

[RESIDENCE PERMIT FOR FOREIGNERS] CONTROL OF LEGALITY BY THE SUPREME COURT

Ex facto jus oritur. The granting and renewal of the resident's permit is subject to a very detailed control of legality by the Supreme Court, which, in the course of its decisions, has thus established the outlines of a real judge-made law.

The last building block is a decision of October 7, 2022 (TS 2021-10, Mrs K v. State of Monaco).

The absence of formal grounds for the refusal. In a decision of July 12, 2022, rendered at our request (TS 2021-08, M.F.J. v. State of Monaco), the Supreme Court overturned a decision of the Police Commissioner refusing to renew a foreigner's residence permit on the grounds that he had not fulfilled the condition of a minimum of three months' stay in the Principality of Monaco during the previous year. In fact, this three-month period of residence is not a minimum period of residence for the renewal of the permit.

In this decision of July 12, 2022, the Supreme Court recalled that, in accordance with law n° 1.312 of June 29, 2006 concerning the grounds of administrative acts, the Administration is not required to issue a formally reasoned decision to refuse a first application for a resident's permit. The contested decision is therefore not illegal because of its lack of formal grounds.

Control of Legality of the grounds for refusal. A legal challenge of the refusal requires the Administration to disclose the reasons for the refusal, in order to allow the Supreme Court to exercise its control of legality. The Court operates as follows:

A control of the relevance of the facts. The documents submitted to the file must make it possible to establish the relevance of the facts attributed to the applicant (in this sense, TS 2020-07, April 6, 2021, M.K.R. v. State of Monaco: here, his involvement in fraudulent maneuvers that led to the bankruptcy of an Icelandic bank).

A control of the reality of the facts. The decision to refuse the issuance of a document must be annulled if it is based on the fact that the applicant - whom we also represented - allegedly passed over counterfeit banknotes to a Monegasque bank in 1997, without having been prosecuted or convicted (TS 2020- 10, December 2, 2021, M.L.I v. State of Monaco).

Review of the legality of the grounds for the refusal and safeguarding the higher interests of the State. When the information is covered by national security secrecy and cannot be declassified, the guarantee of the right to a judicial remedy requires that it be communicated only to the members of the Court's judgment panel. If the Administration refuses to communicate such elements (even by means of appropriate procedures), it does not allow the Supreme Court to exercise its control. This is the other major lesson of the decision of October 7, 2022.

The team at Zabaldano Lawyers remains at your disposal to answer all your questions.