

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

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1. Table 1 – Case law

<p>1. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence - linked to Articles 27 and 28 of Directive 2004/38</p> <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>1 October 2014</p>
<p>Deciding body (in original language)</p>	<p>Conseil d'Etat</p>
<p>Deciding body (in English)</p>	<p>Council of State</p>

Case number (also European Case Law Identifier (ECLI) where applicable)	No.365054 ECLI:FR:CESSR:2014:365054.20141001
Parties	Mrs A/France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000029589886&fastReqId=1773877144&fastPos=2
Legal basis in national law of the rights under dispute	<p>Article L. 121-1 the Code for the entry and stay of foreigners and the right to asylum provides that:</p> <p>The relevant administrative authority can, in a reasoned decision, oblige a national of a Member State of the European Union, another State which is party to the European economic area agreement, or the Swiss Confederation, or a member of their family, to leave the French territory when it finds: ...</p> <p>3. [...] that, within three months of their entry into France, their personal conduct constitutes a real, present and sufficiently serious threat to a fundamental interest of French society... The relevant administrative authority takes into account all of the circumstances relating to their situation, in particular the duration of the stay of the person concerned in France, their age, their health, their family and economic situation, their social and cultural integration in France, and the strength of their bonds with their country of origin.</p>

<p>Key facts of the case</p> <p>(max. 500 chars)</p>	<p>Mrs A. of Romanian nationality was arrested on 8 January 2012 and placed in police custody for soliciting, in a group, the payment of sums of money using false documentation bearing the letter heading of a charitable association.</p> <p>On 9 January 2012, the Prefect of police issued an order obliging her to leave the French territory, refusing her the benefit of a voluntary departure period, stating the destination country, and placing her in detention.</p> <p>In a ruling of 12 January 2012, the Administrative Court of Paris refused an application from Mrs A. to cancel this order.</p> <p>On 4 October 2012, the Paris Administrative Court of Appeal upheld the ruling of 12 January 2012.</p> <p>Mrs A. took her case to the Council of State asking for the ruling of the 4 October 2012 to be overturned and for her appeal to be upheld.</p>
<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>According to the Council of State, it rests with the administrative authority, which shall not base its decision only on the existence of an offence, to examine if the presence of the person concerned on the French territory is likely to constitute a real, present and sufficiently serious threat to a fundamental interest of French society, considering all the circumstances of the case. With these conditions being assessed according to the person's individual situation, in particular the duration of their stay in France, their family and economic situation and their integration into society.</p> <p>The Council of State noted that Mrs A. had been arrested for 'defrauding public charity' (<i>d'escroquerie à la charité publique</i>), that she had already previously been reported for similar offences and that she disposed of no means of existence other than begging. Mrs A did not dispute that the facts reported by the Prefect of police had occurred within three months of her entry into France, or that her situation with regard to the duration of her stay therefore came under the case provided for in paragraph 3 of Article L. 511-3-1 of the</p>

	<p>CESEDA. Mrs A. resided in a camp in the municipality of La Courneuve, and although she was the mother of four children, only one of them was in her charge.</p> <p>The Council of State considered that the Administrative Court of Appeal did not commit a legal error in taking into account all of the circumstances relating to the particular situation of the applicant, in particular her family situation and her social integration in France, to assess the legality of the decision of the Prefect of police, in particular its proportionality. The Administrative Court of Appeal correctly qualified the facts which were submitted to the court, by deducing from all cited elements that the presence of Mrs A. in France constituted a real, present and sufficiently serious threat to public safety, which constitutes a fundamental interest of French society.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Right of a European citizen to stay</p> <p>Legal grounds for the obligation to leave the French territory</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Mrs A.'s appeal was rejected by the Council of State. The order of 9 January 2012 of the Prefect of police, obliging her to leave the French territory, remained in force.</p>

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>2. Considérant que la directive du Parlement européen et du Conseil du 29 avril 2004 relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des Etats membres détermine les conditions dans lesquelles ceux-ci peuvent restreindre la liberté de circulation et de séjour d'un citoyen de l'Union européenne ou d'un membre de sa famille ; que l'article 27 de cette directive prévoit que, de manière générale, cette liberté peut être restreinte pour des raisons d'ordre public, de sécurité publique ou de santé publique, sans que ces raisons puissent être invoquées à des fins économiques ; que ce même article prévoit que les mesures prises à ce titre doivent respecter le principe de proportionnalité et être fondées sur le comportement personnel de l'individu concerné, lequel doit représenter une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société ; que l'article 28 de la directive impose la prise en compte de la situation individuelle de la personne en cause avant toute mesure d'éloignement, notamment de la durée de son séjour, de son âge, de son état de santé, de sa situation familiale et économique, de son intégration sociale et culturelle et de l'intensité de ses liens avec son pays d'origine ; que ce même article prévoit une protection particulière pour les citoyens ayant acquis un droit de séjour permanent, à l'égard desquels des raisons impérieuses d'ordre public ou de sécurité publique doivent être établies, et pour ceux ayant séjourné dans l'Etat membre d'accueil pendant les dix années précédentes ainsi que pour les mineurs, dont l'éloignement doit reposer sur des motifs graves de sécurité publique ;</i></p> <p><i>2. Considérant qu'aux termes de l'article L. 511-3-1 inséré dans le code de l'entrée et du séjour des étrangers et du droit d'asile par la loi du 16 juin 2011 afin d'assurer la transposition de ces dispositions : "L'autorité administrative compétente peut, par décision motivée, obliger un ressortissant d'un Etat membre de l'Union européenne, d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération suisse, ou un membre de sa famille à quitter le territoire français lorsqu'elle constate : (...) 3°</i></p>

Ou que, pendant la période de trois mois à compter de son entrée en France, son comportement personnel constitue une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société française. (...) L'autorité administrative compétente tient compte de l'ensemble des circonstances relatives à sa situation, notamment la durée du séjour de l'intéressé en France, son âge, son état de santé, sa situation familiale et économique, son intégration sociale et culturelle en France, et de l'intensité de ses liens avec son pays d'origine" ;

3. Considérant que ces dispositions doivent être interprétées à la lumière des objectifs de la directive du 29 avril 2004 et notamment de ses articles 27 et 28 mentionnés au point 1 ; qu'il résulte à cet égard des termes mêmes du 3° de l'article L. 511-3-1, qui concerne des ressortissants d'un Etat membre qui ne sont pas entrés en France depuis plus de trois mois, qu'elles ne visent pas les personnes bénéficiant de la protection prévue à l'article 28 de la directive, quant au degré particulier de gravité des motifs d'ordre public dont un Etat membre doit justifier pour pouvoir prendre à leur encontre une mesure d'éloignement ; qu'il appartient néanmoins à l'autorité administrative, qui ne saurait se fonder sur la seule existence d'une infraction à la loi, d'examiner, d'après l'ensemble des circonstances de l'affaire, si la présence de l'intéressé sur le territoire français est de nature à constituer une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société française, ces conditions étant appréciées en fonction de sa situation individuelle, notamment de la durée de son séjour en France, de sa situation familiale et économique et de son intégration ...

6. Considérant, en deuxième lieu, que pour confirmer le jugement du tribunal administratif, la cour administrative d'appel a relevé que Mme A...avait été interpellée en compagnie de dix autres personnes, pour des faits " d'escroquerie à la charité publique ", qu'elle avait déjà fait précédemment l'objet de signalements pour des faits similaires et qu'elle ne disposait d'aucun moyen d'existence autre que la mendicité ; qu'il ressort des pièces du dossier soumis aux juges du fond que Mme A...n'a pas, dans ses écritures, contesté la matérialité des faits qui lui étaient reprochés ; que, par suite, le moyen tiré de ce que

la cour aurait omis de répondre au moyen tiré de ce que la matérialité de ces faits n'était pas établie ne peut qu'être écarté ;

7. Considérant, en troisième lieu, que devant la cour administrative d'appel, Mme A...ne contestait pas que les faits retenus par le préfet de police s'étaient produits pendant la période de trois mois à compter de son entrée en France et que sa situation entraînait ainsi, en ce qui concerne la durée de son séjour, dans le cas prévu au 3° de l'article L. 511-3-1 du code de l'entrée et du séjour des étrangers et du droit d'asile ; que la cour a relevé que l'intéressée résidait dans un campement dans la commune de La Courneuve, qu'elle ne disposait d'aucun autre moyen d'existence que la mendicité et que, si elle était mère de quatre enfants, l'un d'entre eux seulement était à sa charge ; que, dès lors, la cour n'a pas commis d'erreur de droit au regard de ces dispositions en tenant compte de l'ensemble des circonstances relatives à la situation particulière de la requérante, en particulier de sa situation familiale et de son intégration sociale en France, pour apprécier la légalité de la décision du préfet de police, notamment son caractère proportionné ;

8. Considérant, enfin, qu'en déduisant de l'ensemble des éléments cités ci-dessus que la présence de Mme A...en France constituait une menace réelle, actuelle et suffisamment grave pour la sécurité publique, qui constitue un intérêt fondamental de la société française, la cour administrative d'appel n'a pas inexactement qualifié les faits qui lui étaient soumis ;

9. Considérant qu'il résulte de tout ce qui précède que, sans qu'il soit besoin de saisir la Cour de justice de l'Union européenne d'une question préjudicielle, Mme A...n'est pas fondée à demander l'annulation de l'arrêt de la cour administrative d'appel de Paris qu'elle attaque.

Translation :

1. Considering that the Directive 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 determines the conditions under which these may restrict the freedom of movement and residence of a citizen of the European Union or a member of their family; that Article 27 of this directive provides that, in general, such freedom may be restricted on grounds of public order, public safety or public health, without these reasons being invoked for economic purposes; that the same Article provides that the measures taken in this respect must comply with the principle of proportionality and must be based on the personal conduct of the individual concerned, which must represent a real, present and sufficiently serious threat to a fundamental interest of society; that Article 28 of the directive requires that the individual situation of the person concerned be taken into account before any expulsion measure, in particular the length of their stay, age, state of health, family and economic situation, social and cultural integration and the extent of their links with their country of origin; that this same Article provides for special protection for citizens who have acquired a permanent right of residence, those who have resided in the host Member State for the previous ten years, and minors, and expulsion of such persons must be based on serious grounds of public order or public security;

2. Considering that under the terms of Article L. 511-3-1 inserted into the Code for the entry and stay of foreigners and the right to asylum by the law of 16 June 2011 in order to ensure the transposition of these provisions: "The relevant administrative authority can, by a reasoned decision, oblige a national of a Member State of the European Union, another State which is party to the European economic area agreement, or the Swiss Confederation, or a member of their family, to leave the French territory when it finds: [...] 3. [...] that, within three months from their entry into France, their personal conduct constitutes a real, present and sufficiently serious threat to a fundamental interest of French society [...] The relevant administrative authority takes into account all of the circumstances relating to their situation, in particular the duration of the stay of the person concerned in France, their age, their health, their family and economic situation, their social and cultural integration in France, and the strength of their bonds with their country of origin;

3. Considering that these provisions must be interpreted in light of the objectives of the Directive of 29 April 2004 and in particular Articles 27 and 28 mentioned in point 1; that it results in this respect that the terms of paragraph 3 of Article L. 511-3-1, which concerns nationals of a Member State who have not been in France for more than three months, do not target people benefiting from the protection provided for in Article 28 of the directive, as to the particular degree of seriousness of the grounds of public order that a Member State must justify to be able to take an expulsion measure; that, nevertheless, the administrative authority, which shall not base its decision only on the existence of an offence, shall examine if the presence of the person concerned on the French territory is likely to constitute a real, present and sufficiently serious threat to a fundamental interest of French society, considering all the circumstances of the case. With these conditions being assessed according to the person's individual situation, in particular the duration of their stay in France, their family and economic situation and their integration into society [...]

6. Considering, secondly, that to uphold the ruling of the Administrative Court, the Administrative Court of Appeal revealed that Mrs A... had been arrested in the company of ten other people, for the offence of 'defrauding public charity' (*d'escroquerie à la charité publique*), that she had already previously been reported for similar offences and that she disposed of no means of existence other than begging; that it arises from the case file submitted to the judges that Mrs A... had not, in her records, disputed the materiality of the offences which she is accused of; that, consequently, the argument that the court failed to respond to the argument that the materiality of these facts was not established can only be rejected;

7. Considering, thirdly, that before the Administrative Court of Appeal, Mrs A... did not dispute that the facts reported by the Prefect of police had occurred within three months of her entry into France, or that her situation with regard to the duration of her stay therefore came under the case provided for in paragraph 3 of Article L. 511-3-1 of the CESEDA; that the court noted that the interested party resided in a camp in the municipality of La Courneuve, that she did not dispose of any means of existence other than begging and that, although she was the mother of four children, only one of them was in her charge; that, consequently,

	<p>the court did not commit a legal error with regard to these provisions in taking into account all of the circumstances relating to the particular situation of the applicant, in particular her family situation and her social integration in France, to assess the legality of the decision of the Prefect of police, in particular its proportionality;</p> <p>8. Considering, finally, that by deducing from all cited elements above that the presence of Mrs A...in France constituted a real, present and sufficiently serious threat to public safety, which constitutes a fundamental interest of French society, the Administrative Court of Appeal had not incorrectly considered the facts submitted to it;</p> <p>9. Considering that it results from all that precedes that, without it being necessary to seek a preliminary ruling from the Court of Justice of the European Union, Mrs A... does not have legal grounds to request the overruling of the ruling of the Paris Administrative Court of Appeal which she is contesting.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>2.</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to Article 7 of 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	9 October 2014
Deciding body (in original language)	Conseil d'Etat
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier)	No.386029 ECLI:FR:CEORD:2014:386029.20141209

