

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

Contractor: Art.1, Dutch knowledge centre on
discrimination

Authors: Jacky Nieuwboer, Eddie Nieuwenhuizen,
Gregor Walz

Reviewed by: Sandra Mantu, Ashley Terlouw

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1. Table 1- case law

<p>1. Subject matter concerned</p>	<p><input checked="" type="checkbox"/> x 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> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>11 November 2008</p>
<p>Deciding body (in original language)</p>	<p>Hoge Raad</p>
<p>Deciding body (in English)</p>	<p>Supreme Court</p>
<p>Case number (also European Case Law Identifier)</p>	<p>ECLI:NL:HR:2008:BC9547</p>

(ECLI) where applicable)	
Parties	<i>Republic of Croatia (request of extradition of national) (Republiek Kroatië, verzoek tot uitlevering) Croatian v. Public Prosecutor</i>
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2008:BC9546&showbutton=true&keyword=%22ECLI%3aNL%3aHR%3a2008%3aBC9546%22
Legal basis in national law of the rights under dispute	<p>Article 12 of the EC Treaty, now Article 18 of the TFEU, Article 24 of Directive 2004/38/EC, Article 4.1. of the Extradition Treaty and Article 4a of the Dutch Penal Code (<i>Wetboek van Strafrecht 1881</i>), which states that the Dutch Penal Code applies to anyone whose prosecution has been adopted by the Dutch State on the basis of a treaty which lays down that the jurisdiction to prosecute rests in the Netherlands.</p> <p>The Netherlands, Penal Code (<i>Wetboek van Strafrecht</i>), Article 4a as changed by the following act: The Netherlands, Act review of the rules concerning <i>Wet herziening regels betreffende extraterritoriale (Wet herziening regels betreffende extraterritoriale rechtsmacht in strafzaken)</i>, 27 November 2013.</p>
Key facts of the case (max. 500 chars)	Croatia asked the Netherlands to extradite a Croatian national on grounds of a crime for which he was sentenced in Croatia. The Croatian national argued that based on Article 12 of the EC Treaty and Article 24 of Directive 2004/38/EC he was entitled to an equal treatment with Dutch nationals, so he could not be extradited (since a Dutchman could not be extradited on the basis of Article 4.1. of the Extradition Treaty). However, the Supreme Court held that, if the Croatian was not extradited, he could not be sentenced in the Netherlands anymore, contrary to what would have happened to a Dutchman. He should, therefore, be extradited.

Main reasoning / argumentation (max. 500 chars)	<p>The Supreme Court does not judge whether there is an unequal treatment of equal cases on the basis of nationality, as there is a reasonable and objective justification for unequal treatment. If the Croatian is not extradited, he cannot be prosecuted in the Netherlands for a crime for which he was sentenced in Croatia, whereas a Dutchman in such a case could still be prosecuted in the Netherlands. He should, therefore, be extradited. To define who has jurisdiction in cases like these is up to the legislative power.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>This case makes clear that unequal treatment of EU citizens is possible on the basis of a reasonable and objective justification. Different treatment of EU citizens does not amount to unequal treatment where there is a reasonable and objective justification for it.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Croatian will be extradited to Croatia and he will have to follow up his sentence there.</p>
Key quotations in original language and translated into	<p><i>3.7.2. De Hoge Raad laat in het midden of de opgeëiste persoon binnen de personele werkingssfeer van het EG-verdrag valt, of de regeling van art. 4 UW binnen de materiële werkingssfeer van het EG-verdrag valt, en of sprake is van ongelijke behandeling van gelijke gevallen op grond van nationaliteit, aangezien in het onderhavige geval een redelijke en objectieve rechtvaardiging bestaat voor ongelijke behandelin. In geval van niet-uitlevering aan Kroatië kan de</i></p>

English with reference details (max. 500 chars)	<p><i>opgeëiste persoon immers niet alsnog in Nederland worden vervolgd voor het misdrijf waarvoor hij in Kroatië is veroordeeld, terwijl een Nederlander in zo een geval op grond van art. 5 Sr wel alsnog hier te lande vervolgd kan worden.</i></p> <p>Translation:</p> <p>3.7.2. The Supreme court does not judge whether the person whose extradition has been requested is covered by the personal scope of the EC Treaty, or whether the stipulation laid down in Article 4 of the Extradition Treaty is within the scope of the EC Treaty, and whether there is unequal treatment of equal cases on the basis of nationality, as there is a reasonable and objective justification in this case for unequal treatment. It is clear that if there were no extradition to Croatia, the person in question could not be prosecuted in the Netherlands for the crime for which he was sentenced in Croatia, whereas a Dutchman, on the basis of Article 5 of the Penal Code, would be prosecuted in the Netherlands.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

2. Subject matter concerned	<input checked="" type="checkbox"/> x 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38
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	<input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	16 May 2011
Deciding body (in original language)	Centrale Raad van Beroep
Deciding body (in English)	Dutch Administrative High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:CRVB:2011:BQ4816
Parties	<i>Appellants, EU citizens v. the Board of Directors of the Institute carrying out insurances of employees (Uitvoeringsinstituut werknemersverzekeringen, UWV) (appellanten en de Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen)</i>

Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:CRVB:2011:BO4816&showbutton=true&keyword=ECLI%3aNL%3aCRVB%3a2011%3aBO4816
Legal basis in national law of the rights under dispute	<p>Articles 4a and 44b, Act on supplements (<i>Toeslagenwet</i>), which lay down that supplements awarded in addition to benefits based on the Act on disability depend on being domiciled in the Netherlands, and which state that they will be gradually decreased when the beneficiaries no longer live in the Netherlands.</p> <p>The Netherlands, Supplementary Benefits Act (<i>Toeslagenwet</i>), 6 November 1986.</p>
Key facts of the case (max. 500 chars)	<p>The appellants, seven EU citizens (it is not clear from which countries they came, but one of them lived in Poland at the time of the lawsuit) worked in the Netherlands, but became disabled. They received social security based on the Act on Disability, and also received supplementary aid, related to the lowest social benefits possible, which was, however, decreased when they moved to another Member State, probably their state of origin, but this is unknown. One of them lives in Poland. The appellants claimed that the supplementary aid is related to the rights they accumulated when they worked. However, the court held that the aid was related to the social benefits rather than insurances that have been paid for during their employment. The aid is, therefore, based on the financial and social situation in the Netherlands, and the provision which enables the Netherlands to decrease the supplementary aid when someone moves to another Member State justified, also because it has been mentioned in Annex II bis of Regulation 1408/71 that this supplementary aid does not have to be exported to other Member States. Moreover, this Regulation does not aim at harmonisation among Member States, but at coordination. The articles in the EU Treaty against discrimination do not lead to another conclusion. The appellants therefore are no longer entitled to supplementary aid.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Court holds that the supplementary aid is related to social benefits rather than insurances that have been paid for during the period of employment. The aid is, therefore, based on the financial and social situation in the Netherlands, and the provision which enables the Netherlands to decrease the supplementary aid when someone moves to another Member State justified, also because it has been mentioned in Annex II bis of Regulation 1408/7171 that this supplementary aid does not have to be exported to other Member States. This Regulation, moreover, does not aim at harmonisation among Member States, but at coordination. The Articles in the EU Treaty against discrimination do not lead to another conclusion.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The case clarifies that the Dutch authorities are entitled to refuse the exportation of supplementary pension benefits listed on Annex II bis of Regulation 1408/1717. This refusal does not amount to a violation of the principle of non-discrimination on the basis of nationality since these benefits are not linked to periods of employment completed in the Netherlands but have a social assistance element.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>EU citizens who receive supplementary aid, in addition to benefits based on the Act of invalidity, and who move from the Netherlands to another Member State, will no longer receive this supplementary aid, as it is a social benefit rather than an insurance paid for during the period of employment.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>6.4. <i>Het vorenstaande leidt de Raad tot de conclusie dat de woonplaatsvoorwaarde zoals gesteld in artikel 4a TW objectief gerechtvaardigd is en een gerechtvaardigde inbreuk oplevert van het vrij verkeer. Hieraan voegt de Raad nog toe dat binnen de EU consensus bestaat over de opvatting dat een toeslag op grond van de TW niet geëxporteerd hoeft te worden. Deze consensus blijkt uit het feit dat de TW geplaatst is op bijlage II bis bij Vo. 1408/71. Beoordeling in het kader van de artikelen 18, thans, na wijziging, artikel 21 van het VWEU, dan wel 12 EG-Verdrag, thans, na wijziging, artikel 18 van het VWEU, leidt de Raad niet tot een ander oordeel.</i></p> <p>Translation:</p> <p>6.4. [On the basis of the above] the court concludes that the condition to be domiciled (in the Netherlands, jn) as laid down in Article 4a of the Act on Supplements is objectively justified and amounts to a justifiable restriction of the rights of free movement of persons. The court adds to this that within the EU there is an agreement about the opinion that the Act on supplements need not be exported. This agreement is proven by the fact that the Act on supplements is mentioned in Annex II bis of Regulation 1408/71. The court does not come to another conclusion when it applies Articles 18, now, after amendment, 21 TFEU, or Article 12 of the EC Treaty, now, after amendment, Article 18 TFEU.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

3. Subject matter concerned	<input checked="" type="checkbox"/> x 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	3 September 2010
Deciding body (in original language)	Rechtbank Roermond
Deciding body (in English)	District Court Roermond
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBROE:2010:BN6013

