

The Problem of Regulating Legal Residence Requirements Governing Long-Term Resident Status in National Law

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Abstract: Article 4(1) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents places an obligation on the Member States to grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. This article analyses the main aspects of this legal provision and related relevant case-law of the Court of Justice of the European Union, and aims to identify the criteria that are important for evaluating national legislation on granting long-term resident status, and, accordingly, to provide an assessment of compliance of national legislation, which has been in force for almost twenty years, with the provisions of the aforementioned directive. The article reviews an initiative of improving national legislation which ensued from an infringement procedure that has been launched against Lithuania due to incorrect transposition of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. The article is concluded by highlighting the very important task which, in anticipation of solutions by the legislator, falls upon administrative courts in the context of ensuring effectiveness of the Union law, the conclusions of the article also note the need to develop the case-law, interpreting national legislation in accordance with the provisions of this directive, which has been emerging in the jurisprudence of the Supreme Administrative Court of Lithuania.

Key words: *long-term resident status, legal residence requirements, permanent residence permit, temporary residence permit, Directive 2003/109, Law on the Legal Status of Aliens*

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Introduction

Migration is inevitably related to fundamental and diverse aspects of European economic, social and cultural development. As it has been aptly observed in academic literature, from the point of view of historical perspective one can see that migrants have certainly made substantial longstanding influence in most diverse domains in all Member States of the European Union, and continues to do so today, but the question of migration is still very controversial due to fears that large migration influxes would hurt countries' economies, threaten social harmony and settled national values.²

Evolution of the prevailing opinion regarding the position of third-country nationals in European legal system and development of the Union competence in Justice and Home Affairs led to the adoption of the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.³ This legal act sets out the terms for conferring and withdrawing long-term resident status in relation to third-country nationals who have resided legally within the European Union for not less than five years, and establishes the rights pertaining thereto, as well as areas where they enjoy equal treatment with EU nationals, furthermore, it establishes terms applicable to third country nationals seeking to move to another EU Member State.

The recast of the Law on the Legal Status of Aliens of the Republic of Lithuania of 29 April 2004 aimed at harmonising legal rules governing the legal status of aliens in the Republic of Lithuania with international commitments of the Republic of Lithuania and the requirements of the European Union *acquis*. Provisions of national law governing the terms for conferring long-term resident status which have been in force for almost twenty years, have been criticised by the European Commission (hereinafter – the Commission) for incorrectly transposing provisions of Directive 2003/109 only in the summer of 2021. However, would it indeed be reasonable to claim that the infringement procedure against Lithuania for incorrect transposition of this EU legislation has come as a bolt from the blue?

With the aim of looking at the conditions of permanent residence permit from the point of view of EU law requirements, this article analyses provisions of Article 4(1) of Directive 2003/109 establishing the obligation of the Member States to confer a long-term resident status on third country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. Through the relevant case-law of the Court

2 Steve Peers, *EU Justice and Home Affairs Law*. 2016, OUP Oxford. ISBN 9780198776857 P. 319.

3 Sonja Boelaert-Suominen, „Non-EU nationals and Council Directive 2003/109/EC on the status of third-country nationals who are long-term residents: Five paces forward and possibly three paces back”, (2005), 42, *Common Market Law Review*, Issue 4, pp. 1011-1052, p. 1011.

of Justice of the European Union (hereinafter – Court of Justice, CJEU) it is aimed to formulate a reference point for assessment of national rules on granting long-term residence status, and afterwards, in the second part of the article, to have a look at the aforementioned rules set out in legislation of the Republic of Lithuania, and at the relevant case-law of the Supreme Administrative Court of Lithuania, in accordance with it. The last part of the article reviews a draft law on improvement of the Law on the Legal Status of Aliens (hereinafter – the Law), presented by the competent authorities, which aims to improve the current Law, and, taking into account the shortcomings of the national legislation identified by the Commission, the extremely important task that falls upon administrative courts in the context of ensuring the effectiveness of the Union law is highlighted, and the need for further development of the case-law of the Supreme Administrative Court of Lithuania, which has already laid the foundations in this area, is emphasised.

Long-term resident status – a pillar of integration system for third country nationals residing legally and continuously in Member States created by provisions of Directive 2003/109

The Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents of 25 November 2003 was the second Directive⁴ on legal migration adopted after the Treaty of Amsterdam introduced the competence to legislate in this field at EU level.⁵ Considering economic and social cohesion a fundamental objective of the Community, and naming integration of long-term residents a key element of such cohesion,⁶ with the objective of promoting it, by Directive 2003/109/EC the European Union legislator conferred the status of safe resident to long-term residents and certain related rights ‘which are as near as possible to those enjoyed by citizens of the European Union’⁷ and, under certain conditions, the right to reside in another Member State.⁸ This legal act is

4 The first Directive was Directive 2003/86/EC on the right to family reunification.

5 Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. Brussels, 28.9.2011 COM(2011) 585 final, p. 1.

6 Recital 4 of the preamble to Directive 2003/109.

7 Recital 2 of the preamble to Directive 2003/109.

8 Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. Brussels, 28.9.2011 COM(2011) 585 final, p. 1.

therefore, according to the European Commission, a major milestone in the development of EU immigration policy.⁹ When Directive 2011/51/EU¹⁰ was adopted on 11 May 2011, the scope of application of Directive 2003/109 was extended by including beneficiaries of international protection.

As the Grand Chamber of the Court of Justice has described in the *Kamberaj* judgment, the system put in place by Directive 2003/109 clearly makes the acquisition of the status of long-term resident conferred by that legislation subject to a specific procedure and only if all the conditions set out in Chapter II of that directive are fulfilled.¹¹ First, Member States are to grant long-term resident status to third-country nationals only subject to the condition that they have resided legally and continuously on their territory for five years immediately prior to the submission of the relevant application.¹² Furthermore, this status is conferred if the third-country national who wishes to enjoy that status can prove that they have sufficient resources and sickness insurance (additionally, Member States have the possibility to require third-country nationals to comply with integration conditions, in accordance with national law).¹³ Certain procedural requirements are laid down for acquisition of that status, for example, lodging an application with the competent authorities accompanied by documentary evidence proving fulfilment of the conditions set out in Directive 2003/109¹⁴ (this, *inter alia*, shows that long-term resident status is not gained automatically, a third country national must initiate an administrative procedure for the purpose of obtaining it). Finally, Member States may refuse to grant long-term resident status on grounds of public policy or public security.¹⁵

In order to look at the permanent residence permit conditions from the perspective of requirements laid down by EU law, first of all, Article 4(1) of Directive 2003/109 should be emphasised, which establishes the duty of the Member States to grant long-term resident status to third country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. Recital 6 of the preamble to this legal act explains that the main criterion for acquiring the status of long-term resident should be considered the duration of residence in the territory of a Member State.

9 *Ibid.*

10 Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

11 Grand Chamber judgment of the Court of Justice of 24 April 2012 in case *Kamberaj*, C-571/10, ECLI:EU:C:2012:233, p. 66, 67.

12 Article 4(1) of Directive 2003/109.

13 Article 5(1)(2) of Directive 2003/109.

14 Article 7(1) of Directive 2003/109.

15 Article 6 of Directive 2003/109.

It is also noted that residence should be both legal and continuous in order to show that the person has put down roots in the country. Furthermore, it is stated that provision should be made for a degree of flexibility, so that account can be taken of circumstances in which a person might have to temporarily leave that territory.

In order to better understand the Member States' obligations stemming from Article 4(1) of Directive 2003/109, *inter alia*, the margin of discretion that they have on the respective issue, it is appropriate to look more carefully at the genesis of the legal rules which the provision is a part of, as well as at the intentions of the European Union legislator and the more general relevant legal context, highlighting the most relevant aspects that form the content of Article 4(1) of Directive 2003/109.