(ECLI) where applicable)	
Parties	Mrs A/France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000029879913&fastReqId=1027809177&fastPos=1
Legal basis in national law of the rights under dispute	<p>Article L. 521-2 of the Code of administrative justice:</p> <p>When referred to with a request justified as urgent, the judge for summary procedures can order any measure necessary for the safeguarding of a fundamental freedom which a legal entity in public law or an organisation in private law responsible for the management of a public service has seriously and clearly breached in the exercising of one of their powers. The judge for summary procedures rules within forty-eight hours.</p>
Key facts of the case (max. 500 chars)	<p>Mrs A., a Cameroon national holding a residence permit delivered by Spain and valid until 2017, arrived in France in 2012 with her daughter Paola, a Spanish national born on 29 January 2011. On 26 September 2014, Mrs A. was refused a residence permit by an order of the Prefect of Loire-Atlantique accompanied by an obligation to leave the French territory.</p> <p>On the basis of Article L. 521-2 of the Code of administrative justice, Mrs A. referred to the judge for summary procedures of the Administrative Court of Nantes with a request for the suspension of the execution of this order, in as much that it denied the issuing of a residence permit to her.</p> <p>On 25 November 2014, the judge for summary procedures of the Administrative Court of Nantes refused her application.</p>

	<p>Mrs A. appealed against the order of 25 November 2014 of the judge for summary procedures of the Administrative Court of Nantes.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Council of State considers that the effective enjoyment of the right of a minor citizen of the Union to reside in the host Member State necessarily implies the right for this minor to be accompanied by the person who is their primary carer. As such, Mrs A. has, in her capacity as the mother of a minor who is a citizen of the Union, the right to remain in France, under the dual condition of having sufficient resources and suitable medical insurance cover. Mrs A. has sole parental authority of her daughter, and she has worked under a permanent contract since 31 January 2013. This activity provides her with stable and regular resources. The social security contributions that she and her employer pay open the right to medical insurance to her. Under these conditions, Mrs A. and her daughter could not be regarded as placing an unreasonable burden on French public finances. Therefore, in refusing to issue Mrs A. a residence permit in her capacity as mother of a minor who is a citizen of the Union, the Prefect of Loire-Atlantique committed a serious and obviously illegal breach of the fundamental rights that European Union law attaches to the status of citizen of the Union.</p> <p>Following the contested refusal of a residence permit, Mrs A. informed her employer who, for this reason alone, began a procedure to dismiss her. This same residence permit refusal is likely to lead to the cancellation of the rental agreement with Nantes Habitat. It follows from there that the contested refusal of a residence permit is likely to lead to serious consequences for the situation of Mrs A. and of her daughter, from the point of view of their resources, their housing, and consequently the schooling conditions of the minor. Under these conditions, there is urgency, within the meaning of Article L. 521-2 of the Code of administrative justice, that the provisional measures necessary are taken to immediately end the serious and clear breach of the rights conferred by the European Union law that the order entails.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Right to residence of a member of family of a citizen of the European Union</p> <p>Conditions for residence of a member of family of a citizen of the European Union</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Council of State overruled the decision from the judge for summary procedures of the Administrative Court of Nantes of 25 November 2014.</p> <p>The execution of the order of 26 September 2014 of the Prefect of Loire-Atlantique was suspended as it refuses the request for a residence permit for Mrs A. The Prefect of Loire-Atlantique was asked to re-examine Mrs A.'s request as soon as possible in light of the reasons for the ruling of the Council of State.</p>
Key quotations in original language and translated into English with reference	<p><i>3.Considérant ...qu'aux termes de l'article 7 de la directive 2004/38/CE du Parlement européen et du Conseil, du 29 avril 2004, relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des États membres, intitulé "Droit de séjour de plus de trois mois" : " 1. Tout citoyen de l'Union a le droit de séjourner sur le territoire d'un autre État membre pour une durée de plus de trois mois: [...] b) s'il dispose, pour lui et pour les membres de sa famille, de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale de l'État membre d'accueil au cours de son séjour, et d'une assurance maladie complète dans l'État membre d'accueil [...] 2. Le droit de séjour prévu au paragraphe 1 s'étend aux membres de la famille n'ayant pas la</i></p>

details (max.
500 chars)

nationalité d'un État membre lorsqu'ils accompagnent ou rejoignent dans l'État membre d'accueil le citoyen de l'Union, pour autant que ce dernier satisfasse aux conditions énoncées au paragraphe 1, points a), b) ou c) " ; que ces dispositions combinées, telles qu'interprétées par la Cour de justice de l'Union européenne ... confèrent au ressortissant mineur d'un Etat membre, en sa qualité de citoyen de l'Union, ainsi que, par voie de conséquence, au ressortissant d'un Etat tiers, parent de ce mineur et qui en assume la charge, un droit de séjour dans l'Etat membre d'accueil à la double condition que cet enfant soit couvert par une assurance maladie appropriée et que le parent qui en assume la charge dispose de ressources suffisantes ; que l'Etat membre d'accueil, qui doit assurer aux citoyens de l'Union la jouissance effective des droits que leur confère ce statut, ne peut refuser à l'enfant mineur, citoyen de l'Union, et à son parent, le droit de séjourner sur son territoire que si l'une au moins de ces deux conditions, dont le respect permet d'éviter que les intéressés ne deviennent une charge déraisonnable pour ses finances publiques, n'est pas remplie ; que, dans pareille hypothèse, l'éloignement forcé du ressortissant de l'Etat tiers et de son enfant mineur ne pourrait, le cas échéant, être ordonné qu'à destination de l'Etat membre dont ce dernier possède la nationalité ou de tout Etat membre dans lequel ils seraient légalement admissibles;

4. Considérant que le ministre de l'intérieur ... soutient, en effet, que Mme A. ne peut prétendre séjourner sur le territoire français en sa qualité de mère d'une mineure, citoyenne de l'Union, dès lors qu'elle ne justifie ni de ressources suffisantes ni d'une couverture par une assurance maladie appropriée ;

5. Considérant que la jouissance effective du droit de séjour dans l'Etat membre d'accueil par un citoyen de l'Union mineur implique nécessairement le droit pour celui-ci d'être accompagné par la personne qui en assure effectivement la garde ; que Mme A... tire ainsi de sa qualité de mère d'un enfant mineur, citoyen de l'Union, le droit de séjourner en France, Etat membre d'accueil, sous la double condition de disposer de ressources suffisantes et d'une couverture d'assurance maladie appropriée ; qu'il résulte de l'instruction, ainsi que des éléments recueillis lors de l'audience publique, que Mme A... exerce exclusivement l'autorité parentale sur sa fille, qui est scolarisée à Nantes depuis 2013, en vertu d'une ordonnance de non conciliation

rendue, dans le cadre d'une procédure de divorce, le 12 mai 2014, par le juge aux affaires familiales du tribunal de grande instance de Nantes ; que cette même ordonnance a fixé la résidence habituelle de l'enfant chez sa mère ; qu'après avoir été hébergée, avec sa fille, chez sa soeur, la requérante a signé avec Nantes Habitat, le 10 septembre 2014, un contrat de location d'un logement conventionné à Nantes ; que l'intéressée travaille, sous couvert d'un contrat à durée indéterminée, depuis le 31 janvier 2013 ; que cette activité lui procure des ressources stables et régulières d'un montant mensuel d'environ 600 euros ; que, le 1er octobre 2014, elle a signé un avenant augmentant temporairement son temps de travail et, partant, sa rémunération ; qu'ainsi qu'en attestent les fiches de paie qu'elle a versées au dossier, les cotisations de sécurité de sociale qu'elle et son employeur acquittent lui ouvrent droit à l'assurance maladie ; que si elle est admise à l'aide médicale d'Etat, ce n'est qu'à défaut, en l'absence de titre de séjour, de bénéficier de la couverture d'assurance maladie qu'elle est en droit d'avoir ; que, dans ces conditions, Mme A...et sa fille ne sauraient être regardées comme faisant peser une charge déraisonnable sur les finances publiques françaises ; qu'il suit de là qu'en refusant de délivrer à Mme A...un titre de séjour en sa qualité de mère d'un enfant mineur, citoyen de l'Union, le préfet de la Loire-Atlantique a porté une atteinte grave et manifestement illégale aux libertés fondamentales que l'ordre juridique de l'Union européenne attache au statut de citoyen de l'Union ;

6. Considérant qu'il résulte de l'instruction qu'à la suite du refus de séjour litigieux qu'elle a porté à la connaissance de son employeur, celui-ci a engagé, pour ce seul motif, une procédure de licenciement à l'encontre de MmeA... ; que ce même refus de séjour est susceptible d'entraîner la résiliation du contrat de location qu'elle a signé avec Nantes Habitat ; qu'il suit de là que le refus de séjour litigieux est de nature à entraîner des conséquences graves sur la situation de Mme A...et de sa fille, du point de vue de leurs ressources, de leur logement ainsi que, par voie de conséquence, des conditions de scolarisation de cette dernière ; que, dans ces conditions, il y a urgence, au sens de l'article L. 521-2 du code de justice administrative, à ce que soient prises les mesures provisoires nécessaires pour faire cesser immédiatement l'atteinte grave et manifeste que porte l'arrêté litigieux aux droits conférés par l'ordre juridique de l'Union Européenne ;

Translation :

3. Considering... that under the terms of Article 7 of Directive 2004/38/CE of the European Parliament and the Council of 29 April 2004, relating to the right of citizens of the Union and the members of their families to move and remain freely on the territory of the Member States, entitled "Right of residence for more than three months: 1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: [...] b) have sufficient resources for themselves and their family members not to become a burden on the social welfare system of the host Member State during their period of residence and have comprehensive medical insurance cover in the host Member State [...] 2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that a such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c); that these combined provisions, as interpreted by the Court of Justice of the European Union... confer to the minor national of a Member State, in their capacity as citizen of the Union, as well as, consequently, a national of a non-Member State who is the parent of this minor and who is their primary carer, the right to reside in the host Member State on the dual condition that this minor is covered by medical insurance and that the parent who is their primary carer has sufficient resources; that the host Member State, which must ensure to citizens of the Union effective enjoyment of the rights that this status confers on them, cannot refuse a minor who is a citizen of the Union, or their parent, the right to reside on their territory unless at least one of these two conditions, the respect of which makes it possible to prevent the interested parties from becoming an unreasonable burden on their public finances, is not met; that, similarly, the forced removal of a national from a non-Member State and their child could not, if this is the case, be ordered to a destination other than the Member State which the person concerned is a national of, or any Member State in which they would be legally admitted;

4. Considering that the Minister of the Interior... holds, in effect, that Mrs A. cannot remain on the French territory in her capacity as the mother of a minor who is a citizen of the Union, when she has neither sufficient resources nor suitable medical insurance cover;

5. Considering that the effective enjoyment of the right of a minor citizen of the Union to reside in the host Member State necessarily implies the right for this minor to be accompanied by the person who is their primary carer; that Mrs A...has, in her capacity as the mother of a minor child who is a citizen of the Union, the right to remain in France, the host Member State, under the dual condition of having sufficient resources and suitable medical insurance cover; that it results from the investigation, as well as from elements collected at the time of the public hearing, that Mrs A... has sole parental authority of her daughter, who has attended school in Nantes since 2013, under the terms of a non-conciliation custody order issued within the framework of divorce proceedings on 12 May 2014 by the judge for family affairs of Nantes Court; that this same order established the usual place of residence of the child as being with her mother; that after being accommodated with her daughter by her sister, the applicant signed a subsidised rental agreement with Nantes Habitat on 10 September 2014 in Nantes; that the applicant has worked under a permanent contract since 31 January 2013; that this activity provides her with stable and regular resources of a monthly amount of approximately 600 euros; that, on 1 October 2014, she signed an agreement temporarily increasing her working time and, therefore, her wages; that as shown from the pay slips in her case file, the social security contributions that she and her employer pay open the right to medical insurance to her; that if she is allowed State medical aid, it is only, in the absence of a residence permit, to benefit from medical insurance cover which she has the right to have; that, under these conditions, Mrs A... and her daughter could not be considered as placing an unreasonable burden on French public finances; that it follows from this that in refusing to issue Mrs A... with a residence permit in her capacity as the mother of a minor who is a citizen of the Union, the Prefect of Loire-Atlantique committed a serious and obviously illegal breach of the fundamental rights that European Union law confers to the status of citizen of the Union;

	<p>6. Considering that it results from the investigation that following the contested refusal of a residence permit, Mrs A. informed her employer who, for this reason alone, began a procedure to dismiss Mrs A... ; that this same residence permit refusal is likely to lead to the cancellation of the rental agreement with Nantes Habitat; that it follows from there that the contested refusal of a residence permit is likely to lead to serious consequences for the situation of Mrs A. and of her daughter, from the point of view of their resources, their housing, and consequently the schooling conditions of the minor; that, under these conditions, there is urgency, within the meaning of Article L. 521-2 of the Code of administrative justice, that the provisional measures necessary are taken to immediately end the serious and clear breach of the rights conferred by European Union law that the contested order entails;</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>3. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence - linked to Article 3 of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p>
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	<input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	9 October 2006
Deciding body (in original language)	Conseil d'Etat
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	No.280348 ECLI:FR:CESJS:2006:280348.20061009
Parties	Mr Ali A./France

Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008240325&fastReqId=2126334859&fastPos=1
Legal basis in national law of the rights under dispute	<p>Article 3 of Directive 2004/38 is directly referred to in order to provide legal grounds for the decision.</p> <p>The only Article mentioned by the decision is the abrogated Article L 211-2 of the CESEDA, under which:</p> <p>“Decisions to refuse entry visas for France, taken by the diplomatic or consular authorities, are not justified except in cases where the visa is refused to a foreigner belonging to the one of the following categories and subject to considerations concerning the security of the State:</p> <p>1. Members of the family of nationals of the Member States of the European Union and of the other states party to the Agreement on the European Economic Area who are not nationals of one of these states, belonging to the categories defined by Decree in the Council of State [...]”</p>
Key facts of the case (max. 500 chars)	<p>Mr Ali A. applied for an entry and short-stay visa for France in order to marry a British national who held a French residency permit. The French Consul General in Tunis refused to issue him this visa. Mr Ali A challenged the decision of the consul before the Commission for appeals against decisions to refuse visas to enter France. This commission rejected his appeal. Mr Ali A. challenged the absence of legal grounds for the decision of the commission before the Council of State.</p>
Main reasoning / argumentation	<p>It does not appear from the documents before the Court that Mr Ali's relationship with the British national, the duration of which has not been established, is durable within the meaning of Article 3 (b) of Directive 2004/38.</p>