Parties	<i>Applicant v. the Minister of Education, Culture and Science</i> (verzoekster v Minister van Onderwijs, Cultuur en Wetenschap)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROE:2010:BN6013&showbutton=true&keyword=EC LI%3aNL%3aRBROE%3a2010%3aBN6013
Legal basis in national law of the rights under dispute	Article 18, paragraph 1 of the EC Treaty and Article 7.57b of the Act on higher education and scientific research. The Netherlands, Act on higher education and scientific research (<i>Wet op het hoger onderwijs en wetenschappelijk onderzoek</i>), 8 October 1992.
Key facts of the case (max. 500 chars)	The applicant was a woman who lived in the Netherlands but finished her secondary education in Belgium. When she wanted to study medicine in the Netherlands, she had to be put into one of a number of categories of potential students, as only a limited number of students could be admitted. Depending on the category, one had better or worse chances of being admitted. One category, of students who had at least grade 8 on average when finishing their secondary education, was admitted to the study without any barriers. Another category, of students who had grades 7-7.5 when finishing their secondary education, had to draw lots to be admitted. The applicant was put into this category, as her grades in Belgium could not be assessed individually, and this was the category which students with a foreign diploma were assigned to. She was not admitted to the study. She claimed that her Belgian secondary school results had to be seen as equal to at least an 8 on average (with immediate admission to the study of medicine) and that the minister's way of giving different weight to her results because they were of foreign origin amounted to hidden/ indirect discrimination on the basis of nationality. The court agreed and found that her results had to be assessed individually as they amounted to 88% of the total results that could be obtained in Belgium, and that if she was right, she had to be admitted as soon as possible.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>On 4 August 1998, the Council of State had already decided that in practice especially prospective students of a non-Dutch origin will have a foreign diploma, while Dutch students are more likely to hold a Dutch diploma. Dutch students will be placed into a category with better chances to be admitted to their study. This could lead to indirect discrimination on the basis of nationality. The Council of State decided that this is objectively justified, because individual assessments of foreign results are impossible in practice. The differences between educational systems in different states are too significant. In the present case, the court holds that there is a new system now, in which a new category has been added of 8 or more, and students who have obtained this grade are immediately admitted to the study. There need to be very good reasons to justify why students with a foreign diploma do not, in practice, get the chance to be put into this category, because their results are not assessed individually. The minister, again, argued that individual assessments were not possible, partly on the basis of the reasons given above. The court thinks a short term assessment may be difficult, but an external expert with experience in assessing foreign diplomas could do the job. The court holds that there may be some time involved, which may lead to admission at a later stage. This should be the case here, in order to avoid a conflict with EU law.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The average grade of a diploma obtained in another Member States should be assessed individually by an expert to decide to which category a prospective student belongs where the category one is placed into is relevant for being admitted to a study with limited number of available places. Article 18 TFEU requires that high school diplomas obtained abroad should be assessed individually in order to avoid indirect discrimination on the basis of nationality as to access to higher education.</p>
<p>Results (e.g. sanctions) and key consequences or implications</p>	<p>The applicant's results in Belgium had to be assessed individually in order to compare them properly to Dutch results.</p>

of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>2.6 . . . De rechter acht het -ook zonder dat hij over statistisch materiaal daarover beschikt- aannemelijk dat onder de aspirant-studenten met een diploma uit een andere lidstaat dan Nederland die zich aanmelden voor een universitaire studie waarvoor moet worden geloot, mensen met een andere nationaliteit in de meerderheid zijn. Daarmee is gegeven dat sprake is van indirect of verkapt discriminerende werking van dit stelsel jegens Unieburgers met een andere dan de Nederlandse nationaliteit. . . . 2.13. Om desondanks de volle werking van het recht van de Europese Unie te waarborgen dient de rechter het nationale (proces)recht in deze zaak aldus uit te leggen en toe te passen dat dit een effectieve remedie vormt tegen de strijdigheid met het Europees recht die zich hier voordoet. De rechter stelt in dat verband ten aanzien van het voorliggende geval voorop dat verzoekster ter zitting aan de hand van de eindcijferlijst van haar vooropleiding aannemelijk heeft gemaakt dat zij beoordelingen heeft verkregen die gemiddeld 88% van het maximaal te behalen resultaat belopen en dat zij in alle vakken duidelijk hoger dan het gemiddelde van haar klasgenoten heeft gescoord. Nu niet is te verwachten dat de toepassing van de hardheidsclausule voor verzoekster soelaas biedt, is de rechter van oordeel dat verweerder in dit speciale geval in het kader van de heroverweging in bezwaar, zo nodig met voorbijgaan aan de in artikel 7.57g van de WHW opgenomen bijzondere beslistermijn, op basis van advisering door een interne of externe deskundige (instantie) de vraag had moeten beantwoorden of buiten twijfel staat dat het gemiddelde eindcijfer van het door verzoekster in België behaalde diploma vergelijkbaar is met een gemiddeld eindexamencijfer van het Nederlandse vwo dat hoger is dan een 8. Het bestreden besluit dient dan ook wegens strijd met de uit artikel 18 van de VWEU in samenhang met de artikelen 165 en 166 VWEU voortvloeiende eisen te worden vernietigd.</i></p> <p>Translation:</p>

	<p>2.6. [...] The Court holds that – even without statistics being available – it is likely that among the prospective students with a diploma from another Member State than the Netherlands who apply for a study at university which involves the drawing of lots, people with another nationality are the majority. This means that this system indirectly, or in a hidden form, discriminates citizens of the Union with another nationality than the Dutch one. [...] 2.13. In order to safeguard (in spite of this) the full effect of the law of the European Union the Court should explain and apply national (procedural) law in such a way that it is an effective remedy against the present conflict with European law. The court holds in this context in the present case first and foremost that the applicant has shown that it is likely that she has received scores that amounted to an average of 88% of the score that was possible and that she scored clearly higher than the average of her peers on the basis of her list of results of her prior education. It is not expected that the hardship clause will help her, so that the court holds that the defendant should have answered the question that it is without doubt that the average final grade of the diploma obtained by the applicant in Belgium can be compared to an average final grade of the Dutch secondary education which is higher than 8. He should have done so in this specific case in the context of a new evaluation after an objection had been filed, if necessary without taking into account the special term within which a decision should be taken, laid down in Article 7.57g of the Act on higher education and scientific research, on the basis of the advice by an internal or external expert (body). The decision which has been taken by the minister and which was disputed should be annulled therefore due to a conflict with the requirements pursuant to Article 18 TFEU in conjunction with Articles 165 and 166 TFEU.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

4. 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	30 October 2009
Deciding body (in original language)	Centrale Raad van Beroep
Deciding body (in English)	Dutch Administrative High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:CRVB:2009:BK3113

Parties	<i>A Belgian student , appellant, v. the Board of Directors of the Information Management Group (Informatie Beheer Groep)</i> (appellant en de hoofddirectie van de Informatie Beheer Groep)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:CRVB:2009:BK3113&showbutton=true&keyword=ECLI%3aNL%3aCRVB%3a2009%3aBK3113
Legal basis in national law of the rights under dispute	<p>Article 3.27, paragraph 4 and Article 7.1 of the Act on study grants (<i>Wet studiefinanciering 2000</i>), about the rights of the Information Management Group to reverse a decision to give someone a study grant and the right to travel for free by public transport during weekdays when studying, due to the fact that a student was not entitled to this grant and the public transport facility.</p> <p>The Netherlands, Student Grants Act 2000 (<i>Wet studiefinanciering 2000</i>), 29 June 2000.</p>
Key facts of the case (max. 500 chars)	<p>A Belgian student received a study grant for the study of dentistry on the basis of the fact that he had worked for a specific number of hours in the Netherlands. He, therefore, was regarded as a migrant worker and was entitled to this grant in addition to the right to travel for free by public transport during weekdays in the context of his study. The Information Management Group checked his situation and then found out that he had not worked, so his grant, amounting to € 5,388.56 and the value of travelling for free, amounting to € 1,564, had to be paid back. When the student claimed that he was, however, also entitled to the grant and the travelling on the basis of the fact that he had been integrated in the Netherlands, the Information Management Group said that he should have lived in the Netherlands for at least five years, which had not been the case here. The Court stated that Article 12 EC did not prohibit this requirement in the context of giving support to students to pay for their livelihood. However, on the basis</p>

	<p>of Community law, the Belgian student was entitled to the part of the full study grant that was meant to cover the costs which have to do with access to Dutch education on the same footing as students with Dutch nationality. This did not entail that he was also entitled to travelling for free. He was, therefore, entitled to a grant amounting to the costs in regards to study mentioned above. In the meantime, the Information Management Group had already decided in his favour in this respect.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Community law does not imply that the Management Information Group cannot require that students are migrant workers in order to give them a study grant and free travelling during the weekdays by public transport, or require that they have lived in the Netherlands for at least five years, so that they are entitled to these benefits on the basis of their integration. EU law does imply however, that students from other EU Member States are entitled to a study grant which covers the costs which have to do with access to Dutch education on the same footing as Dutch students.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Students from EU Member States are entitled to a study grant which has to do with access to Dutch education on the same footing as Dutch students, but they are not entitled to travel freely during weekdays by public transport. Migrant workers who study in the Netherlands and students from other EU Member States who are integrated in the Netherlands, i.e. they have lived here for at least five years, are entitled to a study grant and free travel during weekdays by public transport.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Students from EU Member States are entitled to a study grant related to access to Dutch education on the same footing as Dutch students, but they are not entitled to travel freely during weekdays by public transport.</p>

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>7.4. Dat de IB-Groep bevoegd was om te herzien, laat onverlet dat zij niet bevoegd was om de eerdere toekenning aan appellant geheel ongedaan te maken en dat het besluit op bezwaar van 30 november 2006 in zoverre onrechtmatig is. Immers, ingevolge het Gemeenschapsrecht heeft appellant onder gelijke voorwaarden als studerenden met de Nederlandse nationaliteit recht op het gedeelte van de volledige studiefinanciering dat is bedoeld ter dekking van de kosten van verbonden aan de toegang tot het onderwijs (de zogenoemde Raulin-vergoeding). . . . Wel wijst de Raad er . . . op dat dit recht niet tevens inhoudt dat appellant aanspraak had op de OV-studentenkaart.</i></p> <p>Translation:</p> <p>7.4. That the Information Management Group had the power to revise its original decision, does not mean that it was entitled to completely annul the prior allowance to the appellant, and to this extent the decision it took on 30 November 2006 after the objections made by the appellant is unlawful. It is clear that Community law lays down that the appellant is entitled to the part of the full study grant which is meant to cover the costs which are related to the access to the education (the so-called Raulin compensation) on an equal footing with students with the Dutch nationality [...] The Court does point out, however, [...] that this right does not also imply an entitlement to travelling for free during weekdays by public transport.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

5. 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 checked="" type="checkbox"/> 5) the right to petition
Decision date	19 July 2013
Deciding body (in original language)	Rechtbank Den Haag
Deciding body (in English)	District Court The Hague
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBDHA:2013:10252

