

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Belgium 2017

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1. Table 1 – Case law

<p>1. Subject matter concerned</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>30 June 2014</p>
<p>Deciding body (in original language)</p>	<p>Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique</p>
<p>Deciding body (in English)</p>	<p>Constitutional Court of Belgium</p>
<p>Case number (also European Case Law Identifier)</p>	<p>95/2014</p>

(ECLI) where applicable)	
Parties	Roger Hallemans and others
Web link to the decision (if available)	http://www.const-court.be/public/n/2014/2014-095n.pdf
Legal basis in national law of the rights under dispute	Article 12 of the Law of 19 January 2012 amending the law relating to the reception of asylum seekers (<i>Wet van 19 januari 2012 tot wijziging van de wetgeving met betrekking tot de opvang van asielzoekers / Loi du 19 Janvier 2012 modifiant la législation concernant l'accueil des demandeurs d'asile</i>). The Article states that the Public Centre for Social Welfare (<i>Openbaar Centrum voor Maatschappelijk Welzijn / Centre Public d'Action Sociale</i>) is not obliged to provide social services to nationals of EU Member States or to their family members during the first three months of residence or, where appropriate, during the longer period during which they look for work, nor is it obliged to grant livelihood aid prior to the acquisition of the right to permanent residency. This Article transposes Article 24 (2) of Directive 2004/38 into Belgian law (para. B.38 second indent).
Key facts of the case (max. 500 chars)	<p>The applicants claim that the Article discontinues the right to social assistance, including the right to urgent medical help, for citizens of EU Member States and their family members during the first three months of residence in Belgium as well as for citizens of EU Member States who arrive in Belgium to find work and their family members during their job search. It also supposedly discontinues the right to livelihood support for citizens of EU Member States until they gain permanent residency.</p> <p>Applicants argue that this provision is in violation of the right to lead a dignified life including, among others, the right to social security and the right to family benefits (Article 23 of the Belgian Constitution) read in conjunction with the right to equality and non-discrimination (Articles 10 and 11 of the Belgian Constitution);</p>

	Articles 2, 4, 9, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights; Article 3 of the European Convention on Human Rights; Articles 13, 16, 30 and E of the European Social Charter.
Main reasoning / argumentation (max. 500 chars)	<p>Due to the general wording of Article 12 of the Law of 19 January 2012, social services (social assistance as well as scholarships and student loans) can be refused to EU citizens (non-Belgians), who have or retain the status of employee, and to their families (paras. B.41-B.44).</p> <p>The social assistance provided by the public centre for social welfare is not considered a payment of financial nature intended to facilitate access to the labour market which is excluded from the scope of application of Article 24 (2) of Directive 2004/38. If it was considered to constitute such a payment, every employment-seeking EU citizen could claim social assistance. This would be against Article 24(2), which seeks to exclude job seekers from the social assistance system while they are looking for work (para. B.50.1).</p> <p>Article 12 creates a discriminatory difference in treatment, because EU citizens and their family members are not entitled to reimbursement of urgent medical aid expenses incurred by the public centre for social welfare during the first three months of residency, whereas persons who reside illegally in Belgium can claim such aid (para. B.52.1). When EU citizens take recourse to the social assistance system, their right to residency can be terminated and they can be expelled (para. 55.2).</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Interpretation of the equal treatment principle included in Article 24 of Directive 2004/38.</p> <p>Clarification of the scope of the notion 'social assistance' in Article 24 (2) of Directive 2004/38 (paras. B.49 and B.50).</p>
Results (e.g. sanctions) and key	Social assistance provided by the public centre for social welfare is covered by Article 24 (2) of Directive 2004/38 (para. B.50.1).

<p>consequences or implications of the case (max. 500 chars)</p>	<p>Article 12 of the Law of 19 January 2012 is annulled, in as much as it applies to citizens of the EU, non-Belgians, who have or retain the status of employee (whether or not they are in paid employment), as well as their family members who reside on Belgian territory legally. Violation of Articles 10, 11 and 23 of the Constitution read in conjunction with Article 24 of Directive 2004/38 (para. B.43 and B.44).</p> <p>On the other hand, this refusal of support for livelihood for EU citizens other than employees and their family members, before they obtain permanent residency, does not violate these Articles (para. B.45-B.47).</p> <p>Article 12 of the Law of 19 January 2012 is annulled in as far as it allows the public centre for social welfare to refuse urgent medical care to EU citizens and their family members during the first three months of their residence. Violation of Articles 10 and 11 of the Constitution (para. B.55.12).</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Door het openbaar centrum voor maatschappelijk welzijn mogelijk te maken om aan de Europese burger, niet-Belg, die de hoedanigheid van werknemer heeft of behoudt, alsook aan zijn familieleden, het voordeel van de maatschappelijke dienstverlening te weigeren gedurende de eerste drie maanden van hun verblijf, alsook het voordeel van de steun voor levensonderhoud tot het verkrijgen van een duurzaam verblijfsrecht in België, heeft artikel 12 van de bestreden wet bovendien een verschil ingevoerd dat in strijd is met het gelijkheidsbeginsel vervat in artikel 24, lid 1, van de richtlijn."</i></p> <p>Translation:</p> <p>"By making it possible for the public centre for social welfare to refuse the benefit of social assistance to non-Belgian EU citizens (who have or retain the status of employee, as well as their family members during the first three months of their residency) as well as the benefit of support for livelihood until permanent residency has been obtained, Article 12 of the contested law also introduced a differentiation that is in violation of the equality principle included in Article 24 (1) of the Directive (para. B.42.3)."</p>
<p>Has the deciding body referred to the</p>	<p>No.</p>

Charter of Fundamental Rights? If yes, to which specific article.	
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2. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30 June 2014
Deciding body (in original language)	Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique
Deciding body (in English)	Constitutional Court of Belgium

Case number (also European Case Law Identifier (ECLI) where applicable)	97/2014
Parties	The chairman of the Parliament of the French Community and the chairwoman of the Assembly of the French Community Commission of the Brussels-Capital Region
Web link to the decision (if available)	http://www.const-court.be/public/n/2014/2014-097n.pdf
Legal basis in national law of the rights under dispute	Article 6 , § 1, 4°, Article 7, second indent, and Article 8, §§2 and 3 of the Decree of the Flemish Community of 20 April 2012 concerning the organisation of childcare for infants and toddlers (para. B.1.3.).
Key facts of the case (max. 500 chars)	<p>The case concerns an action for annulment of three articles of the Decree of the Flemish Community of 20 April 2012 concerning the organisation of childcare for infants and toddlers.</p> <p>(1) According to Article 6, §1, 4° of the decree, obtaining a mandatory license for child care in the Flemish Community is dependent on the active knowledge of Dutch by the person in charge and by one child supervisor. The applicants argue that this condition creates a limitation of the freedom of movement of workers and of the freedom of residence. Moreover, it discriminates on the basis of language or nationality (para. B.5.2.).</p> <p>The applicants claim violation of Articles 10 and 11 of the Belgian Constitution; Articles 18, 45 and 49 of the Treaty on the Functioning of the EU; Articles 1 and 7 of Regulation No. 492/2011 of the European Parliament</p>

and of the Council of 5 April 2011 on freedom of movement for workers within the Union; Article 24 of Directive 2004/38 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; Article 21 of the CFEU (para. B.5.1.).