(max. 500 chars)	There is a risk of deviating from the purpose of the visa, as Mr Ali A., a Tunisian national, and the British national, had never lived together in France and their plans to marry and to have children quickly could be carried out in the applicant's country or that of his future wife.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Right of entry for partners of EU citizens Precision of the criteria for a 'durable relationship'
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Mr Ali A.'s application was rejected by the Council of State. The decision to refuse a visa remains applicable.
Key quotations in original	<i>"...il ne ressort pas des pièces du dossier que l'intéressé entrait dans l'une des catégories d'étrangers pour</i>

language and translated into English with reference details (max. 500 chars)

lesquels les refus de visa doivent être motivés en application des dispositions de l'article L. 211-2 du code de l'entrée et du séjour des étrangers et du droit d'asile ;

Considérant qu'il ressort des pièces du dossier que, pour rejeter le recours de M. A, la commission de recours contre décisions de refus de visa d'entrée en France s'est fondée sur le risque de détournement de l'objet du visa, compte tenu de la précarité de la situation de l'intéressé, âgé de 18 ans et sans revenu en Tunisie, sur le caractère insuffisant de ses ressources pour assurer son séjour en France et sur la circonstance que M. A et Mme pouvaient se marier dans un pays autre que la France ; que, contrairement à ce que soutient M. A, la commission ne s'est pas fondée sur la circonstance que l'intéressé, mineur au regard de la loi tunisienne, n'aurait pas obtenu de ses parents l'autorisation d'épouser Mme ; qu'ainsi, M. A n'est, en tout état de cause, pas fondé à soutenir que la commission aurait commis une erreur de droit en se fondant sur un tel motif ;

Considérant que, si M. A soutient que la décision de la commission de recours contre les décisions de refus de visa d'entrée en France a été prise en méconnaissance de l'article 3 de la directive 2004/38/CE du Parlement européen et du Conseil du 29 avril 2004 relative au droit des citoyens de l'Union et des membres de leur famille de circuler et de séjourner librement sur le territoire des Etats, aux termes duquel (...) L'Etat membre d'accueil favorise conformément à la législation nationale, l'entrée et le séjour des personnes suivantes / (...) / b) le partenaire avec lequel le citoyen de l'Union a une relation durable, dûment attestée , il ne ressort pas des pièces du dossier, en tout état de cause, que la relation de M. A avec Mme , dont la durée n'est pas établie, soit durable au sens du b) de l'article 3 de la directive précitée ;

Considérant qu'il ne ressort pas des pièces du dossier qu'en retenant le risque de détournement de l'objet du visa, la commission de recours ait commis une erreur manifeste d'appréciation ;

Considérant que M. A, ressortissant tunisien, et Mme , ressortissante britannique, n'ont jamais eu de vie commune en France ; que la circonstance qu'ils souhaitent se marier en France et avoir rapidement des enfants, ne permet pas, dès lors que leurs projets pourraient se réaliser dans le pays du requérant ou celui

de sa future épouse, de regarder la décision de la commission comme portant au droit de l'intéressé au respect de sa vie privée et familiale garanti par l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, une atteinte disproportionnée par rapport aux buts en vue desquels elle a été prise."

Translation :

"[...] it does not arise from the documents in the file that the interested party came under one of the categories of foreign nationals for whom the refusal of a visa must be justified pursuant to the provisions of Article L. 211-2 of the Code of entry and stay of foreigners and the right to asylum;

Considering that it arises from the documents in the file that, in rejecting Mr A's appeal, the Commission for appeals against decisions to refuse visas to enter France based its ruling on the risk of deviating from the purpose of the visa, taking into account the precariousness of the situation of the interested party, aged 18 years old and with no income in Tunisia, the insufficient nature of his resources to assure his stay in France and the circumstance that Mr A and his future wife could marry in a country other than France; that, contrary to that which Mr A holds, the commission did not base its decision on the fact that the interested party, a minor under Tunisian law, would not have obtained his parents' consent to marry the British woman; that therefore, Mr A, in any event, does not have grounds to claim that the commission made an error of law by basing itself on such a reason;

Considering that, although Mr A holds that the decision of the Commission for appeals against decisions to refuse visas to enter France was taken in ignorance of Article 3 of Directive 2004/38/CE of the European Parliament and the Council of 29 April 2004 relating to the rights of citizens of the Union and the members of their family to move and reside freely within the territory of the Member States, under the terms of which [...] The host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons [...] b) the partner with whom the Union citizen has a durable relationship, duly attested, it does not arise from the documents in the file, in any event, that the relationship between Mr A

	<p>and the British woman, the duration of which has not been established, is durable within the meaning of Article 3b of the directive mentioned above;</p> <p>Considering that it does not arise from the documents in the file that by holding that there is a risk of deviating from the purpose of the visa, the appeals commission made a manifest error of interpretation;</p> <p>Considering that Mr Ali A., a Tunisian national, and the British woman, had never lived together in France; that the circumstance that they wish to marry in France and to quickly have children, does not lead, since their plans could be carried out in the country of the applicant or that of his future wife, to viewing the decision of the commission as disproportionately breaching the rights of the interested party in respect of his private and family life, guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with regard to the objectives for which it was taken.”</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>4.</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to Article 30 §3 of 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	7 April 2010
Deciding body (in original language)	Conseil d'Etat
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier)	No. 314756

(ECLI) where applicable)	
Parties	Mr A./France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000022155446&fastReqId=1991637864&fastPos=11
Legal basis in national law of the rights under dispute	<p>Article L. 121-4 of the CESEDA:</p> <p>Any citizen of the European Union, any national of another state which is party to the European economic area agreement or of the Swiss Confederation or the members their family who cannot justify a right to reside pursuant to the Article L. 121-1 or Article L. 121-3 or whose presence constitutes a threat to public order can be the subject, depending on the case, of a decision of refusal of entry, refusal of issue or renewal of a residence permit or a withdrawal of this, as well as a removal measure provided for in Book V.</p> <p>Article R. 121-5 of the CESEDA:</p> <p>The notification for deportation orders for the nationals mentioned in Article L. 121-4 mentions the time limit to leave the territory. Except in an emergency, this time limit cannot be less than one month.</p>
Key facts of the case	In an order of 10 March 2007, the Prefect of Aude ordered on the ground of Article L 511-1, II, 8° of CESEDA ¹ the deportation of Mr A, a Romanian national, who entered France in December 2006.

¹ The decision does not refer to the directive as ground of deportation, but the provisions of Article L 511, II, 8° of CESEDA correspond to Article 27 of the directive (public policy and public security).

<p>(max. 500 chars)</p>	<p>In a ruling of 15 March 2007, the Magistrate of the Administrative Court of Toulouse had rejected the claim for annulment of this order.</p> <p>In a ruling of 14 February 2008, the Administrative Court of Appeal of Bordeaux overruled the ruling of 15 March 2007.</p> <p>The Minister of immigration, integration, national identity and interdependent development (<i>Ministre de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire</i>) referred to the Council of State to contest the ruling of 14 February 2008.²</p>
<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>The mention, in the deportation order against a national mentioned in Article L. 121-4 and notified to this person, of the time limit to leave the territory, which, except in the event of an emergency, cannot be less than one month, is a constitutive element of the decision. Therefore, the absence of this mention is likely to affect the legality of the deportation decision.</p> <p>However, in this case, the deportation order taken on 10 March 2007 by the Prefect of Aude against Mr A. does not contain any time limit for Mr A to leave the French territory, nor does it mention any circumstance likely to justify, in consideration of the urgency, the absence of any time limit. This order was, therefore, taken in ignorance of the provisions of Article R. 512-1-1 of the CESEDA and should be cancelled, as well as the decision establishing the country of destination and the order of the same day ordering the placement of Mr A. in detention.</p>
<p>Key issues (concepts,</p>	

² The Council of State referred to paragraph 3 of Article 30 of Directive 2004/38/CE in its decision. This decision concerns the application of provisions on the right of residence and its restrictions of Directive 2004/38.

interpretations) clarified by the case (max. 500 chars)	<p>The time limit to leave the French territory is obligatory information to appear on the deportation order without which this decision is illegal.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Council of State overruled the decisions of the Prefect of Aude of 10 March 2007 ordering the deportation of Mr A., establishing the country of destination and ordering his placement in administrative detention.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Considérant qu'aux termes de l'article L. 121-4 du code de l'entrée et du séjour des étrangers et du droit d'asile : Tout citoyen de l'Union européenne, tout ressortissant d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération suisse ou les membres de sa famille qui ne peuvent justifier d'un droit au séjour en application de l'article L. 121-1 ou de l'article L. 121-3 ou dont la présence constitue une menace à l'ordre public peut faire l'objet, selon le cas, d'une décision de refus de séjour, d'un refus de délivrance ou de renouvellement d'une carte de séjour ou d'un retrait de celle-ci ainsi que d'une mesure d'éloignement prévue au livre V ; qu'aux termes de l'article L. 511-1 du même code : II. L'autorité administrative compétente peut, par arrêté motivé, décider qu'un étranger sera reconduit à la frontière dans les cas suivants : (...) 2° Si l'étranger s'est maintenu sur le territoire français au-delà de la durée de validité de son visa ou, s'il n'est pas soumis à l'obligation du visa, à l'expiration d'un délai de trois mois à compter de son entrée en France sans être titulaire d'un premier titre de séjour régulièrement délivré (...) 8° Si pendant la</i></p>

période de validité de son visa ou, s'il n'est pas soumis à l'obligation du visa, pendant la période définie au 2° ci-dessus, le comportement de l'étranger a constitué une menace pour l'ordre public ou si, pendant cette même durée, l'étranger a méconnu les dispositions de l'article L. 341-4 du code du travail ; qu'il résulte de ces dispositions qu'indépendamment de toute menace pour l'ordre public, un ressortissant communautaire peut faire l'objet d'une mesure d'éloignement lorsqu'il n'a pas droit au séjour en application des articles L. 121-1 et L. 121-3 et qu'il entre dans l'un des cas dans lesquels une telle mesure peut être prise en application de l'article L. 511-1 II ; qu'en jugeant que le préfet de l'Aude n'avait pu légalement décider la reconduite à la frontière de M. A, au motif que ce cas n'était pas prévu par l'article L. 121-4 précité, le magistrat désigné par le président de la cour administrative d'appel de Bordeaux a commis une erreur de droit ; que, par suite, le ministre est fondé à demander l'annulation de la décision attaquée ...

Considérant qu'aux termes de l'article R. 512-1-1 du même code, pris pour la transposition du paragraphe 3 de l'article 30 de la directive 2004/38/CE susvisée : La notification des arrêtés de reconduite à la frontière pris à l'encontre des ressortissants mentionnés à l'article L. 121-4 comporte le délai imparti pour quitter le territoire. Sauf urgence, ce délai ne peut être inférieur à un mois ; qu'il résulte de ces dispositions que la mention, dans la décision d'éloignement prise à l'encontre d'un ressortissant mentionné à l'article L. 121-4 et notifiée à celui-ci, du délai imparti pour quitter le territoire, lequel, sauf en cas d'urgence, ne peut être inférieur à un mois, n'est pas une mesure d'exécution de la décision mais un élément constitutif de la décision elle-même ; que, par suite, le défaut de cette mention est de nature à affecter la légalité de la décision d'éloignement ;

Considérant qu'il ressort des pièces du dossier soumis aux juges du fond que l'arrêté de reconduite à la frontière pris le 10 mars 2007 par le préfet de l'Aude à l'encontre de M. A, n'impartit aucun délai à ce dernier pour quitter le territoire français, ni ne mentionne aucune circonstance de nature à justifier, en considération de l'urgence, l'absence de tout délai ; que cet arrêté a ainsi été pris en méconnaissance des dispositions de l'article R. 512-1-1 du code de l'entrée et du séjour des étrangers et du droit d'asile et doit être annulé, ainsi, par voie de conséquence, que la décision distincte fixant le pays de destination et l'arrêté du même jour

ordonnant le placement de M. A en rétention ; que, par suite, M. A est fondé à soutenir que c'est à tort que, par le jugement attaqué, le magistrat désigné par le président du tribunal administratif de Toulouse a rejeté ses conclusions dirigées contre ces décisions ;

Translation :

Considering that under the terms of Article L. 121-4 of the Code for the entry and stay of foreigners and the right to asylum: Any citizen of the European Union, any national of another state which is party to the European economic area agreement or of the Swiss Confederation, or the members their family, who cannot justify a right to reside pursuant to Article L. 121-1 or Article L. 121-3 or whose presence constitutes a threat to public order can be the subject, depending on the case, of a decision of refusal of entry, refusal of issue or renewal of a residence permit or a withdrawal of this, as well as a removal measure provided for in Book V; that under the terms of Article L. 511-1 of the same code: II. The relevant administrative authority can, in a reasoned order, decide that a foreigner shall be deported in the following cases: [...] 2. If the foreigner has remained within the French territory beyond the period of validity of their visa or, if they are not subject to the visa requirement, at the end of a period of three months from their entry into France without holding a first residence permit [...] 8. If during the period of validity of their visa or, if they were not subject to the visa requirement, during the period defined in 2 above, the conduct of the foreigner constituted a threat to public order or if, during the same period, the foreigner contravened the provisions of Article L. 341-4 of the Labour Code; that it results from these provisions that independently of any threat to public order, a Community national can be the subject of a removal measure when they are not entitled to residence pursuant to Articles L. 121-1 and L. 121-3 and they come under one of the cases in which such a measure can be taken pursuant to Article L. 511-1 II; that by judging that the Prefect of Aude had not legally been able to order Mr A.'s deportation, on the grounds that this case was not provided for by Article L. 121-4, above-mentioned, the magistrate appointed by the President of the Administrative Court of Appeal of Bordeaux committed a legal error; that, consequently, the Minister has grounds to request the cancellation of the contested decision [...]