Parties	<i>Plaintiff and the Minister of Education, Culture and Science, defendant</i> (eiser en de minister van Onderwijs, Cultuur en Wetenschappen, verweerder)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2013:10252
Legal basis in national law of the rights under dispute	<p>Policy rule with regards to the policies checking employment in the context of migration (<i>Beleidsregel controlebeleid migrerend werknemerschap</i>).</p> <p>The Netherlands, Policy rule with regards to the policies checking employment in the context of migration (<i>Beleidsregel controlebeleid migrerend werknemerschap</i>), 13 December 2012.</p>
Key facts of the case (max. 500 chars)	<p>The plaintiff had a Bulgarian nationality. He wanted to study in the Netherlands, but in order to be eligible for a full study grant, he needed to work 32 hours a month. He said that he needed a permit to work in the Netherlands as he was Bulgarian (and as he was treated differently from other EU nationals, in this respect, there was no free movement of workers). It was, therefore, more difficult for him to find work than it was for other EU nationals. He was discriminated on the basis of his Bulgarian nationality and a hardship clause should have applied, to help him in his particular situation (not being able to find a job and therefore not being able to study). A hardship clause is used to deviate from the rules in exceptional cases. The court said his situation was normal, so not an exceptional case, for all Bulgarians and the EU Member States had agreed on the fact that they needed a work permit in other Member States (so it was justified that there was no free movement of workers) when Bulgaria entered the European Union. The plaintiff should have known this and there was nothing exceptional about his case, so a hardship clause did not apply.</p>
Main reasoning / argumentation	<p>Bulgarian nationals are justifiably treated differently from other EU citizens when they want to work in other EU Member States, as it was agreed when Bulgaria became an EU Member State that there would be no free movement of workers until 1 January 2014. This case took place before that (judgement is pronounced in 2013). According to the court, the plaintiff could have known this when he wanted to study in the Netherlands and had to meet the</p>

(max. 500 chars)	requirement of working for 32 hours a month in order to be eligible for a full study grant. Working for 32 hours a month in this context applies to all EU citizens.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Bulgarian citizens are treated differently from other EU citizens in the Netherlands (there is no free movement of workers) as there is a rule of transition, agreed upon when Bulgaria became an EU Member State.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The plaintiff cannot easily study in the Netherlands with a full grant, because it is difficult for him to work 32 hours a month (he needs a work permit).
Key quotations in original language and translated into English with reference	<i>5. Tussen partijen is niet in geschil dat voorwaarde voor de toekenning van volledige studiefinanciering is het verrichten van arbeid op grond van een arbeidsovereenkomst voor 32 uren per maand. Evenmin is in geschil dat eiser hier te lande geen arbeid in loondienst kan verrichten als zijn werkgever ten behoeve van hem niet over een tewerkstellingsvergunning beschikt, omdat voor Bulgaarse onderdanen nog geen vrij verkeer van werknemers bestaat. Dit vloeit voort uit de afspraken die tussen de EU-lidstaten en Bulgarije zijn gemaakt bij de toetreding van Bulgarije tot de EU. Het is dus voor eiser (slechts) mogelijk om volledige studiefinanciering te verkrijgen indien hij arbeid verricht voor een werkgever die ten behoeve van hem over een tewerkstellingsvergunning beschikt. De omstandigheid</i>

details (max. 500 chars)

dat het voor eiser moeilijk is om hier te lande te voldoen aan het vereiste om 32 uren per maand arbeid in loondienst te verrichten om in aanmerking te komen voor volledige studiefinanciering, is een omstandigheid die is verdisconteerd in deze toetredingsafspraken en de daaruit voortvloeiende regelgeving. Naar het oordeel van de rechtbank is dan ook geen sprake van conflicterende wet- en regelgeving. Evenmin is naar het oordeel van de rechtbank sprake van discriminatie van Bulgaarse onderdanen. Alle EU-onderdanen dienen immers minimaal 32 uren per maand te werken om in aanmerking te komen voor volledige studiefinanciering. Dat dit voor Bulgaren moeilijker te realiseren is, doet hier niet aan af. Eisers beroep op het arrest Bidar slaagt ook niet. In die zaak stelde het Hof van Justitie vast dat de Britse regelgeving het volledig onmogelijk maakte dat een student uit een andere Lidstaat aan de voorwaarden kon voldoen voor financiële steun ter dekking van de kosten van levensonderhoud. Daarvan is in dit geval geen sprake, ook al zal het voor eiser, zoals reeds opgemerkt, moeilijk zijn om aan de voorwaarden te voldoen.

Translation:

5. The parties do not dispute about the fact that it is a requirement for receiving the full study grant to work on the basis of a contract of employment for 32 hours a month. It is not disputed either that the plaintiff cannot work here for an employer if his employer does not have a work permit in the former's name, because there is no free movement of workers for Bulgarian citizens yet. This follows from the agreements which were made by the EU Member States and Bulgaria when Bulgaria entered the EU. Therefore, it is (only) possible for the plaintiff to get a full study grant if he works for an employer who has a work permit for the former's benefit. The fact that it is difficult for the plaintiff to meet the requirement to work for an employer for 32 hours a week in this country is something that has been taken into account in the agreements made at the time of the entry to the EU by Bulgaria and the rules and regulations which followed. Therefore, the District Court feels that there is no conflict there. Nor are Bulgarian citizens discriminated. All EU citizens have to work 32 hours a month in order to be eligible for a full study grant. The fact that this is more difficult for Bulgarians does not change this. The plaintiff's reliance on the case *Bidar* fails, too. In the case, the European Court of Justice held that the British rules and regulations made it completely impossible for a student from another Member State to meet the requirements of financial support to cover the cost of subsistence. This is not the case here, even though it will be difficult for the plaintiff, as stated before, to meet the requirements.

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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6. 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 July 2016
Deciding body (in original language)	College voor de Rechten van de Mens

Deciding body (in English)	Netherlands Institute for Human Rights
Case number (also European Case Law Identifier (ECLI) where applicable)	Opinion 2016-78
Parties	<i>Polish petitioner v. Bo-rent BV, company renting cars (Verzoeker v Bo-rent B.V.)</i>
Web link to the decision (if available)	https://www.mensenrechten.nl/publicaties/oordelen/2016-78/detail
Legal basis in national law of the rights under dispute	Article 7, first paragraph, beginning and part (a) of the General act on equal treatment (AWGB) and Article 1 of this act, which prohibit discrimination on the basis of nationality when offering or giving access to goods or services and concluding, executing or terminating agreements in this field as a professional or as a company.
Key facts of the case (max. 500 chars)	The petitioner had a Polish driving license and could not rent a car from Bo-rent B.V. Bo-Rent B.V. sent him an e-mail and stated that it needed a Dutch driving license, or a driving license from nineteen other countries. Poland was not included. Moreover, persons renting a car should prove that they reside in the Netherlands. The Netherlands Institute for Human Rights held that this was indirect discrimination on the basis of nationality, because people from other countries than the nineteen mentioned by Bo-rent B.V. would usually have another nationality than the Dutch one or one of the other countries mentioned. Moreover, the website of the company stated that a Dutch driving license was necessary and an EU passport or ID-card (so it went even further than stated in the e-mail). According to the company, it was only possible to check the validity of Dutch driving licenses, which was confirmed by the company

	<p>24ID-check. Just checking addresses, for example by a copy of a bank account, was not possible, because these could easily be falsified. The Netherlands Institute for Human Rights held that it was not necessary, though, to require a Dutch driving license. Other companies had no problems with a Polish driving license and it was possible to have the petitioner pay one cent by electronic money transfer to show the validity of the bank account which had been shown by him.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Requiring a Dutch driving license when renting a car is indirect discrimination on the basis of nationality. This is not necessary, as it is possible to check the bank account and therefore address of nationals with another driving license in such a way, that a car can be rented without further risk.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>It is indirect discrimination on the basis of nationality when a company does not want to rent a car to someone with a Polish nationality.</p> <p>It is not necessary to require this, as the driving license can be verified and information about the address of the person who wants to rent a car can be verified, too, by means of an electronic money transfer.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Bo-rent should rent cars to citizens who have a driving license other than the Dutch one, such as a Polish one. This opinion is not binding, but the Netherlands Institute for Human Rights has great authority, so 75 % of all the opinions are followed by the parties. In this case, too, the car rental company changed its policies in accordance with the opinion. EU citizens were no longer discriminated. If the opinion is not followed, the complainant may decide to take the case to a regular court. If the regular court wants to deviate from the opinion, it has to give reasons to do so. Cases are, however, rarely taken to a regular court. This case is a leading case, but as the case already shows, other car rental companies do not usually discriminate.</p>

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>4.11 Ten aanzien van het bovenstaande is het College, . . . nog altijd niet overtuigd van de noodzaak om voor de verhuur van een auto een Nederlands rijbewijs te eisen. Verzoeker heeft er in dit verband op gewezen dat hij bij andere verhuurbedrijven in Amsterdam, waaronder Avis, met een Pools rijbewijs wel een auto kan huren. In reactie op de stelling van verweester dat alleen de geldigheid van Nederlandse rijbewijzen kan worden vastgesteld heeft verzoeker informatie overgelegd, afkomstig van de website van 24ID-check, waaruit blijkt dat het mogelijk is om de echtheid van rijbewijzen, paspoorten en ID-bewijzen uit de hele wereld op echtheid te controleren. Ten aanzien van het afwijzen van een adreslegitimatie middels bijvoorbeeld een bankafschrift als alternatief middel is het bij het College bekend dat de mogelijkheid bestaat om de huurder een pintransactie van één cent te laten uitvoeren om op die wijze de echtheid van de getoonde bankrekening te verifiëren.</i></p> <p>Translation:</p> <p>4.11. As to the above, the Netherlands Institute for Human Rights is still not convinced of the necessity to require a Dutch driving license for renting a car. The petitioner, in this context, pointed out that other rental companies in Amsterdam, such as Avis, do make it possible to rent a car with a Polish driving license. Reacting to the statement of Bo-rent B.V. that only the validity of Dutch driving licenses can be verified, the petitioner submitted information, derived from the website of 24ID-check, which shows that it is possible to verify driving licenses, passports and ID-cards from the whole world. As to the rejection of showing one's ID by means of an address, for example using a bank account as an alternative means, the Netherlands Institute for Human Rights knows that it is possible to ask an applicant who wants to rent a car to pay one cent by electronic money transfer to verify the bank account which has been shown.</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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7. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence Article 27 of Directive 2004/38/EC. - 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	1 February 2016
Deciding body (in original language)	Rechtbank Den Haag
Deciding body (in English)	District Court The Hague
Case number (also European)	ECLI:NL:RBDHA:2016:838