(2) According to Article 7, second indent of the decree, active knowledge of Dutch of all child supervisors and the use of Dutch in the operation of the child care location is a requirement for organisers with a license to receive a basic subsidy from the autonomous Flemish agency Child and Family (*Kind en Gezin*). This is argued to limit the right to free movement of workers and a discrimination on the basis of language or nationality (para. B.20).

The applicants claim a violation of Articles 10 and 11 of the Belgian Constitution; Articles 18 and 45 of the TFEU; Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community; Articles 21, 24, 34 and 36 of the CFEU (para. B.19).

(3) According to Article 8 §§2 and 3, children (of whom at least one parent has sufficient knowledge of Dutch) get precedence to child care locations subsidised by the Flemish Community in the bilingual area Brussels-Capital and this covers a maximum of 55 % of their reception capacity. Applicants claim that this leads to discrimination among children and among parents, depending on whether or not a family can provide proof that one parent has a sufficient knowledge of Dutch (para. B.37).

The applicants argue that this provision violates Articles 10 and 11 of the Belgian Constitution; Articles 18, 20, 21, 45, 49 and 56 of the TFEU; Articles 21, 24, 34 and 36 of the CFEU; Articles 2 and 3 of Directive 2004/38 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; Articles 1 and 7 of Regulation No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union; Article 24 of Directive 2004/38 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

	<p>freely within the territory of the Member States; Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (para. B.37).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>(1) Concerning the alleged discrimination by Article 6 , §1, 4° of the decree, the Court argues that the requirement of knowing the Dutch language to obtain the mandatory license goes against the freedom of establishment and the freedom of movement as it has for effect to put in a more favourable position those who master the Dutch language over those who do not (para. B 6.2.)</p> <p>However, the Court adds that the objective pursued by the decree is a general interest objective which justifies the restriction to those freedoms (para. B. 7.3.). Furthermore, the Court argues that the restriction to those freedoms is not disproportionate because the requirement to know the Dutch language only applies to the organiser of the child care location and one child supervisor; it only goes as far as what is required to understand the necessary regulations adopted by the authorities and what is required to safeguard the quality of the care and safety of the children (para. B. 8.2. and para. B. 8.5.).</p> <p>(2) Concerning the alleged discrimination by Article 7, second indent of the decree, the Court applies the same reasoning used for Article 6, §1, 4° of the decree. The requirement to know the Dutch language is a restriction to the freedom of establishment and the freedom of movement (para. B.22.). However, the objective pursued by the decree is a general interest objective that justifies the restriction to those freedoms (para. B 24.1.). Furthermore, the requirement for all the child supervisors to speak Dutch is not disproportionate, given that it does not go beyond what is required to fulfil the objective of having a Dutch-speaking environment for the children (para. B.24.3.).</p> <p>(3) As for Article 8, §§2 and 3 of the decree, the Court first reminds that in the territory of Brussels-Capital, the Flemish Community is competent to regulate institutions which, with respect to their organisation, should be considered to belong to the Flemish Community exclusively. The Court argues that it is, therefore, not unreasonable that institutions, such as Flemish child care locations, provide for a minimum priority access for families, of which at least one parent has a sufficient knowledge of Dutch. The restriction is not considered to</p>

	<p>be disproportionate, because the priority enrolment right was fixed at maximum 55% and the proofs required from the parents are not difficult to provide (para. B. 38.).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>General interest objectives may justify that restrictions, such as the requirement of sufficient knowledge of a language, are put on the freedom of movement and residence. Those restrictions should not be disproportionate to the pursued goals of the general interest objectives.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Constitutional Court annuls the part of Article 7, indent 2 of the decree which violates Articles 30 and 129 of the Constitution. This part of Article 7, indent 2 pertains to the usage of language in the functioning of the child care location and is not relevant with respect to the freedom of movement. As for the rest of the grounds, the Court rejects the request for annulment. Authorities may adopt language restrictions to the freedom of movement and the freedom of residence to safeguard general interest objectives if they are not disproportionate with the pursued goals of those general interest objectives.</p> <p>These language restrictions are not disproportionate if they apply to a minimum number of people, such as the organiser of the child care location and one child supervisor. It also not disproportionate if the language requirement is not more than what is necessary to safeguard the safety of the children and the quality of the child care provided. It is also not disproportionate if it is in place to maintain a Dutch-speaking environment for the children to learn the language. Language priority access to child care is not disproportionate if it applies to a maximum of 55% of the capacity of the child care location.</p>
<p>Key quotations in original language and translated into English with</p>	<p><i>“ La subordination de l’autorisation d’organiser une structure d’accueil d’enfants à la condition qu’au moins un des accompagnateurs d’enfants employés par cette structure dispose d’une connaissance active de la langue néerlandaise a pour effet de favoriser les personnes maîtrisant cette langue, par rapport à celles qui ne la maîtrisent pas, dans la recherche d’un emploi dans ce secteur. Cette disposition est dès lors de nature à gêner</i></p>

<p>reference details (max. 500 chars)</p>	<p><i>le droit à la libre circulation des travailleurs ressortissants d'autres Etats membres qui souhaitent exercer ce métier et qui ne peuvent prouver qu'ils possèdent une connaissance active de cette langue."</i></p> <p>Translation:</p> <p>"To make the authorisation to establish a child care location dependent upon the condition that at least one of the child supervisors employed in the child care location has an active knowledge of the Dutch language has the effect of favouring people who master that language, compared to those who do not, in their search for a job in this sector. This may, thus, hinder the right to free movement of workers from other Member States who would wish to exercise this profession and who cannot prove that they have an active knowledge of the language (para. 6.2.)."</p> <p><i>"L'objectif poursuivi est donc un objectif d'intérêt général qui est de nature à justifier adéquatement les restrictions aux libertés d'établissement et de libre circulation garanties par le TFUE."</i></p> <p>Translation:</p> <p>"The goal pursued, thus, is a general interest objective which may adequately justify the restrictions to the freedom of establishment and the freedom of movement guaranteed by the TFEU (para. 7.3.)."</p> <p><i>"La Cour doit examiner si la restriction contenue dans la disposition attaquée est proportionnée à l'objectif ainsi poursuivi. En effet, selon la Cour de justice, les exigences linguistiques ne peuvent pas aller au-delà de ce qui est nécessaire pour atteindre cet objectif."</i></p> <p>Translation:</p> <p>"The Court must examine whether the restriction contained in the contested provision is proportionate with the goal pursued. Indeed, according to the Court of Justice, the language requirements cannot go beyond what is necessary to achieve this goal (para. B 8.1.)."</p>
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Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Yes, reference to Article 21 of the CFEU (para. B.5.4.).
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3. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to Article 7 §1 b) and Article 8 § 4 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	10 September 2014
Deciding body (in original language)	Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers

Deciding body (in English)	Council for Alien Law Litigation
Case number (also European Case Law Identifier (ECLI) where applicable)	129 028
Parties	<i>X v. the Belgian State</i>
Web link to the decision (if available)	http://www.rvv-cce.be/sites/default/files/arr/A129028.AN.pdf
Legal basis in national law of the rights under dispute	<p>Article 40 (4) (2) and Article 40 (4) second indent of the law of 15 December 1980 on access to the territory, residence, establishment and the removal of aliens (Wet van 15 December 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen / Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).</p> <p>This Article transposes Article 7 §1 b) and Article 8 §4 of Directive 2004/38 into Belgian law (para. 2.6).</p>
Key facts of the case (max. 500 chars)	<p>X, a Dutch national, had an E-card since 15 March 2011. He became involuntarily unemployed after having worked until 11 January 2013. For six months following this date, the Foreigners' Affairs Office (<i>Dienst Vreemdelingenzaken</i> / <i>Office des Etrangers</i>) considered him to be an employee. On 15 January 2013, X was asked to provide proof of his current economic activities or information on subsistence when not economically active and when applying for a renewal of his residency permit after two years. X provided a certificate of unemployment and proof that he submitted an application to undertake vocational training to drive heavy trucks with a trailer. The Foreign Affairs' Office considered that the documents did not demonstrate that X</p>

	<p>participated in the selection for the training or that he was currently enrolled in it. Moreover, they did not show that he was actively looking for work or that he has a realistic chance of getting any. X did not work for a single day over the course of one year. Because his unemployment benefits are not considered as “sufficient resources”, his residency right was terminated and he was ordered to leave Belgian territory within thirty days (para. 1).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Neither the contested decision nor the administrative file demonstrates that the Foreigners’ Affairs Office examined whether the unemployment benefits provided are at least equal to the level of income for which social assistance can be granted, or whether the applicant constitutes an unreasonable burden for the Belgian social assistance system. Additionally, it was unclear whether the personal situation of the applicant – such as the nature and the regularity of the income and the number of dependent family members, was taken into consideration during decision-making (para. 2.7).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>When determining whether one has “sufficient resources”, the traditional social insurances that are part of the social assistance system and that count as income replacement benefits, such as occupational accident insurances, old-age pensions, family benefits and unemployment benefits, must in principle be considered (para. 2.8 fifth indent).</p> <p>The Foreigners’ Affairs Office must examine whether applicants constitute an unreasonable burden on the social assistance system. The receipt of unemployment benefits does not automatically mean that one constitutes an unreasonable burden on the social assistance system (para. 2.7 and 2.8).</p>
<p>Results (e.g. sanctions) and key consequences or implications</p>	<p>The Council for Alien Law Litigation annulled the contested decision by the Foreigners’ Affairs Office, because the latter failed to review the certificate provided on unemployment benefits with adequate care (para. 2.9).</p>

of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Verzoeker kan worden gevolgd waar hij stelt dat het gegeven dat men een werkloosheidsuitkering ontvangt, niet automatisch betekent dat men daardoor ook een onredelijke belasting vormt voor het social bijstandssysteem.”</i></p> <p>Translation:</p> <p>“The applicant [‘s arguments] can be followed where he states that the fact that one receives unemployment benefits, does not automatically mean that one, therefore, constitutes an unreasonable burden on the social assistance system (para. 2.8 second indent).”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

4. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	6 December 2012
Deciding body (in original language)	Cour du Travail de Bruxelles / Arbeidshof van Brussel
Deciding body (in English)	Labour Court of Brussels
Case number (also European Case Law Identifier (ECLI) where applicable)	2012/AB/267
Parties	<i>Public Centre for Social Welfare of Auderghem v. B.D.G.</i>

Web link to the decision (if available)	http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20121206-11
Legal basis in national law of the rights under dispute	<p>Articles 18, 21, 45 of the TFEU.</p> <p>Articles 7, 14, 24 of Directive 2004/38.</p> <p>Articles 39/79, 40, §4, 42bis, §1, 42septies, of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen / Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).</p>
Key facts of the case (max. 500 chars)	<p>B.D.G. was born in Tunisia, married in Spain and acquired Spanish nationality in 1996. In March 2010, he registered with the communal administration as an independent worker. His E-card was valid from 2010 to 2015. In June 2011, B.D.G. requested social assistance from the Public Centre for Social Welfare of Auderghem. The Centre refused the request for assistance on the grounds that he exercised his right to freedom of movement without the necessary financial resources and, thus, was in a state of illegal residence. B.D.G. contested the decision before the Labour Tribunal of Brussels and argued that he came to Belgium as an independent worker, opened a shop that failed to become profitable after a year and had to stop his activity with significant losses. In February 2012, the Labour Tribunal granted the request. The Centre appealed to the Labour Court of Brussels.</p> <p>The main issue in question concerned the condition of residence. The Centre argued that the defendant does not qualify for social assistance because he is in a state of illegal residence.</p>
Main reasoning / argumentation	The Labour Court first points out that only the Minister or his delegate is qualified to remove the certificate of registration.

<p>(max. 500 chars)</p>	<p>The Labour Court states that according to the case law of the Court of Justice, the removal of the residence permit cannot be a direct consequence of the granting of social assistance and must respect the general principles of the European Union. Furthermore, a European citizen can invoke the principle of equality of treatment as soon as he obtains a certificate of residence. For those reasons, the defendant should receive equal treatment regarding social assistance as long as his certificate of residence is not removed.</p> <p>Furthermore, allowing the Public Centre for Social Welfare to remove the effects of the residence permit would be a source of unwarranted difference in treatment between European citizens who have seen their residence permit removed by the Minister, and who can appeal with a suspensive effect, and European citizens for whom the Public Centre for Social Welfare has removed social assistance benefits due to an alleged irregularity in their residence permit, and who can appeal but without a suspensive effect.</p> <p>Moreover, allowing the Public Centre for Social Welfare to rule on the residence permit could create divergent administrative practice, which Directive 2004/38 intend to avoid.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Public Centre for Social Welfare does not have the authority to decide whether a European citizen meets the requirements for legal residence.</p> <p>Allowing the Public Centre for Social Welfare to ignore the effects of the residence permit would be discriminatory, because the appeal does not have a suspensive effect, whereas an appeal against the decision of removal of the residence certificate does have such a suspensive effect.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The Labour Court decided that the Public Centre for Social Welfare cannot ignore the effects of the residence permit and does not have the authority to decide whether a European citizen meets the requirements for legal residence. After considering the facts, the Labour Court concluded that all of the conditions for social assistance were met in the case at hand.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Permettre au CPAS d’écarter les effets du droit de séjour, même sous contrôle des juridictions du travail, pourrait être la source d’une différence de traitement injustifiée entre les ressortissants de l’Union européenne dont le droit de séjour a été retiré par le Ministre ou son délégué et qui disposent d’un recours suspensif et le ressortissant à qui le CPAS a retiré le bénéfice du revenu d’intégration en raison d’une prétendue irrégularité de son titre de séjour et qui ne dispose à cet égard, que d’un recours non suspensif devant les juridictions du travail.”</i></p> <p>Translation:</p> <p>“Allowing the Public Centre for Social Welfare to ignore the effects of the residence permit, even under the control of the labour courts, could be a source of unwarranted difference in treatment between European citizens whose residence permit has been removed by the Minister or his delegate and who have access to an appeal with suspensive effect on the one hand, and European citizens from whom the Centre has removed social assistance benefits due to an alleged irregularity in their residence permit and who can only launch a non-suspensive appeal before the labour courts on the other hand (para. 18.).”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

5. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	4 November 2010
Deciding body (in original language)	Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique
Deciding body (in English)	Constitutional Court of Belgium
Case number (also European Case Law Identifier)	128/2010

(ECLI) where applicable)	
Parties	Court of First Instance of Liege (preliminary issue)
Web link to the decision (if available)	http://www.const-court.be/public/f/2010/2010-128f.pdf
Legal basis in national law of the rights under dispute	Articles 12bis and 40 to 47 of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	The Court of First Instance of Liege asked the following preliminary question to the Constitutional Court: Are the Articles 40 to 47 of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens, in violation with Articles 10 and 11 of the Constitution, given that they do not provide that an alien asking for family reunification with a Belgian or European citizen spouse should be granted residence permit as soon as no answer has been given to their request when the time limit expires even though according to Article 12bis of the same law, the alien asking for family reunification with a third-country national admitted to reside in Belgium will be granted such a request in case no reply is received within nine month, when warranted extended depending on the closing date (para. B. 3.).
Main reasoning / argumentation (max. 500 chars)	<p>The Court notes that Article 12bis §2 of the law of 15 December 1980 puts down a deadline and determines the consequence of the failure to meet said deadline. The Court also notes that Articles 40 to 47 of the law of 15 December 1980 do not regulate the legal regime of the deadline (paras. B 5.2. and B. 6.2.).</p> <p>The Court continues that Article 12bis §2 of the law of 15 December 1980 entails two guarantees: (1) the authorities should take a decision on family reunification within the deadline set; (2) authorisation for family</p>

	<p>reunification is given when no decision is taken within the deadline in order to protect the third-country national in case the authorities fail to meet the deadline or to take a decision (para. B. 7.1.).</p> <p>According to the Court, there is no reasonable justification to deny such a guarantee to a third-country national who is married to a European or Belgian citizen who lodged a similar request (para. B 7.2.).</p> <p>The Court concludes that Articles 40 to 47 of the law of 15 December 1980 are not compatible with Articles 10 and 11 of the Belgian Constitution, because the legislator did not put down a deadline for the authorities to take a decision on the request for family reunification which is made at a Belgian diplomatic or consular post abroad and because it has not fixed consequences for the situation where no decision is taken within the set deadline (para. B. 9.)</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The lack of a legal regime for the deadline for decisions regarding the family reunification of a third-country national spouse of a European or Belgian citizen is discriminatory and violates Articles 10 and 11 of the Constitution.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The answer to the question is positive. Articles 40 to 47 of the law of 15 December 1980 violate Articles 10 and 11 of the Constitution because they create an inequality between third-country national spouses of European or Belgian citizens on the one hand, and third-country national spouses of third-country nationals admitted to reside in Belgium on the other hand.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Les Articles 40 à 47 de la loi relative aux étrangers ne sont pas compatibles avec les Articles 10 et 11 de la Constitution en ce que le législateur n’a pas établi de délai dans lequel les autorités doivent prendre une décision relative à une demande de regroupement familial qui est faite auprès d’un poste diplomatique ou consulaire belge à l’étranger et en ce qu’il n’a pas établi la conséquence qui doit être attachée à l’absence d’une décision dans le délai prévu. Cette discrimination trouve son origine dans une lacune dans la législation, à laquelle seul le législateur peut remédier.”</i></p> <p>Translation:</p> <p>“Articles 40 to 47 of the Aliens’ Law are incompatible with Articles 10 and 11 of the Constitution because the legislator did not provide for a deadline within which the authorities must take a decision on the request for family reunification made at Belgian diplomatic or consular post abroad, and because it does not have fixed consequences for the situation where no decision is taken within the deadline set. This discrimination originates in a gap in the legislation which only the legislator can remedy (para. B. 9.).”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

6.	<input type="checkbox"/> 1) non-discrimination on grounds of nationality
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Subject matter concerned	<input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	26 September 2013
Deciding body (in original language)	Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique
Deciding body (in English)	Constitutional Court of Belgium
Case number (also European Case Law Identifier (ECLI) where applicable)	121/2013
Parties	Abderrahman Achfri and others

Web link to the decision (if available)	http://www.const-court.be/public/f/2013/2013-121f.pdf
Legal basis in national law of the rights under dispute	Articles 2 to 12 of the Law of 8 July 2011 modifying the Law of 15 December 1980 on access to the territory, residence, establishment and the removal of aliens (<i>Loi du 8 Juillet 2011 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers en ce qui concerne les conditions dont est assorti le regroupement familial / Wet van 8 Juli 2011 tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen wat betreft de voorwaarden tot gezinshereniging</i>).
Key facts of the case (max. 500 chars)	<p>In this case, the Court combines 35 different claims for annulment against various combinations of Articles 2 to 12 of the Law of 8 July 2011 modifying the Law of 15 December 1980 concerning access to the territory, residence, establishment and removal of aliens.</p> <p>The law of 8 July 2011 modifies the law of 15 December 1980 on the aspects of family reunification.</p> <ul style="list-style-type: none"> • Articles 2 to 7 of the challenged law replace Articles 10, 10bis, 10ter §2, 11, 12bis and 13 of the law of 15 December 1980 on the conditions for family reunification for the family members of a third-country national. • Articles 8, 10, 11, and 12 of the challenged law replace Articles 40bis, 42 §1, 42ter and 42quater of the law of 15 December 1980 on the conditions for family reunification for the family members of a European citizen other than Belgian, which transpose Directive 2004/38. • Article 9 of the challenged law replaces Article 40ter of the law of 15 December 1980 and regulates the conditions for family reunification for the family members of a Belgian citizen. <p>The applicants claimed that Articles 8, 10, 11 and 12 of the Law of 8 July 2011 violate Articles 10 and 11 of the Constitution combined with Article 3, second indent, of Directive 2004/83 on several points.</p>