	<p>Considering that under the terms of Article R. 512-1-1 of the same code, taken for the transposition of paragraph 3 of Article 30 of Directive 2004/38/CE, referred to above: The notification for deportation orders for the nationals mentioned in Article L. 121-4 mentions the time limit to leave the territory. Except in an emergency, this time limit cannot be less than one month; that it results from these provisions that the mention in the notification for the deportation order for nationals mentioned in Article L. 121-4 notifies this person of the time limit to leave the territory, which, except in the event of urgency, cannot be less than one month, is not an execution measure for the decision but is a constitutive element of the decision itself; that, consequently, the absence of this information is likely to affect the legality of the deportation order;</p> <p>Considering that it arises from the case file submitted to the ruling judges that the deportation order taken on 10 March 2007 by the Prefect of Aude against Mr A does not mention any time limit for Mr A to leave the French territory, nor does it mention any circumstance likely to justify, in consideration of the urgency, the absence of any time limit; that this order was thus taken in ignorance of the provisions of Article R. 512-1-1 of the Code for the entry and stay of foreigners and the right to asylum and must be cancelled, as well as, consequently, the decision establishing the country of destination and the order of the same day ordering the placement of Mr A in detention; that, consequently, Mr A has grounds, for the contested ruling, to claim that the magistrate appointed by the President of the Administrative Court of Toulouse wrongly rejected his claim to annul these decisions;</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p>	<p>No.</p>

to which specific article.	
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5. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 7 of 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	15 March 2016
Deciding body (in original language)	Cour administrative d'appel de Versailles
Deciding body (in English)	Versailles Administrative Court of Appeal

Case number (also European Case Law Identifier (ECLI) where applicable)	No. 15VE01437
Parties	Mrs B/France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000032259944&fastReqId=2017524130&fastPos=55
Legal basis in national law of the rights under dispute	<p>Article L. 121-1 of the CESEDA:</p> <p>Unless their presence constitutes a threat to public order, any citizen of the European Union, any national from another state which is party to the European economic area agreement or from the Swiss Confederation has the right to reside in France for a duration longer than three months if they satisfy one of the following conditions:</p> <ol style="list-style-type: none"> 1. They have an occupation in France; 2. They have both sufficient resources for themselves and the members of their family such as referred to in paragraph 4 in order for them not to become a burden on the social welfare system, as well as medical insurance [...]

	<p>4. If they are the direct descendant under twenty-one years old or dependent, or a direct dependent ascendant, ascending direct ascendant or descendant dependent on the spouse, accompanying or joining a national who satisfies the conditions laid out in 1 or 2 [...]</p> <p>Article L. 121-3 of the CESEDA:</p> <p>Unless their presence constitutes a threat to public order, the member of family referred to in paragraphs 4 or 5 of Article L. 121-1 depending on the situation of the person whom accompanies or joins them, a national of a third country, has the right to reside anywhere in France for a period of more than three months. If they are over eighteen years old, or at least sixteen years old when they wish to work, they must hold a residence permit [...]</p> <p>Article L. 313-14 of the CESEDA :</p> <p>The temporary residence permit mentioned in Article L. 313-11, or the temporary residence permit mentioned in paragraph 1 of Article L. 313-10 can be issued, except if their presence constitutes a threat to public order, to a foreign national who is not polygamous and whose admission is in response to humanitarian considerations or is justified with regards to exceptional circumstances which they put forward, without prejudice to the condition provided for in Article L. 311-7 [...]</p>
<p>Key facts of the case</p> <p>(max. 500 chars)</p>	<p>Mrs B., a citizen of the Democratic Republic of the Congo, who holds a residence permit issued by the Dutch authorities, valid until March 2014, entered France in 2011 to join her spouse, a Dutch national, with their three children, born in 2001, 2004 and 2006, also of Dutch nationality. On 1 April 2012, the couple had a fourth child in France.</p> <p>Having requested admission to residence in May 2013, Mrs B., in an order of 6 October 2014 from the Prefect of Seine-Saint-Denis, was refused permission to remain (due to the fact that both her and her husband did not</p>

	<p>prove to have adequate resources) of and received an order to leave the French territory within one month accompanied by a decision fixing the destination country.</p> <p>Mrs B. asked the Administrative Court of Montreuil to cancel the order of 6 October 2014 from the Prefect of Seine-Saint-Denis. In ruling No. 1410411 of 26 March 2015, the Administrative Court of Montreuil rejected this application.</p> <p>Mr B. appealed against this ruling.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>A national of a third country who is the parent of a minor who is a citizen of the European Union and who assumes responsibility of the minor has the right to residence in the host Member State on the dual condition that the child be covered by appropriate medical insurance and that the parent who cares for them has adequate resources. The host Member State may only refuse the right to reside to the child who is a citizen of the Union and their parent if at least one of these two conditions, the respect of which avoids placing an unreasonable burden on the public finances, is not met.</p> <p>A national of a third country has the right to remain in France as a dependent spouse of a national of the European Union only to the extent that the latter fulfils at least one of conditions laid down in the provisions of paragraphs 1 and 2 of Article L. 121-1 of the CESEDA: either working in France or having sufficient resources so as not to become a burden on the social welfare system, and to have health insurance.</p> <p>In this case, it is not disputed that apart from social security benefits, Mrs B. does not have her own income, nor, moreover, that her husband, although he worked for a few months in 2011 and 2012 before being registered at the national employment agency, was no longer performing any work on the date of the decision being challenged. Mrs B. and her husband, who have four dependent children, made an income tax declaration of only 6,400 euros income for the year 2011, and no income for the year 2012.</p>

	<p>As such, Mrs B. cannot prove to have sufficient resources for her and her children not to become an unreasonable burden on the public finances.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Spouse's right of residence for more than three months</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Mrs B's request was rejected; the order of 6 October 2014 from the Prefect of Seine-Saint-Denis remains applicable.</p>
<p>Key quotations in original language and</p>	<p><i>2. Considérant, en premier lieu, qu'aux termes de l'article 20 du Traité sur le fonctionnement de l'Union européenne : " 1. Il est institué une citoyenneté de l'Union. Est citoyen de l'Union toute personne ayant la</i></p>

translated into English with reference details (max. 500 chars)

nationalité d'un État membre. La citoyenneté de l'Union s'ajoute à la citoyenneté nationale et ne la remplace pas. 2. Les citoyens de l'Union jouissent des droits et sont soumis aux devoirs prévus par les traités. Ils ont, entre autres: a) le droit de circuler et de séjourner librement sur le territoire des États membres (...) Ces droits s'exercent dans les conditions et limites définies par les traités et par les mesures adoptées en application de ceux-ci " ; qu'aux termes de l'article 7 de la directive 2004/38/CE du Parlement européen et du Conseil, du 29 avril 2004, relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des États membres, intitulé " Droit de séjour de plus de trois mois " : " 1. Tout citoyen de l'Union a le droit de séjourner sur le territoire d'un autre État membre pour une durée de plus de trois mois : (...) b) s'il dispose, pour lui et pour les membres de sa famille, de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale de l'État membre d'accueil au cours de son séjour, et d'une assurance maladie complète dans l'État membre d'accueil (...) 2. Le droit de séjour prévu au paragraphe 1 s'étend aux membres de la famille n'ayant pas la nationalité d'un État membre lorsqu'ils accompagnent ou rejoignent dans l'État membre d'accueil le citoyen de l'Union, pour autant que ce dernier satisfasse aux conditions énoncées au paragraphe 1, points a), b) ou c) " ; que ces stipulations et dispositions combinées, telles qu'interprétées par la Cour de justice de l'Union européenne, notamment dans les arrêts visés ci-dessus, confèrent au ressortissant mineur d'un État membre, en sa qualité de citoyen de l'Union, ainsi que, par voie de conséquence, au ressortissant d'un État tiers, parent de ce mineur et qui en assume la charge, un droit de séjour dans l'État membre d'accueil à la double condition que cet enfant soit couvert par une assurance maladie appropriée et que le parent qui en assume la charge dispose de ressources suffisantes ; que l'État membre d'accueil, qui doit assurer aux citoyens de l'Union la jouissance effective des droits que leur confère ce statut, ne peut refuser à l'enfant mineur, citoyen de l'Union, et à son parent, le droit de séjourner sur son territoire que si l'une au moins de ces deux conditions, dont le respect permet d'éviter que les intéressés ne deviennent une charge déraisonnable pour ses finances publiques, n'est pas remplie ; que, dans pareille hypothèse, l'éloignement forcé du ressortissant de l'État tiers et de son enfant mineur ne pourrait, le cas échéant, être ordonné qu'à destination de l'État membre dont ce dernier possède la nationalité ou de tout Etat membre dans lequel ils seraient légalement admissibles ;

3. Considérant que Mme B... soutient qu'elle dispose d'un droit au séjour en sa qualité de parent d'enfants de nationalité néerlandaise ; que, toutefois, il n'est pas contesté qu'en dehors des prestations sociales, l'intéressée ne dispose d'aucun revenu propre, pas plus d'ailleurs que son époux, qui, s'il a travaillé quelques mois en 2011 et 2012 avant de s'inscrire à Pôle Emploi, n'exerçait plus aucune activité à la date de l'arrêté attaqué ; que les intéressés, qui ont quatre enfants à charge, n'ont d'ailleurs déclaré à l'impôt sur le revenu que 6 400 euros de revenus au titre de l'année 2011 et aucun revenu pour l'année 2012 ; qu'ainsi, la requérante ne justifie pas disposer de ressources suffisantes pour qu'elle et ses enfants ne deviennent pas une charge déraisonnable pour les finances publiques ; qu'elle n'est donc pas fondée à se prévaloir des stipulations et dispositions combinées des articles 20 et 21 du traité sur le fonctionnement de l'Union européenne et 7 de la directive 2004/38/CE du 29 avril 2004 ;

4. Considérant, en deuxième lieu, qu'aux termes de l'article L. 121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile " Sauf si sa présence constitue une menace pour l'ordre public, tout citoyen de l'Union européenne, tout ressortissant d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération suisse a le droit de séjourner en France pour une durée supérieure à trois mois s'il satisfait à l'une des conditions suivantes : / 1° S'il exerce une activité professionnelle en France ; / 2° S'il dispose pour lui et pour les membres de sa famille tels que visés au 4° de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale, ainsi que d'une assurance maladie ; / (...) 4° S'il est un descendant direct âgé de moins de vingt et un ans ou à charge, ascendant direct à charge, conjoint, ascendant ou descendant direct à charge du conjoint, accompagnant ou rejoignant un ressortissant qui satisfait aux conditions énoncées aux 1° ou 2° (...) " ; qu'aux termes de l'article L. 121-3 de ce code : " Sauf si sa présence constitue une menace pour l'ordre public, le membre de famille visé aux 4° ou 5° de l'article L. 121-1 selon la situation de la personne qu'il accompagne ou rejoint, ressortissant d'un Etat tiers, a le droit de séjourner sur l'ensemble du territoire français pour une durée supérieure à trois mois. / S'il est âgé de plus de dix-huit ans ou d'au moins seize ans lorsqu'il veut exercer une activité professionnelle, il doit être muni d'une carte de séjour (...) " ; qu'il résulte de ces dispositions que le ressortissant d'un Etat tiers ne dispose d'un droit au

séjour en France en qualité de conjoint à charge d'un ressortissant de l'Union européenne, que dans la mesure où ce dernier remplit lui-même au moins l'une des conditions fixées par les dispositions précitées des 1° et 2° de l'article L. 121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile ;

5. Considérant, ainsi qu'il vient d'être dit, que l'époux de Mme B...n'exerce aucune activité professionnelle et ne dispose ni pour lui, ni pour les membres de sa famille, de ressources suffisantes afin de ne pas devenir une charge déraisonnable pour le système d'assistance sociale ; que, par suite, le moyen tiré par l'intéressée de ce qu'elle pourrait prétendre à un titre de séjour en application des dispositions de l'article L. 121-3 du code de l'entrée et du séjour et du droit d'asile ne peut qu'être écarté ;

6. Considérant, en troisième lieu, qu'aux termes de l'article L. 313-14 du code de l'entrée et du séjour des étrangers et du droit d'asile : " La carte de séjour temporaire mentionnée à l'article L. 313-11 ou la carte de séjour temporaire mentionnée au 1° de l'article L. 313-10 peut être délivrée, sauf si sa présence constitue une menace pour l'ordre public, à l'étranger ne vivant pas en état de polygamie dont l'admission au séjour répond à des considérations humanitaires ou se justifie au regard des motifs exceptionnels qu'il fait valoir, sans que soit opposable la condition prévue à l'article L. 311-7 (...) " ;

7. Considérant que, si Mme B...soutient que sa famille vit dans des conditions de logement précaires, cette circonstance n'implique pas, bien au contraire, son maintien sur le territoire national ; que si, par ailleurs, elle fait valoir que son dernier fils, né en 2012, présente des troubles psychologiques nécessitant un suivi particulier, elle n'établit pas que ce suivi ne pourrait être assuré qu'en France et qu'en particulier, cet enfant ne pourrait être soigné aux Pays-Bas, pays dont son époux est ressortissant et dans lequel elle a régulièrement résidé avec le reste de la famille jusqu'en 2011 ; que, de surcroît, la requérante n'allègue aucune intégration professionnelle ou sociale ; que, dans ces conditions, en estimant que l'admission au séjour de Mme B...ne répondait pas à des considérations humanitaires ou ne se justifiait pas par des motifs exceptionnels, le préfet de la Seine-Saint-Denis n'a pas commis d'erreur manifeste d'appréciation de la situation de l'intéressé au regard des dispositions de l'article L. 313-14 du code de l'entrée et du séjour des étrangers et du droit d'asile ;

8. *Considérant, en troisième lieu, qu'aux termes de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales : " 1° Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance ; 2° Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale ou à la protection des droits et libertés d'autrui " ;*

9. *Considérant que, pour les motifs de fait énoncés au point 7, et, alors, en particulier, que Mme B...n'invoque aucune circonstance précise qui ferait obstacle à ce qu'elle poursuive normalement sa vie de famille à l'étranger, notamment, aux Pays-Bas, l'arrêté attaqué ne peut être regardé comme portant à son droit au respect de sa vie privée et familiale une atteinte disproportionnée aux buts en vue desquels il a été pris ; que cet arrêté n'a donc pas méconnu les stipulations de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales*

Translation :