Case Law Identifier (ECLI) where applicable)	
Parties	<i>Public Prosecutor v. accused</i> (officier van justitie tegen verdachte)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/#zoekverfijn/zt[0][zt]=ECLI%3ANL%3ARBDHA%3A2016%3A838&zt[0][fi]=AlleVelden&zt[0][ft]=Alle+velden&so=Relevance&ps[]=ps1
Legal basis in national law of the rights under dispute	<p>Article 197, Penal Code (<i>Wetboek van Strafrecht 1881</i>), Article 52 and 27 of the Code on Criminal Procedure (<i>Wetboek van Strafvordering 1921</i>), Article 67, first paragraph, beginning and under b, of the Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>).</p> <p>The Netherlands, Penal Code (<i>Wetboek van Strafrecht</i>), Article 4a, as changed by the following act: The Netherlands, Act implementing Directive 2008/115/EU (<i>Wet ter implementatie van de richtlijn nr. 2008/115/EG</i>), 15 December 2011.</p> <p>The Netherlands, Code of criminal procedure (<i>Wetboek van strafvordering</i>), Article 27, as amended by the following act: The Netherlands, Act implementing Directive 2010/64/EU (<i>Wet tot implementatie van richtlijn nr. 2010/64/EU</i>), 28 February 2013.</p> <p>The Netherlands, Code of Criminal Procedure (<i>Wetboek van strafvordering</i>), Article 52 as amended by: The Netherlands, Act on determining identity of suspects, convicts and witnesses (<i>Wet identiteitsvaststelling verdachten, veroordeelden en getuigen</i>), 18 July 2009.</p>

	The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000.
Key facts of the case (max. 500 chars)	<p>The police stopped the accused, a person with the Polish nationality, when he was walking in a street in the Hague, a drugs scene, at 5.40 in the morning, on 4 October 2015 with a drugs user. The question is whether the police was allowed to stop him because there has to be a reasonable suspicion in the context of an offence or a crime for someone to be stopped. In this case, the Polish national was accused of being in the Netherlands, knowing that he had been extradited. The District Court held that it was sufficient that the accused had been accompanied by the drugs user in the circumstances mentioned. It could be assumed that he had done something illegal (drugs) even though this had nothing to do with the fact that he had entered the Netherlands after having been extradited. On 28 August 2013, so two years earlier, the accused had been told that he would be removed from the Netherlands and he was issued an entry ban (his freedom of movement was restricted) to the Netherlands. The District Court held that the entry ban was allowed under Article 27 of Directive 2004/38/EC for reasons of public order or public security. This only has effect, however, if the behaviour of the accused represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The District Court considered that the accused had been sentenced to prison for four years on 7 December 2012 on the basis of a very serious crime, in which the victim had died. On 17 December 2014, he was actively removed from the Netherlands. The District Court held that the circumstances of the case did not show that the accused had improved his life, and the requirements laid down by Article 27 of Directive 2004/38/EC were met. The accused knew that he had breached Article 197 of the Penal Code (not allowing a <i>persona non grata</i> to enter the Netherlands) and was sentenced to two months of imprisonment.</p>
Main reasoning / argumentation (max. 500 chars)	The District Court holds that the accused is still a threat to a fundamental interest in society, and that he, already being a <i>persona non grata</i> , breached Article 197 of the Penal Code (not allowing a <i>persona non grata</i> to enter the Netherlands).

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This case makes clear that Article 27 of Directive 2004/38/EC, laying down the requirements for being issued an entry ban (the behaviour of the accused represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society) still apply in a case where a Polish national is accompanied by a drugs dealer at a drugs scene in the Netherlands, having come back after he had been removed from the country. It is not clear whether he was a drugs user or a dealer himself.</p> <p>The issue in this case seems to be the interpretation given to the notion of public policy/public order and in particular what elements are relevant in reaching the conclusion that the person's behaviour still represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society so that his exclusion from the Netherlands should not be lifted. There is a link between Article 32 of Directive 2004/38 and Article 27 in the sense that an exclusion order can be issued only on grounds of public policy or public security and can be lifted only when the circumstances that gave rise to it have changed.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Polish national is sentenced to two months' imprisonment because he knew that he was extradited from the Netherlands and still came back. So, his entry was illegal. The order to exclude him from the Netherlands is not lifted because he still constitutes a threat to public policy.</p>
<p>Key quotations in original language and translated into</p>	<p><i>3.4. . . . De rechtbank constateert dat verdachte op 7 december 2012 wegens een zeer ernstig delict, waarbij het slachtoffer is overleden, is veroordeeld tot een gevangenisstraf voor de duur van vier jaren. Gelet op de ernst en de aard van deze veroordeling en op het feit dat verdachte niet lang vóór 4 oktober 2015, te weten op 17 december 2014, actief uit Nederland is verwijderd, is de rechtbank van oordeel dat de bedreiging voor een fundamenteel belang</i></p>

<p>English with reference details (max. 500 chars)</p>	<p><i>van de samenleving nog steeds actueel, werkelijk en voldoende ernstig is. Voorts heeft de rechtbank daarbij de omstandigheid in aanmerking genomen dat verdachte op 4 oktober 2015 diep in de nacht in het bijzijn van een drugsgebruiker, in een omgeving waar regelmatig overlast is van drugsgebruikers en drugshandelaren, werd aangehouden. Daaruit blijkt in ieder geval niet dat verdachte zijn leven heeft verbeterd.</i></p> <p><i>De rechtbank ziet derhalve geen aanknopingspunten om te veronderstellen dat de ongewenstverklaring zijn rechtskracht heeft verloren.</i></p> <p>Translation:</p> <p>3.4. [...] The District Court notes that the accused was sentenced to four years of imprisonment on 7 December 2012, on the basis of a very serious crime, resulting in the death of the victim. In view of the seriousness and the nature of this sentence and the fact that the accused not long before 4 October 2015, i.e. on 17 December 2014, was actively removed from the Netherlands, the District Court holds that the threat affecting one of the fundamental interests of society is still genuine, present and sufficiently serious. Moreover, the District Court has taken into account that the accused was stopped by the police late in the night of 4 October 2015 accompanied by a drugs user, in an environment where drugs users and drugs dealers regularly act in conflict with public order. This shows in any case that the accused has not improved his life. The District Court, therefore, does not see any reasons to assume that the effect of declaring the Polish national a <i>persona non grata</i> no longer exists.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

8. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 16, first paragraph, and Article 19, first paragraph of Directive 2004/38/EC 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	28 May 2016
Deciding body (in original language)	Rechtbank Den Haag
Deciding body (in English)	District Court The Hague
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBDHA:2016:4544

Parties	<i>Plaintiff v. the Secretary of the Ministry of Security and Justice</i> (eiseres en de staatssecretaris van Veiligheid en Justitie, verweerder)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/#zoekverfijn/z[0][zt]=ECLI%3ANL%3ARBDHA%3A2016%3A4544&z[0][fi]=AlleVelden&z[0][ft]=Alle+velden&so=Relevance&ps[]=ps1
Legal basis in national law of the rights under dispute	Articles 8.17 (first paragraph) and 8.19 of the Aliens Decision 2000 (<i>Vreemdelingenbesluit 2000</i>). The Netherlands, Aliens Decision 2000 (<i>Vreemdelingsbesluit 2000</i>), 23 November 2000.
Key facts of the case (max. 500 chars)	The plaintiff, a Bulgarian national, started to live in the Netherlands on 4 March 2009. On 11 March 2015, the plaintiff applied for a document showing that she was entitled to a permanent residence permit, as she was a Union citizen as referred to in Article 16, first paragraph of Directive 2004/38/EC. The Dutch authorities (IND, the Immigration and Naturalisation Service) rejected the application on 22 May 2015 because she had not proven that she had enough means of subsistence and had stayed lawfully in the Netherlands. The plaintiff objected, but the defendant claimed that the objection lacked good grounds. She did not stay legally in the Netherlands, as she did not have sufficient means to live on, according to the authorities. It was not clear what resources she lived on to sustain herself. The IND did not use this criterion (the requirement of having enough means of subsistence) until April 2015. Until then, just staying in the Netherlands for a continuous period of five years was enough, but the defendant alleged that this had been a wrong application of the law and that this had to be amended according to the directive. The District Court held that a more favourable application of the directive, not requiring enough means of subsistence, was possible on the basis of Article 37 of the directive, so that the previous procedure did not have to be amended in retrospect. The District Court concluded that the plaintiff had already stayed for five years in the Netherlands before April 2015, when only actual residence counted, and she was therefore entitled to a document giving her the right of permanent residence on the basis of Article 19, first paragraph, of the directive.

Main reasoning / argumentation (max. 500 chars)	The court acknowledges that in order to acquire a right of permanent residence the conditions laid down by Article 16 have to be met, but that national authorities may exercise their right to use more favourable administrative provisions when checking whether the conditions laid down by the directive are met. EU citizens who have exercised their right to free movement should be able to benefit from this more favourable administrative policy if they fall within its temporal scope.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	This case makes clear that it is not necessary to require that someone has residence, in the Netherlands, with sufficient means to live on in a country in order to obtain a right to a permanent residence permit. National authorities may rely on Article 37 of the directive and use more favourable national administrative provisions when assessing if EU citizens meet the conditions for the exercise of the rights laid down by the directive (here, the right of permanent residence).
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	An EU citizen who resided in the Netherlands for five years continuously before April 2015, is entitled to a document attesting her right of permanent residence, without having to prove that residence met the conditions of sufficient resources.
Key quotations in original language and translated into	<i>12. De rechtbank volgt verweerder in zijn standpunt dat uit artikel 16, eerste lid, van de verblijfsrichtlijn volgt dat sprake moet zijn geweest van 35eft35 verblijf gedurende vijf 35eft35 op het grondgebied van het gastland. Artikel 37 van de verblijfsrichtlijn laat evenwel toe 35eft35en lidstaat "wettelijke en bestuursrechtelijke bepalingen" toepast die gunstiger zijn voor personen waarop deze richtlijn van toepassing is. Uit de dossierstukken blijkt onmiskenbaar dat</i>

English with reference details (max. 500 chars)

verweerder vóór april 2015 bij aanvragen als die van eiseres slechts beoordeelde of daadwerkelijk sprake was van verblijf in Nederland gedurende een aaneengesloten periode van vijf jaar. Eerst daarna is verweerder ook gaan controleren of gedurende die periode aan het middelenvereiste werd voldaan. Ter zitting 36eft verweerder 36eft36en bevestigd. Verweerder 36eft daarbij desgevraagd toegelicht dat dit geen nieuw beleid is, of een nieuwe vaste gedragslijn, maar dat deze toetsing altijd al op grond van de verblijfsrichtlijn had moeten plaatsvinden. De rechtbank kan dit standpunt niet volgen. Gelet op artikel 37 van de verblijfsrichtlijn laat deze richtlijn toe dat sprake is van een, ten opzichte van de bepalingen van de verblijfsrichtlijn, gunstiger uitvoeringspraktijk. Dit betekent dat uit de verblijfsrichtlijn geen dwingende verplichting voortvloeit om te controleren of in de vijf relevante 36eft36 sprake was van 36eft36 verblijf. Of deze uitvoeringspraktijk moet worden gekwalificeerd als nieuw beleid, dan wel 36eft36en gewijzigde vaste gedragslijn, kan in het midden blijven. Kennelijk 36eft verweerder gedurende de periode vóór april 2015 stelselmatig slechts gecontroleerd of sprake was van feitelijk verblijf gedurende ten minste vijf jaar. Voorts wordt overwogen dat de termijn die geldt voor de beoordeling van het duurzaam verblijfsrecht van eiseres was afgelopen op 4 maart 2014, dus vóór de datum van het wijzigen van de uitvoeringspraktijk van verweerder. De rechtbank acht het in strijd met het unierechtelijke rechtszekerheidsbeginsel dat verweerder het voor eiseres ongunstiger uitvoeringsregime, dat pas in april 2015 van toepassing werd, ook op eiseres 36eft toegepast.