	<ul style="list-style-type: none"> • On the condition of age, the applicants claim that the Law of 8 July 2011 creates an unfair discrimination between EU-nationals and third-country nationals, because a derogation exists to this condition for family reunification of third-country nationals, but not for family reunification of EU citizens. Namely, in order to be considered as a family member of an EU-national, the partners united by law to a registered partnership must both be older than 21 years, whereas the minimum age limit for partners of a third-country national can be reduced to 18 years when the partners can prove that – prior to the arrival of the partner that is being joined in Belgium – they have lived together for at least one year (A.12.1.1.). Such a reduction of the age limit is not possible for family reunification of EU-citizens. This violates Articles 10 and 11 of the Constitution in conjunction with Article 3, second indent, (b), of Directive 2004/38. • Regarding the residence right of family members who are dependent on the sponsor or require his help for health reasons, the applicants claimed that Article 3, second indent, (a) of Directive 2008/38 was not transposed into Belgian legislation (A.12.3.1.).
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Regarding the age condition, the Court found that provisions allowing for a derogation from these conditions for family reunification with a third-country national, while no derogation exists for family reunification with a European citizen, which creates a difference in treatment for which there is no reasonable justification (B. 30.11.).</p> <p>Regarding the residence right of family members who are dependent on the sponsor or require his help for health reasons, the Court of Justice states that the Member States should encourage the residence of those persons and make sure that their legislation provides criteria to allow them to obtain a decision about their request for entry and residence which is based on a thorough assessment of their personal situation, and which is motivated in case of refusal. The Court argues that Article 40bis is not compatible with Articles 10 and 11 of the Constitution combined with Directive 2004/83, because it does not provide for such a procedure (B. 32.4.).</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>There is no reasonable justification for a difference in treatment between third-country nationals and EU-citizens regarding the condition of age sets for family reunification (B. 30.11.).</p> <p>The law should provide a procedure for family reunification for family members of an EU citizen and who are dependent on that EU-citizen or require help from that person for health reasons (B. 32.5.).</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>Article 40bis, §2, first indent, 2°, c) of the law of 15 December 1980 is annulled, because it does not provide that the exception to the condition of age contained in Article 10, §1, first indent, 5° of the law of 15 December 1980 also applies to the family reunification of EU-citizens with their partner.</p> <p>Article 40bis, §2, second indent of the law of 15 December 1980 is annulled, because it should organise a procedure that allows family members who are dependent on the sponsor or require the help of the sponsor for health reasons to introduce a request for residency.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Par conséquent, même si la condition d’âge de vingt et un ans contenue dans l’Article 40bis, § 2, alinéa 1er, 2°, c), de la loi du 15 décembre 1980 n’est pas en soi dénuée de justification raisonnable, il n’existe pas de justification raisonnable au fait qu’une dérogation à la condition d’âge puisse être accordée, en vertu de l’Article 10, § 1er, alinéa 1er, 5°, à certaines conditions en cas de regroupement familial avec un ressortissant d’un Etat tiers alors que, depuis l’adoption de la disposition attaquée, cette dérogation n’est plus possible en cas de regroupement familial avec un citoyen de l’Union.”</i></p> <p>Translation:</p> <p>“Therefore, even though the condition of age of twenty-one years contained in Article 40bis, §2, first indent, c) of the law of 15 December 1980 is not without reasonable justification, there is no reasonable justification for</p>

	<p>the fact that a derogation to the condition of age could be given, in accordance with Article 10, §1, first indent, 5°, under certain conditions in case of a family reunification with a third-country national whereas, since the adoption of the challenged disposition, this derogation is no longer possible in case of family reunification with a EU-national (B. 30.11.)."</p> <p><i>"La disposition attaquée ne prévoyant pas de procédure qui permette aux membres de la famille visés à l'Article 3, paragraphe 2, a), de la directive 2004/38/CE d'obtenir une décision sur leur demande d'entrée et de séjour qui soit fondée sur un examen approfondi de leur situation personnelle et qui, en cas de refus, soit motivée, l'Article 40bis n'est pas compatible avec les Articles 10 et 11 de la Constitution, combinés avec l'Article 3, paragraphe 2, de ladite directive."</i></p> <p>Translation :</p> <p>"Given that the challenged disposition does not provide for a procedure that allows members of the family referred to in Article 3, §2, a) of Directive 2004/38/CE to obtain a decision about their request of entry and residence which is based on a thorough assessment of their personal situation and which is motivated in case of refusal, Article 40bis is not compatible with Articles 10 and 11 of the Constitution, combined with Article 3, §2, a) of Directive 2004/38/CE (B. 32.4.)."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>Yes, reference to Articles 1, 7 and 45 of the CFEU.</p>

7. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	19 February 2015
Deciding body (in original language)	Le Conseil d'Etat / De Raad van State
Deciding body (in English)	The Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	230.257

Parties	<i>X v. the Belgian State</i>
Web link to the decision (if available)	http://www.raadvst-consetat.be/Arrets/230000/200/230257Dep.pdf#xml=http://www.raadvst-consetat.be/apps/dtsearch/getpdf.asp?DocId=27663&Index=c%3a%5csoftware%5cdtsearch%5cindex%5carrets%5ffr%5c&HitCount=2&hits=14+15+&04181720172013
Legal basis in national law of the rights under dispute	Article 42quater, §1, third indent of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	<p>In September 2011, X arrived in Belgium after being authorised to join her spouse. In May 2013, the residence permit of X, of unspecified nationality, was discontinued by the Belgian State. This decision was appealed before the Council for Alien Law Litigation in June 2013, but the appeal was rejected in December 2013. In January 2014, X lodged a request for annulment of the appeal before the Council of State.</p> <p>X claims a violation of Articles 8 and 13 of the European Convention on Human Rights; Article 14, §1 of the International Covenant on Civil and Political Rights; Article 5 TFUE; Articles 41, 47, 48 and 51 of the Charter of Fundamental Rights of the European Union; Articles 13, 14, 15, 28, 31.3 of Directive 2004/38; Articles 10, 11, 149, 159 and 191 of the Constitution; Articles 1319, 1320 and 1322 of the Civil Code pertaining to the principle that documents must be construed in accordance with their actual terms; Articles 2 and 6 of the Judicial Code; Articles 39/2 §2, 39/65 and 42quater, §1 and §5 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens; the general principles of law, "<i>audit alteram partem</i>", of thoroughness and prescribing the respect of the rights to be heard, of defence and to a fair hearing.</p> <p>X claims that, in order to comply with the above-mentioned provisions, the defendant should have heard the applicant on the elements which could contribute to maintaining the residence permit as opposed to just taking them into consideration without further investigation. The Council for Alien Law Litigation had ruled that the</p>