The aspect of residence duration. It has already been mentioned that, according to recital 6 of the preamble to Directive 2003/109 'The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State.'¹⁶ As Advocate General Yves Bot has noted in his opinion, the European Union legislature starts from the premiss that, after a period of residence in the territory of the host Member State which is sufficiently long and continuous, the third-country national has expressed his intention to settle permanently in the territory of that State and has shown that he has put down roots in that State. The duration of the stay of the third-country national in the territory of the host Member State actually reveals the intensity of the links established in the territory of that State and therefore a certain level of integration, as that third-country national has developed close links with that State. The longer the period of residence in the territory of the host Member State, the closer the links with that State are assumed to be and the more complete the integration tends to be, and eventually that national feels that he is assimilated with a national and that he forms an integral part of the society of that Member State.¹⁷ From the point of view of the Court of Justice, the duration of the legal and continuous residence of five years established in article 4(1) of Directive 2003/109 shows that the person concerned has put down roots in the country and therefore the long-term residence of that person.¹⁸

The five-year period chosen by the Union legislator actually reflects earlier practice of some Member States, as well as rules enshrined in documents of the International Labour Organisation and the Council of Europe.¹⁹ The Court of

16 Recital 6 of the preamble to Directive 2003/109.

17 Opinion of Advocate General of 15 May 2012 in case *Singh*, C-502/10, EU:C:2012:294, p. 32–33.

18 Judgment of the Court of Justice, 18 October 2012, in case *Singh*, C-502/10, EU:C:2012:636, p. 45.

19 For example, ILO Convention No. 97, as well as European Convention on Establishment (1955) of the Council of Europe set out obligations to ensure equal treatment to migrant employees in various respects and to grant residence after five years; Recommendation Rec(2000)15 of the Council of Europe Committee of Ministers concerning the security of residence of long-term migrants recommends granting long-term resident status to third country nationals who have

Justice's judgment in *Tahir* case shows that provisions of Directive 2003/109 do not allow Member States discretion to establish shorter time limits in national law for acquisition of long-term resident status. According to the CJEU, recital 17 to Directive 2003/109 states that harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States, however, permits with a permanent or unlimited validity issued on terms more favourable than those laid down by this directive do not confer the right to reside in other Member States. Thus, even though Article 13 of Directive 2003/109 allows Member States to issue permits with a permanent or unlimited validity on terms more favourable than those laid down by the directive, the Court of Justice has found that that possibility relates only to residence permits which shall not confer the right of residence in the other Member States.²⁰

As will be analysed below, the concept of 'legal residence' is defined according to the relevant rules of national and (or) European level, according to which national authorities or courts must assess whether certain concrete periods of time when a third country national resided in the host Member State are included in the required five-year period. Usually, the question of the basis of legal and continuous residence in the country is not important in the context of counting the required period: before submission of the relevant application for acquisition of the long-term resident status, the third-country national may have been living in the host Member State on several different bases and the relevant periods may be aggregated.²¹ It is true that, when counting the 5-year term of legal and continuous residence, it is important to take into account the requirements enshrined in Article 4(2) of Directive 2003/109 in this regard, and not to include periods of residence in the country where third-country nationals resided solely on temporary grounds²² or on grounds of diplomatic status.²³ Certain exceptions to counting the relevant periods are applied with regard to persons that reside in the country for study purposes or vocational training,²⁴ as well as persons to whom international protection has been granted.²⁵ In summary, periods of residence in a Member

resided in the country for five years. See Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents. 13 March 2001. COM(2001) 127 final Explanatory memorandum p. 2.1-2.3. Register of Commission documents. [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2001\)127&lang=lt](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2001)127&lang=lt) [accessed 24-11-2021]

20 Judgment of the Court of Justice of 17 July 2014 in case *Tahir*, C-469/13, EU:C:2014:2094, p. 39–41.

21 Edit. Kay Hailbronner, EU Immigration and Asylum Law, A Commentary. München: Beck, 2010. - pp. 149–286. ISBN 978-3-406-60017-3. P. 620.

22 Exceptions to application of Directive 2003/109 as established in Article 3 (2) (e) of this directive.

23 Exceptions to application of Directive 2003/109 as established in Article 3 (2) (f) of this directive.

24 Article 4(2)(2) of Directive 2003/109.

25 Article 4(2)(3) of Directive 2003/109.

State on different bases may be included in the 5-year legal and continuous residence period required by Directive 2003/109 if residence in the country on each particular basis *ipso facto* complies with requirements for the acquisition of the long-term resident status laid down in Directive 2003/109.²⁶

It is interesting to note that in a resolution adopted on 25 November 2021 the European Parliament has criticised Directive 2003/109 for not providing an effective right to intra-Union mobility, and recommended that the Commission amend it, *inter alia*, by reducing the number of years of residence required to acquire EU long-term resident status from five to three years.²⁷

However, foreigners who have irregularly entered the territory of a Member State are not recognised as legally residing third-country nationals until their residence is legalised according to the relevant procedures. Therefore the 5-year legal residence period in such case is essentially counted from the moment of recognition of the right to reside in the country, not including the prior period of the relevant administrative procedure of legalising the residence of the foreigner.²⁸

The aspect of legal residence. Even though Member States are obliged to confer long-term resident status to third-country nationals who have resided in the country legally for a respective length of time according to Article 4(1) of Directive 2003/109, provisions of this legislative act do not provide a definition of legal residence. The Court of Justice has noted that although, according to Article 1(a) of Directive 2003/109, the subject matter of the directive is to determine the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto, that subject matter does not define either the concept of 'legal residence' or the conditions or rights pertaining to that residence, which fall within the competence of the Member States.²⁹ According to the CJEU, unlike Directive 2004/38, Directive 2003/109 does not lay down the conditions which the residence of those nationals must satisfy for them to be regarded as legally resident in the territory of a Member State, therefore it follows that those conditions are governed by national law alone.³⁰

26 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. (2016). In K. Hailbronner & D. Thym (Eds.). EU Immigration and Asylum Law: A Commentary (pp. 427–519). München: Verlag C. H. Beck oHG. P. 449.

27 European Parliament resolution of 25 November 2021 with recommendations to the Commission on legal migration policy and law (2020/2255(INL)), p. 14. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0472_LT.html [accessed 2021-12-09].

28 Edit. Kay Hailbronner, EU Immigration and Asylum Law, A Commentary. *Op. cit.* 20, p. 619.

29 Judgment of the Court of Justice of 18 October 2012 in case *Singh*, C-502/10, EU:C:2012:636, p. 39-40.

30 Judgment of the Court of Justice of 8 November 2012 in case *Iida*, C-40/11, EU:C:2012:691, p. 36.

This judgment of the Court of Justice implies that legality of a third country national's residence in the host Member State is determined, first of all, according to the provisions of national immigration laws of a particular State. This conclusion seems convincing bearing in mind that the variety of residence bases in Member States is not harmonised on EU-level.³¹ Directive 2003/109 refers to national and (or) EU rules, according to which legal residence is a necessary condition in order to acquire long-term resident status, and also does not harmonise those rules. Therefore, assessment of whether a valid residence permit is required in a particular case should be made according to national and (or) EU rules.³²

On the other hand, issues of Member States' competence to define the concept of legal residence under national legislation were already noted by the Commission in its first report on implementation of Directive 2003/109. According to the Commission, Member States' exercise of competence in this field is subject to limits laid down in EU law. If, in transposition of Article 4 of Directive 2003/109, Member States define the concept of legal residence, they may not narrow the scope of its application. In the Commission's view, restricting lawful residence to residence under a residence permit and excluding as a matter of principle visas and other forms of authorisation for stay may constitute an incorrect transposition of this provision when these stays do not fall under the exceptions to the application of this legal act provided for under Article 3(2) of Directive 2003/109.³³

In these circumstances, it could be said that the key issue becomes the aspect of proper implementation of the Member States' competence to define the concept of legal residence under national law, thus also the margin of discretion that a State has in this respect, which is necessary to analyse in accordance with the Court of Justice's not abundant, yet eloquent case-law.

31 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. (2016). In K. Hailbronner & D. Thym (Eds.). *EU Immigration and Asylum Law: A Commentary* (pp. 427–519). München: Verlag C. H. Beck oHG. P. 441.

32 *Ibid*, p. 442. In this context, the author notes, *inter alia*, that, for example, the requirement to hold a certificate proving legality of their presence in the country is not applicable to citizens of Turkey, residing on the basis of the Decision no 1/80 of the Association Council of 19 September 1980 on the Development of the Association. Another example would be Article 25 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which states that possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

33 Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. Brussels, 28.9.2011 COM(2011) 585 final <https://eur-lex.europa.eu/legal-content/LT/TX/?uri=COM%3A2011%3AO585%3AFIN> [accessed 22-11-2021] p. 3.2.

Member States' competence to lay down conditions of legal residence. As has been aptly noted in legal literature, 'in a supranational union based on the principles of conferral and subsidiarity, the scope of EU legislation is – like in any federal system – sensitive terrain relating directly to the vertical balance of power. A broad interpretation of the scope of Union law leaves Member States less room for autonomous action. It is this concern over state autonomy which feeds the epic disputes between domestic constitutional courts and the ECJ on questions such as *ultra vires* or constitutional identity'.³⁴

It is appropriate to start analysing the issue of Member States' competence to lay down conditions of legal residence relevant in the context of Directive 2003/109, first of all, by taking into account that the long-term resident status is considered an element on which the whole scheme of integration of third-country nationals who are legally settled on a long-term basis in the Member States, created by provisions of Directive 2003/109, is based.³⁵ The definition of a status which is common to all Member States allows ensuring fair treatment of legally resident third-country nationals so that they can acquire that status and enjoy it on much the same terms in all of the European Union.³⁶ In its presentation of proposal for Directive 2003/109, the Commission has clearly stated that long-term resident status must ensure legal certainty of third country nationals, and where the conditions are actually met, help avoid leaving it to Member States' discretion to decide on acquisition of this status.³⁷ Thus, criteria for acquisition of long-term resident status, applied consistently and uniformly in all Member States, are key to legal certainty of third-country nationals who may expect to be granted a permanent residence permit.

