

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	16.02.2016
Deciding body (in original language)	Tribunal Superior de Justicia en Sta. Cruz de Tenerife. Sala de lo Contencioso.
Deciding body (in English)	High Court of Justice (Administrative Chamber) Headquarter Court: Santa Cruz de Tenerife
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 149/2015 Decision No. 85/2016 ECLI: ES: TSJICAN: 2016: 79 Reporting Judge: María del Pilar Alonso Sotorrio
Parties	Mr. Cornelio (Alias) v. Government Subsection, Immigration Area, in Tenerife (Subdelegacion de Gobierno de Tenerife)
Web link to the decision (if available)	http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=7659425&links=%22149%2F2015%22%20%22MARIA%20DEL%20PILAR%20ALONSO%20SOTORRIO%22&optimize=20160504&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 38/2004 (<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)	The sentence is the response to the appeal by Cornelio, attempting to demonstrate that the resolution given by the local Court in Tenerife, is not legal, according to European Directive 38/2004/EC and Spanish Royal Decree 240/2007.

	<p>He is married to a British citizen, who lives in Spain, and he has lived for in Spain for 7 years and is integrated into Spanish society. Three and a half years ago, he was convicted of homicide and was sentenced to 5 years in prison. He does not constitute any danger to public security.</p> <p>The resolution argued that the refusal of the appeal was based on the police record of the solicitor and the special severity of the crime committed (homicide).</p>
Main reasoning / argumentation (max. 500 chars)	<p>The main reasoning is based on the recommended interpretation of Directive 2004/38, according to the proportionality principle and examining the personal behaviour of the solicitor, which constitutes a real and actual threat for the society.</p> <p>The sentence refers to the decision of the European Court of Justice, of 10 July 2008, that describes the concept of public security and puts a special focus on the threat to a fundamental value of the society.</p> <p>In this particular case, this threat consists of the nature of the crime, reflecting a special danger for public order and security. The petitioner married during his stay in prison, in 2013, and he has no other links to Spain.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>This Court discussed the interpretation that should be given to Article 15 of Royal Decree 240/2007 according to the latest resolutions of the European Court. It clarified that the restrictions of the right to reside in the EU territory for the members of the family of a European Union citizen, a careful and personal analysis should be carried out, attending to the person's current personal behaviour, and not only to the special severity of the crime committed.</p> <p>In order to analyse these circumstances, the Court evaluated the general situation of the petitioner: the family situation, employment history, and the nature of the crime.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court refused this appeal, and the petitioner did not obtain a residence permit as a family member of a European citizen. He had to pay legal costs.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“Partiendo de lo anteriormente expuesto ha de estarse conforme con la valoración efectuada por la administración y la sentencia dictada toda vez que el recurrente fue condenado por un delito de homicidio, que evidencia relevancia social, reflejando peligrosidad tanto para el orden público como para la seguridad pública. Siendo destacable que no consta su arraigo en España, fue titular de un permiso que caducó en 2011; cometió el delito en el año 2012, contrayendo matrimonio durante su estancia en prisión en el año 2013, siendo dicho matrimonio el que habilitó que pudiera solicitar el permiso que fue denegado y constituye el objeto de impugnación en el presente recurso.” Fundamentos de Derecho- Cuarto</p> <p>“Based on the above, the appellant was convicted of homicide, which shows social relevance reflecting a danger to both public order and public safety, and this must be in accordance with the assessment made by the administration and the sentence handed down. He was the holder of a (residence) permit that expired in 2011 and it is noteworthy that his roots are not established in Spain. He committed the</p>

	crime in 2012 and contracted a marriage during his stay in prison in 2013; this marriage enabled him to request the permission that had earlier been refused and which constitutes the subject of challenge in the present appeal. " Fourth Legal Reasoning
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No