2. Considering, in the first instance, that under the terms of Article 20 of the Treaty on the Functioning of the European Union: 1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the treaties. They shall have, *inter alia*: a) the right to move and reside freely within the territory of the Member States [...] These rights shall be exercised in accordance with the conditions and limits defined by the treaties and by the measures adopted thereunder; that under Article 7 of Directive 2004/38/CE of the European Parliament and the Council of 29 April 2004, relating to the rights of citizens of the Union and the members of their families to move and reside freely on the territory of the Member States, under the heading

'Right of residence for more than three months: 1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: [...] b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State [...] 2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that a such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c); that these combined provisions, as interpreted by the Court of Justice of the European Union, notably in the rulings cited above, confer to the minor national of a Member State, in their capacity as citizen of the Union, as well as, consequently, a national of a non-Member State who is the parent of this minor and who is their primary carer, the right to reside in the host Member State on the dual condition that this minor is covered by medical insurance and that the parent who is their primary carer has sufficient resources; that the host Member State, which must ensure to citizens of the Union effective enjoyment of the rights that this status confers on them, cannot refuse a minor who is a citizen of the Union, or their parent, the right to reside on their territory unless at least one of these two conditions, the respect of which makes it possible to prevent the interested parties from becoming an unreasonable burden on their public finances, is not met; that, similarly, the forced removal of a national from a non-Member State and their child could not, if this is the case, be ordered to a destination other than the Member State which the person concerned is a national of, or any Member State in which they would be legally admitted;

3. Considering that Mrs B... holds that she has a right to residence in her quality of parent to children of Dutch nationality; that, however, it is not disputed that apart from social security benefits, Mrs B. does not have her own income, nor, moreover, that her husband, who, although he worked for a few months in 2011 and 2012 before being registered at the national employment agency, was no longer performing any work on the date of the decision being challenged; that the interested parties, who have four dependent children, made an income tax declaration of only 6,400 euros income for the year 2011, and no income for the year 2012; that as such, the applicant cannot prove to have sufficient resources for her and her children not to become an unreasonable

burden on the public finances; that she does not, therefore, have legal grounds to base her claim on the combined stipulations and provisions of Articles 20 and 21 of the Treaty on the Functioning of the European Union and Article 7 of Directive 2004/38/CE of 29 April 2004;

4. Considering, secondly, that under Article L. 121-1 of the Code of entry and stay of foreigners and the right to asylum: Unless their presence constitutes a threat to public order, any citizen of the European Union, any national from another state which is party to the European economic area agreement or from the Swiss Confederation has the right to reside in France for a duration longer than three months if they satisfy one of the following conditions: 1. They are working in France; 2. They have both sufficient resources for themselves and the members of their family such as referred to in paragraph 4 in order for them not to become a burden on the social welfare system, as well as medical insurance; [...] 4. They are the direct descendant under twenty-one years old or dependent, or a direct dependent ascendant, ascending direct ascendant or descendant dependent on the spouse, accompanying or joining a national who satisfies the conditions laid out in 1 or 2 [...] ; that under Article L. 121-3 of this Code: Unless their presence constitutes a threat to public order, the member of family referred to in paragraphs 4 or 5 of Article L. 121-1 depending on the situation of the person whom accompanies or joins them, a national of a third country, has the right to reside anywhere in France for a period of more than three months. If they are over eighteen years old, or at least sixteen years old when they wish to work, they must hold a residence permit (...); that it results from these provisions that the national of a non-Member State does not have a right to residence in France in their quality as a dependent spouse of a national of the European Union, unless this spouse fulfils at least one of the conditions set out by the above mentioned provisions of paragraphs 1 and 2 of Article L. 121-1 of the Code of entry and stay of foreigners and the right to asylum;

5. Considering, as has just been mentioned, that Mrs B.'s husband... is not working and does not have, either for him, nor for the members of his family, sufficient resources in order not to become an unreasonable burden on the social welfare system; that, consequently, the argument forwarded by the interested party that she has

a right to a residence permit pursuant to the provisions of Article L. 121-3 of the Code of entry and stay and the right to asylum can only be rejected;

6. Considering, thirdly, that under the terms of Article L. 313-14 of the Code for the entry and stay of foreigners and the right to asylum: The temporary residence permit mentioned in Article L. 313-11 or the temporary residence permit mentioned in paragraph 1 of Article L. 313-10 can be issued, except if their presence constitutes a threat to public order, to a foreign national who is not polygamous and whose admission is in response to humanitarian considerations or is justified with regards to exceptional circumstances which they put forward, without prejudice to the condition provided for in Article L. 311-7 [...];

7. Considering that, although Mrs B...holds that her family lives in precarious housing conditions, this circumstance does not imply, quite to the contrary, her remaining in the country; that although, in addition, she makes the point that her youngest son, born in 2012, presents psychological disorders requiring particular follow-up, she does not establish that this follow-up could be assured only in France and in particular, that this child could not be cared for in the Netherlands, the country of which her husband is a national and where she regularly resided with the rest of the family until 2011; that, in addition, the applicant does not claim any professional or social integration; that, under these conditions, in deciding that the admission to residence of Mrs B... did not correspond to humanitarian considerations or was not justified by exceptional circumstances, the Prefect of Seine-Saint-Denis did not make a manifest error in assessing the situation of the interested party with regard to the provisions of Article L. 313-14 of the Code of entry and stay of foreigners and the right to asylum;

8. Considering, thirdly, that under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: 1. Everyone has the right to respect for their private and family life, their home and their correspondence; 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of

	<p>national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others;</p> <p>9. Considering that, for the factual reasons stated in point 7, and, in particular, that Mrs B... does not evoke any precise circumstance which would be an obstacle for her to continue to lead a normal family life abroad, in particular, in the Netherlands, the ruling being challenged cannot be viewed as being a disproportionate breach of her right to the respect of her private and family with regard to the objective for which it was taken; that this order did not therefore ignore the stipulations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>6. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p>
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	<p>- linked to article 7.1 (b) of Directive 2004/38³</p> <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>
Decision date	26 November 2008
Deciding body (in original language)	Conseil d'Etat
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier)	No. 315441

³ The Council of State's decision does not itself refer to this article, but it is about the condition of sufficient resources in order to have the right of residence.

(ECLI) where applicable)	
Parties	No parties; it is an opinion of the Council of State.
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000019831940&fastReqId=1353043121&fastPos=16
Legal basis in national law of the rights under dispute	<p>Article L. 121-4 of the CESEDA:</p> <p>Any citizen of the European Union, any national of another state which is party to the European economic area agreement or of the Swiss Confederation, or the members their family, who cannot justify a right to reside pursuant to the Article L. 121-1 or Article L. 121-3 or whose presence constitutes a threat to public order can be the subject, depending on the case, of a decision of refusal of entry, refusal of issue or renewal of a residence permit or a withdrawal of this, as well as a removal measure provided for in Book V.</p> <p>Article L. 512-1 of the CESEDA:</p> <p>A foreigner who is the subject of a refusal of residence, a refusal to issue or renew a residence permit or a withdrawal of a residence permit, a receipt for a request for a residence permit, or a provisional authorisation to stay accompanied by an obligation to leave the French territory mentioning the country of destination can, within one month following the notification, ask for the cancellation of these decisions at the administrative court [...] Their appeal suspends the execution of the obligation to leave the French territory without however being an obstacle to placement in administrative detention, under the conditions provided for in Title V of this Book. The administrative court rules within three months as from the referral. However, in the event of placement in detention of the foreigner before it has returned its decision, the court rules, according to the</p>

procedure provided for in Article L. 512-2, on the legality of the obligation to leave the French territory and of the decision establishing the country of removal, no later than seventy two hours as from the notification by the administration to the court of this placement. If the obligation to leave the French territory is cancelled, an immediate end is put to the surveillance measures provided for in Title V of this Book and the foreigner is provided with a provisional authorisation to reside until the administrative authority has again ruled on their case.

Article L. 121-2 of the CESEDA:

The nationals referred to in Article L. 121-1 who wish to establish their usual place of residence in France shall register themselves with the mayor of their municipality of residence within the three months of their arrival.

Nationals who have not respected this obligation to register are considered to have resided in France for less than three months.

Article R. 121-5 of the CESEDA:

A certificate, in conformity with the model fixed by order of the Minister in charge of immigration, is immediately given by the mayor to nationals who subject themselves to the obligation to register provided for in Article L. 121-2 [...].

Article L. 121-1 of the CESEDA:

Unless their presence constitutes a threat to public order, any citizen of the European Union, any national from another State which is party to the European economic area agreement or of the Swiss Confederation has the right to reside in France for a duration longer than three months if they satisfy one of the following conditions: [...]. 2. If, for themselves and the members of their family, they have [...] sufficient resources in order for them not to become a burden for the social welfare system, as well as medical insurance [...]

	<p>Article R. 121-4 of the CESEDA:</p> <p>When required, the sufficient nature of resources is assessed by taking into account the personal situation of the interested party. In no case may the amount required exceed the flat-rate amount of the income of active solidarity mentioned in Article L. 262-2 of the Code for social action and families.</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The Administrative Court of Cergy-Pontoise was referred to with a request from European citizen⁴ Mr Alin B for the cancellation of an order of 19 September 2007 in which the Prefect of Val d'Oise refused to maintain his right to reside on the basis of Article L. 121-1 of the Code for the entry and stay of foreigners and the right to asylum as he did not have sufficient resources.</p> <p>This court decided to send the case file for this request to the Council of State, submitting three questions for it to examine.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>In responding to the questions from the court, the Council of State considered:</p> <p>1. Article 24 of the law of 12 April 2000, which sets out the general rules of procedure, by providing that decisions intervene only after the interested party has been able to present written representations and, if necessary, upon their request, verbal representations, could not usefully be invoked against a decision bearing an obligation to leave the French territory subjected to the specific procedures of Book V of the CESEDA.</p> <p>However, if the prefect takes, on the basis of Article L. 121-4 of the CESEDA, a decision of refusal of residence, refusal to issue or renew or withdraw a residence permit, without accompanying it with a removal measure to which are attached the specific procedures of Book V of the CESEDA, such a decision must be accompanied by</p>

⁴ The Council of State's decision does not contain any indication on the citizenship of the applicant, but refers to him as to a 'European citizen'.

	<p>the procedure provided for in Article 24 of the law of 12 April 2000, whose requirements, in particular on time limits, depend on the circumstances of the case.</p> <p>2. It falls on the administration, in the event of a dispute over the duration of the stay of a citizen of the European Union that it has decided to remove, to put forward the elements on which it has argued to consider that they no longer meet the conditions to reside in France. It falls on the foreigner who asks for the cancellation of this decision to provide any evidence to contest the legal grounds, according to the usual procedures for providing evidence.</p> <p>3. Insufficient resources can be argued by the prefect to take a removal decision against a Community national who has resided in France for more than three months, even if the interested party has not yet actually become a beneficiary of the social welfare system.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Rules of procedure relating to the notification of a foreigner of the obligation to leave the French territory</p> <p>The burden of proof to confirm the duration of residence of a citizen of the European Union</p> <p>Interpretation of the condition of having sufficient resources in order not to become a burden for the social welfare system</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The Council of State gave an opinion on the questions raised by the Administrative Court of Cergy-Pontoise. This opinion was notified to the court in question which took it into account to resolve the case of Mr Alin B. The opinion was also published in the Official Journal of the French Republic making it also available for other jurisdictions to take it into account.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>1°) Lorsque l'autorité préfectorale constate qu'un ressortissant communautaire ne justifie plus d'un droit au séjour, au motif qu'il séjourne depuis plus de trois mois sur le territoire national sans répondre aux conditions fixées par l'article L. 121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile, alors même que ce ressortissant n'a pas sollicité la délivrance d'un titre de séjour, les dispositions de l'article 24 de la loi du 12 avril 2000 trouvent-elles à s'appliquer ?</i></p> <p><i>Il ressort de l'ensemble des dispositions du livre V du CESEDA, et notamment de son article L. 512-1, que le législateur a entendu déterminer l'ensemble des règles de procédure administrative et contentieuse auxquelles sont soumises l'intervention et l'exécution des décisions par lesquelles l'autorité administrative signifie à l'étranger l'obligation dans laquelle il se trouve de quitter le territoire français.</i></p> <p><i>Dès lors, l'article 24 de la loi du 12 avril 2000 qui fixe les règles générales de procédure applicables aux décisions devant être motivées en vertu de la loi du 11 juillet 1979, en prévoyant que ces décisions n'interviennent qu'après que la personne intéressée a été mise à même de présenter des observations écrites et, le cas échéant, sur sa demande, des observations orales (...) , ne saurait être utilement invoqué à l'encontre d'une décision portant obligation de quitter le territoire français prise sur le fondement du I de l'article L. 511-1 du CESEDA, y compris à l'encontre d'un ressortissant communautaire, et même si celui-ci n'a pas sollicité la délivrance d'un titre de séjour.</i></p> <p><i>Toutefois, si le préfet prend sur le fondement de l'article L. 121-4 du CESEDA une décision de refus de séjour, de refus de délivrance ou de renouvellement d'une carte de séjour ou de retrait, sans l'assortir d'une mesure d'éloignement à laquelle sont attachées les procédures spécifiques du livre V du CESEDA, une telle décision</i></p>

doit être assortie de la procédure prévue par l'article 24 de la loi du 12 avril 2000, dont les exigences, notamment de délai, dépendent des circonstances de l'espèce.

2°) Lorsqu'une telle mesure a été prise avant l'entrée en vigueur de la loi n° 2007-1631 du 20 novembre 2007, pour pouvoir apprécier la durée du séjour, inférieure ou supérieure à trois mois, par quelle partie et selon quelles modalités la date d'entrée sur le territoire français doit-elle être établie ?

Il incombe à l'administration, en cas de contestation sur la durée du séjour d'un citoyen de l'Union européenne dont elle a décidé l'éloignement, de faire valoir les éléments sur lesquels elle se fonde pour considérer qu'il ne remplit plus les conditions pour séjourner en France. Il appartient à l'étranger qui demande l'annulation de cette décision d'apporter tout élément de nature à en contester le bien-fondé, selon les modalités habituelles de l'administration de la preuve.

L'administration peut notamment s'appuyer sur des données émanant des organismes pourvoyeurs d'aide lorsqu'elle invoque la charge que constitue le ressortissant communautaire pour le système d'aide sociale, ou sur les déclarations préalablement faites par l'intéressé.