The Court of Justice's clarification in case *Singh* is important in this regard, where request for interpretation of Article 3(2)(e) of Directive 2003/109 was submitted by a court from the Kingdom of the Netherlands in a dispute concerning the rejection of an Indian citizen's application for the grant of a permanent residence permit, whose formally limited residence permit was extended several times for over seven years. The court asked to clarify what meaning did the Union legislator intend to give to the concept of 'residence permit which has been formally limited'

34 Thym, Daniel. (2016). Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A. *European Journal of Migration and Law*. 18. 89–111. 10.1163/15718166-12342091. P. 97.

35 Opinion of Advocate General of 15 May 2012 in case *Singh*, C-502/10, EU:C:2012:294, p. 29.

36 *Ibid.*

37 Proposal for a Council Directive concerning the status of third country nationals who are long term residents of 13 March 2001. COM(2001)127 final. Register of Commission Documents. [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2001\)127&lang=lt](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2001)127&lang=lt) [accessed on 24-11-2021]

which is used in Article 3(2)(e) of Directive 2003/109³⁸, so that the exception to the application of the directive enshrined in that provision is better defined.

Having noted that the terms ‘in cases where their residence permit has been formally limited’ used in the aforementioned provision of Directive 2003/109 must be regarded as designating an autonomous concept of European Union law which must be interpreted in a uniform manner throughout the Member States, the Court of Justice interpreted this provision according to the objectives of Directive 2003/109.³⁹ Having noted that the duration of legal and continuous residence of five years which shows that the person concerned has put down roots in the country and therefore the long-term residence of that person, also having taken into account objectives of Directive 2003/109, the Court of Justice ruled that Article 3(2) excludes from its scope residence of third-country nationals which, whilst lawful and of a possibly continuous nature, does not *prima facie* reflect any intention on the part of such nationals to settle on a long-term basis in the territory of the Member States. For the purpose of separating between persons whose residence is based solely on temporary grounds from those that reside in the country *de facto* long-term, the Court of Justice noted that the fact that a residence permit contains a formal restriction does not in itself give any indication as to whether that third-country national might settle on a long-term basis in the Member State, notwithstanding the existence of such a restriction. According to the Court of Justice, a formally limited residence permit within the meaning of national law, but whose formal limitation does not prevent the long-term residence of the third-country national concerned, cannot be classified as a formally limited residence permit within the meaning of Article 3(2)(e) of Directive 2003/109, as otherwise the achievement of the objectives pursued by the directive would be jeopardised and, therefore, it would be deprived of its effectiveness. In light of the foregoing, it has been found that the fact that the validity of a residence permit is extended for successive periods, including beyond a five-year period, and, in certain cases, indefinitely, according to the Court of Justice, may be a strong indication from which it can be concluded that the formal limitation attached to that permit does not prevent the long-term residence of the third-country national in the Member State concerned, and if that is the case (it is for the referring court to ascertain), residence on the basis of such a permit will have to be regarded as legal residence, therefore, its holder should acquire the status of third-country national who is a long-term resident.⁴⁰

38 Article 3(2)(e) of Directive 2003/109 states that this Directive does not apply to third-country nationals who reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited.

39 Judgment of the Court of Justice of 18 October 2012 in case *Singh*, op. Cit. 28. P. 43, 45.

40 Ibid, p. 46-47, 50-55.

In other words, in the *Singh* judgment, the Court of Justice has largely confirmed that granting a permanent residence permit according to Directive 2003/109 is indeed based on the objective criterion of the length of legal and continuous residence in a Member State's territory of five years. Subsequent case-law has clarified that the condition laid down in Article 4(1) of Directive 2003/109 requiring legal and continuous residence within the territory of the Member State concerned for five years prior to the submission of the relevant application is an essential condition for acquiring the long-term resident status provided for in Directive 2003/109.⁴¹ Thus, even though in exercising their competence in the field of immigration, Member States may lay down conditions of legal residence and in these circumstances formally limit residence permits of third country nationals, however, national rules applied in this field may not limit effectiveness of Directive 2003/109 and undermine the objectives of this directive. In other words, according to the Directive, third country nationals who fulfil the criterion of five-year long legal and continuous residence in the territory of a Member State, seeking to reside in the Member State territory long-term, qualify for a long-term resident status, despite the *formally established* officially limited nature of the residence permit, i. e. when a formally limited residence permit due to its nature *ipso facto* causes an obstacle to acquisition of a long-term residence permit, even though in reality it does not prevent the third country national from settling in the respective Member State long-term.

It should be emphasized in this regard that it is not the purpose of this case-law to refute discretion of Member States to institute formally limited residence permits in their national law altogether – such competence is clear from Article 3(2)(e) of Directive 2003/109 which sets out one of the exceptions from application of Directive 2003/109. On the other hand, as Advocate General Yves Bot has pointed out in his opinion in this case, if under the cloak of the granting of a formally limited residence permit, the Member States could exclude particular categories of third-country nationals from the benefit of the status of long-term resident, even though those third-country nationals would be eligible for that status, given their legal and long-term residence in the territory of those States, according to the Advocate General: i) that would deprive those nationals of the rights attached to the grant of a long-term resident's residence permit which are far better than those rights from which holders of a formally limited residence permit benefit; ii) those third-country nationals would be deprived of the legal certainty which the directive is designed to confer on each third-country national who is legally settled on a long-term basis in the territory of a Member State, which, as a result, would be detrimental to their integration in that State; iii) that would result in ending the

41 Judgment of the Court of Justice of 17 July 2014 in case *Tahir*, C-469/13, EU:C:2014:2094, p. 34.

fair treatment which must be granted to all third-country nationals who reside legally and on a long-term basis in the territory of a Member State; iv) we would lose sight of what in the light of the sixth recital and Article 4 of the directive amounts to the main criterion for acquiring the status of long-term resident, namely the duration of the residence, in favour of vaguer criteria.⁴²

Even though, according to the case-law of the Court of Justice, Member States, in exercise of their competence in the field of immigration, may lay down conditions of legal residence, however, in order for the national provisions in this field to comply with Directive 2003/109, their object or effect must not be imposition of an additional condition that would constitute an obstacle for acquisition of long-term resident status. This conclusion is implied by judgment of the Court of Justice in case *Commission v. Kingdom of the Netherlands*,⁴³ where it has been examined whether the amount of charges levied by the Kingdom of the Netherlands for the grant of status and the issue of residence permit in another Member State, are liable to create an obstacle to the exercise of the alien's right of residence.

In this judgment, having acknowledged that Member States may make the issue of the residence permits pursuant to Directive 2003/109 subject to the payment of charges and that, in fixing the amount of those charges, they enjoy a wide margin of discretion, the Court of Justice has nevertheless emphasized the limited scope of such discretion. Having reminded that Member States may not apply national rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness, also having regard to the objective pursued by Directive 2003/109 and the system which it puts in place, it was clearly stated in this judgment that where the third-country nationals satisfy the conditions and comply with the procedures laid down in Directive 2003/109, they have the right to obtain long-term resident status as well as the other rights which stem from the grant of that status. Therefore, while it is open to the Kingdom of the Netherlands to make the issue of residence permits under Directive 2003/109 subject to the levying of charges, according to the Court of Justice, the level at which those charges are set must not have either the object or the effect of creating an obstacle to the obtaining of the long-term resident status conferred by that directive, otherwise both the objective and the spirit of that directive would be undermined. Charges which have a significant financial impact on third-country nationals who satisfy the conditions laid down by Directive 2003/109 for the acquisition of those residence permits could prevent them from claiming the rights conferred by that directive, contrary to recital 10 to that directive, and in particular

42 Opinion of Advocate General of 15 May 2012 in case *Singh*, C-502/10, EU:C:2012:294, p. 56–60.

43 Judgment of the Court of Justice of 26 April 2012 in case *Commission v Kingdom of the Netherlands*, C-508/10, EU:C:2012:243.

the requirement that the set of rules governing the procedures for examination of applications for the acquisition of long-term resident status should not constitute a means of hindering the exercise of the right of residence.⁴⁴ The same arguments were referred to when the Court of Justice decided on the question of charges for the issue and renewal of residence permits in Italy.⁴⁵

It is interesting that in his opinion in this case the Advocate General expressed doubts on whether the issue of residence permits to third-country nationals generally has the effect of altering the law, in that it creates rights, or whether it is merely declaratory, inasmuch as it simply recognises a pre-existing situation. Analysis of the provisions of Directive 2003/109 led the Advocate General to the conclusion on ‘the existence of an obligation, preclusive of any discretion, to grant that status once the conditions have been met, so that it is not possible, in my view, to classify the power conferred on the national authorities to issue residence permits under the Directive as discretionary’.⁴⁶

The idea dictated by the aforementioned judgments of the Court of Justice, that the objective pursued by Directive 2003/109 and the system which it puts in place clearly determines the limited nature of Member States’ discretion even in those fields where wide margin of discretion is acknowledged to the respective Member State, is essentially not unexpected taking into account not least the nature of a directive as a legal act to be implemented and transposed into national law, and the constant efforts of the Court of Justice to ensure the effectiveness of EU legislation. On the other hand, this case-law provides useful guidance on defining a formula for the assessment of national rules on granting long-term resident status, and, more specifically, it directs to analysing those rules through the prism of an obstacle to the acquisition of long-term resident status. In other words, in exercise of their competence to lay down the conditions of legal residence in national law, Member states may not limit the effectiveness of Directive 2003/109 and undermine the objectives of this directive: the object or effect of the respective national rule must not become additional conditions creating an obstacle to acquisition of long-term resident status.

