

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 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	12 May 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)	3-15-2785/11
Parties	A.J. vs Ministry of Interior
Web link to the decision (if available)	https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=182807298
Legal basis in national law of the rights under dispute	<ul style="list-style-type: none"> 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

	<ul style="list-style-type: none"> • 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)	<p>Ministry of the Interior (Mol) took on 22 July 2015 a decision whereby it prohibited A.J.'s (an EU citizen) entry to the Republic of Estonia for five years. It was explained in the decision that A.J. was associated with the A. Gortšakov Public Diplomacy Fund. This Fund was created by the Russian Ministry of Foreign Affairs; its main role is to activate Russian diaspora living outside of Russia. The Mol based its decision on the fact that A.J. participated in the activities of the Fund and therefore, 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.</p> <p>The administrative court granted the application and found that the decision of the Mol did not show that A.J. had been an active member of the Fund. Therefore, the decision of the Mol was not substantiated enough as required by the directive and subsequent court practice of the CJEU.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Mol did not present sufficient proof neither to the applicant nor the court; the Mol found that the 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 Mol, the court has an obligation to control the legality of this decision. As the Mol did not provide further evidence of the threat A.J. was posing, the court annulled the decision of the Mol.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>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.</p>
Results (e.g. sanctions) and key consequences or	<p>Decision of the Ministry of the Interior was annulled.</p>

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.

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>12.9 Kohus märgib, et haldusakti tühistamine ei tähenda, et haldusorgan ei võiks uuesti sissesõidukeeldu kehtestada. Haldusaktis või selle andmise aluseks olevas valitsusasutuse ettepanekus tuleks põhistada A.Gortšakovi Nimelise Avaliku Diplomaatia Toetamise Fondiga seotust ja/või esitada ja põhistada muud asjaolud, mis Kaitsepolitseiameti vastuses on märgitud. Haldusaktis saab esitada asjaolud ja põhistada faktilisi väiteid määral, mida ei takista julgeolekuhuvid. Kui mõni faktiline põhjendus esitatakse üksnes ettepanekus, siis tuleks haldusaktis märkida, millisest dokumendist on täiendavad põhjendused leitavad, et kohus saaks kohtulikku kontrolli läbi viia.</i></p> <p><i>Kohtumenetluses peab olema kontrollitav, miks konkreetset isikut on põhjust pidada avalikku korda ja julgeolekut ohustavaks. St, millistest tema tegevustest, organisatsioonilisest kuuluvusest või sidemetest selline järeldus tuleneb. Kohus mõönab, et selliseid faktilisi asjaolusid ei ole tihti võimalik tavapärasel viisil tõendada, kuid haldusaktis ja/või kohtule konfidentsiaalsena esitatavas arvamuses tuleb sisulise kohtuliku kontrolli võimaldamiseks esitada põhistused, mis veenaksid kohut sellistele faktilistele asjaoludele tugineva väite usutavuses. Kuna haldusakti õiguspärasust hinnatakse selle andmise aja seisuga, siis peab olema kohtul võimalik veenduda, millised olid haldusakti andmise põhjendused selle andmise hetkel. EK eelnevalt käsitletud lahendist võib järeldada, et ei ole mõeldav olukord, kus liikumisvabaduse piirang EL kodanikule seatakse ilma ühtegi põhjendust esitamata.</i></p> <p>12.9. The Court notes that revocation of an administrative decision does not mean that the administrative body could not issue a new precept. Such administrative decision of the MoI should substantively show the association of a person with the A. Gorštakov's Fund and/or present and substantiate other facts that are indicated in the response of the Security Police Board. An administrative decision can set out facts and substantiate factual claims to the extent that is not impeded by security interests. If some of the factual arguments are only set out in the proposal, then the administrative act should indicate which of the documents these additional justifications for the judicial review can be found.</p> <p>The court proceeding has to be able to verify what particular reasons were considered a threat to public order and security i.e. which activities and organizational affiliations are a threat. The court admits that such factual circumstances can sometimes not be ascertained in the usual manner, but in an administrative decision and /or sin a confidential opinion submitted to the court, an administrative body has to give justifications to enable substantive judicial review and convince the court of the plausibility of such claims. Since the legality of</p>

	<p>an administrative decision is assessed at the time of its issue, it must be possible for the court to satisfy itself as to the reasons for the provision of the administrative decision at the time it was granted. It can be concluded from the previous practice of the CJEU, that it is not conceivable that the freedom of movement of an EU citizen is restricted without any justification.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Yes. to Article 47.</p>