	<p>applicant can make her voice heard in a spontaneous manner and that it is not mandatory for the authority to hear the applicant if she does not spontaneously make herself heard before the decision to terminate the residence permit is taken.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>According to the Council of State, Directive 2004/38 does not specify if and how the rights of an alien to be heard should be respected before taking a decision to terminate the residence permit of that person. Furthermore, the right to be heard before the adoption of a decision, which could have negative effects on one's interests, is a part of the rights of defence consecrated by the general principles of the law of the European Union. This right guarantees everyone the possibility to make their point of view known during the administrative procedure and prior to the adoption of any decision that could have negative effects on their interests.</p> <p>The Council states that Article 42quater, §1, third indent of the law of 15 December 1980 provides that a decision to terminate a residence permit should take the duration of the stay, age, health, economic and familial situation, social and cultural integration and the intensity of the link to the country of origin into account. The defendant is obliged to seek the information necessary to make an informed decision. The defendant must investigate the case and, thus, invite the alien to be heard on the reasons that would oppose the termination of the residence permit and thus deportation, such as the elements specified in Article 42quater, §1, third indent. Such an invitation is the only way that aliens can be given an effective and practical opportunity to make their point of view heard.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The right to be heard implies that prior to the taking of a decision to terminate the residence permit of an alien is taken, the authority must invite the alien to make his/her point of view on the case heard.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Council of State concludes that by ruling that the right to be heard only implies that the applicant can make herself heard spontaneously, the Council for Alien Law Litigation has failed to have proper regard for that right. Therefore, the Council of State annulled the ruling of the Council for Alien Law Litigation.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Eu égard à la finalité précitée du droit à être entendu, la partie adverse a l’obligation de rechercher les informations lui permettant de statuer en connaissance de cause. Il lui appartient en effet d’instruire le dossier et donc d’inviter l’étranger à être entendu au sujet des raisons qui s’opposeraient à ce que la partie adverse mette fin à son droit au séjour et l’éloigne du territoire, notamment au regard des éléments visés par l’Article 42quater, § 1er, alinéa 3, de la loi précitée du 15 décembre 1980. Seule une telle invitation offre, par ailleurs, une possibilité effective et utile à l’étranger de faire valoir son point de vue.”</i></p> <p>Translation:</p> <p>“Regarding the aforementioned aim of the right to be heard, the defendant has the obligation to seek the information necessary to making an informed decision. It is up to the defendant to investigate the case and, thus, to invite the alien to be heard on the reasons which would oppose to a termination of the residence permit and the deportation, such as the elements specified in Article 42quater, §1, third indent. Only such an invitation allows for an effective and practical opportunity for the alien to make his point of view heard (p. 7).”</p>
Has the deciding body referred to the	Yes, Article 41 of the Charter (p. 6).

Charter of Fundamental Rights? If yes, to which specific article.	
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8. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30 April 2015
Deciding body (in original language)	Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers
Deciding body (in English)	The Council for Alien Law Litigation

Case number (also European Case Law Identifier (ECLI) where applicable)	N° 144 652
Parties	<i>X v. the Belgian State</i>
Web link to the decision (if available)	http://www.rvv-cce.be/sites/default/files/arr/A144652.AN.pdf
Legal basis in national law of the rights under dispute	Article 42bis of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	<p>The applicant is a Polish national whose date of entry into Belgium is unknown. In May 2012, the applicant lodged a request for a certificate of registration as a paid worker, which was delivered the same day. In October 2014, the defendant informed the applicant via ordinary letter that his residence permit might be terminated and that he had one month to provide information regarding his situation. The applicant did not reply to the letter and in December 2014 his residence permit was terminated and he was ordered to leave the territory within 3 months. The applicant lodged an appeal before the Council for Alien Law Litigation in January 2015.</p> <p>The applicant claims that the decision is inadequate, because the defendant has not taken all of the elements of his administrative file into account and did not collect all of the information necessary to taking the decision.</p>

	<p>Furthermore, the applicant claims that the defendant violated his duty of information and that one ordinary letter is not enough to fulfil said duty.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Council for Alien Law Litigation states that according to the case law of the Council of State (Case No. 230.257 presented above), the defendant has the obligation to find all of the information necessary to making an informed decision. The defendant should invite the alien to be heard and to present all of the reasons which could oppose the termination of his residence permit. Only such an invitation guarantees that the alien enjoys an effective and practical opportunity to present his/her point of view (para. 3.4 indent 1).</p> <p>The Council for Alien Law Litigation observes that the defendant sent a questionnaire to the applicant in October 2014. However, it does not appear that the defendant did everything in its power to ensure that the questionnaire reached its recipient. For that reason, the Council for Alien Law Litigation argues that the defendant did not fulfil its duty to seek out all the information necessary to take an informed decision (para. 3.4 indent 4).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>A simple ordinary letter is not enough to fulfil the duty of the administration to seek out all the information necessary to take an informed decision on the termination of a residence permit.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The decision is annulled, because the administration violated the general principle of law which dictates that the administrative authority should take all of the relevant elements into account when making a decision (para. 3.6).</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Or, le Conseil constate en l’espèce, à la suite de la partie requérante, que si la partie défenderesse a effectivement envoyé un questionnaire à la partie requérante en date du 16 octobre 2014, il ne ressort pas du dossier administratif qu’elle ait mis tout en œuvre afin de s’assurer que cet envoi atteigne la partie requérante. En effet, aucun élément du dossier administratif ne permet d’attester de la réception par la partie requérante dudit questionnaire. En sorte que la partie défenderesse n’a pas rempli l’obligation pré-décrite de rechercher les informations lui permettant de statuer en connaissance de cause [...].”</i></p> <p>Translation :</p> <p>“However, the Council observes in the present case, following the applicant, that if the defendant had indeed sent a questionnaire to the applicant on 16 October 2014, it does not appear from the administrative file that the defendant has done everything in their power to make sure that this questionnaire reached its recipient. Indeed, no element of the administrative file can attest to the receipt by the applicant of said questionnaire. Therefore, the defendant has not fulfilled its obligation, described above, to seek out all of the information necessary to take an informed decision [...] (para. 3.4. indent 4).”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

9. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	25 June 2015
Deciding body (in original language)	Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers
Deciding body (in English)	The Council for Alien Law Litigation
Case number (also European Case Law Identifier)	148 537

(ECLI) where applicable)	
Parties	<i>X v. the Belgian State</i>
Web link to the decision (if available)	http://www.rvv-cce.be/sites/default/files/arr/A148537.AN.pdf
Legal basis in national law of the rights under dispute	Article 42bis of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	The applicant, a French national, arrived in Belgium on an unknown date. In December 1987, she lodged a request for registration as a spouse to M.P., also a French national. Her blue card was regularly renewed until 2006, at which time the card was cancelled <i>ex officio</i> . In February 2007, she received a certificate of registration that was valid until August 2007. In August 2008, she lodged a request for registration, which was denied in January 2009. Her appeal to the Council for Alien Law Litigation was rejected in May 2010. Her request for registration as a paid worker, which she lodged in July 2010, was accepted. In September 2013, a letter from the defendant informed the applicant that the termination of her residence permit was under consideration, inviting her to provide proof of her activities and salary. In October 2014, her residence permit was terminated because she did not have paid employment and had been receiving social integration benefits as the head of the household since at least April 2012. Not only did she not have paid employment, she also did not have sufficient resources within the meaning of article 40, §2, 2nd indent of the Law of 15 December 1980. For this reason, the applicant was ordered to leave Belgian territory. The applicant lodged an appeal before the Council for Alien Law Litigation.