3°) La condition posée par le 2° de l'article L. 121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile et par l'article R. 121-4 du même code, relative au caractère suffisant des ressources pour que le ressortissant communautaire ne devienne pas une charge pour le système d'assistance sociale, peut-elle être opposée à un ressortissant communautaire inactif et sans ressources, mais non pris en charge par le système d'assistance sociale français ?

L'article L. 121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile dispose que : Sauf si sa présence constitue une menace pour l'ordre public, tout citoyen de l'Union européenne, tout ressortissant d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération suisse a le droit de séjourner en France pour une durée supérieure à trois mois s'il satisfait à l'une des conditions suivantes : (...)

/ 2° S'il dispose pour lui et pour les membres de sa famille (...) de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale, ainsi que d'une assurance maladie (...) . L'article R. 121-4 précise que le caractère suffisant des ressources est apprécié en tenant compte de la situation personnelle de l'intéressé. En aucun cas, le montant exigé ne peut excéder le montant du revenu minimum d'insertion mentionné à l'article L. 262-2 du code de l'action sociale et des familles (...) .

Il résulte de ces dispositions que l'insuffisance des ressources peut être opposée par le préfet pour prendre une décision d'éloignement à l'encontre d'un ressortissant communautaire qui séjourne en France depuis plus de trois mois, alors même que l'intéressé n'est pas encore effectivement pris en charge par le système d'aide sociale.

Translation :

1. When the prefectural authority finds that a Community national no longer has a right of residence, on the grounds that they have been living in the country for more than three months without complying with the conditions set out in Article L. 121-1 of the Code for the entry and stay of foreigners and the right to asylum, even though this national has not applied for the issue of a residence permit, are the provisions of Article 24 of the law of 12 April 2000 to be applied?

It arises from the whole of the provisions of Book V of the CESEDA, and in particular Article L. 512-1, that the legislator intended to determine all the rules of administrative and contentious procedure to which are subjected the application and execution of decisions by which the administrative authority notifies a foreigner of the obligation to leave the French territory.

Consequently, Article 24 of the law of 12 April 2000 which sets out the general rules of procedure applicable to the decisions which have to be justified under the terms of the law of 11 July 1979, by providing that these decisions intervene only after the interested party has been able to provide written representation and, if

necessary, on their request, verbal representations [...], could only be invoked for a decision bearing an obligation to leave the French territory taken on the basis of I of Article L. 511-1 of the CESEDA, including for a Community national, and even if this person has not requested the issuing of a residence permit.

However, if the prefect takes, on the basis of Article L. 121-4 of the CESEDA, a decision of refusal of residence, refusal to issue or renew or withdraw a residence permit, without accompanying it with a removal measure to which are attached the specific procedures of Book V of the CESEDA, such a decision must be accompanied by the procedure provided for in Article 24 of the law of 12 April 2000, whose requirements, in particular on time limits, depend on the circumstances of the case.

2. When such a measure was taken before the entry into force of Law No. 2007-1631 of 20 November 2007, in order to be able to assess the duration of residence, shorter or longer than three months, by which party and according to what means should the date of entry into France be established?

It falls on the administration, in the event of a dispute over the duration of the stay of a citizen of the European Union which it has decided to remove, to put forward the elements on which it has argued to consider that they no longer meet the conditions to reside in France. It falls on the foreigner who asks for the cancellation of this decision to provide any evidence to contest the legal grounds, according to the usual procedures for providing evidence.

The administration can in particular use information from organisations which provide assistance when they invoke the burden which the Community national constitutes for the social welfare system, or on the statements made beforehand by the interested party.

3. On the condition set out by the paragraph 2 of Article L. 121-1 of the Code for the entry and the stay of foreigners and the right to asylum and by Article R. 121-4 of the same code, relating to the sufficient nature of resources so that the Community national does not become burden for the social welfare system, can this be

	<p>applied to an economically inactive Community national who has no resources, but who has not become a beneficiary of the social welfare system?</p> <p>Article L. 121-1 the Code for the entry and stay of foreigners and the right to asylum provides that: Unless their presence constitutes a threat to public order, any citizen of the European Union, any national from another state which is party to the European economic area agreement or of the Swiss Confederation has the right to reside in France for a duration longer than three months if they satisfy one of the following conditions: [...] 2. If, for themselves and the members of their family, they have [...] sufficient resources in order for them not to become a burden for the social welfare system, as well as medical insurance [...]. Article R. 121-4 specifies that the sufficient nature of resources is assessed by taking into account the personal situation of the interested party. In no case may the amount required exceed the flat-rate amount of the minimum welfare income mentioned in Article L. 262-2 of the Code for social action and families.</p> <p>It results from these provisions that insufficient resources can be argued by the prefect to take a removal decision against a Community national who has resided in France for more than three months, even if the interested party has not yet actually become a beneficiary of the social welfare system.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

7. Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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	14 December 2016
Deciding body (in original language)	Cour de cassation, Chambre civile 1
Deciding body (in English)	Court of cassation, 1 st Civil Chamber
Case number (also European Case Law)	No. of appeal: 14-25800

Identifier (ECLI) where applicable)	
Parties	Mr X/ Grasse Bar
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000033630752&fastReqId=833150642&fastPos=13
Legal basis in national law of the rights under dispute	Decree No. 91-1197 of 27 November 1991 organising the occupation of lawyer.
Key facts of the case (max. 500 chars)	<p>Mr X., born and residing in Belgium⁵ where he practices his profession, requested his admission to the Grasse Bar and to benefit from the exemption from training and qualifications provided for in Article 98-5 of Decree No. 91-1197 of 27 November 1991 organising the occupation of lawyer for lawyers working on the legal activity of a trade-union for at least eight years.</p> <p>The Court of Appeal of Aix-en-Provence, in its decision of 26 June 2014, refused the application from Mr X. The Court of Appeal held that “the legal activity referred to in Article 98-5, of Decree No. 91-1197 of 27 November</p>

⁵ The Court of Cassation refers to the European citizenship of the applicant, specifying that he was born and resided in Belgium.

	<p>1991 must have been carried out in France, as proof of experience of French law; that it is the taking into account of practical experience of the application of French law which makes it possible for the applicant to dispense with admission tests for the French certificate of aptitude for the occupation of lawyer and to be registered with a French bar as a lawyer in accordance with the derogatory procedure provided for in Article 98-5, of the Decree of 27 November 1991 [and] that this requirement is in no way discriminatory with respect to the nationals of other Member States of the European Union; that it does not have any bearing on the nationality of the applicant”.</p> <p>By considering that this requirement, founded on a criterion of territoriality, is likely to advantage French citizens over candidates who are nationals of other Member States of the European Union, and that Article 45 of the Treaty on the Functioning of the European Union was violated by the Court of Appeal, Mr X. appealed in cassation.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Court of Cassation upheld the order of the Court of Appeal according to which the condition of carrying out the legal activity referred to in Article 98-5 of the Decree of 27 November 1991 in France, is independent of the nationality of the applicant, and is not discriminatory with regard to the nationals of other Member States of the European Union, which can meet this condition if they have worked in France. This condition is essential in guaranteeing the necessary knowledge and qualifications for the exercise of the occupation of lawyer in France.</p> <p>According to the Court of Cassation, the Court of Appeal emphasised that this regulation is justified by imperative reasons of general interest for the protection of citizens, that it is specific in guaranteeing the achievement of the purpose which it pursues and that in requiring knowledge and qualifications likely to protect the rights of parties and the proper administration of justice, it does not go beyond what is necessary to achieve this.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Conditions of access to the occupation of lawyer</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>Mr X's appeal was rejected.</p>
Key quotations in original language and translated into English with reference	<p><i>Mais attendu que, selon une jurisprudence constante de la Cour de justice de l'Union européenne, l'ensemble des dispositions du Traité sur le fonctionnement de l'Union européenne relatives à la libre circulation des personnes vise à faciliter l'exercice des activités professionnelles de toute nature sur le territoire de l'Union et s'oppose aux mesures qui pourraient défavoriser ces ressortissants lorsqu'ils souhaitent exercer une activité économique sur le territoire d'un autre Etat membre ; qu'une mesure qui entrave la libre circulation des travailleurs ne peut être admise que si elle poursuit un objectif légitime compatible avec le Traité et se justifie par des raisons impérieuses d'intérêt général, à condition que l'application d'une telle mesure soit propre à garantir la réalisation de l'objectif en cause et n'aille pas au-delà de ce qui est nécessaire pour atteindre cet</i></p>

details (max.
500 chars)

objectif (arrêt du 10 mars 2011, C-379/09, Casteels, points 21 et 22 ; arrêt du 8 novembre 2011, C-461/11, Radziejewski, point 33) ;

Et attendu que l'arrêt relève que l'activité juridique visée à l'article 98, 5°, du décret du 27 novembre 1991, doit avoir été exercée sur le territoire français, dès lors que la prise en compte de cette expérience permet de passer outre les épreuves d'admission au certificat français d'aptitude à la profession d'avocat selon la procédure dérogatoire prévue par ce texte ; qu'il ajoute que cette condition, indépendante de la nationalité du requérant, n'est pas discriminatoire à l'égard des ressortissants d'autres Etats membres de l'Union européenne, qui peuvent la remplir s'ils ont travaillé en France, et qu'elle est indispensable pour garantir les connaissances et qualifications nécessaires à l'exercice de cette profession sur le territoire national ; que la cour d'appel a ainsi fait ressortir que cette réglementation se justifie par des raisons impérieuses d'intérêt général de protection des justiciables, qu'elle est propre à garantir la réalisation de l'objectif qu'elle poursuit et qu'exigeant des connaissances et qualifications de nature à protéger les droits de la défense et la bonne administration de la justice, elle ne va pas au-delà de ce qui est nécessaire pour l'atteindre ; que le moyen n'est pas fondé ;

Translation:

Whereas the Court of Justice of the European Union has consistently held that all the provisions of the Treaty on the Functioning of the European Union relating to the free movement of persons are intended to facilitate the pursuit of professional activities of any kind within the territory of the Union and precludes measures which might discriminate against such nationals when they wish to pursue an economic activity within the territory of another Member State; that a measure which impedes the free movement of workers can be accepted only if it pursues a legitimate objective compatible with the treaty and is justified by overriding reasons in the general interest, provided that the application of such a measure is to ensure that the objective in question is achieved and does not go beyond what is necessary in order to achieve that objective (C-379/09, *Casteels*, 8 November 2011, paras. 21 and 22; C-461/11, *Radziejewski*, para. 33);

	<p>And whereas the judgment states that the legal activity referred to in Article 98-5 of the Decree of 27 November 1991 must have been exercised in France, since the taking into account of that experience dispenses with the admission tests to the French certificate of aptitude for the profession of lawyer in accordance with the derogatory procedure provided for in that law; that it adds that this condition, which is independent of the applicant's nationality, is not discriminatory against nationals of other Member States of the European Union, who may meet the condition if they have worked in France, and that it is essential in guaranteeing knowledge and qualifications necessary for the practice of this profession in France; that the Court of Appeal has thus pointed out that that legislation is justified by imperative reasons relating to the general interest of the protection of individuals, that it is capable of achieving the objective it pursues and that in requiring knowledge and qualifications for protecting the rights of the parties and the proper administration of justice, it does not go beyond what is necessary to achieve its purpose; that argument has no legal grounds;</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>8.</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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	15 September 2011
Deciding body (in original language)	Défenseur des droits
Deciding body (in English)	Public Defender of Rights
Case number (also European Case Law Identifier)	No. LCD-2011-39

(ECLI) where applicable)	
Parties	Mr X./CAF
Web link to the decision (if available)	www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-lcd-2011-39-du-15-septembre-2011-relative
Legal basis in national law of the rights under dispute	<p>Article L. 121-1 of the CESEDA:</p> <p>Unless their presence constitutes a threat to public order, any citizen of the European Union, any national from another state which is party to the European economic area agreement or of the Swiss Confederation has the right to reside in France for a duration longer than three months if they satisfy one of the following conditions:</p> <ol style="list-style-type: none"> 1. They have an occupation in France; 2. They have sufficient resources for themselves and the members of their family such as referred to in paragraph 4 in order for them not to become a burden for the social welfare system, as well as medical insurance [...] <p>Article R. 121-5 of the CESEDA:</p> <p>When required, the sufficient nature of resources is assessed by taking into account the personal situation of the interested party. In no case may the amount required exceed the flat-rate amount of the minimum welfare income mentioned in Article L. 262-2 of the Code for social action and families [...]</p>

	<p>The burden for the social welfare system which a national mentioned in Article L. 121-1 can constitute is evaluated in particular by taking into account the amount of non-contributory social security benefits which were granted to them, the duration of their difficulties and their stay.</p> <p>Article L 512-2 of the Social security code</p> <p>The circular of the National family allowance fund (<i>Caisse nationale des Allocations familiales</i>) (CNAF) No. 2009-022 of 21 October 2009</p> <p>The circular of the Department for Social Security of 3 June 2009 relating to the family allowances for nationals of the European Union</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>On 1 September 2009, the CAF took the decision to suspend the payment of family allowances for the four children of the European citizen⁶ Mrs X. and asked Mrs X to repay the sum of 5,562 euros corresponding to family allowances already paid. The suspension decision was taken on the grounds that Mrs X. did not meet the conditions of legal residence, in that as she was economically inactive and she did not have medical cover or sufficient resources, which are conditions set out in particular by Directive 2004/38, relating to the right to reside for citizens of the Union and the CESEDA.</p> <p>Mrs X. challenged the CAF's decision before the amicable appeals Commission (<i>Commission de recours amiable</i>), which implicitly confirmed the decision of the CAF. Subsequently, Mrs X referred to Court for Social Security Affairs and the High Authority for the Fight against Discrimination and for Equality (HALDE) which sent her casefile to the Public Defender of Rights.</p>

⁶ The decision does not contain any other details.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The CAF subjected access for Community nationals to family allowances to conditions which were not provided for by the law and which were contrary to the applicable Community legislation. Therefore, the decision of the CAF to suspend the payment of family allowances for the four children of Mrs X. constitutes discrimination based on nationality, in violation of Articles 18 and 21 of the Treaty on the Functioning of the European Union, Article 24 of Directive 2004/38/CE, as well as Article 3 of the International Convention of the Rights of the Child.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Conditions of granting family allowances to European nationals</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Public Defender of Rights considered that the CAF decision to suspend family allowances for Mrs X. was discriminatory on the grounds of her nationality and decided to make representations before the Court for Social Security Affairs.</p>

**Key quotations
in original
language and
translated into
English with
reference
details** (max.
500 chars)

...la CAF a considéré que Mme X. ne remplissait pas la condition relative à l'assurance maladie dans la mesure où elle est bénéficiaire de la couverture médicale universelle (CMU)...Pourant tant au regard du CESEDA et du Code de la sécurité sociale qu'aux termes de la définition donnée par la Commission européenne, la CMU est une couverture maladie permettant bien d'établir le droit au séjour des ressortissants communautaires inactifs...

