

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Article 27 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	22 March 2011
Deciding body (in original language)	Върховен административен съд (BAC)
Deciding body (in English)	Supreme Administrative Court (SCAC)
Case number (also European Case Law Identifier ( <a href="#">ECLI</a> ) where applicable)	Interpretative case No 6 of 2010
Parties	Not applicable. Interpretative cases have no parties.
Web link to the decision (if available)	<a href="http://www.sac.government.bg/TD_VAS.nsf/d6397429a99ee2afc225661e00383a86/e71585c9264812f9c2257e4c0023b7f4?OpenDocument">www.sac.government.bg/TD_VAS.nsf/d6397429a99ee2afc225661e00383a86/e71585c9264812f9c2257e4c0023b7f4?OpenDocument</a>
Legal basis in national law of the rights under dispute	Bulgarian Identity Documents Act ( <i>Закон за българските документи за самоличност</i> ), Art. 75(6)

<b>Key facts of the case</b> (max. 500 chars)	<p>Upon initiative of its chair, the Supreme Administrative Court (SAC) (<i>Върховен административен съд</i>, ВАС) opened an interpretative case (<i>тълкувателно дело</i>) to examine whether the ban to leave the country, imposed on persons with outstanding financial obligations, corresponded to Art. 27 of Directive 2004/38. According to Art. 75(6) of the Bulgarian Identity Documents Act (<i>Закон за българските документи за самоличност</i>), a ban to leave the country shall be imposed on any person, who ‘does not comply with an enforceable court decision, by which they have been sentenced to pay a financial obligation in large amounts to Bulgarian natural or legal persons or foreign persons, unless they provide an adequate security’.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>In its decision, the court referred to the direct effect of EU directives and the supremacy of EU law before any piece of national legislation that is not in line with it. According to the court, the ban restricted the right to free movement and residence on the territory of EU Member States. According to Art. 27 of Directive 2004/38, Member States were allowed to impose such restrictions, but only on the grounds of public policy, public security or public health. The scope of these grounds is not defined in EU law, but can be derived from the case law of the Court of Justice of the European Union. In addition to that, Directive 2004/38 introduces clear rules for the application of these restrictions: they shall not be invoked to serve economic ends, they shall comply with the principle of proportionality, they shall be based exclusively on the personal conduct of the individual concerned, etc. According to EU law and the case law of the Court of Justice of the European Union, when applying a restriction on the right to free movement, national authorities should assess the personal conduct of the individual concerned taking into account the particulars of each case. On the contrary, according the Bulgarian law, national authorities are not allowed to assess the particulars of the case, but are rather bound by the imperative nature of the legal provision.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The decision evaluates the compliance of a national legal provision to the provision of Art. 27 Directive 2004/38 and elaborates on the direct effect of the Directive and on the supremacy of EU law before national law. It also refers to a number of the decisions of the Court of Justice of the European Union, where these issues have been discussed.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The court found that the provision of Art. 75(6) of the Bulgarian Identity Documents Act (<i>Закон за българските документи за самоличност</i>) was not fully compliant with Directive 2004/38. Therefore, national courts are authorised to directly apply the Directive and repeal any ban for leaving the country, which contradicts to its provisions. Two months after the decision of the court was published, the Constitutional Court declared the provision of Art. 75(6) of the Bulgarian Identity Documents Act (<i>Закон за българските документи за самоличност</i>) unconstitutional. In its decision, the Constitutional Court stated that by declaring the provision unconstitutional ‘favourable prerequisites will be created for the more comprehensive and precise transposition of the provision of Art. 27 of Directive 2004/38/EC’.</p>
<b>Key quotations in original language and translated into</b>	<p>„12. Европейското законодателство и практиката на Съда на Европейския съюз изискват дерогацията на правото на свободно движение да бъде функция на преценката на компетентния национален орган на конкретните релевантни факти по отношение на конкретното лице. Те не допускат налагане на ограничение при условията на обвързана компетентност, тъй</p>

<p><b>English with reference details</b> (max. 500 chars)</p>	<p>като това прави невъзможна преценката за наличието на достатъчно сериозна и актуална заплаха, която съответното лице представлява за някой от фундаменталните интереси на обществото.</p> <p><i>13. По силата на българската правна норма компетентният национален орган няма право да извършва индивидуална преценка на изключително личното поведение на лицето, както и да установи съществуването на истинска, реална и достатъчно сериозна заплаха, която засяга някой от основните интереси на обществото. Налице е законово установен автоматизъм на налагане на принудителната административна мярка.”</i></p> <p><i>“12. The European legislation and the case-law of the Court of Justice of the European Union require that the derogation of the right to free movement be a function of the assessment of the relevant national authority of the particular facts relevant to the individual concerned. They do not allow the imposition of a constraint under a constrained jurisdiction as this makes it impossible to judge the existence of a sufficiently serious and current threat that the person concerned represents for one of the fundamental interests of society.</i></p> <p><i>13. Under the Bulgarian law, the competent national authority is not entitled to make an individual assessment of the individual’s personal behaviour and to establish the existence of a genuine, real and sufficiently serious threat affecting one of the fundamental interests of society. There is a legally established automatism of imposing the compulsory administrative measure.”</i></p> <p>Bulgaria, Supreme Administrative Court (Върховен административен съд), Interpretative Decision No 2 of 22 March 2011 on interpretative case No 6/2010 (Тълкувателно решение № 2 от 22.03.2011 г. на ВАС по тълк. д. № 6/2010 г.), 22 March 2011</p>
<p><b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b></p>	<p>No.</p>