

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: art. 8 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	13 May 2011
Deciding body (in original language)	<i>Tribunale Amministrativo Regionale per la Lombardia</i>
Deciding body (in English)	Lombardy Regional Administrative Court (TAR Lombardy)
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment No. 01238 of 13 May 2011
Parties	<i>Three EU and non-EU foreign citizens, and two NGOs - Associazione Nazionale Oltre Le Frontiere Lombardia (Anolf Lombardia) [National Association Beyond Borders, Lombardy – ANOLF Lombardy], Associazione Nazionale Oltre Le Frontiere Brianza (Anolf Brianza) [National Association Beyond Borders Brianza – ANOLF Brianza]- v. the Mayors of six Municipalities (Sindaci di Lissone, Biassono, Seregno, Lazzate, Cogliate, and Lesmo – Lombardia) and the Ministry of the Interior (Ministero dell’Interno)</i>
Web link to the decision (if available)	www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=HGZIBWVAZ6PV3XZI4TQSENSGIM&q=residenza%20or%20cittadini%20or%20ue

Legal basis in national law of the rights under dispute	Legislative Decree No. 30 of 6 February 2007 on the implementation of the Directive 2004/38/EC concerning the right of EU citizens and their families to move and live in the territory of EU Member States (<i>Decreto Legislativo 6 febbraio 2007, n. 30 “Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell’Unione europea e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri”</i>)
Key facts of the case (max. 500 chars)	Between 2007 and 2010, the Mayors of six Lombard Municipalities adopted several ordinances containing provisions that affected foreign citizens’ right of residence in the municipal territory. ¹ These ordinances established some strict income and housing requirements, making it mandatory for foreign citizens – including EU ones – to enrol in municipal civil registries: the rationale behind this decision was that the introduction of EU citizenship and the right for EU citizens to move freely and live in other EU Member States entailed a massive increase in the number of foreign citizens’ applications for enrolment in municipal civil registries, with a negative impact on public security and health since the houses where these people live are often unsuitable from a hygienic point of view. As to EU citizens, the abovementioned ordinances set out the obligation to resubmit the residence application for those who were already enrolled in the municipal civil registry of other Italian Municipalities. They furthermore set out the obligation for those EU citizens willing to enrol in municipal civil registries for the first time to demonstrate that their income is higher than the annual threshold exempting individuals from healthcare fees, as established in Italian legislation. Finally, the abovementioned ordinances made it compulsory for those EU citizens willing to enrol in municipal civil registries for the first time to undergo administrative checks to assess the lawfulness of their source of income.
Main reasoning / argumentation (max. 500 chars)	According to TAR Lombardy, the requirements imposed on EU citizens willing to live in the territory of the Municipalities concerned by the judgment at hand were to be considered illegitimate. In fact, the court recalled EU legislative provisions concerning the right to move freely and live in other EU Member States, set out in Directive 2004/38/EC (implemented with Legislative Decree No. 30/2007). First of all, according to such legislation, the enrolment of EU citizens in municipal civil registries is a mandatory requirement in order to live in another EU Member State; however, it concerns a national-level enrolment procedure, which needs to be accomplished just once and not every time the EU citizen moves to another Municipality. Secondly, the assessment of the EU citizen’s income is permitted by EU legislation if s/he wants to live in another Member State for more than three months for reasons different from study or work:

¹Ordinance No. 107 dated 6 December 2007 (*Ordinanza n. 107 del 6/12/2007*) of the Mayor of Biassono, Ordinance No. 563 dated 12 December 2007 (*Ordinanza n. 563 del 12/12/2007*) of the Mayor of Seregno, Ordinance No. 851 dated 7 December 2007 (*Ordinanza n. 851 del 7/12/2007*) of the Mayor of Lissone, and the ordinances adopted by the Mayors of Lesmo, Lazzate, and Cogliate, which were unknown at the time of the release of the judgment. The case also concerned the ordinance adopted by the Mayor of Lissone on 13 October 2010 (the number was not reported in the text of the judgment), Ordinance No. 124 dated 14 October 2010 (*Ordinanza n. 124 in data 14/10/2010*) of the Mayor of Biassono, Ordinance No. 37 dated 12 October 2007 (*Ordinanza n. 37 del 12/10/2007*) of the Mayor of Cogliate, Ordinance No. 11 dated 12 December 2010 (*Ordinanza n. 11 del 12/12/2010*) of the Mayor of Lesmo, the ordinance adopted by the Mayor of Seregno on 12 October 2010 (the number was not reported in the text of the judgment), and Ordinance No. 7 dated 11 October 2010 (*Ordinanza n. 7 del 11/10/2010*) of the Mayor of Lazzate.

	<p>nonetheless, this requirement cannot be based on a specific income criterion, and it has to consider the EU citizen's personal situation. The challenged ordinances, instead, set forth fixed and strict income criteria. Administrative checks might be legitimate but they cannot result in a discriminatory administrative delay jeopardising EU citizens' right to free movement.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The judgment is relevant because the court contributed to better defining the right of EU citizens to live in the Italian territory, limiting the discretionary power of local Mayors, who shall respect EU and Italian legislation, without imposing additional administrative requirements actually jeopardising this right, in addition to abstaining from introducing indirect discrimination in favour of Italian citizens or openly against foreign nationals.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>For the reasons mentioned above, the court considered the Mayors' ordinances illegitimate, and ordered compensation to be paid to the complainants.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>“La normativa interna che ha recepito la direttiva CE relativa al diritto di soggiorno e circolazione dei cittadini comunitari e dei loro familiari fa coincidere l’iscrizione presso le autorità competenti prevista dall’art. 8 della direttiva medesima con l’iscrizione nei registri anagrafici [...] In conseguenza di ciò l’iscrizione nei predetti registri dei cittadini UE e dei loro familiari viene subordinata al possesso di requisiti ulteriori rispetto allo stabilimento della dimora abituale nel comune ove essa viene richiesta. Ciò non significa, tuttavia, che i comuni abbiano acquisito una potestà normativa che li abiliti a disciplinare sul piano sostanziale o su quello procedurale la registrazione negli elenchi anagrafici dei cittadini comunitari. L’anagrafe è, infatti, un servizio di competenza statale che non rientra nelle attribuzioni delle amministrazioni locali, le quali ne hanno unicamente la gestione.”</i></p> <p><i>“The national legislation implementing the EC directive concerning EU citizens’ and their family members’ right to reside and move freely overlaps the ‘registration with the relevant authorities’ – envisaged by Article 8 of the directive itself – with the enrolment in municipal civil registries [...] Consequently, EU citizens’ and their family members’ enrolment in these registries is conditional upon compliance with additional requirements than establishing their habitual abode in the Municipality where the enrolment is applied for. This does not mean, however, that the Municipalities now have the legislative power to adopt substantive or procedural rules on EU citizens’ enrolment in municipal civil registries. The municipal civil registry is, in fact, a service that falls under the competence of national authorities and not of local administrations, which are solely in charge of managing it.”</i></p>

Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No, it has not.
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