Thus, having formulated a reference point for the assessment of national rules on granting long-term resident status, it is consistent to look at the aforementioned rules laid down in legislation of the Republic of Lithuania, and at the relevant case-law of the Supreme Administrative Court of Lithuania.

44 *Ibid.*, p. 68-71.

45 See judgment of the Court of Justice of 2 September 2015, *Confederazione Generale Italiana del Lavoro (CGIL) and Istituto Nazionale Confederale Assistenza (INCA) v Presidenza del Consiglio dei Ministri and others*, C-309/14, EU:C:2015:523.

46 Opinion of Advocate General Yves Bot of 19 January 2012 in case *European Commission v the Kingdom of the Netherlands*, C-508/10, EU:C:2012:25, p. 75.

Conditions for the issue of a permanent residence permit in the Republic of Lithuania and their interpretation in the case-law

Article 22(1) of the Law on the Legal Status of Aliens of the Republic of Lithuania (No VIII-978) adopted as far back as 17 December 1998, stipulating conditions for the granting of a permanent residence permit in the Republic of Lithuania, established that an alien shall, upon his request, be issued a permit for permanent residence in the Republic of Lithuania provided he meets the following conditions: 1) he has been in possession of a permit of temporary residence in the Republic of Lithuania for the last five years; 2) he has a place of residence in the Republic of Lithuania; 3) he has a lawful source of subsistence in the Republic of Lithuania.⁴⁷ The content of the rule implies that the aforementioned conditions are cumulative, thus for the acquisition of a permanent residence permit a clear requirement applied, *inter alia*, to be in possession of a temporary residence permit for the last five years.

On 29 April 2004, a recast of the Law on the Legal Status of Aliens of the Republic of Lithuania has been adopted⁴⁸ with the aim of laying down decision-making procedures for questions on the legal status of aliens in the Republic of Lithuania following the accession of the Republic of Lithuania to the European Union, thus also bringing the legislation on the legal status of aliens of the Republic of Lithuania in line with international commitments of the Republic of Lithuania and the requirements of the European Union acquis.⁴⁹ Article 53(1)(8) of this legal act which lays down the grounds for issuing and renewing a permanent residence permit in the Republic of Lithuania, stated that an alien may be issued a permanent residence permit if he has resided in the Republic of Lithuania uninterrupted for the last 5 years holding a temporary residence permit. This wording of the provision has not changed, and is therefore still currently relevant.

Article 2(15) of the Law states that a permit of a long-term resident of the Republic of Lithuania to reside in the European Union (permanent residence permit) means a document granting an alien the right to reside in the Republic of Lithuania and certifying the alien's permanent resident status.⁵⁰ As the Supreme Administrative Court of Lithuania has noted several times in its case-law, permanent residence permit provides an alien with the most rights in comparison with

47 Law on the Legal Status of Aliens, 17 December 1998, No. VIII-978.

48 Law on the Legal Status of Aliens, 29 April 2004, No. IX-2206..

49 The explanatory note on draft laws No. IXP-2784, IXP-2785 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.216385?positionInSearchResults=27&searchModelUUID=201ddb98-228e-4dc5-a213-0d13ed2b04cc> [Accessed on 14-11-2021]

50 Article 2(15) of the Law on the Legal Status of Aliens, 29 April 2004, No. IX-2206. Žin., 2004, No. 73-2539.

other forms of aliens' legal residence in the Republic of Lithuania. A decision to grant such a permit essentially means that the Republic of Lithuania allows the alien to reside in the Republic of Lithuania for an indefinite period, grants him special status which brings the alien particularly close to the legal status of a citizen of the Republic of Lithuania, therefore a permanent residence permit may be granted only on the basis provided in legislation and after thorough examination of whether all the required conditions for granting this permit are complied with and whether there are no grounds for refusing this permit. The above considerations also mean that higher requirements and more stringent conditions are applied to an alien for the issue of a permanent residence permit than for the issue of a temporary residence permit, a visa, or authorisation for an alien to enter the Republic of Lithuania and stay there on another legal basis.⁵¹

In its case law, the Supreme Administrative Court of Lithuania consistently interprets that the conditions for the issue of a permanent residence permit in the Republic of Lithuania, established in Article 53(1)(8) of the Law – uninterrupted residence in the Republic of Lithuania for the last 5 years and holding a temporary residence permit – are not optional, i.e. an alien seeking to acquire a permanent residence permit in the Republic of Lithuania must comply with both of them.⁵² This is undoubtedly consistent having in mind that by Article 53(1)(8) the legislator transposed and implemented conditions established in Article 4(1) of Directive 2003/109 for the acquisition of long-term resident status – the requirement of 5-year continuous residence and the condition of legal residence, which, by the legislator's choice was transposed by laying down the requirement of holding a specific document (a temporary residence permit).

With respect to the condition of five-year uninterrupted residence in the Republic of Lithuania, it should be noted that separate provisions regarding inclusion of a particular period of time are enshrined in Article 53 (9)-(11) of the Law, and the period of residence is counted according to the procedure established by the Minister of the Interior.⁵³ This procedure is set out in the Description of the

51 See, e.g. judgment of the Supreme Administrative Court of Lithuania of 3 March 2021 in administrative case No. eA-2448-442/2021, judgment of 31 March 2021 in administrative case No. eA-2811-492/2021, etc.

52 See, e.g. judgment of the Supreme Administrative Court of Lithuania of 30 June 2021 in administrative case No. eA-3216-442/2021, p. 47, judgment of 14 May 2019 in administrative case No. eA-4000-822/2019, 19 p. and the case-law cited therein. Furthermore, it should be noted that, in order to obtain a permanent residence permit in the Republic of Lithuania, an alien must also comply with the conditions laid down in Article 26(1)(1)-(3) of the Law (Article 53(3) of the Law), must pass an examination of the national language and the examination of the basics of the Constitution of the Republic of Lithuania (Article 53(6) of the Law), additionally, there must be no grounds, established in Article 35(1), to refuse a residence permit.

53 Article 53(1)(8) and Article 53(3) of the Law on the Legal Status of Aliens of the Republic of Lithuania, 29 April 2004, No. IX-2206.

Procedure for the Issue of a Permanent Residence Permit of the Republic of Lithuania to reside in the European Union⁵⁴ (hereinafter – the Description), which governs, *inter alia*, submission, acceptance, examination of alien's applications for the issue or renewal of a permit of a long-term resident of the Republic of Lithuania to reside in the European Union, counting residence duration in the Republic of Lithuania, adoption of a decision on the issue or renewal of a permanent residence permit, and annulment of the decision to issue a permanent residence permit, annulment and invalidity of a permanent residence permit.⁵⁵

According to point 46 of the Description, if an alien is seeking to acquire a permanent residence permit on the basis of Article 53(1)(8), the authorised official of the Migration Department must assess and establish whether, taking into consideration Article 53 (9)(9¹) and (11) of the Law, the alien has resided in the Republic of Lithuania for a period foreseen in Article 53(1)(8) of the Law and whether during this period the alien has not been absent from the territory of the Republic of Lithuania for a period longer than established in Article 53(10) of the Law.⁵⁶ Since, as already mentioned above, the conditions for the issue of a permanent residence permit in the Republic of Lithuania on the grounds of Article 53(1)(8) of the Law are not optional, holding a temporary residence permit is a necessary condition for the issue of a permanent residence permit. Hence, once an alien holding a temporary residence permit applies for the issue of a permanent residence permit, according to point 47 of the Description, an authorised official of the Migration Department must assess whether there are no grounds for annulment of the temporary residence permit in accordance with the procedure laid down in the Description of the Procedure of the Issue of Temporary Residence Permits to Aliens in the Republic of Lithuania.⁵⁷ If such ground is established, a decision on annulment of a temporary residence permit is taken together with a decision to refuse a permanent residence permit.

54 Description of the Procedure for the Issue of Permit of a Long-term Resident of the Republic of Lithuania to Reside in the European Union, enacted by order No. 1V-445 of the Minister of the Interior, 21 December 2005 (recast by Minister of the Interior of the Republic of Lithuania order No. 1V-583, 27 June 2019, TAR 27-06-2019, No. 10319).

55 *Ibid*, point 1.

