

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 the 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	02-07-2015
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) versus 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	Decree-Law 124/2004 of 25 May ¹ : 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.

¹ 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. Available at: <https://dre.pt/application/file/a/252121>.

rights under dispute	
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 (max. 500 chars)	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 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 are in violation of articles 18, 45, 52 and 56 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.</p> <p>A Member State is obliged to restoring damage caused by a breach of Community law if the following conditions are met: (i) the legal norm confers individual rights; (ii) the breach is sufficiently serious; (iii) 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	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).

case (max. 500 chars)	<p>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)	<p><i>“ 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;</i></p> <p><i>- 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”.</i></p> <p>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> <p>See www.dgsi.pt/jtcn.nsf/89d1c0288c2dd49c802575c8003279c7/7cc2dfba22422e8080257eed005d2ccd?OpenDocument&Highlight=0,Diretiva,2004%2F38%2FCE </p>
Has the deciding body refer to the	<p>No.</p>

**Charter of
Fundamental Rights.
If yes, to which
specific Article.**