Pour affirmer que la réclamante ne perçoit pas de ressources suffisantes, la CAF s'appuie sur les déclarations de ressources que Mme X. a rempli dans le cadre de sa demande initiale de prestations. Or, les ressources prises en compte pour le calcul du montant des prestations sociales qui sont, à peu des choses près, les revenus retenus pour l'établissement de l'impôt sur les revenus, sont de nature différente de celles prises en compte pour le droit au séjour, lesquelles peuvent être plus diversifiées ... ces ressources peuvent provenir des tiers. La CAF aurait dû, avant d'aboutir à la conclusion de l'absence de ressources suffisantes, effectuer un tel examen.

Bien plus, en présence de ressources insuffisantes, la CAF devait se demander...si les réclamations constituaient, du fait de cette absence de ressources, une charge déraisonnable pour l'Etat d'accueil...

En leur octroyant dans le passé des prestations familiales – prestations attribuées sous condition de régularité du séjour – les caisses leur ont, de facto, reconnu le droit au séjour...Le droit communautaire imposait à la CAF obligation d'appliquer un droit au maintien des prestations.

Translation :

[...] the CAF considered that Mrs X. did not meet the condition relating to medical insurance in that she is a beneficiary of universal medical cover (CMU) [...] However both with regards to the CESEDA and the Social security code and the terms of the definition given by the European Commission, the CMU is a medical cover which makes it possible to establish the right to residence for economically inactive Community nationals [...]

	<p>To assert that the claimant does not have sufficient resources, the CAF used the declarations of resources that Mrs X. filled in for her request for allowances. However, the resources taken into account for the calculation of the amount of social security benefit which are, more or less, the resources used for income tax assessments, are of a different nature than those taken into account for the right to residence, which can be more diversified... these resources can come from the third parties. The CAF should have, before arriving at the conclusion of insufficient resources, carried out such an examination.</p> <p>Furthermore, in the case of insufficient resources, the CAF should consider [...] if, because of this lack of resources, the claims constituted an unreasonable burden for the host State [...]</p> <p>In granting them family allowances in the past - benefits which were accorded on condition of the legality of residence - the CAF have, <i>de facto</i>, recognised their right to residence [...] the Community legislation imposed on the CAF the obligation to apply a right to maintain benefit payments.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>9.</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p>
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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	2 July 2007
Deciding body (in original language)	La Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE).
Deciding body (in English)	High Authority for the fight against discrimination and for equality
Case number (also European Case Law Identifier)	Ruling No. 2007-190

(ECLI) where applicable)	
Parties	Mr D. / Housing Agency G and insurance company S
Web link to the decision (if available)	www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/deliberation-ndeg2007-190-du-2-juillet-2007-relative
Legal basis in national law of the rights under dispute	Law No. 89-462 of 6 July 1989 on improving tenancy relations.
Key facts of the case (max. 500 chars)	<p>Mr D. of European nationality (the ruling does not contain any other details), has lived and has been taxable in France since 1998 and works as a civil servant.</p> <p>On 26 October 2004, after having visited an apartment, he filled out a reservation contract with agency G. On 3 November 2004, the agency informed him that the rental insurance of the owner, company S, would not allow for the conclusion of the lease on the grounds that he was not of French nationality. Within the framework of the investigation, insurance company S communicated the documents relating to the conditions of subscription to insurance against unpaid rents, which impose the provision of an identity document issued by the French administration.</p> <p>On 27 April 2006, Mr D. referred to the HALDE with a claim relating to a refusal to rent by housing agency G.</p>

<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>The HALDE argued that the facts exposed arose from Article 1 of Law No. 89-462 of 6 July 1989 relating to tenancy relations, in that they imply the existence of discrimination based on nationality.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Discrimination in housing based on nationality</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The HALDE informed Mr D. that it fell to him to apply to the civil courts in order to claim his rights, by invoking the rules relating to the burden of proof applicable in this field, in which case the HALDE will present its observations before the court.</p> <p>The HALDE reminded agency G as well as insurance company S that the Criminal code prohibits refusing or subjecting rental of housing to a prohibited criterion of discrimination.</p> <p>The HALDE recommended to insurance company S that it put the list of documents required to benefit from the safeguard against unpaid rents in conformity with the law in force, and asked to be kept informed of the</p>

	actions taken pursuant to this recommendation within three months as from the notification of the ruling.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>L'article 1er de la loi «Mermaz » n°89-462 du 6 juillet 1989 relative aux rapports locatifs prévoit que le droit au logement est un droit fondamental et qu'aucune personne ne peut se voir refuser la location d'un logement, notamment en raison de son appartenance à une nation.</i></p> <p>Translation :</p> <p>Article 1 of the "Mermaz" Law No. 89-462 of 6 July 1989 relating to tenancy relations provides that the right to housing is a basic right and that no person can be refused rented housing, in particular, on the grounds of their belonging to a particular nation.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality
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10. Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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	7 February 2011
Deciding body (in original language)	La Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE).
Deciding body (in English)	High Authority for the fight against discrimination and for equality
Case number (also European)	Ruling No. 2011-40

Case Law Identifier (ECLI) where applicable)	
Parties	Minister for Higher education and Research (<i>Ministre de l'Enseignement supérieur et de la Recherche</i>)
Web link to the decision (if available)	www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/deliberation-ndeg2011-40-du-7-fevrier-2011-relative
Legal basis in national law of the rights under dispute	Article L. 612-3 of the Education Code.
Key facts of the case (max. 500 chars)	<p>The national education system set up the "Admission post-bac" site (APB) to simplify the process for students wishing to be registered for training accessible after obtaining the baccalaureate. This site brings together, in one tool, all higher education training and, in particular, makes it possible to obtain information on courses, higher educational establishments (links to their sites), to express the desire to continue studying, and to administratively register with the requested establishments. The service offered guarantees better optimisation of the assignment of places available for the various courses.</p> <p>Yet, the use of the services offered by the site is refused to any person not having French nationality, Community nationals included. For such people, the following is shown, in effect, at the time of an attempt to register: "only candidates of French nationality can register for training on the APB site".</p>

	<p>People not having French nationality are invited to approach the requested training institutes themselves.</p> <p>The Minister for higher education and research referred to the HALDE on 1 February 2011 with a request for an opinion relating to the conditions of access to the "APB" internet site for students and high-school pupils who do not have French nationality.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Nationals having the nationality of a Member State of the European Union benefit from perfect equality in access to the labour market. Therefore, apprenticeship training should not be subjected to a prior obligation of having a work permit. Consequently, providing less favourable treatment to Community nationals in the access to a service allowing administrative registration for apprenticeship training because of their nationality, constitutes discrimination prohibited by Article 18 of the TFEU. However, nationals of Bulgaria and Romania remain subjected to the obligation to obtain a work permit for any paid activity during the transition period regarding free access to the labour market. Registering with the site could be open to them with a mention of the applicable law as regards work permits and apprenticeship contracts.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Discrimination in training</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>The HALDE recommended:</p> <ul style="list-style-type: none"> - opening access to the "APB" site and pre-registration for apprenticeship training to any pupil who requests this, whatever their nationality or place of residence;

<p>or implications of the case (max. 500 chars)</p>	<p>- providing detailed information to users of the site, intended to allow them to understand residence permits which they must be in possession of to conclude an apprenticeship contract, so that the interested parties are aware of the risks of refusal to which they are exposed at the time of the final registration for the requested training.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>Les ressortissants ayant la nationalité d'un Etat membre de l'Union européenne bénéficient d'une parfaite égalité dans l'accès au marché du travail. Cette égalité, dont le corollaire est la prohibition de toute discrimination, directe ou indirecte, à raison de la nationalité, trouve son fondement dans l'article 18 du Traité sur le fonctionnement de l'union européenne (TFUE). En aucun cas, une formation en apprentissage ne saurait donc être soumise à une obligation préalable d'autorisation de travail. En conséquence, traiter moins favorablement les ressortissants communautaires dans l'accès à un service permettant notamment l'inscription administrative à des formations en apprentissage et ce, en raison de leur nationalité, constitue une discrimination prohibée par le principe fondamental de prohibition de toute discrimination à raison de la nationalité prévue à l'article 18 du TFUE.</i></p> <p><i>Ces ressortissants [Bulgares et Roumains] demeurent soumis à l'obligation d'obtenir une autorisation de travail pour toute activité salariée pendant la période transitoire en matière de libre accès au marché du travail. L'inscription au site APB - qui ne vaut pas inscription aux formations sollicitées – pourrait néanmoins être ouverte, à l'instar de ce qui a été proposé pour les étrangers ne disposant pas encore d'autorisation de travail, avec mention du droit applicable en matière d'autorisation de travail et de contrat d'apprentissage.</i></p> <p>Translation :</p> <p>Nationals having the nationality of a Member State of the European Union benefit from perfect equality in access to the labour market. This equality, of which the corollary is the prohibition of any discrimination, direct</p>

	<p>or indirect, on grounds of nationality, has its basis in Article 18 of the Treaty on the Functioning of the European Union (TFEU). In no case may apprenticeship training therefore be subjected to a prior obligation of having a work permit. Consequently, in providing less favourable treatment to Community nationals in the access to a service allowing, in particular, administrative registration for apprenticeship training because of their nationality, constitutes discrimination prohibited by the fundamental principle of prohibiting any discrimination based on nationality provided for in Article 18 of the TFEU.</p> <p>These nationals [of Bulgaria and Romania] remain subjected to the obligation to obtain a work permit for any paid activity during the transition period regarding free access to the labour market. Registering with APB the site - which is not the same as registering for the requested training - could nevertheless be open to them, as was proposed for foreigners not having yet having a work permit, with mention of the applicable law as regards work permits and apprenticeship contracts.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>11. 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>
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	<p>- linked to which article of Directive 2004/38</p> <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>
Decision date	21 December 2009
Deciding body (in original language)	La Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE)
Deciding body (in English)	High Authority for the fight against discrimination and for equality
Case number (also European Case Law Identifier (ECLI) where applicable)	Ruling No. 2009-412

Parties	Mrs T. /Employment Agency
Web link to the decision (if available)	www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/deliberation-ndeg2009-412-du-21-decembre-2009
Legal basis in national law of the rights under dispute	<p>Article L.121-2 of the CESEDA:</p> <p>[...] remain subject to holding a residence permit during the time of the validity of any transitional measures provided for by the Treaty of Accession for the country from where they originate, and unless this treaty stipulates otherwise, the same applies to citizens of the European Union who wish to work in France [...]</p> <p>When these citizens have successfully completed studies leading to a qualification at least equivalent to a masters, in a nationally accredited higher educational establishment, they are not subjected to the requirement of holding a residence permit to work in France.</p>
Key facts of the case (max. 500 chars)	<p>On 21 October 2008, a Romanian national, Mrs T. received a decision of refusal of registration on the list of the job seekers at the local employment agency. This decision was based on the fact that Mrs T. "did not present a residence or work permit giving [her] access to the labour market". In a letter of 24 October 2008, Mrs T. referred to the HALDE.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>It arises from the provisions of the CESEDA that nationals of the new Member States subjected to transitional provisions and who hold a qualification at least equivalent to a masters can also ask to be registered on the list of job seekers. The claimant holds a Masters in Economics awarded by the Paris-Pantheon-Sorbonne University. Although she claims to have informed the local employment agency about her qualification, she was refused registration on the list of job seekers. It results that this refusal is illegal and, insofar as it is based on her nationality, is discriminatory in nature.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Discrimination in employment</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The HALDE recommended Pôle Emploi remind all its local employment agencies of the applicable rules as regards registration of nationals of the new Member States governed by the transitional provisions provided for in the treaty on lists of job seekers. It asked to be informed within three months of the actions taken pursuant to its recommendation.</p>

**Key quotations
in original
language and
translated into
English with
reference
details** (max.
500 chars)

La demande de l'ANPE de présenter un titre de séjour est notamment fondée sur les articles L.121-2 du code de l'entrée et du séjour des étrangers (CESEDA) et R.5221-1 du code du travail aux termes desquels les ressortissants des nouveaux Etats-membres régis par les dispositions transitoires prévues par le Traité (roumains et bulgares) sont soumis à l'obligation d'un titre de séjour s'ils souhaitent exercer en France une activité professionnelle.

En d'autres termes, ils sont soumis à une obligation d'autorisation de travail.

Cependant, le dernier alinéa de l'article L.121-2 du CESEDA exonère de l'obligation de détenir une autorisation de travail, matérialisée par un titre, les mêmes ressortissants communautaires à la condition qu'ils aient achevé avec succès, dans un établissement supérieur habilité au plan national, un cycle de formation conduisant à un diplôme au moins équivalent au master...

Il découle de la dérogation fixée par ces deux textes que les ressortissants des nouveaux Etats membres soumis à dispositions transitoires et titulaires d'un tel diplôme peuvent également demander leur inscription sur la liste des demandeurs d'emploi.

Translation :

The request of the ANPE to present a residence permit is in particular based on Articles L.121-2 of the Code for the entry and stay of foreigners (CESEDA) and R.5221-1 of the Employment Code under the terms of which nationals of the new Member States governed by the transitional provisions provided for in the treaty (Romanian and Bulgarian) are subjected to the obligation of having a residence permit if they wish to work in France.

In other words, they are subjected to an obligation of having a work permit.

