

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	28.04.2017
Deciding body (in original language)	Tribunal Superior de Justicia en Burgos. Sala de lo Contencioso.
Deciding body (in English)	High Justice Court (Administrative Chamber) Headquarter Court: Burgos
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 16/2017 Decision No. 93/2017 ECLI: ES: TSJICL: 2017: 1666 Reporting Judge: María del Pilar Alonso Sotorrio
Parties	<i>Arsenio</i> (Alias) v. Government Subsection, Immigration Area, in Burgos
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=8055965&links=%2293%2F2017%22%20%22JOSE%20MATIAS%20ALONSO%20MILLAN%22&optimize=20170614&publicinterface=true
Legal basis in national law of the rights under dispute	Article 15 of the Royal Decree 240/2007, of 16 February, transposing Directive 2004/38 (<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 <i>Arsenio</i>, an Italian citizen, pretending to demonstrate that the resolution given by the local Court in Burgos, is not legal, according to the European Directive 38/2004/EC and the national Royal Decree 240/2007.</p> <p>He means he lives already a long time in Spain, documented with a permanent residence permit and, despite of the crimes he has committed, he does not constitute a real, actual and serious danger to the public security. He pretends not to be expelled to Italy, his nationality country, arguing that it would be a double sanction for him.</p>

	The resolution argued the refusal of the appeal was based on the special severity of the crimes committed (gender based homicide)
Main reasoning / argumentation (max. 500 chars)	<p>The main reasoning is based on the recommended interpretation of the Directive 2004/38, according to the proportionality principle and attending to the personal behaviour of the solicitor, that constitutes a real and actual threat for the society.</p> <p>The sentence mentioned that the appellant doesn't have any family ties in Spain, and since his entry in our country, he has committed many different crimes, one of them with very special severity and it constitutes a threat to a fundamental value of the society, such as the right to live.</p> <p>In this particular case, this threat consists in the nature of the crime, reflecting a special danger for the public order and security.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>This Court discusses about the interpretation that should be given to article 15 of the Royal Decree 240/2007 according to the latest resolutions of the CJEU. It clarifies that, the restrictions of the right to reside in the UE territory for the members of the family of an European Union, a careful and personal analyses should be done, attending to his personal behaviour at the present, and not only at the special severity of the committed crime.</p> <p>In order to analyse these circumstances, the Court evaluates the general situation of the petitioner: the familiar situation, the working status and precedents, and the nature of the criminal act. The fact of being currently in prison is considered an evidence of the actual risk of solicitor for the society.</p> <p>It clarifies also the "non bis in idem" principle. It argues that both sanctions (prison and expulsion) have different basis and nature, and cannot be considered a double sanction of the same act. Meanwhile the sentence is adopted as a measure of the criminal politics of the State, the expulsion of the territory is adopted as part of the Immigration Politics, attending to the control of immigration, and focused on a peaceful coexistence.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Court refuses this appeal. He has to pay the process costs.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>"Realmente nada cabe decir respecto de la amenaza grave, puesto que los delitos cometidos denotan una inusitada y extrema gravedad, sin que sea precisa otra fundamentación sobre este particular. En cuanto a que es una amenaza real, basta ver que desde que llegó a España la conducta mostrada por don Arsenio es simplemente una conducta delictiva, cometiendo delito tras delito y solamente parando de delinquir al cometer un gravísimo delito de asesinato, por el que ha ingresado en prisión. También se aprecia que la amenaza es real, puesto que el hecho de que no haya cometido más delitos desde que cometió el delito de asesinato, junto con un delito de robo/hurto de uso de vehículo, sólo es debido a su ingreso en prisión. Fundamento de derecho tercero."</p> <p>TRADUCCION " There is nothing really to be said about the serious threat, since the crimes committed show an unusual and extreme gravity, without any other reasoning being necessary on this point. As for a real threat, it is enough to see that since he arrived in Spain the conduct shown by Don Arsenio is simply a criminal behaviour, committing crime after crime and only stopping to commit crime by committing a very serious crime of murder, for which he has Imprisoned. It is also noted that the threat is real, since the fact that he</p>

	has not committed more crimes since committing the crime of murder, along with a crime of vehicle theft, is only due to his imprisonment.”
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No, the deciding body does not refer to the Charter of Fundamental Rights.