	<p>The applicant claims that Article 42bis §1 of the law of 15 December 1980 was violated because the defendant did not take all of the elements of the case related to the duration of her stay, age, economic and family situation, social and cultural integration, link to the country of origin and particularly her health status into account. The applicant claims that she was not allowed to present all the elements related to her personal situation.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Council for Alien Law Litigation argues that, when taking the decision to terminate the residence permit of the applicant, the defendant should have reasonably made sure to possess all of the information necessary to evaluating the situation of the applicant in regard to the duration of her stay, age, health status, economic and familial situation, social and cultural integration and link to the country of origin. In this specific case, the defendant did not do so and, therefore, failed to respect its duty of care and precision. Furthermore, the Council for Alien Law Litigation states that according to the case law of the Council of State (number 230.257 presented above), the defendant has the obligation to find all of the information necessary to make an informed decision (para. 4.3.1 indent 1 and 2)</p> <p>The Council for Alien Law Litigation argues that, even though the defendant sent a letter to the applicant inviting her to present elements that could allow her to retain her residence permit, it appears that the letter only requested proofs related to salary, other resources, job searches, proof of studies or to provide humanitarian elements related to a member of her family. It did not invite the applicants to present elements related to a potential inability to work or to present humanitarian elements related to her own person, which are provided for in Article 42bis of the law of 15 December 1980. Therefore, it concludes that the decision also violates Article 42bis of the law of 15 December 1980 (para. 4.3.3.)</p>
<p>Key issues (concepts, interpretations) clarified by</p>	<p>The defendant should make sure to possess all of the information necessary to make an informed decision regarding the termination of a residence permit.</p>

<p>the case (max. 500 chars)</p>	<p>The letter sent to invite the alien to present all of the elements in defence of his/her case should make mention of all the relevant elements which, according to the law of 15 December 1980, can be taken into consideration to terminate a residence permit.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Council for Alien Law Litigation annuls the decision on the grounds that the defendant did not respect its duty of care and precision and that the decision violated Article 42bis of the law of 15 December 1980.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>“Il ne résulte toutefois pas de ce courrier que la partie requérante ait été invitée à présenter des éléments liés à « une incapacité de travail temporaire résultant d’une maladie ou d’un accident » tel que prévu à l’Article 42bis, §2, 1° de la loi du 15 décembre 1980. De plus, si la partie défenderesse a invité la partie requérante à produire tout élément humanitaire lié à des membres de sa famille, elle s’abstient de solliciter de celle-ci les mêmes dits éléments dans son chef tels que prévus par l’Article 42bis, §1er, alinéa 3 de ladite loi.”</i></p> <p>Translation:</p> <p>“It does not appear, however, from the letter that the applicant was invited to present elements linked to a ‘temporary incapacity to work resulting from a disease or accident’ provided for in Article 42bis, §2, 1° of the law of 15 December 1980. Furthermore, if the defendant invites the applicant to produce humanitarian elements related to members of her family, he does not request from her the same elements regarding herself, such as provided for in Article 42bis, §1, indent 3 of said law (para. 4.3.3. indent 3).”</p>

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.
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10. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	17 September 2015

Deciding body (in original language)	Grondwettelijk Hof / Cour Constitutionnelle
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	121/2015
Parties	Council for Alien Law Litigation
Web link to the decision (if available)	http://www.const-court.be/public/f/2015/2015-121f.pdf
Legal basis in national law of the rights under dispute	Article 42quater, §4 of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	The Council for Alien Law Litigation asks the following preliminary question to the Constitutional Court: Is Article 42quater §4, 4° of the law of 15 December 1980, combined or not with Article 11 of the same law, compatible with Articles 10, 11, 22, and 191 of the Constitution and Article 8 and 14 of the ECHR in the following interpretation where the spouse or partner, third-country national, having benefited from family reunification with another third-country national and victim of domestic violence can, according to Article 11 of

	<p>the same law, keep his/her residence permit despite a relationship breakdown and even if the conditions of residence are no longer met, whereas the spouse or partner, third-country national, having benefited from family reunification with a Belgian or EU national and victim of domestic violence, must satisfy the condition of Article 42quater §4, last indent to benefit from the continuation of his/her residence permit in the case of relationship breakdown (para. B 2.1.)?</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Constitutional Court first observes that, according to Article 42quater of the law of 15 December 1980, the Minister can terminate the residence permit of a third-country national authorised to reside as a spouse or partner of a Belgian or EU national when there is a relationship breakdown within the first two years. However, the Minister cannot terminate the residence permit if the person has been the victim of domestic violence, as long as that person works or has sufficient means in order not to become a burden for the social security system (para. B 5.1.).</p> <p>Therefore, the third-country national who had a relationship breakdown with his/her Belgian partner and who was the victim of domestic violence, does not hold a right to keep his/her residence permit enforceable against the authority. However, he/she does not automatically lose his/her residence permit. It is up to the Minister to decide whether or not the residence permit should be terminated (para. B 5.2.)</p> <p>The Minister holds discretionary power in this matter and will need to take many elements into account, such as the reason why the alien ended the relationship. In that regard, the Minister will take domestic violence into consideration in the same way as he does when applying Article 11 of the law of 15 December 1980 (para. B 5.3.).</p>
<p>Key issues (concepts, interpretations) clarified by</p>	<p>The Minister has discretionary power when deciding whether or not to terminate a residency permit. According to the law, he must take multiple elements into consideration, such as the fact that the person has been the victim of domestic violence.</p> <p>The fact that an alien has been a victim of domestic violence does not grant him/her a right of continuation of his/her residence permit.</p>

<p>the case (max. 500 chars)</p>	<p>The third-country national who has benefited from family reunification with a Belgian or EU national, and is the victim of domestic violence, can also see his/her residence permit maintained despite a relationship breakdown and even if the conditions of residence are no longer met.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The alleged difference in treatment is non-existent (para. B. 5.4.).</p> <p>Article 42quater of the law of 15 December 1980 is not incompatible with Articles 10, 11, 22 and 191 of the Constitution.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Il s'ensuit qu'à défaut de répondre aux conditions précitées, l'étranger non européen ayant cessé de cohabiter avec son époux belge en raison des violences domestiques qu'il a subies, ne dispose pas d'un droit au maintien de son séjour, opposable à l'autorité compétente. Il ne perd toutefois pas automatiquement son droit au séjour. En effet, il appartient au ministre compétent ou à son délégué de déterminer s'il convient de mettre un terme au droit de séjour de l'intéressé dans de telles conditions."</i></p> <p>Translation:</p> <p>"It follows that failing to meet the above-mentioned conditions, the third-country national who has ceased to live together with his or her Belgian spouse, due to domestic violence that he/she has suffered, does not have a right to the continuation of his/her residence, enforceable against the authority. However, he/she does not automatically lose his/her residence permit. Indeed, it is up to the competent Minister or his delegate to determine whether or not the residence permit should be terminated in such circumstances (para. B 5.2.)."</p>

