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| Subject-matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 1 March 2012 |
| Deciding body (in original language) | <i>Consiglio di Stato</i> |
| Deciding body (in English) | Council of State |
| Case number (also European Case Law Identifier (ECLI) where applicable) | Fifth Section, judgment No. 1193 of 1 March 2012 |
| Parties | <i>Two Italian citizens living in the Municipality of Trevi(Umbria) v. the Municipality of Trevi (Comune di Trevi), the Electoral Commission of the Municipality of Trevi (Commissione elettorale del Comune di Trevi), electoral list No. 3 named 'We for Trevi'(Noi per Trevi), and the Ministry of the Interior (Ministero dell'Interno)</i> |
| Web link to the decision (if available) | <a href="http://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=FJH7Y5P4AEE3AD6VCAN5QQLMW M&q<sup>1</sup>">www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=FJH7Y5P4AEE3AD6VCAN5QQLMW M&q¹ |

¹All hyperlinks were accessed on 26 April 2017.

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| Legal basis in national law of the rights under dispute | <p>Articles 1 and 3 of Legislative Decree No. 197 of 12 April 1996, Implementation of Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (<i>Decreto legislativo 12 aprile 1996, n. 197, Attuazione della direttiva 94/80/CE concernente le modalità di esercizio del diritto di voto e di eleggibilità alle elezioni comunali per i cittadini dell'Unione Europea che risiedono in uno Stato membro di cui non hanno la cittadinanza</i>)</p> |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> 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). <p>Following the municipal elections in Trevi, two Italian citizens challenged the enrolment in the local electoral register of 35 EU citizens regularly living in the municipal territory. According to the complainants, the abovementioned EU citizens did not comply with the administrative requirements envisaged by Decree of the President of the Republic No. 223 of 20 March 1967, Approval of the consolidated act governing the right to vote, as well as the maintenance and review of electoral registers (<i>Decreto del Presidente della Repubblica 20 marzo 1967, n. 223, Approvazione del testo unico delle leggi per la disciplina dell'elettorato attivo e per la tenuta e la revisione delle liste elettorali</i>) and by Article 3 of Legislative Decree No. 197/1996, according to which EU citizens willing to take part in municipal elections have to lodge a formal request with the Mayor within five days from the publication of the formal convocation of election rallies.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The Council of State (which represents the second instance of the Italian administrative justice system) confirmed the judgment of the Umbria Regional Administrative Court (<i>Tribunale Amministrativo Regionale per l'Umbria</i>, TAR Umbria), which had been challenged by the complainants. In fact, according to the Council of State, the abovementioned 35 EU citizens – whose right to participate in the municipal elections is not in question – had to comply with the administrative requirements envisaged by Italian legislation.</p> |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>Through this judgment, the Council of State confirmed the right of EU citizens regularly living in the territory of an Italian Municipality to take part in municipal elections at the same conditions as Italian citizens. Nonetheless, the abovementioned legislative decree – which implemented Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals – set out some specific bureaucratic requirements aimed at balancing EU citizens' right to vote with the need for transparency and clarity of electoral procedures, covering the drafting of the official electoral register.</p> |

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| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>According to the Council of State's reasoning, the complaint lodged by the two Italian citizens was definitely upheld and the first-level court's decision was confirmed. Consequently, the 35 EU citizens who had been allowed to vote were not entitled thereto because they were not officially enrolled in the municipal electoral register. For this reason, their vote was considered illegitimate. Since the Mayor had been elected by a margin of just 14 votes, the elections were considered invalid and had to be held again.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p><i>"[...] il legislatore ha voluto fissare dei termini temporali invalicabili, la cui scadenza, determina il c.d. "blocco delle liste", con la conseguenza che è impedito qualsiasi intervento sulle stesse, e ciò al fine di dare certezza al voto, sicchè ammissioni di carattere eccezionale ed urgente a votare sono, sempre per espressa previsione di legge, limitate ai casi in cui l'acquisto o il riacquisto del diritto di voto è intervenuto successivamente al blocco delle liste. Nel caso dei 35 cittadini comunitari, impropriamente ammessi al voto dalla Commissione Circondariale, non solo non si verte nella casistica straordinaria [...] ma è pacifico che la residenza nel Comune di Trevi da parte degli interessati è datata nel tempo e ben poteva essere utilizzata la procedura espressamente prevista dalla legge per iscrivere gli stessi nella lista elettorale."</i></p> <p><i>"[...] the legislator has expressly set mandatory deadlines whose expiry entails the so-called 'freeze of rolls', and thus the impossibility to further modify them in any way whatsoever. All of this is aimed at ensuring certainty in relation to the voting procedure; consequently, according to applicable legislation, exceptional and urgent enrolment is limited to the cases in which access or re-access to the right to vote has been obtained after the freeze of rolls. In the case of the 35 EU citizens who had been unlawfully allowed to vote by the District Commission, not only can the extraordinary enrolment procedure not be applied [...] but it is also clear that the subjects concerned had been living in the Municipality of Trevi for a long time, and thus the procedure envisaged by the applicable legislation could have been applied in order to enrol them in the electoral register."</i></p> |
| Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article. | <p>No, it has not.</p> |