56 According to Article 53(10) of the Law, when issuing a permanent residence permit to an alien on the grounds set out in point 8 of this Article, the period of residence shall not be interrupted by the time spent outside the territory of the Republic of Lithuania, provided that it does not last for more than six consecutive months and does not comprise more than ten months within a five-year period.

57 Description of the Procedure for the Issue, Renewal, Withdrawal of Temporary Residence Permits to Aliens in the Republic of Lithuania, also of Assessment whether a Marriage, Registered Partnership, Adoption are of Convenience or a Company is a Shell Company, enacted by order No. 1V-329 of 12 October 2005 of the Minister of Interior of the Republic of Lithuania (a recast enacted by order No. 1V-615 of 8 July 2019 of the Minister of Interior of the Republic of Lithuania, TAR 08.07.2019, No. 11271).

In assessing compliance of this provision with the constitutional rule of law, as well as with Article 3(1) of the Law on Public Administration of the Republic of Lithuania, and Article 53(3) of the Law on the Legal Status of Aliens of the Republic of Lithuania, a Chamber (extended composition) of the Supreme Administrative Court of Lithuania found that this provision directly determines proper implementation of Article 4(1) of Directive 2003/109, as, according to it, it is efficiently ensured that a permanent residence permit would be issued only to a person legally residing in the country, taking into account all the conditions of legal residence that are governed by the Law. Emphasising the condition of legal residence for acquisition of long-term resident status which is clearly established in Article 4(1) of Directive 2003/109, the Supreme Administrative Court of Lithuania drew attention to a duty of the competent authorities which is particularly important in this context, to ensure that the permanent residence permit would not be issued to an alien who only formally fulfils the established requirements without thorough examination of whether all the required conditions for the issue of such permit truly exist at the time of the issue of the permanent residence permit and whether there is no basis to refuse the permit. According to the Chamber (extended composition), the procedure laid down in point 47 of the Description enables, in particular, to effectively ensure that a permanent residence permit would be issued only to an alien who fulfils the conditions of legal residence laid down in the Law, as required by Article 4(1) of Directive 2003/109.⁵⁸

When counting the 5-year period of uninterrupted residence in the Republic of Lithuania, and determining whether the alien has not been absent from the territory of the Republic of Lithuania for a period longer than indicated in Article 53(10) of the Law, according to point 48(10) of the Description, supplied documents and other information, received by the Migration Department in exercise of its functions are assessed, as well as data established following evaluation specified in point 47 of the Description about the period(s) when the alien did not fulfil the conditions applicable for acquisition of a temporary residence permit, and that constituted a ground for withdrawing the temporary residence permit. According to the Supreme Administrative Court of Lithuania, linguistic and systemic analysis of this provision leads to the conclusion that, when counting the period of alien's residence in the country, the period(s) when the alien resided in the country without fulfilling conditions applicable for acquisition of a temporary residence permit, and that constituted grounds for withdrawing the temporary residence permit, is (are) *not included* in the period of the alien's residence in the country. Analysing the question of constitutionality of this provision, the

58 Judgment of the Supreme Administrative Court of Lithuania (extended chamber) of 13 January 2021 in administrative case No. eI-16-575/2020, p. 34, 36, 38.

Supreme Administrative Court of Lithuania emphasised that, in order to ensure effective implementation of Article 4(1) of Directive 2003/109, taking into account the condition for the issue of a permanent residence permit of five-year legal and uninterrupted residence in the territory of the Member State concerned prior to the submission of the relevant application, enshrined in that provision, it is important to properly and correctly count the period of such legal residence in the country. Thus, the time when the alien was residing in the country in breach of the national rules on the conditions of legal residence, should under no circumstances be included in such period, therefore, when counting the period of legal residence in the country, it is important to take the fact of holding a temporary residence permit on the relevant period into account not formally but to identify the actual period of legal residence in the country. Meanwhile, disregard of the duty imposed on aliens under Article 40(5)⁵⁹, according to the SACL, obviously indicates a situation when an alien is residing in the country on the basis of a temporary residence permit, no longer meeting the conditions for the issue of such residence permit, i. e. the alien is formally considered to be legally residing in the Republic of Lithuania, even though in fact they no longer have this right. Furthermore, in practice, there are often cases when the competent authorities issue a temporary residence permit without substantiation, e.g. when an alien supplies false data in support of their application for a temporary residence permit.⁶⁰ In this respect, abundant and consistent case-law of the Supreme Administrative Court of Lithuania should be emphasised, where it has been repeated that if a suspicion exists that, when applying for a temporary residence permit in the Republic of Lithuania, an alien has supplied false data or did not fulfil other criteria laid down in the Law for the issue of such permit, the temporary residence permit issued to the alien must be withdrawn. It may not be considered that during the period of validity of such a temporary residence permit issued without substantiation, the alien has resided in the Republic of Lithuania legally, i.e. that they have fulfilled one of the aforementioned conditions for the issue of a permanent residence permit enshrined in Article 53(1)(8)⁶¹ of the Law.

In other words, points 47 and 48.10 of the Description, according to which the Migration Department, in examination of an alien's application for a perma-

59 According to Article 40(5), an alien in possession of a temporary residence permit must, following the change of the circumstances due to which the permit has been issued, obtain a new temporary residence permit.

60 Judgment of the Supreme Administrative Court of Lithuania (extended chamber) of 13 January 2021 in administrative case No. eI-16-575/2020 35, p. 42–44.

61 See, e.g. judgment of the Supreme Administrative Court of Lithuania of 16 May 2018 in administrative case No. A-3933-624/2018, judgment of 3 January 2019 in administrative case No. eA-5450-822/2018, judgment of 14 May 2019 in administrative case No. eA-4000-822/2019, judgment of 10 July 2019 in administrative case No. eA-4517-525/2019.

nent residence permit on the basis of Article 53(1)(8) of the Law, when counting the period of the alien's residence in the country, essentially evaluates data on the period(s) when the alien held a valid temporary residence permit but did not fulfil the conditions applicable for acquisition of a temporary residence permit on such basis, according to the case-law of the Supreme Administrative Court of Lithuania, ensures proper implementation of the Member States' obligations according to Article 4(1) of Directive 2003/109.

The conditions of legal residence in the Republic of Lithuania for the issue of a permanent residence permit, regulated in a clear and imperative manner, have consistently determined case-law of the Supreme Administrative Court of Lithuania in cases where aliens disputed decisions of the Migration Department to refuse a permanent residence permit in the Republic of Lithuania because there has been an interruption between the periods of time when the alien resided on the basis of a temporary residence permit, during which, it should be noted, however, the alien was present in the Republic of Lithuania legally, for example, on the basis of a national visa. In view of the Migration Department, the following are not included in the 5-year period of residence in the Republic of Lithuania: the time when an alien was present in the Republic of Lithuania under a visa-free regime, on the basis of a Schengen visa, a national visa issued by the Republic of Lithuania or another Schengen State, a European Union residence card issued by another Member State of the European Union, a residence permit issued by another Schengen State. According to the Migration Department, the provisions of the Law define that a visa is a document entitling to enter and stay in the Republic of Lithuania,⁶² and a temporary residence permit means a document granting an alien the right for temporary residence in the Republic of Lithuania,⁶³ thus they are different documents and a visa cannot be treated as a temporary residence permit.⁶⁴

The prevailing case-law of the SACL on this question is favourable to the position of the Migration Department.⁶⁵ Rejecting the alien's arguments regarding legal residence on the basis of a national visa, the Supreme Administrative Court of Lithuania emphasised that Article 53(1)(8) of the Law imperatively lays down a requirement, namely, of an uninterrupted residence in Lithuania on the condition of holding a temporary residence permit. Assessing the aspect of an interruption that occurred between temporary residence permits held by the alien,

62 Article 2(33) of the Law.

63 Article 2(14) of the Law.

64 Judgment of the Supreme Administrative Court of Lithuania, 31 March 2021, in the administrative case No. eA-2811-492/2021, p. 10.

