizen does not meet the requirements for right of residence due to being considered a danger to public order or security, his or her right of residence shall be interfered with by means of a decision on refusal of entry or deportation. In that case the procedure contains all the relevant due process guarantees, including that the decision on refusal of entry of an EU citizen who has resided in the country for more than three months is made by the Immigration Service. In connection with the decision on refusal of entry it is possible to also refuse registration.</p>

<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	Yes. Article 45(1). The court mentions Article 45(1) of the Charter when listing the relevant provisions in EU law, but the Charter is otherwise not explicitly discussed in the decision.
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