Translation:

12. The District Court agrees with the defendant that Article 16, first paragraph of Directive 2004/38/EC implies that someone must have resided legally during five years in the territory of the host state. However, Article 37 of the directive allows that a Member State applies "any laws, regulations or administrative provisions" which would be more favourable to the persons covered by this directive. The files clearly show that the defendant only judged whether there was actual residence for a continuous period of five years in the Netherlands in the case of applications such as the one filed by the plaintiff before April 2015. Only from that moment onwards did the defendant check whether the requirement of means of subsistence was met. The defendant acknowledged this during the hearing. He then, upon request, explained that this was not a new policy, or a new procedure, but that this should have happened all the time on the basis of the directive. The District Court does not agree with this. In view of Article 37 of the directive, this

	<p>directive allows a more favourable treatment in comparison with the stipulations of the directive. This means that the directive does not imply a mandatory obligation to check whether there was legal residence in the five years concerned. Whether this practice should be qualified as a new policy, or as an amended procedure, does not have to be dealt with. Obviously, the defendant only checked actual residence for a period of at least five years on a regular basis before April 2015. Moreover, it is considered by the court that the term which applies to the assessment of the right to permanent residence of the plaintiff had already ended on 4 March 2014, therefore before the date that the defendant changed his practice. The District Court holds that it is in conflict with the principle of legal certainty that applies within the Union that the defendant also applied the new method of application of the law, which is less favourable for the defendant, and which only applied as of April 2015, to the plaintiff.</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. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence</p> <p style="padding-left: 40px;">- Articles 2, 6 and 16 of Directive 2004/38/EC 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	21 March 2007
Deciding body (in original language)	Raad van State
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RVS:2007:BA1807
Parties	<i>Appellant v. the Minister for Matters concerning Aliens and Integration</i> (appellante en de Minister voor Vreemdingenzaken en Integratie)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/#zoekverfijn/zit[0][zt]=ECLI%3ANL%3ARVS%3A2007%3ABA1807&zit[0][fi]=AlleVelden&zit[0][ft]=Alle+velden&so=Relevance&ps[]=ps1

<p>Legal basis in national law of the rights under dispute</p>	<p>Articles 14 and 17, first paragraph, beginning and under (b), of the Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>). The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000.</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The appellant, a woman, was married to a Dutchman on 7 January 2003. She was (apparently) a national of a third country (TCN) and stayed in the Netherlands without having a permit. It was not clear from the judgment since when she had resided in the Netherlands and since when they had or had not been together. Her husband resided between 1993 and 1996 in France, and from August/September 1996 until March/April 1997, he resided in Germany because he studied theology. In the summer of 1997, he resided in France for two months in order to work for a church. In August 2004, the husband was in France to work for the same church and the appellant accompanied him. The spouses of Union citizens who have made use of the freedom of movement of workers are entitled to a residence permit for a definite period without having a prior permit for temporary residence when coming back to the Netherlands. The appellant claimed that her Dutch husband should be regarded as a Union citizen working in another Member State, entitling her to a Dutch residence permit for a definite period of time as she derived, as a family member, this right from his status. The Minister for Matters concerning Aliens and Integration rejected her application. The District Court held that it had not been proven that her husband performed real and genuine work in France during the two months of the summer of 1997 and the month of August in 2004, so he could not be seen as a worker in the sense of Community law. The court, therefore, held that the appellant's application for a residence permit for a definite period of time, without having a prior permit for temporary residence, had been rightfully rejected. The Council of State held that the District Court was right. The appellant's husband's residence abroad in the 1990s was long before the appellant and her husband were married. In 2004, the appellant resided one month with her husband in France. According to the Council of State, she did not prove that he actually and genuinely worked there. The Council of State, therefore, assumed that he had only stayed there for a short time, and not as a worker. The appellant, therefore, could not derive the right to a residence permit for a definite period of time without having a</p>

	<p>prior permit for temporary residence on the basis of this stay, as her husband did not need to be regarded as a Union citizen working in another Member State in the sense of the directive.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Council of State rejected the application for a residence permit on the following grounds. The TCN spouse of an EU citizen enjoys a derived right of residence based on the EU citizen's exercise of free movement rights. In this case, the EU citizen claimed that he should be seen as having exercised free movement rights as an EU worker in France and Germany on three separate occasions, two of which occurred before the spouses were married or in a relationship. The court argues that no rights can be derived from the first two periods of exercise of free movement rights due to the long period of time elapsed between the exercise of free movement rights as a worker and the marriage. The third exercise of free movement rights by the husband took place after the marriage but it was of a short duration (one month) leading the court to argue that there was no real and actual work performed as required by the definition of the notion of EU worker. A short stay of one month in another Member State does not give rise upon return to the Netherlands to a right of residence on the basis of Directive 2004/38 to the TCN family member of an EU citizen.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The case clarifies the conditions under which a TCN family member of an EU citizen who has exercised his free movement rights in another Member State can claim a right of residence upon return to the state of nationality of the EU citizen. For the TCN spouse to claim such a derived right of residence, the EU citizen must have exercised free movement rights as an EU worker in the host state.</p> <p>This makes clear that one actually has to work in another Member State in order to be regarded as a Union citizen making use of the freedom of movement of workers. If one is such a Union citizen, one's spouse may be entitled to a residence permit for a definite period of time without having a prior permit for temporary residence in the state that the husband, in this case, is a national of.</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>The appellant, a third-country national, is not entitled to a residence permit for a definite period of time without having a prior permit for temporary residence in the Netherlands.</p>

<p>or implications of the case (max. 500 chars)</p>	
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>2.3.1.2. Appellante heeft niet samen met de man met wie zij in 2003 is gehuwd, tussen 1993 en 1996 in Frankrijk, van augustus/september 1996 tot maart/april 1997 in Duitsland en gedurende twee maanden in de zomer van 1997 in Frankrijk verbleven. Ten tijde van dit verblijf van hem op het grondgebied van deze lidstaten, was appellante Nederland nog niet binnengekomen. Niet is gesteld dat tussen hen destijds reeds een relatie bestond. Voorts is van belang dat tussen de hier bedoelde laatste uitoefening van het gemeenschapsrecht door de echtgenoot en de datum van het huwelijk met appellante geruime tijd verstreken is. Derhalve is er geen grond voor het oordeel dat appellante op grond van dat verblijf van de echtgenoot aanspraken aan het gemeenschapsrecht kon ontlenen.</i></p> <p><i>2.3.1.3. In 2004 verbleef appellante één maand met haar echtgenoot in Frankrijk. Appellante heeft niet aangetoond dat haar echtgenoot gedurende die maand reële en daadwerkelijke arbeid heeft verricht en derhalve in de hoedanigheid van werknemer gebruik heeft gemaakt van het recht op het vrije verkeer van werknemers. Daarom moet het ervoor worden gehouden dat hij gebruik heeft gemaakt van het kortdurend verblijfsrecht, als bedoeld in artikel 6 van richtlijn 2004/38/EG. Overwogen wordt voorts dat niet is gebleken dat appellante heeft beoogd in Frankrijk een zeker verblijf te bewerkstelligen. Daartoe wordt in aanmerking genomen dat, en dit is tussen partijen ook niet in geschil, appellante bij aankomst in Frankrijk wel een verblijfsvergunning bij de Franse autoriteiten heeft aangevraagd, maar deze aanvraag niet tot een beslissing heeft geleid, omdat zij niet op uitnodigingen van de autoriteiten heeft gereageerd. Onder die omstandigheden is het buiten . . . twijfel dat geen grond bestaat voor het oordeel dat appellante door dit kortdurend verblijf met haar echtgenoot in Frankrijk na terugkeer in Nederland aan artikel 6 van richtlijn 2004/38/EG aanspraak kon ontlenen op rechtmatig verblijf voor lange duur of op vrijstelling van de op grond van artikel 17, eerste lid, aanhef en onder b, van de Vw 2000 voor langdurig verblijf vereiste mvv.</i></p>

	<p>Translation:</p> <p>2.3.1.2. The appellant did not reside between 1993 and 1996 in France, from August/September until March/April 1997 in Germany and during two months in the summer of 1997 in France with the man whom she married in 2003. Appellant had not entered the Netherlands yet during his stay in the territory of these Member States. It has not been alleged that they already had a relationship at the time. Moreover, it is important that a considerable time elapsed between the latest exercise of Community law by the spouse that is referred to here and the date of the wedding with the appellant. Therefore, there is no reason to judge that the appellant could derive rights based on Community law in the context of this residence.</p> <p>2.3.1.3. The appellant spent one month with her spouse in France in 2004. The appellant did not prove that her husband performed real and actual work during that month and therefore used the right of the free movement of workers, him being a worker. It should, therefore, be assumed that he used the right to briefly stay in another Member State, as referred to in Article 6 of Directive 2004/38/EC. Furthermore, the Council of State considers that nothing has shown that the appellant tried to reside in France. It is taken into account, and the parties do not differ in opinion about this, that the appellant did ask for a residence permit from the French authorities when she entered France, but this request did not lead to a decision, because she did not react to invitations by the authorities. In these circumstances [...] it is without doubt that there is no reason for the judgment that the appellant, on the basis of this brief stay with her husband in France was, derived from Article 6 of Directive 2004/38/EC, entitled to a lawful stay for a long period of time or to an exemption on the basis of Article 17, first paragraph, beginning and under b, of the Aliens Act 2000 of the permit for temporary residence which is required for a longer stay, after returning to the Netherlands.</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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10. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence Article 35 of Directive 2004/38/EC, paragraph 4.2 of the announcement of the Commission to the European Parliament and the Council of 2 July 2009 concerning guidelines for a better implementation and application of Directive (COM(2000) 313 definite) - 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	20 July 2016
Deciding body (in original language)	Raad van State
Deciding body (in English)	Council of State

Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RVS:2016:2006
Parties	<i>Appellant, the Secretary of State of Security and Justice v. the alien</i> (de staatssecretaris van Veiligheid en Justitie, appellant v de vreemdeling)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2016:2006&showbutton=true&keyword=ECLI%3aNL%3aRVS%3a2016%3a2006
Legal basis in national law of the rights under dispute	<p>Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>) and Aliens Decision 2000, Articles 8.17 and 8.19 (<i>Vreemdelingenbesluit 2000, 8.17 and 8.19</i>).</p> <p>The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000.</p> <p>The Netherlands, Aliens Decision 2000 (<i>Vreemdelingsbesluit 2000</i>), 23 November 2000.</p>
Key facts of the case (max. 500 chars)	<p>The alien was a national from Ghana. His (female) partner had the British nationality and her descent was from Ghana. The alien alleged that he lawfully resided (apparently in the Netherlands) as a partner of a Union citizen on the basis of his relationship with his partner. The Secretary of State investigated the relationship and decided that it was fake. The question is whether there were "good indications" to justify this investigation, as this is what Community law requires. The District Court held there were no concrete (and therefore "good") indications and stated that this was what Community law required. The Secretary of State alleged, however, that the Community guidelines did not</p>

	<p>require concrete indications and stated that vaguer indications could be seen as “good” as well. In this case, it was decided that the indications were slightly vague, but good enough to justify an investigation. The Council of State held that the Secretary of State had a margin of appreciation. Now that he had considered that the alien had tried to get a residence permit unsuccessfully first and that there was an age difference of twelve years with his partner, and that the alien would be extradited, the Secretary of State was allowed to investigate the case. When both parties were heard separately, they differed in what they said about their relationship to such an extent, that the Secretary of State could rightfully conclude that the relationship was fake.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The court holds that investigations may not be systematical or arbitrary according to Community law. However, the Secretary of State based his investigation on certain aspects of the individual case having considered that the alien had tried to get a residence permit unsuccessfully first and that there was an age difference of twelve years with his partner, and that the alien would be extradited. The Secretary of State was, therefore, allowed to investigate the case.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This case makes clear that the Secretary of State, in order to find out whether it is fake, has to base an investigation into a relationship on aspects of the individual case.</p> <p>The case clarifies the notion of ‘systematic check’ for the purposes of Article 35 of Directive 2004/38. As long as the decision to investigate is based on the individual circumstances of the case, there is not systematic check.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The Secretary of State was entitled to investigate the relationship between a national of Ghana and a British national. Since that relationship was successfully challenged, the TCN national could not derive a right to reside in the Netherlands based on his relationship with an EU citizen.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>4.3. Bij het antwoord op de vraag wanneer een vermoeden van misbruik mag worden aangenomen heeft de staatssecretaris beoordelingsruimte. De in de richtsnoeren opgenomen lijst met concrete aanwijzingen die kunnen leiden tot het instellen van een onderzoek naar eventueel misbruik heeft een niet-limitatief karakter. Het staat de staatssecretaris dan ook vrij andere omstandigheden in de beoordeling te betrekken. . . .</i></p> <p><i>De rechtbank heeft onbestreden overwogen dat de staatssecretaris de omstandigheden dat de vreemdeling eerder zonder succes een verblijfsprocedure heeft doorlopen en het leeftijdsverschil tussen de vreemdeling en referente 12 jaar bedraagt als relevante aanwijzingen mocht aanmerken. Voorts heeft de staatssecretaris, anders dan de rechtbank heeft overwogen, bij de besluitvorming niet ten onrechte in aanmerking genomen dat de vreemdeling de relatie met referente is aangegaan nadat was geprobeerd hem uit te zetten. Dat er enig tijdsverloop is geweest tussen de uitzettingsprocedure, het ontstaan van de relatie en de indiening van de onderhavige aanvraag, laat onverlet dat aan de omstandigheid dat het gezinsleven pas is ontwikkeld nadat het afwijzende besluit in de eerdere verblijfsprocedure is genomen, betekenis mag worden toegekend (zie ook de richtsnoeren).</i></p> <p><i>Wat er ook zij van de overige door de staatssecretaris in aanmerking genomen factoren, reeds gelet op de hiervoor vermelde omstandigheden, in onderlinge samenhang bezien, heeft hij zich niet ten onrechte op het standpunt gesteld dat een nader onderzoek in dit geval gerechtvaardigd was. Nu het hier een combinatie van op de persoon van de vreemdeling toegespitste omstandigheden betreft, is, anders dan de vreemdeling betoogt, van een systematische controle geen sprake.</i></p> <p><i>De grief slaagt.</i></p> <p>Translation:</p>

	<p>4.3. Answering the question when it may be assumed that there is an abuse, the Secretary of State has a margin of appreciation. The list of concrete indications laid down in the guidelines which may lead to an investigation into possible abuse is of a non-exhaustive nature. The Secretary of State is therefore free to take into account other circumstances [...]</p> <p>It is not contested that the District Court considered that the Secretary of State was allowed to consider the circumstances relevant that the alien unsuccessfully applied for a residence permit first and that the age difference between the alien and the referee (the woman) is twelve years. Moreover, the Secretary of State did not unjustifiably take into account that the alien started the relationship with the referee after there had been attempts to extradite him. The Council of State does not agree with the District Court here. That there was some lapse of time between the procedure to extradite the alien, the coming into existence of the relationship and the present application, does not mean that the circumstances that the family life was only developed after the rejection in the prior residence procedure, has no significance (also see the guidelines). Whatever the other aspects taken into account by the Secretary of State were, on the basis of the above-mentioned circumstances, seen in each other's context, he was not unjustifiably of the opinion that a further investigation in this case was justified. As there is a combination of circumstances focused on the person of the alien, there is no systematic check here, although the alien alleges otherwise.</p> <p>The Secretary of State is right.</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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11. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Article 6, first and second paragraphs, Article 8, fourth paragraph, Article 14, first paragraph, Article 35, of Directive 2004/38/EC, 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	12 November 2009
Deciding body (in original language)	Raad van State
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier)	ECLI:NL:RVS:2009:BK3910

(ECLI) where applicable)	
Parties	<i>Appellant, the alien v. Secretary of State of the Ministry of Justice</i> (eiseres en de staatssecretaris van Veiligheid en Justitie, verweerder)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2009:BK3910&showbutton=true&keyword=ECLI%3aNL%3aRVS%3a2009%3aBK3910
Legal basis in national law of the rights under dispute	Article 9, first paragraph of the Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>). The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000.
Key facts of the case (max. 500 chars)	The alien was born in 1970 and is a Jordanian national. She married a Dutchman in Amman, Jordan, in 2005. The alien entered the Netherlands with a visa for a short period of stay, valid from 3 April 2006 until 19 May 2006. Her husband had to go to hospital in the Netherlands on 13 April 2006. After two days, he was referred to a hospital in Antwerp, Belgium, where he stayed until 25 September 2006. The alien stayed with him in Antwerp. After the husband was dismissed, the couple went back to the Netherlands. As the husband received medical services in Belgium, he was a Union citizen receiving services and was entitled to the right of residence for three months without any further conditions. The same goes for his spouse, as she could derive this right from his status. When the alien came back to the Netherlands and applied for a document which shows that she has a right of residence (derived from her husband's status, who received medical services in Belgium), the Secretary of State of the Ministry of Justice rejected this application and also rejected her subsequent objection to the rejection of the application. The Secretary of State argued that the husband did not have sufficient means of subsistence when he was in Belgium or, after his illness, in

	<p>the Netherlands, because he did not work anymore. According to the alien, this had nothing to do with her right of residence after her husband's stay for medical reasons in Belgium. The Secretary of State, however, stated that the woman had no right of residence because of the lack of means of subsistence. The District Court agreed with the Secretary of State. The Council of State, however, held that the directive did not require that someone proved that he or she had enough means of subsistence in a case like this, where a stay of less than three months was involved and medical treatment was given. The third country national (the wife) had a right of residence without the husband having to prove means of subsistence upon his return to the Netherlands. According to the Council of State. it was not necessary to continue one's work after having spent this time abroad. All in all, the husband should be regarded as a Union citizen receiving services in Belgium, and the alien was therefore entitled to a document giving her a right of residence in the Netherlands without the government imposing further requirements.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>When a Dutch citizen stays for less than three months on the basis of receiving medical treatment in another Member State, he is regarded as a Union citizen making use of the freedom of movement within the EU. He need not prove to have any means of subsistence (Directive 2004/38/EC), nor does the Dutchman have to continue his work after coming back to the Netherlands for his wife, an alien, to be entitled to a document giving her a right of residence in the Netherlands when they return to this country.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The case clarifies the conditions under which a TCN family member of an EU citizen who has exercised his free movement rights in another Member State can claim a right of residence upon return to the state of nationality of the EU citizen. This case makes clear that the Secretary of State may not require that a Dutchman who receives medical treatment in another Member State for less than three months has means of subsistence. Coming back, he does not have to prove that he continued to work either. He is regarded as a Union citizen exercising his right to receive services in another Member State. This entitles the wife to a document giving her a right of residence in the Netherlands when they return to this country without any further requirements.</p>

