

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	1 November 2016
Deciding body (in original language)	Tallinna Halduskohus
Deciding body (in English)	Tallinn Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	3-15-2902/20, ECLI:EE:TLHK:2016:3.15.2902.4773
Parties	V.G. vs Ministry of Interior
Web link to the decision (if available)	https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=194257410
Legal basis in national law of the rights under dispute	• Obligation to Leave and Prohibition on Entry Act (OLPEA) (<i>väljasõidukohustuse ja sissesõidukeelu seadus</i>)¹ Art 31 sec 1 (in force until 27 December 2005)

¹ Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), State Gazette 03.01.2017, 16, available in English: www.riigiteataja.ee/en/eli/517012017004/consolide

	• Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>)² Arts 41 and 45 • Directive 2004/38 articles 5, 27 and 30; Decision No. C-300/11 of the CJEU (ZZ vs. Secretary of State for Home Department) • Citizen of the European Union Act (CEUA) (<i>Euroopa Liidu kodaniku seadus</i>)³ Articles 52⁴ secs 2 and 3 (in force until 27 December 2005)
Key facts of the case (max. 500 chars)	Ministry of the Interior took on 22 July 2015 a decision whereby it prohibited V.G.'s (Latvian citizen) entry to the Republic of Estonia for five years. It was explained in the decision that V.G. was associated with the A. Gortšakov Public Diplomacy Fund. This Fund was created by the Russian Ministry of Foreign Affairs and its main role is to activate Russian diaspora living outside of Russia. As V.G. had been more active in this context, he was considered to jeopardise the security and public order of Estonia. The applicant did not have any personal, economic or family connection to Estonia, nor did he have a residence permit. The administrative court granted the application and found that the decision of the MoI was not substantiated enough as required by the directive and subsequent court practice of the CJEU.
Main reasoning / argumentation (max. 500 chars)	The MoI did not present proof neither to the applicant nor to the court that the mere connection of the applicant to the Fund was sufficient grounds to believe that he is a threat to the public security of Estonia. Although general security analysis might be a permissible ground for prohibiting entry of EU citizens and this is a discretionary right of the MoI, the court has an obligation to control the legality of this decision. As the MoI did not provide further evidence of the threat V.G. was posing, it annulled the decision.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In the centre of the dispute was a question whether the prohibition of entry has to be substantiated or whether it can be an unsubstantiated decision based on the more general security analysis.
Results (e.g. sanctions) and key consequences or implications of the	Decision of the Ministry of the Interior was annulled.

² Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) State Gazette 21.05.2015, www.riigiteataja.ee/en/eli/521052015001/consolide

³ Estonia, Citizen of the European Union Act (CEUA) (*Euroopa Liidu kodaniku seadus*), State Gazette 16.01.2017, www.riigiteataja.ee/en/eli/516012017001/consolide.

case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<i>"11. /---/ Kohus nõustub samas vastustaja ja kaasatud haldusorganiga selles, et sissesõidukeelu olemust ja julgeolekuasutuste tegevuse iseloomu arvestades ei eelda sissesõidukeelu kohaldamine alati üksikasjalike põhjenduste ja tõendite kajastamist vastavas otsuses. Olgugi, et õiguste piiramine (milleks on ka EL liikmesriigi kodaniku sissesõidukeeld mõnda EL riiki) peab lisaks õigusliku ja faktilise aluse esinemisele olema üldjuhul ka piirangu adressaadile kontrollitavalt põhjendatud, siis teatud juhtudel võivad selle põhimõtte osas rakenduda teatavad mõõndused. Selline alus on ette nähtud direktiivi 2004/38/EÜ art-s 30, mis sätestab, et asjaomasele isikule teatatakse täpselt ja täielikult, millistel avaliku korra, julgeoleku või tervishoiuga seotud kaalutlustel tema kohta otsus on tehtud, välja arvatud juhul, kui see on vastuolus riigi julgeolekuhuvidega.</i> <i>/---/</i> <i>Kohus leiab, et riigi julgeolekuhuvina tuleb muu hulgas käsitada avalikku huvi riigisaladuse kaitse vastu, mis kaalub üles piirangu adressaadi õiguse tutvuda kõigi kogutud tõenditega. Avalikuks huviks on huvi tagada julgeolekuasutuste töö efektiivsus, mis kogutud andmete avaldamisel saaks oluliselt kahjustatud, kuivõrd neist andmetest võivad selguda teabehanke meetodid ja allikad, mille kaudu teabe saamine on põhimõtteliselt võimalik vaid seni, kuni need püsivad saladuses.</i> <i>Eeltoodust tulenevalt ei pea kohus põhjendatuks kaebaja seisukohta, et vaidlustatud otsuse õiguspärasuse eelduseks on otsuse põhjendustes kogu sellise teabe avaldamine, mis on julgeolekuasutuse poolt kogutud kaebaja tegevuse kohta ja mis ohustab otsuse tegija hinnangul EV julgeolekut ja avalikku korda.</i> <i>12. Olukorras, kus haldusakti adressaadile ei esitata otsuse aluseks olevat kogu teavet, vaid üksnes põhimotiivid, on haldusakti kontrollitavus tagatud kaebeõiguse ja kohtuliku kontrolli kaudu. Seega tuleb kohtul hinnata, kas otsuse põhimotiivid ja nende kinnituseks kohtule esitatud (konfidentsiaalne) teave on vastavuses ja toetavad otsuse järeltõlgimist.</i> 11 / --- / The Court agrees with the respondent that the prohibition to entry initiated by the national security agencies do not always require a detailed statement of reasons and evidence. Although the restriction of fundamental rights (which include the prohibition of entry of the EU citizen), has to include the legal and factual basis and its reasons have to be justified to the recipients, in certain cases, this principle permits certain concessions. Article 30 of the Directive 2004/38 / EC allows such limitation if it is contrary to the national security interests.

	/ --- / The Court finds that the national security interests of the state include the protection of state secrets, and this outweighs the restriction of the recipient's right to examine all the evidence collected. It is in the public interest of the state to ensure the effectiveness of the work of the security agencies, which could be significantly damaged by the publication of the data collected, since this data may reveal information on methods and sources through which information if collected, they might be available only as long as they remain secret. Accordingly, the court did not consider the applicant's view founded that the legality of the contested decision presumes the disclosure of such information, which is collected by the security authority on the activities of the applicant that is considered to threaten the security and public order of the Republic of Estonia. 12. In the situation where the addressee of the administrative decision has not been provided with all the information, but only the main motives, the decision can be controlled through court proceedings and judicial supervision. Thus, the court must assess whether the general basis of the administrative decision and its basic motivations and the (confidential) information support the findings of the Mol.
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.