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.
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11. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> • linked to which Article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	23 February 2017
Deciding body (in original language)	Grondwettelijk Hof / Cour Constitutionnelle

Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	28/2017
Parties	Council for Alien Law Litigation
Web link to the decision (if available)	http://www.const-court.be/public/f/2017/2017-028f.pdf
Legal basis in national law of the rights under dispute	Article 42quater of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens (<i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i> / <i>Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>).
Key facts of the case (max. 500 chars)	The Council for Alien Law Litigation asked the following preliminary question to the Constitutional Court: Even though the periods of time, referred to in the provisions below, differ in their starting point, is Article 42quater of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens compatible with Articles 10 and 11 of the Constitution regarding the fact that the Minister or his delegate can, during the five years following the deliverance of a residence permit, terminate the residence permit of the spouse of a Belgian national or of an EU Member State national, when the marriage with him/her is dissolved and that during the fourth or fifth year of this period, the alien does not meet the conditions stipulated in Article 42quater, §4 <i>in fine</i> – namely, that the worker must have sufficient resources – whereas in the

	<p>application of Article 13 of the same law, the residence permit of the spouse of a third-country national admitted or authorised for unlimited residence, becomes unlimited once the period of three years after the deliverance of the residence permit has passed, in such a way that the minister cannot terminate the residence permit during the fourth or fifth year after the delivery of the residence permit, even if the marriage is dissolved during this period and the person does not work or has sufficient resources?</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Comparing the two provisions, it appears that in the case of the partner or spouse of a Belgian or EU national, the authority can, provided that the conditions are met, terminate the residence permit of that alien for a period of up to five years following the deliverance of a residence permit, whereas it is only three years for the partner or spouse of a third-country national. This constitutes a difference in treatment (para. B 3.). Such a difference in treatment must be reasonably justified in order not to constitute a violation of the principle of equality and non-discrimination (para. B 7.2.).</p> <p>According to the Court, the categories are comparable (para. B 8.). Furthermore, the difference in treatment is based on the residence status linked to the nationality of the spouse who is joined by a third-country national who has obtained his/her residence permit on the basis of family reunification. This criterion is objective for the Court. The Court must then examine whether it is pertinent, in regards to the goal of the provision in question (para. B 9.).</p> <p>The change from three years to five years was made in order to transpose Directive 2004/38. According to the Constitutional Court, the objective of harmonisation cannot, in itself, justify the difference in treatment. Moreover, the legislator had the option of changing from three years to five years, but was not required to do so by Directive 2004/38 (paras. B 10.1, 10.2 and 10.3.). The Council of Ministers argued that the legislator intended to fight against abuses of family reunification and marriages of convenience. The Constitutional Court replied that while those are legitimate objectives, nothing seems to show why the nationality of the spouse who is joined by his/her partner within the framework of family reunification is a relevant criterion to justify the difference in treatment (paras. B 11.1 and 11.2.).</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Directive 2004/38 did not require the legislator to change the period in which the authority can terminate a residence permit of a third-country national on the grounds of dissolved marriage from three to five years.</p> <p>There is unjustified difference in treatment between third-country nationals, who are spouses of Belgian or EU nationals and third-country nationals who are spouses of third-country nationals authorised for unlimited residence in regards to the time period during which the Minister can terminate their residence permit.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>There is an unjustified difference in treatment. The answer to the question of the Council for Alien Law Litigation is negative: Article 42quater of the law of 15 December 1980 is not compatible with Articles 10 and 11 of the Constitution.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“L’objectif de donner exécution à cette directive européenne ou d’harmoniser la législation belge avec la législation des autres Etats membres ne saurait, en soi, justifier une différence de traitement entre étrangers ressortissants de pays tiers à l’Union européenne, selon qu’ils ont obtenu leur droit de séjour dans le cadre d’un regroupement familial avec un conjoint belge ou possédant la nationalité d’un Etat membre d’une part ou avec un conjoint possédant la nationalité d’un Etat tiers d’autre part.”</i></p> <p>Translation:</p> <p>“The goal of implementing a European directive or of harmonising Belgian legislation with the legislation of other Member States cannot, in itself, justify a difference of treatment between third-country nationals, depending on whether they have obtained their residence permit in the framework of a family reunification</p>

	<p>with a Belgian or EU spouse on the one hand or a third-country national spouse on the other hand (para. B 10.2.)."</p> <p><i>"Bien que le législateur pouvait, au regard du droit de l'Union européenne, porter de trois à cinq ans la période au cours de laquelle il peut être mis fin, à certaines conditions, au droit de séjour d'un ressortissant d'un Etat tiers, conjoint d'un Belge ou d'un citoyen de l'Union européenne, en cas de dissolution du mariage, il n'était pas, en vertu de l'Article 37 de la directive précitée, tenu de le faire."</i></p> <p>Translation:</p> <p>"Even though the legislator could, with respect to European Union law, change the period during which, under certain circumstances, the residence permit of a of a third-country national, spouse of a Belgian or EU national can be terminated from three to five years, in case of dissolution of marriage, he was not, according to Article 37 of the aforementioned Directive, required to do so (para. B 10.3.)."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

2. Table 2 – Overview

No overall information is available on the total number of national cases decided and relevant for the objective of the research. Online search for case law yields hundreds of results. For instance, the case law search section on the website of the Council for Alien Law Litigation (*Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers*) shows 2,624 results for Directive 2004/38 between 2007 and 2017.¹ For the Council of State (*Raad van State / Conseil d'État*), it concerns 186 cases from 30 April 2006 to present.² The search engines of these bodies do not make distinctions regarding the rights considered in these cases. Therefore, it is impossible to provide the total number of national cases for each of the right to non-discrimination on the grounds of nationality and the right to move and reside freely in another Member State. On the other hand, desk research and ad hoc information requests show that there is no relevant case law in Belgium on the right to vote and to stand as candidates, the right to enjoy diplomatic protection of any Member State, and the right to petition.³

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases	n.a.	n.a.	0	0	0

¹ Council for Alien Law Litigation (*Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers*), [Arresten](#), accessed on 15 March 2017.

² Council of State (*Raad van State / Conseil d'État*), [Rechtspraak](#), accessed on 15 March 2017.

³ Juridat, [Rechtspraak](#), accessed on 15 March 2017; Universiteit Antwerpen (research group 'government & law'), Information obtained via phone on 15 March 2017; FPS Foreign Affairs, Foreign Trade and Development Cooperation (*FOD Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking / SPF Affaires Etrangères, Commerce Extérieur et Coopération au Développement*), Information obtained via email on 15 March 2017; Agency Integration and Community Integration (*Agentschap Integratie en Inburgering*), Information obtained via email on 20 March 2017.

decided and relevant for the objective of the research if this data is available (covering the reference period)					
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