<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Dutchman is regarded as a Union citizen who has received services in another Member State and his wife, an alien, is therefore entitled to a document which provides her a right of residence in the Netherlands when the couple returns to the Netherlands without any further requirements.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>2.6. In grief 1 klaagt de vreemdeling dat de rechtbank ten onrechte heeft overwogen dat het verblijf in België onvoldoende is om de echtgenoot tot 30 april 2006 te beschouwen als dienstenontvanger op grond van richtlijn 73/148/EEG Daartoe voert de vreemdeling onder meer aan dat de rechtbank niet heeft onderkend dat uit het arrest van het Hof van Justitie van de Europese Gemeenschappen (hierna: het Hof) van 31 januari 1984 in zaak nrs. 286/82 en 26/83 (Jurispr. 1984, blz. 377; Luisi en Carbone) volgt dat haar echtgenoot als dienstenontvanger als bedoeld in de richtlijn 73/148/EEG moet worden aangemerkt en dat diens daarop gebaseerde verblijfsrecht zich ook tot haar uitstrekt. Op grond van deze richtlijn 73/148/EEG hadden haar echtgenoot en zijzelf een verblijfsrecht tot 30 april 2006, waarbij hun paspoorten golden als verblijfsvergunning. Dit verblijfsrecht is in elk geval tot 15 juli 2006 voortgezet op grond van artikel 6 van richtlijn 2004/38/EG, aldus de vreemdeling.</i></p> <p><i>2.6.1. In het door de vreemdeling aangehaalde arrest heeft het Hof in punt 16, voor zover thans van belang, overwogen dat als personen te wier behoefte een dienst wordt verricht mede zijn te beschouwen zij die geneeskundige behandeling ontvangen.</i></p> <p><i>Hieruit volgt dat, nu de echtgenoot van de vreemdeling met ingang van 15 april 2006 in België een medische behandeling heeft ondergaan, hij met ingang van deze datum moet worden aangemerkt als een ontvanger van diensten, bedoeld in artikel 1, aanhef en onder b, van richtlijn 73/148/EEG. Het aan deze hoedanigheid verbonden</i></p>

verblijfsrecht is ingevolge artikel 1, aanhef en onder c, van deze richtlijn met ingang van 15 april 2006 ook van toepassing op de vreemdeling.

2.7.2. . . . Uit artikel 6, eerste en tweede lid, gelezen in samenhang met artikel 14, eerste lid, van richtlijn 2004/38/EG volgt dat voor het recht van verblijf van maximaal drie maanden niet is vereist dat burgers van de Unie en hun familieleden beschikken over voldoende middelen van bestaan.

. . . Hieruit vloeit voort dat de rechtbank met de bestreden overweging niet heeft onderkend dat aan de vreemdeling en haar echtgenoot wat betreft de periode van 30 april 2006 tot 15 juli 2006, waarin zij ingevolge artikel 6, eerste en tweede lid, een recht van verblijf hadden, niet de eis kan worden gesteld dat zij dienen te beschikken over voldoende middelen van bestaan. Dat betekent, anders dan de rechtbank heeft overwogen, dat aan de vreemdeling en haar echtgenoot niet kan worden tegengeworpen dat zij niet hebben aangetoond te beschikken over voldoende middelen van bestaan.

2.8. Voorts klaagt de vreemdeling in grief 2 dat de rechtbank ten onrechte heeft overwogen dat zij niet in haar stelling kan worden gevolgd dat uit de overgelegde gegevens kan worden opgemaakt dat de echtgenoot zijn bedrijfsactiviteiten heeft voortgezet, . . . Overigens volgt uit het arrest Eind (Jurispr. 2007, blz. I-10761) dat het beschikken over voldoende middelen van bestaan bij terugkeer geen rol meer speelt.

2.8.1. . . . Ook indien de echtgenoot van de vreemdeling na terugkeer uit België zijn bedrijfsactiviteiten niet zou hebben voortgezet, dan nog zou de vreemdeling, in haar hoedanigheid van familielid van een burger van de Unie, bedoeld in artikel 2, aanhef en onder 2) van richtlijn 2004/38/EG een recht van toegang tot en verblijf in Nederland hebben. Grief 2 slaagt ook in zoverre.

Translation:

2.6. In objection 1, the alien complains that the District Court considered unjustifiably that the residence in Belgium is insufficient to regard the husband as a receiver of services on the basis of Directive 73/148/EEC [...] The alien alleges, among other things, that the District Court did not realise that it follows from the case of the European Court of Justice

(hereinafter ECJ) of 31 January 1984 in case numbers 286/82 and 26/83 (Law Reports 1984, p. 377, *Luisi and Carbone*) that her husband must be regarded as a receiver of services as referred to in Directive 73/148/EEC and his right of residence based on this, also applies to her. On the basis of Directive 73/148/EEC, her husband and she had a right of residence until 30 April 2006, their passports being their residence permits. This right was continued to 15 July 2006 at least, pursuant to Article 6 of Directive 2004/38/EC, says the alien.

2.6.1. The ECJ considered in consideration 16 in the case referred to by the alien, insofar as it is relevant here, that persons who are given services are also those who receive medical treatment. It follows that, now that the husband of the alien received medical treatment, starting from 15 April 2006 onwards, he should be regarded as a receiver of services, referred to in Article 1, beginning and under b, of Directive 73/148/EEC. The right of residence related to this status also applies to the alien pursuant to Article 1, beginning and under c, of this Directive, starting on 15 April 2006.

[...]

2.7.2. [...] Article 6, first and second paragraph, in conjunction with Article 14, first paragraph, of Directive 2004/38/EC show that it is not required that citizens of the Union and their spouses have enough means of subsistence for the right of residence of at most three months. It follows that the District Court, when considering this aspect, did not realise that the alien and her spouse as to the period of 30 April 2006 until 15 July 2006, in which they were entitled to reside in Belgium pursuant to Article 6, first and second paragraphs, could not be required to have enough means of subsistence. This means, other than the District Court considered, that it cannot be held against the alien and her spouse that they did not prove to have enough means of subsistence.

2.8. Furthermore, the alien says in claim 2 that the District Court unjustifiably considered that it could not follow her in her claim that the information submitted could show that her husband continued his professional activities, [...] By the way, it follows from the case *Eind* (Law Reports 2007, p. I-10761) that having enough means of subsistence does not play a part anymore after returning to the country of origin.

	2.8.1. [...] Even if the husband of the alien had not continued his professional activities after his return from Belgium, the alien would have been entitled to enter and stay in the Netherlands, in her status as a family member of a Union citizen, referred to in Article 2, beginning and under 2 of Directive 2004/38/EC. Claim 2 is therefore successful to this extent.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

12. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <p style="text-align: center;">Articles 2, 3, and 27, par. 2 Directive 2004/38, free movement of persons (without mentioning the Article)</p> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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Decision date	15 December 2010
Deciding body (in original language)	Rechtbank 's Gravenhage
Deciding body (in English)	District Court The Hague
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBSGR:2010:BQ1756
Parties	<i>Plaintiff v. Minister of Immigration and Asylum, following up the Minister of Justice</i> (eiser en de minister voor Immigratie en Asiel, rechtsopvolger van de minister van Justitie, verweerder)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2010:BQ1756&showbutton=true&keyword=ECLI%3aNL%3aRBSGR%3a2010%3aBQ1756
Legal basis in national law of the rights under dispute	Article 3, paragraph 1; Article 8, paragraph 4 and Article 14 of Directive 2004/38/EC; Article 8, under (a) up to including (e) or (l) of the Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>). The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000.

<p>Key facts of the case (max. 500 chars)</p>	<p>The plaintiff, an Albanian national, married his wife, a national of Slovakia in 2007. He received a Slovakian residence permit on the basis of his marriage. It is not clear whether when the Albanian entered the Netherlands he was already married and what the circumstances were. The court states, however, that it has never been proven that the plaintiff's spouse moved from Slovakia to another country. On 13 January 2010, the District Court of Amsterdam sentenced the plaintiff to an 18-month imprisonment on the basis of the Drugs Act. On 22 April 2010, the defendant declared that the plaintiff was a <i>persona non grata</i> on the basis of Dutch law because he was a danger to public order due to his sentence, and because he did not lawfully reside in the Netherlands as referred to in Article 8, under (a) up to including (e) or (l) of the Aliens Act 2000. The question is whether the defendant should have judged the case on the basis of Community law, as the plaintiff alleged that he should be regarded as the husband of a Union citizen who had made use of the freedom of movement of persons with stipulations of Community law applying in this field. This could have only been the case if he and his wife had resided in another country than Slovakia. It was not shown that his wife had left this country for another Member State. The plaintiff could, therefore, not rely on her being a Union citizen who had made use of the freedom of movement of persons, with the rights entitled to this status. He could, therefore, be declared a <i>persona non grata</i> on the basis of Dutch law in the Netherlands.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Third-country nationals can only derive rights from Community law when their spouse has made use of the right of freedom of movement of persons, having left their country to reside in another Member State. As the spouse has not left her own country, her husband, from Albania, cannot rely on Community law when he is declared a <i>persona non grata</i> on the basis of Dutch law in the Netherlands.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This case makes clear that a citizen from an EU Member State is only regarded as a Union citizen making use of the freedom of movement of persons when they leave their Member State of origin and reside in another Member State. Only then does Community law related to this field apply in all respects.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Albanian can be declared a <i>persona non grata</i> on the basis of Dutch law and has to leave the country.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>5. <i>Het geschil spitst zich allereerst toe op de vraag of eiser valt onder Richtlijn 2004/38/EG betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden (Richtlijn 2004/38/EG), zodat verweerder had moeten beoordelen of eiser een actuele, werkelijke en ernstige bedreiging voor een fundamenteel belang van de samenleving als bedoeld in artikel 27, tweede lid, van de Richtlijn 2004/38/EG vormt alvorens tot ongewenstverklaring over te kunnen gaan.</i></p> <p>6. <i>Volgens artikel 2, eerste lid, van Richtlijn 2004/38/EG wordt voor de toepassing van deze richtlijn onder "burger van de Unie" verstaan: eenieder die de nationaliteit van een lidstaat bezit.</i></p> <p><i>Volgens het tweede lid, aanhef en onder a, van Richtlijn 2004/38/EG wordt onder "familielid" onder meer verstaan: de echtgenoot.</i></p> <p><i>Volgens artikel 3, eerste lid, van Richtlijn 2004/38/EG is deze richtlijn van toepassing ten aanzien van iedere burger van de Unie die zich begeeft naar of verblijft in een andere lidstaat dan die waarvan hij de nationaliteit bezit, en diens familieleden als gedefinieerd in artikel 2, tweede lid, die hem begeleiden of zich bij hem voegen.</i></p> <p>7. <i>Niet is gebleken dat eisers Slowaakse echtgenote zich heeft begeven naar, heeft verbleven of verblijft in een andere lidstaat dan waarvan zij de nationaliteit bezit. Naar het oordeel van de rechtbank is Richtlijn 2004/38/EG reeds</i></p>

daarom niet van toepassing op eiser. Uit de bewoordingen van artikel 3, eerste lid, van Richtlijn 2004/38/EG blijkt immers dat het EU-recht pas van toepassing is wanneer eisers echtgenote gebruik heeft gemaakt van haar recht op vrij verkeer. De rechtbank verwijst in dit verband naar het arrest *Metock* van het Hof van Justitie van de Europese Gemeenschappen (HvJ EG) van 25 juli 2008, (C-127/08, LJN: BE8788), waarin het HvJ EG benadrukt dat alleen diegenen rechten van binnenkomst en verblijf ontleen aan Richtlijn 2004/38/EG die familielid zijn van een burger van de Unie die van zijn recht op vrij verkeer gebruik heeft gemaakt door zich in een andere lidstaat te vestigen dan die waarvan hij de nationaliteit bezit. Richtlijn 2004/38/EG verleent aan familieleden van burgers van de Unie dus geen volledig en fundamenteel recht op vrij verkeer, maar slechts een recht op vrij verkeer dat afhankelijk is van de burger van de Unie.

