

<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 - Article 24 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>	28 March 2017
<b>Deciding body (in original language)</b>	Civil Court of Appeal (Inferior Jurisdiction) <sup>1</sup>
<b>Deciding body (in English)</b>	Civil Court of Appeal (Inferior Jurisdiction)
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	12/2016
<b>Parties</b>	Maksimova Desislava Vasileva (ID 60804A) vs Director General Social Security
<b>Web link to the decision (if available)</b>	Cases can be found through a search function on the Justice Services website: <a href="http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all">http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all</a>

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<sup>1</sup> This decision was taken in the English language, as there is a possibility to request the Courts for proceedings to be conducted in English if one of the parties does not speak Maltese.

<b>Legal basis in national law of the rights under dispute</b>	Regulation 3, Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17 <sup>2</sup>
<b>Key facts of the case</b> (max. 500 chars)	<p>1. Respondent is a Bulgarian citizen, and a divorced mother of three children. Throughout her time in Malta she worked with seven different companies offering health services. In 2015, she applied for social benefits. The assistance she applied for is a non-contributory cash benefit, which is financed through tax revenue, and a benefit within the meaning of article 70(2) of Regulation 883/2004. The arguments of the appellant and of the respondent were solely based on the Free Movement of European Union Nationals and their Family Members Order.</p> <p>2. The application for benefits was denied on the basis that she did not have sufficient resources in accordance with the Free Movement of European Union Nationals and their Family Members Order. The Umpire upheld Vasileva's appeal, however the Director filed a further appeal to overturn the Umpire's decision in the Court of Appeal.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	The Director of Social Security based the appeal on the premise that aim of Directive 2004/38 is to prevent economically inactive EU citizens from using the host Member State's welfare system to fund their means of subsistence. This enables a Member State to have the possibility of refusing to grant social benefits to economically inactive EU citizens who do not have sufficient resources to claim a right of residence. The Court, in its decision, took into consideration that the Director did not consider the merits of the case and that the applicant was in fact a permanent resident in Malta.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The Court clarified that in taking a decision the Director must consider the merits of each individual case and not base a decision merely on the fact that in terms of the Free Movement Order an EU citizen must have sufficient resources for herself and her children in order to continue living in Malta. In fact, the Court clarified that it is only during the first three months of residence that Union citizens are not entitled to Maltese social assistance and that the Director has a duty to process applications and decide on the merits of each case.</p> <p>The Court also examined whether Vasileva had acquired permanent residence, as if this was the case then the requirement to have sufficient resources and medical insurance do not apply. The Court contended that the Director should have made this examination when first processing the application. The Court took into consideration that Vasileva was granted a residence permit in 2010 and was then further issued a residence permit in 2015 which was valid till 2020. In addition, her application for benefits was presented after five years from the first residence permit and there was no proof that any expulsion orders were issued against her. Therefore, it was evident that Vasileva acquired the right to permanent residence.</p>

<sup>2</sup> Free Movement of European Union Nationals and their Family Members Order, S.L. 460.17 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11755&l=1>

<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Court rejected the Director's appeal and ruled in favour of Vasileva.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p>"The court immediately notes that from the appellant's decision (dated 9th September 2015) it is evident that he did not consider the merits of respondent's case but merely based his decision on the fact that he contends that in terms of Legal Notice 191 of 2007 respondent, as a foreigner, must have sufficient resources for herself and her children in order to continue living in Malta.</p> <p>In terms of article 3(1) of the Free Movement of European Union Nationals and their Family Members Order S.L. 460.17 (<i>Ordni dwar il-Moviment Liberu ta' Ċittadini tal-Unjoni Ewropea u tal-Membri tal-Familji tagħhom</i>) it is only during the first three months of residence that Union citizens are not entitled to Maltese social assistance. This in itself is proof that Union citizens are entitled to apply for social benefits and the appellant has a duty to process the application and decide on the merits of the case."</p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	<p>No.</p>