

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	1. 07. 2016
Deciding body (in original language)	Tribunal Superior de Justicia en Burgos. Sala de lo Contencioso.
Deciding body (in English)	High Court of Justice (Administrative Chamber) Headquarter Court: Burgos
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 106/2016 Decision No. 145/16 ECLI: ES: TSJCL: 2016: 4008 Reporting Judge: Eusebio Revilla Revilla
Parties	<i>Mrs. María Inmaculada</i> (Alias of a Bolivian Citizen) 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&datasematch=AN&reference=7880344&links=%22106%2F2016%22%20%22EUSEBIO%20REVILLA%20REVILLA%22&optimize=20161201&publicinterface=true
Legal basis in national law of the rights under dispute	Article 7 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>). Article 3.2 (c) of Order PRE 1490/2012 for the implementation of the Royal Decree 240/2007, of 16 February, transposing Directive 38/2004 (<i>Orden PRE/1490/2012, de 9 de julio, por la que se dictan normas para la aplicación del artículo 7 del Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre</i>

	<i>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 appeal attempting to demonstrate that the resolution given by the local Court in Burgos is not in accordance with law, more specifically, Article 7 Royal Decree 240/2007 transposing Directive 38/2004 and the Article 3.2 (c) of Order PRE 1490/2012 for the implementation of this Royal Decree. Thus, the purpose of this appeal is the revocation of the decision of the Government in Burgos recognising the right of the permanent residence permit of the petitioner as a family member of EU citizens.</p> <p><i>María Inmaculada</i>, a citizen from Bolivia, is the daughter of a Bolivian citizen married to Alexander, a Portuguese citizen, and she has a residence permit granted to her as a family member of a European citizen. When she asked for permanent residence, the Government determined that, as she is a family member of a European citizen, if her relative maintains the requirements of Article 7, related to proving he is employed or has other economic means, permanent residence could be granted. But here, Alexander is receiving social benefits, making him not meet the requirements and consequently she is not qualified to receive permanent residence.</p> <p>The local Court found that as Alexander is already documented and has documented proof, economic means should not be requested, according to the R.D. 240/2007. However, the State Attorney defending the General State Administration of Spain finds this decision is contrary to the law and raises an appeal with the Burgos High Court of Justice (Administrative Chamber) against that decision and subsidiary, if the appeal is refused, to be acquitted to cover the legal costs.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The State Attorney finds that, under Articles 7.1 and 2. And Article 14.1 of Royal Decree 14/2007, in order to obtain the right of permanent residence, the requirements of Article 7 should be complied during the whole previous period. In this sense, he references the interpretation of CJEU in decisions dated on 21 November 2011, <i>Cases C-424/10 and C-425/10 Ziolkowski and Szeja</i>.</p> <p>The Court argues with same interpretation, thus neither the worker status as a family member of EU citizen nor health insurance cover and adequate means have been accredited. In this sense, the facts of this case are as follows :<i>María Inmaculada</i> has been living in Spain since she was ten years old. Her petition for a permanent residence permit was refused because her mother's husband does not have sufficient economic means to prove she is not going to be a social charge. Nevertheless, one month later she obtained a temporary residence permit under Royal Decree 240/2007, from the same Government Office, specifically under Articles 2 and 8, interpreting not only that she lives with Alexander, but also that she has an economic situation that covers her residence in Spain. There is no evidence to consider she will be a burden for the Spanish social system, as she has already been living here since she was 10.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Court clarifies some relevant aspects. The interpretation of Directive 38/2004/CE in reference to the concept of legal residence prevails. To obtain permanent residence, one is required to have lived for the previous five years with a legal residence, which involves maintaining the access conditions to the residence status during the whole period.</p> <p>Directive 38/2004/CE gives a special character to the permanent residence right, as an integration instrument, which gives more cohesion to European citizenship. This status of permanent residence should not be conditioned to other requirements after its achievement. In this sense, the focal point on this</p>

	<p>case is not whether Alexander should be asked to compliment the economic requirements to keep his status, but whether María Inmaculada in attempting to get this status for the first time, should be required to prove her economic position.</p> <p>The coherence in the activity of the Administration is also clarified by the case, as two different decisions of the same Government Office cannot interpret the same economic situation to bring two opposite results.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The appeal is partially admitted, accepting that no one has to pay legal costs.</p> <p>The main petition is refused, confirming the resolution of the local Court and granting the petitioner her right to permanent residence, under Article 10 of Royal Decree 240/2007.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“Así las cosas, si la solicitante pide la citada tarjeta de residencia permanente de familiar de ciudadano de la Unión Europea por llevar viviendo en España de forma legal y continuada más de cinco años, haciéndolo en compañía de su madre, pero sobre todo en compañía y a cargo del esposo de su madre el ciudadano comunitario Sr. Alexander ; si además este tiene reconocida la residencia comunitaria en España con carácter permanente desde el 2 de febrero de 2.005; y en tercer lugar, si tenemos en cuenta que la propia Administración al otorgar a la apelante mediante resolución de 28.8.2015 una tarjeta de residencia de familiar de ciudadano de la Unión Europea para residir en España junto a su familiar Sr. Alexander está reconociendo implícitamente que éste posee medios económicos para que la solicitante pueda vivir a cargo del mismo, es por lo que necesariamente hemos de concluir que las resoluciones administrativas impugnadas no son conformes a derecho y que infringen lo dispuesto en el art. 10.1 en relación con el art. 7.1 del RD 240/2007 ...”</p> <p>Fundamentos de Derecho- Quinto</p> <p>Thus, if the petitioner asks for the abovementioned permanent residence card has a family member of a citizen of the European Union for having lived in Spain legally and continually for more than five years, doing so in the company of her mother, and especially in the company of her mother’s husband, the EU citizen Alexander; If in addition this EU citizen has been given permanent community residence in Spain from 2 February 2005; And thirdly, if we take into account that the Administration itself, by granting the appellant by resolution of 28 August 2015 a residence card for a family member of a European Union citizen to reside in Spain with her family member, Mr. Alexander, the Administration is implicitly acknowledging that he possesses sufficient economic means for the applicant to live under his charge, it is for that reason that we must necessarily conclude that the administrative decisions challenged are not in accordance with law and that they violate the provisions of Article 10.1 in relation to Article 7.1 of Royal Decree 240/2007 ... " Fifth Legal Reasoning</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No</p>