	<p>However, the last subparagraph of Article L.121-2 of the CESEDA exonerates the same Community nationals from the obligation of holding a work permit on the condition that they have successfully completed studies leading to a qualification at least equivalent to a masters, in a nationally accredited higher educational establishment...</p> <p>It arises from the derogation set out in these two laws that nationals of the new Member States subjected to transitional provisions and who hold such a qualification can also ask to be registered on the list of job seekers.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>12. 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 - linked to which article of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p>
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	<input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	3 November 2016
Deciding body (in original language)	Le Défenseur des droits
Deciding body (in English)	Public Defender of Rights
Case number (also European Case Law Identifier (ECLI) where applicable)	Decision MLD-2016-258
Parties	Mr X /Shop Z

Web link to the decision (if available)	www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2016-258-du-3-novembre-2016-relative-un
Legal basis in national law of the rights under dispute	<p>Article 225-1 of the Criminal Code, which defines discrimination as any distinction made between people on the grounds of the criteria that it targets, in particular age and membership or non-membership, real or supposed, of a nation.</p> <p>Article 225-2-1 of the Criminal code, which outlaws discrimination when it consists in refusing the supply of a good or a service. Article 225-2-4 of the same code outlaws discrimination when it consists in subjecting the supply of a good or a service to a condition based on one of the criteria referred to in Article 225-1.</p>
Key facts of the case (max. 500 chars)	<p>On 13 May 2015, Mr X bought several pieces of furniture from shop Z. In order to transport them, he wished to benefit from the offer to hire a van. He presented his British driving licence, his British passport and a document of proof of French residence. He was refused the rental on grounds of his nationality. It was specified to him that it was imperative to present a French identity document or a French driving licence.</p> <p>On 21 May 2015, Mr X addressed a complaint to shop Z.</p> <p>In a letter dated 29 June 2015, the shop manager specified to Mr X. that according to the instructions of company Y, which manages the hire vans, for any rental it is necessary to present a French identity document and a document of proof of residence in France, in addition to the presentation of a European licence.</p> <p>Mr X. referred to the Public Defender of Rights.</p>

<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>The condition of holding a European driving licence and the requirement to justify one's identity with a document issued by the French State amounts to excluding people from rental services on grounds of their nationality. The refusal to rent to Mr X, taken on the grounds of his British nationality, comes under conduct which is prohibited by Article 225-2-1 of the Criminal Code.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Discrimination in the provision of services</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Public Defender of Rights reminded shop Z that refusing to rent a vehicle to Mr X. amounted to the offence of discrimination provided for in Article 225-2-1 of the Criminal Code, and is punishable by three years' imprisonment and a € 45,000 fine.</p> <p>It recommended to company Y:</p> <ul style="list-style-type: none"> - that it includes in its training a module on the rules relating to the validity in France of driving licences obtained abroad as well as a reminder of the discriminatory nature of refusing a rental based on the country of issue of the driving licence or the identity document; - that it reminds its partners renting to the general public that foreign passports and national identity cards allow their holders to prove their identity.

	<p>The Public Defender of Rights asked to be informed of the action taken pursuant its recommendations.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>De même que la condition de détention d'un permis de conduire européen, exiger d'une personne de justifier de son identité par un document délivré par l'Etat français revient à exclure des services de location des personnes à raison de leur nationalité, notamment les ressortissants qui ne disposent pas de titre de séjour, et relève du comportement prohibé par l'article 225-2 4° du code pénal.</i></p> <p><i>Il ressort de l'enquête du Défenseur des droits que le refus de location opposé à Monsieur X par les employés du magasin Z, confirmé par la directrice du magasin, a bien été pris en considération de leur nationalité britannique. Ce refus relève du comportement prohibé par l'article 225-2 1° du code pénal.</i></p> <p>Translation :</p> <p>As well as the condition of holding a European driving licence, requiring a person to prove their identity with a document issued by the French State amounts to excluding people from rental services on grounds of their nationality, in particular nationals who do not have a residence permit, comes under conduct prohibited by Article 225-2-4 of the Criminal Code.</p> <p>It arises from the investigation of the Public Defender of Rights that the refusal to rent to Mr X by the employees of shop Z, which was confirmed by the manager of the shop, was indeed made on the grounds of his British nationality. This refusal comes under the conduct prohibited by Article 225-2-1 of the Criminal Code.</p>
<p>Has the deciding body referred to the Charter of Fundamental</p>	<p>No.</p>

Rights? If yes, to which specific article.	
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13. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	13 March 2008
Deciding body (in original language)	Cour de cassation, Chambre civil 2

Deciding body (in English)	Court of Cassation, 2nd Civil Chamber
Case number (also European Case Law Identifier (ECLI) where applicable)	No. of appeal: 08-60266
Parties	Mr A/Administrative Commission
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000018339576&fastReqId=969611094&fastPos=7
Legal basis in national law of	Article L. O. 227-1 of the Electoral Code: Citizens of the European Union residing in France, other than French citizens, can take part in the election of town councillors under the same conditions as French voters, subject to the provisions of this section.

<p>the rights under dispute</p>	<p>The persons mentioned in the first subparagraph are regarded as resident in France if they have their place of residence there or if their residence is continuous there [...]</p> <p>Article L. O. 227-4 of the Electoral Code:</p> <p>In addition to the documents required from French nationals, nationals of a state of the European Union other than France produce, in support of their request for registration on a complementary electoral roll, a valid identity document and a written declaration specifying:</p> <ul style="list-style-type: none"> a) their nationality; b) their address within the territory of the French Republic; c) that they have not been stripped of their voting rights in the State from which they originate.
<p>Key facts of the case</p> <p>(max. 500 chars)</p>	<p>The request of Mrs X, of Portuguese nationality, to be registered on the complementary electoral roll for the local elections of the municipality of L'Ile Rousse (citizens of the European Union residing in France must be registered in order to exercise their right to vote on a complementary list of electors upon their request), was rejected by the administrative commission, as Mrs X did not submit a written declaration that she had not been stripped of her voting rights in the state from which she originates.</p> <p>On 7 February 2008, Mr A., a third party registered voter, submitted a request contesting this rejection with the clerk's office of the L'Ile Rousse magistrates court.⁷ Indeed, pursuant to Article L 25 of the Electoral Code,</p>

⁷ Pursuant to Article L 25 of the Electoral Code, the decisions of the Administrative Commission may be challenged by the electors concerned before the court (*tribunal d'instance*). Article LO 227-3 of the Section 'Special provisions for the right of nationals of a member State of the European Union other than France to vote for the election of municipal councillors and members of the Council Of Paris' of the Electoral Code stipulates that, 'the appeals provided for in the second paragraph of Article L. 25 may be exercised by French voters and by persons registered

	<p>the decisions of the Administrative Commission may be challenged by the electors concerned before the court (<i>tribunal d'instance</i>). Article LO 227-3 of the Section 'Special provisions for the right of nationals of a member State of the European Union other than France to vote for the election of municipal councillors and members of the Council of Paris' of the Electoral Code stipulates that "the appeals provided for in the second paragraph of Article L. 25 may be exercised by French voters and by persons registered on the complementary list of electors with regard both to the electoral list and the complementary electoral list".</p> <p>In refusing the application by Mr A., the ruling of 21 February 2008 held that the provisions of Articles L. O. 227-1 and L. O. 227-4 of the Electoral Code require the production of a written declaration from Mrs X. under which she had not been stripped of her voting rights in the state from which she originates, and that this was not produced with the file.</p> <p>Mr A. appealed in cassation.</p>
<p>Main reasoning / argumentation</p>	<p>The signature of the form comprising the mention according to which "the undersigned voter declares that they have not asked to be registered to vote in local elections in any other municipality in France and that they have not been stripped of their voting rights in the state from which they originate" is sufficient and in conformity with the requirements of Article L. O. 227-4 of the Electoral Code to produce a written declaration</p>

on the complementary list of electors with regard both to the electoral list and the complementary electoral list'. [Electoral Code](#), Article LO 227-3.

(max. 500 chars)	specifying that the national of the European Union has not been stripped of their voting rights in the state from which they originate.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Conditions and documents required for nationals of the European Union to be able to vote in France
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Cassation overruled and cancelled the L'Ile Rousse magistrates' court decision of 21 February 2008, returned the parties to the state they were in before the aforementioned decision and referred them to Bastia magistrates' court.
Key quotations in original language and translated into	<i>Attendu que, pour rejeter la demande de M. A., le jugement retient que les dispositions des articles L. O. 227-1 et L. O. 227-4 du code électoral imposent la production d'une attestation écrite de Mme X. et que cette pièce n'est pas produite au dossier ;</i>

<p>English with reference details (max. 500 chars)</p>	<p><i>Qu'en statuant ainsi, alors que le formulaire rempli et signé par Mme X., le 8 octobre 2007, n'exige, comme justificatifs à fournir, qu'une photocopie d'un titre d'identité et de nationalité et un justificatif de domicile ou d'inscription au rôle des contributions directes communales, et comporte la mention selon laquelle " l'électeur soussigné déclare qu'il n'a demandé son inscription pour les élections municipales dans aucune autre commune de France et qu'il n'est pas déchu du droit de vote dans l'Etat dont il est ressortissant ", le tribunal n'a pas tiré les conséquences légales de ses constatations.</i></p> <p>Translation :</p> <p>Given that in rejecting the application by Mr A. the ruling held that the provisions of Articles L. O. 227-1 and L. O. 227-4 of the Electoral Code require the production of a written representation from Mrs X. and that this was not produced with the file.</p> <p>That in thus ruling, whereas the form filled in and signed by Mrs X., on 8 October 2007, requires, in terms of documents, only a photocopy of an identity and nationality document and a document of proof of residence or registration on a roll for direct municipality taxation, and include the wording "the undersigned voter declares that they have not asked to be registered to vote in local elections in any other municipality in France and that they have not been stripped of their voting rights in the state from which they originate", the court did not draw on the legal consequences of their observations.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p>	<p>No.</p>

to which specific article.	
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14. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	5 March 2008
Deciding body (in original language)	Cour de cassation, Chambre civil 2
Deciding body (in English)	Court of cassation, 2nd Civil Chamber

Case number (also European Case Law Identifier (ECLI) where applicable)	No. of appeal: 08-60234
Parties	Mrs X./ Mr Z.
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000018234929&fastReqId=164998227&fastPos=8
Legal basis in national law of the rights under dispute	<p>Article L. O. 227-4 of the Electoral Code:</p> <p>In addition to the documents required from French nationals, nationals of a state of the European Union other than France produce, in support of their request for registration on a complementary electoral roll, a valid identity document and a written declaration specifying:</p> <ul style="list-style-type: none"> a) their nationality; b) their address within the territory of the French Republic; c) that they have not been stripped of their voting rights in the State from which they originate.

<p>Key facts of the case</p> <p>(max. 500 chars)</p>	<p>Mr Z., a third party voter registered on the electoral roll of the municipality of Barbaggio, contested the registration on the electoral roll of citizens of the European Union other than French citizens, and Mrs X., of German nationality.</p> <p>The ruling of 14 February 2008 of the Bastia magistrates' court stated that Mrs X. had not provided an attestation indicating that she had not been stripped of her voting rights in her country of origin and that she could not sufficiently prove effective residence in Barbaggio.</p> <p>Mrs X appealed in cassation.</p>
<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>It falls upon the third party voter to provide proof that Mrs X. did not fulfil any of the legal conditions to appear on the complementary electoral roll (citizens of the European Union residing in France must be registered in order to exercise their right to vote on a complementary list of electors upon their request).⁸ The Bastia magistrates' court, by reversing the burden of proof obligation, violated the law.</p>

⁸ Pursuant to Articles LO 227-1 and LO 227-2 of the Electoral Code, citizens of the European Union residing in France must be registered in order to exercise their right to vote on a complementary list of electors upon their request. [Electoral Code](#), Articles LO 227-1 and LO 227-2.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The burden of proof when the legal conditions to appear on the electoral roll are not met</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court of Cassation overruled and cancelled the Bastia magistrates' court decision of 14 February 2008, returned the parties to the state they were in before the aforementioned decision and referred them to the L'Ile-Rousse magistrates' court.</p>
Key quotations in original language and translated into English with reference	<p><i>Attendu qu'il appartient au tiers électeur qui conteste une inscription sur les listes électorales de rapporter la preuve de ses prétentions ;</i></p> <p><i>Attendu, selon le jugement attaqué, rendu en dernier ressort, que M. Z., tiers électeur inscrit sur la liste électorale de la commune de Barbaggio, a contesté l'inscription sur la liste électorale complémentaire des citoyens de l'Union européenne autres que les citoyens français de Mme X., de nationalité allemande ;</i></p>

details (max.
500 chars)

Attendu que pour accueillir cette contestation, le jugement énonce que la requérante n'a pas produit une attestation sur l'honneur indiquant qu'elle n'est pas déchue du droit de vote dans son pays d'origine et qu'elle ne justifie pas suffisamment d'une résidence effective à Barbaggio ;

Qu'en statuant ainsi, alors qu'il appartenait au tiers électeur d'apporter la preuve que Mme X. ne remplissait aucune des conditions légales pour figurer sur la liste électorale complémentaire, le tribunal, en inversant la charge de la preuve, a violé les textes susvisés.

Translation:

Given that it falls upon the third party voter who contests registration on the electoral roll to provide proof of his claims;

Given that, according to the contested ruling, given in final judgement, Mr Z., a third party voter registered on the electoral roll of the municipality of Barbaggio, contested the registration on the complementary electoral roll of the citizens of the European Union other than French citizens, and Mrs X., of German nationality;

Given that to accommodate this challenge, the ruling states that the applicant did not produce an attestation that she has not been stripped of her voting rights in her country of origin and cannot provide sufficient proof of effective residence in Barbaggio;

That in thus ruling, whereas it fell to the third party voter to provide proof that Mrs X. did not fulfil any of the legal conditions to appear on the complementary electoral roll, the court, in reversing the burden of proof obligation, violated the laws referred to above.

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.
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2. Table 2 – Overview

	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 decided and relevant for the objective of the	Data on total number of national cases is not available, as not all decisions of HALDE are available now, since the	16 decisions of the Council of State referring to Directive 2004/38	13 decisions of the Court of Cassation	0	0

research if this data is available (covering the reference period)	reorganisation of this authority.				
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