Translation:

5. The dispute focusses first and foremost on the question whether the plaintiff is covered by Directive 2004/38/EC as to the right of free movement and residence in the territory of the Member States for the citizens of the Union and their family member (Directive 2044/38/EC), so that the defendant should have judged whether the plaintiff is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society as referred to in Article 27, second paragraph, of Directive 2004/38/EC before he could have declared him a *persona non grata*.

6. According to Article 2, first paragraph, of Directive 2004/38/EC "Union citizen" is, for the application of this Directive, among others: the spouse. According to Article 3, first paragraph of Directive 2004/38/EC this Directive applies to any Union citizen who moves to or resides in another Member State than the one he or she is a national of, and his or her family members as defined in Article 2, second paragraph, who accompany him or join him.

7. It has not been shown that the plaintiff's Slovakian wife moved to, resided or resides in another Member State than the one she is a national of. The Court therefore judges that even for this reason Directive 2004/38/EC does not apply to the plaintiff. It is clear that the words of Article 3, first paragraph, of Directive 2004/38/EC show that EU law only applies when the plaintiff's wife has made use of her right of the freedom of movement of persons. The Court refers in this context to the case *Metock* of the European Court of Justice (ECJ) of 25 July 2008 (C-127/08, LJN: BE8788), in

	<p>which the ECJ stresses that only those may derive rights of entry and residence from Directive 2004/38/EC who are a family member of a Union citizen who had made use of his right of freedom of movement of persons by residing in another Member State than the one he is a national of. Directive 2004/38/EC therefore does not grant family members of the citizens of the Union a complete and fundamental right of freedom of movement of persons, but only a right of freedom of movement of persons that depends on the Union citizen.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>13. Subject matter concerned</p>	<p><input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p>X 2) freedom of movement and residence</p> <p>- linked to which article of Directive 2004/38; Articles 15, 27 and 30, par. 1 and 3</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>
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Decision date	25 August 2011
Deciding body (in original language)	Rechtbank 's-Gravenhage
Deciding body (in English)	The Hague District Court
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBSGR:2011:BU3879
Parties	<i>Plaintiff with the Polish nationality, v. the minister for Immigration and Asylum, previously the State Secretary of Justice, defendant</i> (Eiseres, van Poolse nationaliteit, tegen: de minister voor Immigratie en Asiel, voorheen de staatssecretaris van Justitie, verweerder)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2011:BU3879&showbutton=true&keyword=ECLI%3aNL%3aRBSGR%3a2011%3aBU3879
Legal basis in national law of the rights under dispute	Article 6:7 of the General act on administrative law (<i>Algemene wet bestuursrecht</i>) and Article 69, paragraph 1 of the Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>).

<p>Key facts of the case (max. 500 chars)</p>	<p>The plaintiff, a Polish national, had a residence permit in the Netherlands from 28 November 2007 onwards, which was ended on 19 November 2008 by the Ministry of Justice. The reason for this withdrawal was that the plaintiff, according to the Ministry of Justice, was an unreasonable burden on public resources. The plaintiff objected to this decision on 23 December 2008. The ministry declared that the objection was not admissible, because the objection had been filed too late. It should have been filed within four weeks on the basis of Article 69, first paragraph of the Aliens Act and it was filed after a month. In general, the period for filing objections or appeals is six weeks in the Netherlands (Article 6:7 of the General act on administrative law). Later on, the plaintiff also appealed too late again. The plaintiff argued that the six-week period of the General act on administrative law should have been applied, as she was a Union citizen. She stated that she was discriminated in comparison to Dutch citizens, because it was especially non-Dutch people who had to adhere to the four-week period in the Aliens Act. The court rejected her view, saying that the periods in the Aliens Act apply to everyone, irrespective of nationality. The nature of the case was decisive (right of residence, in this case). The argumentation of the plaintiff did not hold in the eyes of the court.</p> <p>The plaintiff also stated that Directive 2004/38/EC implied that the period for objection and appeal should be six weeks, or at least a month. The court held, however, that the periods referred to in the directive only applied to the period of extradition from a Member State, and not to the periods within which one might object or appeal. Again, the argumentation of the plaintiff did not persuade the court.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The court holds that the application of the Aliens Act instead of the General Act on Administrative Law to EU citizens is not discriminatory, because it has nothing to do with their nationality, but with their right of residence. Moreover, Directive 2004/38/EC concerns the period of extradition and not the period within which one may object or appeal.</p>
<p>Key issues (concepts, interpretations)</p>	<p>Interpretation of Article 18 of the TFEU (it is not discriminatory to apply the Aliens Act instead of the General act on administrative law to EU citizens) and interpretation of Directive 2004/38/EC (the periods mentioned are not about filing an objection or appeal).</p>

) clarified by the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The plaintiff should have filed an objection/appeal to the decision to withdraw her residence permit within four weeks, instead of a month or six weeks, and because she did not do so, her case was inadmissible. She had to leave the country.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>2.9 . . . heeft eiseres voorts een beroep gedaan op artikel 18 van het Verdrag betreffende de werking van de Europese Unie (VWEU). Eiseres voert in dit verband aan dat door de beperking van de bezwaar- en beroepstermijn tot vier weken sprake is van discriminatie binnen de werkingsfeer van het verdrag op grond van nationaliteit. Daarnaast is volgens eiseres sprake van indirecte discriminatie nu met name niet-Nederlanders procedures op grond van de Vreemdelingenwet zullen voeren en nadeel zullen ondervinden van de kortere termijnen.</i></p> <p><i>2.10 De rechtbank overweegt dat, zoals uit de Memories van Toelichting bij de Vreemdelingenwet 1994 en Vreemdelingenwet 2000 blijkt, het onderscheid in bezwaar- en beroepstermijnen tussen vreemdelingrechtelijke zaken en algemene bestuursrechtelijke zaken niet gemaakt is vanwege de nationaliteit van de vreemdeling, maar vanwege de aard van de zaken. Nu de termijnen neergelegd in de Vw gelden voor een ieder, ongeacht de nationaliteit, die procedures voert op basis van de Vreemdelingenwet, kan eiseres niet worden gevolgd in haar betoog dat sprake is van een met artikel 18 VWEU discriminatoire behandeling op basis van nationaliteit door het</i></p>

toepassen van de termijnen, zoals neergelegd in artikel 69 Vw. Gelet op het voorgaande wordt eiseres evenmin gevolgd in haar stelling dat sprake is van indirecte discriminatie.

. . .

2.17 . . . Voor zover eiser bedoeld heeft te betogen dat verweerder dan wel de rechtbank, door de termijnen neergelegd in artikel 69 Vw te hanteren, afbreuk doet aan het doel en het nuttig effect van richtlijn 2004/38/EG, overweegt de rechtbank dienaangaande als volgt. Uit vaste jurisprudentie van het Hof volgt weliswaar dat verweerder zijn handelingsvrijheid op grond van de bepalingen van een richtlijn niet zo mag gebruiken dat afbreuk wordt gedaan aan het doel van de richtlijn, in dit geval het uitoefenen van vrij verkeer en verblijf van unieburgers en hun familieleden op het grondgebied van de lidstaten, en het nuttig effect daarvan (zie onder meer het arrest van het Hof inzake Chakroun, van 4 maart 2010, C-540/03), niet valt echter in te zien dat verweerder dan wel de rechtbank, door de termijnen neergelegd in artikel 69 Vw te hanteren, afbreuk doet aan het doel en het nuttig effect van richtlijn 2004/38/EG.

Translation:

2.9. [...] The plaintiff also relied on Article 18 of the Treaty on the Functioning of the European Union (TFEU). The plaintiff argues in this context that the limitation of the period within which one may object or appeal to four weeks leads to discrimination within the scope of the treaty on the basis of nationality. In addition, the plaintiff feels that there is indirect discrimination, because especially non-Dutch citizens will bring cases to the court on the basis of the Aliens Act and they will suffer from the shorter periods.

2.10. The court holds that, as the Explanatory Memorandums to the Aliens Act 1994 and the Aliens Act 2000 prove, the difference between the periods within which one may object or appeal in cases that concern aliens and general administrative cases was not made on the basis of the nationality of the alien, but on the basis of the nature of the case. Now that these periods apply to anyone, irrespective of the nationality, who brings a case on the basis of the Aliens Act, the court cannot follow the plaintiff when she says that there is a discriminatory treatment which is in

	<p>conflict with Article 18 TFEU by applying these periods, as laid down in Article 69 of the Aliens Act. In view of the above, the court cannot follow the plaintiff either where it concerns indirect discrimination.</p> <p>2.17 [...] Insofar as the plaintiff meant to argue that the defendant or the court, by using the periods laid down in Article 69 of the Aliens Act, infringes the aim and the useful effect of Directive 2004/38/eC, the court holds the following. It is true that leading cases by the ECJ show that the defendant is not allowed to use his margin of appreciation on the basis of the stipulations of the directive in such a way that the aim of the directive is infringed, in this case the free movement and residence of Union citizens and their relatives on the territory of the Member States, and their useful effect (see among other things the ECJ judgement in the case C-540/03, <i>Chakroun</i>, 4 March 2010), but the court does not see that either the defendant or the district court, by using the periods laid down in Article 69 of the Aliens Act, infringes the aim and the useful effect of Directive 2004/38/EC.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1. 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 research if this data is available (covering the reference period)	Ca. 10 46 opinions of Netherlands Institute for Human Rights	Ca. 25	0	0	0