65 See, e.g. judgment of the Supreme Administrative Court of Lithuania of 29 April 2020 in administrative case No. eA-3683-822/2020, judgment of 3 March 2021 in administrative case No. eA-2448-442/2021, judgment of 31 March 2021 in administrative case No. eA-2811-492/2021.

the SACL drew attention to the fact that the break was caused by the behaviour of the applicant (late application for the permit). It was also noted that the disputed Migration Department decision does not preclude the alien from applying for the permanent residence permit again when they stay in the Republic of Lithuania for the required period and when other relevant conditions laid down in the Law are fulfilled.⁶⁶

A complaint of an alien under a visa-free regime was treated the same way when he argued that the Law does not lay down a requirement of no interruptions between the dates of official temporary residence permits, furthermore, an Argentinian citizen may live in the Republic of Lithuania legally without a visa for 90 consecutive days, thus, according to the applicant, he was residing in Lithuania legally during the interruptions. The SACL did not agree with this position, stating that an alien under a visa-free regime may enter and stay in the Republic of Lithuania without a visa, but their stay in the Republic of Lithuania and other Schengen States may not last longer than 90 days within a 180-day period.⁶⁷ Thus, a visa-free regime does not give rise to the right of an alien to reside in the Republic of Lithuania, it only gives rise to the right to enter and stay in the territory of the Republic of Lithuania and other Schengen States without a visa for a certain limited time.⁶⁸

With respect to a visa and a temporary residence permit as documents formalising separate legal categories, the aforementioned case-law of the Supreme Administrative Court of Lithuania is consistently developed in the most recent clarifications provided by this court in the context of movement restrictions that were in force during the pandemic period. Clarifying the provisions of point 3.1.1 of the Decision of the Government of the Republic of Lithuania 'On Declaring the State-level State of Emergency' which established an exception to a prohibition to enter the Republic of Lithuania for citizens of the states of the European Economic Area and to persons legally residing therein⁶⁹, the SACL stated that, according to the Law, presence and residence in Lithuania are separate legal con-

66 Judgment of the Supreme Administrative Court of Lithuania of 29 April 2020 in administrative case No. eA-3683-822/2020, p. 35–36.

67 Article 11(2) of the Law.

68 Judgment of the Supreme Administrative Court of Lithuania of 3 April 2017 in administrative case No. eA-3031-822/2017.

69 Point 3.1.1 of the Decision of the Government of the Republic of Lithuania 'On Declaring the State-level State of Emergency' (version of the decision No. 588 of 10 June 2020, TAR, 11-06-2020, No. 12822) stated that crossing the state border is restricted by prohibiting aliens to enter the Republic of Lithuania, this prohibition being not applicable to citizens and legal residents of the States of the European Economic Area, the Swiss Confederation, the United Kingdom of Great Britain and Northern Ireland, arriving from these countries if in the country where they are residing the incidence of Covid-19 disease during the last 14 days did not exceed 25 cases for 100 000 inhabitants. The list of these countries is published by the Head of the State-level Emergency State Operations every Monday.

cepts, their legal status and regime are also different. A visa issued according to established procedures confers the right to a person to enter, stay or transit the Republic of Lithuania,⁷⁰ whereas a temporary or a permanent residence permit confers the right to a person to respectively temporarily or permanently reside in the Republic of Lithuania.⁷¹ For these reasons, the Chamber held that the arguments supplied in the appeal, which stated that these concepts are essentially the same, and that both of them confer the right to a person to reside in a respective State of the European Economic Area, are unfounded and incorrect. Regarding the argument supplied in the appeal that the presence of a person in possession of a visa in the respective State of the European Economic Area is inseparable from the right to also reside in that country, the SACL noted that that corresponds to the concepts used in every-day life, but, in legal terms, this statement is incorrect as, for the purposes of application of the Law, stay and residence in a respective country are separate legal categories.⁷²

On the other hand, there are examples of the case-law of the Supreme Administrative Court of Lithuania, which show that an interruption which occurred between temporary residence permits in the event of extraordinary circumstances, during which the alien was present in the territory of the Republic of Lithuania legally on the basis of a national visa, should not be considered as having interrupted counting the 5-year continuous legal residence period.

Assessing the situation when a 32-day break occurred between temporary residence permits issued to the applicant, the Chamber drew attention to the facts that the applicant had continuously lived in Lithuania since 2004 when, being a minor, she left her country of origin for permanent residence in the Republic of Lithuania together with her family, graduated from high-school in Lithuania, passed all the obligatory school-leaving examinations in Lithuanian, studied in Vytautas Magnus University in Lithuanian, acquired a bachelor degree in political science and a master's degree in law, additionally, passed an examination on the basics of the Constitution of the Republic of Lithuania, married a citizen of the Republic of Lithuania, is working in Lithuania and is self-employed preparing legal documents and providing consultations, during all 15 years of legal residence in Lithuania has not been absent from Lithuania for a period longer than established in Article 53(10) of the Law, furthermore, the applicant herself states that her ties with her country of origin are broken – the applicant considers herself and is in fact a resident of the Republic of Lithuania. It has also been emphasised that the applicant submitted her ap-

70 Articles 2(33), 17(1) of the Law.

71 Articles 2(14), (15), 24(1) of the Law.

72 Judgment of the Supreme Administrative Court of Lithuania of 28 April 2021 in administrative case No. A-2913-438/2021, p. 16–17.

plication when the previous temporary residence permit had not been expired, and it was submitted on this particular date because on that day the applicant married a Lithuanian citizen and wished to acquire a temporary residence permit on another basis, family reunification, which, according to the SACL, in no way constitutes a basis to claim that the applicant would not have received a temporary residence permit previous to that date on a different basis. Taking these exceptional circumstances into account, the Chamber found that there is no basis to accept that the mere fact that the applicant did not have a valid temporary residence permit for 32 days (had a national visa (D)), would constitute a basis to decide that the applicant does not fulfil the requirements of Article 53(1)(8) of the Law. Furthermore, the SACL pointed out that the Migration Department should have taken into account the facts that during the relevant period the applicant was issued a national visa (D), she resides in Lithuania for over 15 years, is integrated into the society, has completed higher education here and is currently working.⁷³

In another case, the applicant disputed a Migration Department decision to refuse a permit of a long-term resident of the Republic of Lithuania to reside in the European Union on the basis that the condition of 5-year uninterrupted residence in the Republic of Lithuania was not fulfilled because there was an interruption of 31 calendar days between the temporary residence permits issued to the applicant, during which the applicant stayed in Lithuania on the basis of a national visa. On the basis of the circumstances of the case, the SACL emphasised that after receiving the first application together with the accompanying documents submitted by the applicant, having identified the shortcomings of the supplied documents, the Migration Department should have set a term for the applicant to remedy the shortcomings of the application according to Article 33(4) of the Law, instead of refusing to accept the application according to point 44.10 of the Description of the Procedure for the Issue, Renewal, Withdrawal of Temporary Residence Permits to Aliens in the Republic of Lithuania, and of Assessment whether a Marriage, Registered Partnership, Adoption are of Convenience or a Company is a Shell Company;⁷⁴ the application for renewal of a permit, submitted by the applicant again 12 days prior to expiry of the issued permit and accepted for processing by the defendant, in view of the Chamber, should have been processed as an application for renewal of a permit under the urgency procedure and a decision on it should have been taken respectively within one month after the submission of

73 Judgment of the Supreme Administrative Court of Lithuania of 19 February 2020 in administrative case No. eA-3271-556/2020, *Administracinė jurisprudencija*. 2020, 39, p. 56–72.

74 Description of the Procedure for the Issue, Renewal, Withdrawal of Temporary Residence Permits to Aliens in the Republic of Lithuania, and of Assessment whether a Marriage, Registered Partnership, Adoption are of Convenience or a Company is a Shell Company, enacted by order of the Minister of Interior of 12 October 2005, No. 1V-329.

the application because the legislation does not confer a right on the defendant to reclassify, at its discretion, the application for renewal of a permit to an application for issue of a permit. Thus, taking into account that the Migration Department did not comply with the requirements of the legislation when processing the first application (failed to set a term for remedying the shortcomings of the application) and the subsequent application (adopted a decision based not on the request formulated in the application), the SACL found that in the given case the Migration Department should have taken into consideration all the circumstances that are of legal significance, whether the applicant's residence in Lithuania indeed may not be regarded as uninterrupted, despite the fact that the applicant did not hold a permit to reside in Lithuania for 31 calendar days but stayed on the basis of a national visa during that period. Referring to the aforementioned case-law of the SACL, the Chamber emphasised that, taking into account the exceptional circumstances, due to which a person (an alien) does not hold a valid temporary residence permit to reside in Lithuania for a certain period, and has a national visa during that period, the case-law specifies that the Migration Department must also take into consideration the circumstances that a person has been issued a national visa, the person's residence in Lithuania, and their integration into the society. Meanwhile, both the disputed decision of the Migration Department and the judgment of the first instance court were based exceptionally on the sole circumstance that the applicant did not hold a residence permit in Lithuania for 31 calendar days, despite the reasons why this interruption occurred.⁷⁵

In conclusion, case-law of the Supreme Administrative Court of Lithuania developed concerning permanent residence permits, consistently follows the criteria of continuous legal residence, which, according to the Law, is imperatively limited by the conditions of 5-year uninterrupted residence in the country holding a temporary residence permit, even though it is also accepted that an interruption between temporary residence permits which occurred in case of extraordinary circumstances when an alien stayed in the country on the basis of a visa, i.e. legally, may not be regarded as a basis to interrupt counting the 5-year period of uninterrupted residence. This case-law is consistently determined by the way the legislator chose to implement Article 4(1) of Directive 2003/109, in particular, by tying the condition of legal residence under Article 53(1)(8) of the Law with holding a single document – a temporary residence permit.

