

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence: Art. 5,7,8,14,15, 27 and 28 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	06.04.2017
Deciding body (in original language)	Tribunal Superior de Justicia de Madrid. Sala de lo Contencioso-Administrativo
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: Madrid
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 1025/2016 Decision No. 305/2017 Roj: STSJ M 3418/2017 - ECLI: ES:TSJM:2017:3418 Reporting Judge: JOSE ARTURO FERNANDEZ GARCIA
Parties	Mr. Sabino (Alias). v. General State Administration of Spain (<i>Administración General del Estado Español</i>)
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=8039885&links=&optimize=20170531&publicinterface=true
Legal basis in national law of the rights under dispute	Royal Decree 240/2007, of 16 February, transposing Directive 2004/38 (following the judgment of the Supreme Court of 1 June 2010 (appeal 114/2007). (<i>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo</i>).
Key facts of the case (max. 500 chars)	<p>The sentence is the response to the appellation of S., an English citizen who resides in Spain, against the resolutions of the Spanish Embassy in New Delhi (India) denying applications for family reunification visas in the EU Community scheme, for the applicant's parents D^a Gemma and Don Bernabe.</p> <p>The refusal is based on:</p> <ul style="list-style-type: none"> – The embassy-hired researcher says that the parents belong to a middle class with substantial monthly income from properties and stores, and that they do not need to be in the care of someone, since both are in good health.

	<ul style="list-style-type: none"> – In addition, there are two children living near the applicants (one of them living in the same house) <p>The appellant alleges</p> <ul style="list-style-type: none"> – The decision was based on an investigator's report containing subjective judgments without support in objective data. – The report was not provided to the parents, which provoked defencelessness. – The son performs periodic transfers to his parents and the brother who lives with them in Nepal is studying and has no financial means. – Parents live on remittances sent by their son since the Nepal earthquake left them with no regular income.
Main reasoning / argumentation (max. 500 chars)	<p>In line with the judgment of the Supreme Court dated June 1, 2010 (114/2007), which partially modifies article 2 of Royal Decree 240/2007, it is only necessary to examine whether visa applicants are in the care of their child.</p> <p>The Court concludes that it is not established whether the applicants, in an effective and real, and not merely formal form, are an integral part of the family of that group with which they intend to meet in Spain.</p> <p>The Court maintains that the economic dependence of the applicants on their son is not credited. In addition, compared to the data presented by the Embassy, the complainant does not prove the lack of economic income of his parents. The Court dismisses the application for those reasons.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>In line with the consequences of the reiterated Supreme Court Judgment dated June 1, 2010 (recurso 114/2007), which partially modifies article 2 of Royal Decree 240/2007, a special regime cannot be applied other than the aforementioned norm to the Spanish citizens,</p> <p>That is because the right to freedom of movement and residence of citizens of the Union and of other States, is not comparable to the right to family reunification of foreign nationals, which, as will be recalled, is the subject of Council Directive 2003/86 / Of September 22, 2003, on the right to family reunification and is also regulated in the general legislation of Foreigners (Articles 16 and 17 of Organic Law 4/2000).</p> <p>In the present case, therefore, it is only necessary to examine whether visa applicants are in the care of their child, who is currently of British nationality and residing in Spanish territory. This requirement was questioned by the diplomatic delegation in its resolutions.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court concludes by stating that the economic dependency, effective and real, of the applicants with the son who lives in Spain was not proved. Therefore, in the absence of such a legal requirement, the appeal is dismissed.</p> <p>The plaintiff has to pay the process cost up to a maximum total amount of € 300 plus VAT.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“(Véase Tribunal de Justicia de la Unión Europa sentencia de 15 de noviembre de 2011, Murat Dereci y otros, C 256/11 , apartado 50).En el presente caso, dado que los ciudadanos de la Unión interesados nunca han ejercido su derecho de libre circulación y siempre han residido en el Estado miembro cuya nacionalidad poseen, se ha de constatar que no están comprendidos en el concepto de «beneficiario» en el sentido del artículo 3, apartado 1, de la Directiva 2004/38, por lo que ésta no es aplicable a dichos ciudadanos de la Unión ni a los miembros de su familia. De ello se deduce que las Directivas 2003/86 y 2004/38 no son aplicables a los nacionales de terceros. Estados que solicitan un derecho de residencia para reunirse con ciudadanos de la Unión miembros de su familia que nunca han ejercido su derecho de libre circulación y siempre han residido en el Estado miembro cuya nacionalidad poseen.”</p>

	<p>“ (See Court of Justice of the European Union judgment of 15 November 2011, Murat Dereci and Others, C 256/11, paragraph 50).</p> <p>In the present case, since the citizens of the Union concerned have never exercised their right to freedom of movement and have always resided in the Member State of which they are nationals, it must be established that they do not fall within the concept of ' Meaning of Article 3 (1) of Directive 2004/38, so that it is not applicable to such citizens of the Union or to members of their family. It follows that Directives 2003/86 and 2004/38 are not applicable to third-country nationals. States applying for a right of residence to meet Union citizens who are members of their family who have never exercised their right to freedom of movement and who have always resided in the Member State of which they are nationals.”</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>Yes</p> <p>Article 7 EU Charter on Fundamental Rights</p> <p>Article 8 ECHR</p>