It seems that there have been no doubts raised on the compatibility of Article 53(1)(8) of the Law, which has been in force for almost 20 years, with provisions of Article 4(1) of Directive 2003/109 neither by the competent authorities of the Re-

75 Judgment of the Supreme Administrative Court of Lithuania of 23 September 2020 in administrative case No. eA-4752-520/2020.

public of Lithuania, which are active in the respective field, nor by academics who show particular interest in the topic of migration (the Constitutional Court of the Republic of Lithuania has also not examined the question of constitutionality of the aforementioned provision). However, it should be recalled that the case-law of the Court of Justice of the European Union, analysed in the first part of the article, which clearly indicated a prohibition to limit the effectiveness of Directive 2003/109 and to undermine the objectives of this directive when Member States are exercising their competence on the subject of laying down the conditions of legal residence in national law, allowed to identify a reference point for assessment of national rules in this field. Pursuant to it, assessment should be made of the choice of the legislator of the Republic of Lithuania to tie the condition of legal residence under Article 4(1) of the Directive 2003/109 to an imperative of holding a single document suitable in this respect – a temporary residence permit, even though in case the competent authorities are short of time for carrying out the respective assessment, the third country national who had a temporary residence permit, thus keeps residing continuously and legally in the territory of the Republic of Lithuania, is issued a national visa until a decision on application of the person for a respective residence permit will be adopted. In this context, it should be noted that the legal regime, according to which, when counting the five-year legal and uninterrupted residence period, only a temporary residence permit is considered a valid proof of the fact of legal residence, implies an additional condition laid down in national law which is not enshrined in provisions of Directive 2003/109 and which clearly causes an obstacle for acquisition of the long-term resident status. Accordingly, *ipso jure* interruption of counting the residence period only due to a break that occurred between temporary residence permits, during which a third-country national continues to stay in the country without interruption and legally on the basis of a national visa, can hardly be considered compatible with the objectives of Directive 2003/109 and with the prohibition to limit effectiveness of this legal act.

Infringement procedure for incorrect transposition of the provisions of Directive 2003/109 and a step towards better national legislation

On 28 September 2011, the first report of the Commission on implementation of Directive 2003/109/EB has been published.⁷⁶ The conclusions of this document

⁷⁶ Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, 28.9.2011 COM(2011) 585 final. *Op. cit.* 4.

stated that there was a general lack of information among third-country nationals about the EU long-term resident status and the rights attached to it, also many deficiencies in the transposition of the Directive 2003/109 to the national law were identified, for example, restrictive interpretation of the scope of application of the Directive, additional conditions for admission, such as high fees, illegal obstacles to intra-EU mobility, watering down of the right of equal treatment and protection against expulsion.⁷⁷

In the second report on implementation of Directive 2003/109/EC, published on 29 March 2019, the Commission stated that since 2011, the implementation state of play of Directive 2003/109 has improved, also thanks to the numerous infringement cases launched by the Commission and judgements issued by the Court of Justice. However, according to the Commission, some outstanding issues continue to undermine the full achievement of the main objectives of Directive 2003/109, which are to: constitute a genuine instrument for the integration of third-country nationals who are settled on a long-term basis in the Member States; and contribute to the effective attainment of an internal market. The Commission identified the problematic issues of non-promotion of the use of the EU long-term resident status, continuing to almost exclusively issue national long-term residence permits, also national rules that do not encourage intra-EU mobility, insufficient expertise and capacity of the competent authorities in this field when they cooperate with their counterparts in other Member States.⁷⁸

In part II of this report, providing an assessment of compatibility of transposition measures with requirements of Directive 2003/109, with respect to Article 4, the Commission noted that the first report had already highlighted that some Member States apply the concept of legal residence in a restrictive way, in particular by excluding holders of specific visas or residence permits. It was stated that after the Commission's investigation into one of those cases, the Member State has changed the relevant national law and ensured its compliance with the requirements of Directive 2003/109.⁷⁹

Having in mind that over 5 years passed from the final deadline for implementation of Directive 2003/109⁸⁰ until the first report of the Commission on im-

⁷⁷ *Ibid.*, p. 11.

⁷⁸ Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents 29.3.2019 COM(2019) 161 final <https://eur-lex.europa.eu/legal-content/LT/TXT/PDF/?uri=CELEX:52019DC0161&from=LT> [accessed on 30-11-2021].

⁷⁹ *Ibid.*, p. 2.

⁸⁰ Article 26 of Directive 2003/109 stated that Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest.

plementation of Directive 2003/109, and even 8 years elapsed between the first and the second reports, the third Commission report will probably take its time for several years. Nevertheless, it may be quite clearly inferred that a part of the third Commission report on the transposition issues of Article 4 of Directive 2003/109 will entail, in some form or another, information on the Commission infringement procedure against the Republic of Lithuania for incorrect transposition of Directive 2003/109, which has been launched on 9 June 2021 on the basis of Article 258 of the Treaty on the Functioning of the European Union.⁸¹

In the publicly available summary of the reasons for this procedure, it is, first of all, reminded that for the purpose of supporting the integration of non-EU nationals, Directive 2003/109 defines the conditions under which those persons can obtain long-term resident status and defines their right to equal treatment. Having noted that, under Directive 2003/109, long-term resident status is granted on the condition of legal and continuous residence within the country's territory for 5 years immediately prior to the submission of their application, the Commission highlighted that, according to legislation of the Republic of Lithuania, such long-term resident status may only be acquired by aliens living in the country on the basis of a 'temporary residence permit', excluding people with long stay visas. In view of the Commission, any period of legal and continuous residence should count towards the period of 5 years under Directive 2003/109, unless such residence does not reflect any intention to settle on a long-term basis in the territory of the Member State concerned.⁸² Thus, according to the Commission, Directive 2003/109 does not state that only documents of certain types, confirming the right of residence, may be considered proof of continuous and legal stay in a Member State.⁸³

In response to the Commission's action, the Ministry of the Interior of the Republic of Lithuania introduced the Draft Law amending Articles 2, 11, 19, 23, 26,

81 Infringement No. INFR(2021)4028 European Commission website: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&decision_date_from=&decision_date_to=&title=&submit=Search&r_dossier=2021/4028 [accessed on 13-11-2021]

82 Legal migration: Commission urges Lithuania, Malta and Slovenia to correctly transpose EU rules on long-term residents. June infringements package: key decisions. European Commission website: https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_2743 [accessed on 13-11-2021].

83 The explanatory note on the Draft Law amending Articles 2, 22, 36 of the Law on the State Border and Its Protection of the Republic of Lithuania and supplementing the Law with Article 22¹, on the Draft Law amending Article 21 of the Law on the Sea Environment Protection of the Republic of Lithuania, No. VIII-512, and the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law 'On the Legal Status of Aliens' of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹, p. 9. Proposal of the Ministry of the Interior of the Republic of Lithuania No. 1D-6559 'On proposals of draft laws of the Republic of Lithuania'. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/18f820f2493d11eca442ce6d75941970?jfwid=-noodowh3f> [accessed on 03-12-2021].

35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law 'On the Legal Status of Aliens' of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹ (hereinafter – the Draft Law).

Article 9(1) of the Draft Law proposes changing Article 53(1)(8) of the Law, stipulating that a permanent residence permit may be issued to an alien 'if they have resided legally and without a break for the last 5 years in the Republic of Lithuania, holding a document conferring or confirming the right to reside in the Republic of Lithuania or a national visa.'⁸⁴ According to the drafters of the draft law, 'it would mean that, when counting the five-year period, in order to assess whether the alien acquired the right to obtain a permanent residence permit, the periods when an alien was resident in the Republic of Lithuania, holding a document which confirms the right of residence in Lithuania or a national visa, would also be included.'⁸⁵

Taking into account the exception to the application of the directive, enshrined in Article 3(2)(e) of Directive 2003/109,⁸⁶ it is proposed to supplement Article 53 of the Law with a new part 8¹, providing that 'when a permanent residence permit is granted to the alien on the basis of part 1(8) of this Article, the periods of time when the purpose for which they entered the Republic of Lithuania is short-term, related to temporary activity of non-continuous character, are not included in the period of residence in the Republic of Lithuania.'⁸⁷ The examples given of such short-term entry include entry and stay in Lithuania with a Schengen visa or without a visa (in case of a visa-free entry), furthermore, on the basis of this provision, the periods of entry and stay in Lithuania with a national visa issued on certain grounds, would not be included.⁸⁸ In this respect, it should be noted that

84 Article 9(1) of the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law 'On the Legal Status of Aliens' of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹. Proposal of the Ministry of the Interior of the Republic of Lithuania No. 1D-6559 'On proposals of draft laws of the Republic of Lithuania'. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/18f82of2493d11eca442ce6d75941970?jfwid=-noodowh3f> [accessed on 03-12-2021].

85 The explanatory note on the Draft Law amending Articles 2, 22, 36 of the Law on the State Border and Its Protection of the Republic of Lithuania and supplementing the Law with Article 22¹, on the Draft Law amending Article 21 of the Law on the Sea Environment Protection of the Republic of Lithuania, No. VIII-512, and the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law 'On the Legal Status of Aliens' of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹, p. 9. *Op. cit.* 82.

86 *Ibid.*

87 Article 9(3) of the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law 'On the Legal Status of Aliens' of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹. *Op. cit.* 83.

88 The explanatory note on the Draft Law amending Articles 2, 22, 36 of the Law on the State Border and Its Protection of the Republic of Lithuania and supplementing the Law with Article 22¹, on the Draft Law amending Article 21 of the Law on the Sea Environment Protection of the

in the procedure of identifying and counting the period of legal residence when issuing a permanent residence permit to the alien on the bases of parts 1(8) and 1(8¹) of this Article, which the Minister of Interior of the Republic of Lithuania is designated to lay down,⁸⁹ it is envisaged to elaborate that ‘the periods when an alien had a national visa, issued on the grounds related to short-term stay in Lithuania, when temporary, non-continuous activities are undertaken, not seeking to reside (continue to reside) in Lithuania, are not included in the period of legal residence.’⁹⁰ A period during which an alien has stayed in the Republic of Lithuania on the basis of a national visa, issued on the grounds laid down in points 70.1, 70.4, 70.5, 70.7, 70.8, 70.9, 70.12, 70.15–70.21 of the Visa Issuance Description⁹¹, would be considered a short-term stay, whereas a period, during which an alien has stayed in the Republic of Lithuania on the basis of a national visa, issued on the grounds laid down in points 70.2, 70.3, 70.6, 70.10–70.11¹, 70.13, 70.18 of the Visa Issuance Description (except for seasonal workers), would be considered a long-term stay.⁹²

In the context of the analysed case-law of the Supreme Administrative Court of Lithuania, it should be noted that point 70.11 of the Visa Issuance Description states that a national visa may be issued to an alien who has submitted an application to issue or renew a residence permit in the Republic of Lithuania or a residence card of a family member of a Union citizen; point 70.11¹ enshrines a possibility for a national visa to be acquired by an alien, regarding whom the Migration Department has adopted a decision to issue or renew a temporary or a permanent residence permit in the Republic of Lithuania or a residence card of

Republic of Lithuania, No. VIII-512, and the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law ‘On the Legal Status of Aliens’ of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹, p. 9. *Op. cit.* 82.

89 Article 9(2) of the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law ‘On the Legal Status of Aliens’ of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹. *Op. cit.* 83.

90 The explanatory note on the Draft Law amending Articles 2, 22, 36 of the Law on the State Border and Its Protection of the Republic of Lithuania and supplementing the Law with Article 22¹, on the Draft Law amending Article 21 of the Law on the Sea Environment Protection of the Republic of Lithuania, No. VIII-512, and the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law ‘On the Legal Status of Aliens’ of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹, p. 9. *Op. cit.* 82.

91 Order of 28 December 2017, No. 1V-899/V-330 of the Minister of the Interior and the Minister of Foreign Affairs ‘On Adoption of the Visa Issuance Description’, TAR, 02-01-2018, No. 90.

92 The explanatory note on the Draft Law amending Articles 2, 22, 36 of the Law on the State Border and Its Protection of the Republic of Lithuania and supplementing the Law with Article 22¹, on the Draft Law amending Article 21 of the Law on the Sea Environment Protection of the Republic of Lithuania, No. VIII-512, and the Draft Law amending Articles 2, 11, 19, 23, 26, 35, 53, 62, 98¹, 124, 125, 133, 140³ of the Law ‘On the Legal Status of Aliens’ of the Republic of Lithuania, No. IX-2206, and supplementing the Law with Article 20¹, p. 9-10. *Op. cit.* 82.

a family member of a Union citizen, or an alien has lost a temporary or a permanent residence permit in the Republic of Lithuania or a residence card of a family member of a Union citizen abroad. In other words, a systematic assessment of the proposed amendments presupposes that an interruption which has occurred between temporary residence permits, during which an alien is staying in the Republic of Lithuania on the basis of a national visa, *ipso jure* will not be considered a ground to interrupt the counting of 5-year uninterrupted legal residence period anymore.

It is difficult to assess the Draft Law at such an early stage of law-making, even though its current content, it appears, allows hope of an efficient rectification of implementation mistakes of Article 4(1) of Directive 2003/109. Analysis of legislation which is currently only proposed, is certainly possible and would be in a certain sense beneficial, however, in this particular case, it does not fall under the scope of the objective of the research. Meanwhile, the main aim in this context is to highlight the general task, formulated by the Court of Justice, which falls upon administrative courts, in application of national legislation, to interpret it, so far as possible, in the light of the wording and the purpose of the directives in order to achieve the result sought by those legal acts and consequently comply with the third paragraph of Article 288 of the Treaty on the Functioning of the European Union. This obligation to interpret national law in conformity with Union law is inherent in the system of the Treaty on the Functioning of the European Union, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of the Union law when they determine the disputes before them.⁹³ The aforementioned duty of interpretation in compliance with the Union law, covers the whole body of rules of national law,⁹⁴ including domestic case-law.⁹⁵ The duty was also emphasised several times in the case-law of the Supreme Administrative Court of Lithuania, relevant in the context of the issuance of permanent residence permits,⁹⁶ thus, it only remains to wish to keep staying on course of respect to the values and principles of the European law.

93 Judgment of the Grand Chamber of the Court of Justice of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, point 24 and the case-law cited therein.

94 See, *inter alia*, judgment of the Court of Justice of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, point 38 and the case-law cited therein.

95 Judgment of the Court of Justice of 13 July 2000, *Centrosteeel*, C-456/98, EU:C:2000:402, point 17.

96 See, e.g. judgment of the Supreme Administrative Court of Lithuania (extended chamber) of 13 January 2021 in administrative case No. eI-16-575/2020, judgment of extended chamber of 14 April 2021 in administrative case No. eI-11-556/2021.

Conclusions

The whole scheme of integration of third-country nationals who are legally settled on a long-term basis in the Member States, created by the provisions of Directive 2003/109, based on the long-term resident status, consistently determines that the criteria for acquisition of long-term resident status, applied coherently and uniformly in all Member States, are key to legal certainty of third-country nationals who may expect to acquire a permanent residence permit. Accordingly, the analysis of the Court of Justice's case-law on this issue leads to the conclusion that, in exercising their competence in the field of immigration, Member States may lay down conditions of legal residence in national law, however, that may not undermine the objectives of this directive and result in limiting the effectiveness of Directive 2003/109. In order to ensure compliance of national provisions on granting long-term resident status with Directive 2003/109, their object or effect must not be imposition of an additional condition that would constitute an obstacle for the acquisition of long-term resident status.

According to this reference point for assessment of national immigration rules, the rule laid down in Article 53(1)(8) of the Law on the Legal Status of Aliens of the Republic of Lithuania, by which the conditions set out in Article 4(1) of Directive 2003/109 for acquisition of long-term resident status (the requirement of 5-year continuous residence and the condition of legal residence, which, by the legislator's choice, was tied to the imperative of holding a single document suitable in this respect – a temporary residence permit) were transposed and implemented, deserves criticism. Legal rules, according to which, when counting the five-year period of legal and uninterrupted residence, only a temporary residence permit is considered a valid proof of the fact of legal residence, imply an additional condition laid down in national law, which is not established in the provisions of Directive 2003/109 and which clearly constitutes an obstacle for the acquisition of long-term resident status, and is incompatible with the objectives of Directive 2003/109 and the prohibition of limiting the effectiveness of this legal act.

The European Commission infringement procedure against the Republic of Lithuania for incorrect transposition of Directive 2003/109, consistently determined the competent authorities' actions on improving existing legislation. The content of the proposed legislative initiative (at least at this early stage of law-making) allows hope of an efficient rectification of transposition mistakes of Article 4(1) of Directive 2003/109.

In anticipation of this result, the general task, formulated by the Court of Justice, in application of national legislation, to interpret it, so far as possible, in the light of the wording and the purpose of the directives in order to achieve the result sought by those legal acts and consequently comply with the third para-

graph of Article 288 of the Treaty on the Functioning of the European Union, becomes relevant to administrative courts. In this context, it should be noted that the Supreme Administrative Court of Lithuania has already acknowledged in its case-law that in case of certain circumstances, an interruption that has occurred between temporary residence permits, during which a third-country national stayed in the country on the basis of a national visa issued to them, i.e., legally, may not be considered a ground to interrupt the counting of 5-year uninterrupted legal residence period. Thus, this case-law of the SACL, in a certain sense, implied shortcomings of the existing legislation before the Commission identified it. Even though the assessment of the legal situation, provided in the aforementioned case-law is reasonably cautious (the necessity of departing from an imperative requirement laid down in the Law is acknowledged only in case of certain existing circumstances), however, taking into account the shortcomings of the national legislation, which has also been acknowledged by the legislator following remarks of the Commission, the aforementioned interpretation of the Supreme Administrative Court of Lithuania should become a useful starting point for interpretation of national legislation in compliance with the provisions of Directive 2003/109.