



EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS



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

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1. Introduction

Luxembourg has a small population of just under 600,000 residents, 47 % of which have a foreign nationality. In the capital city, this percentage amounts to almost 70 %. Moreover, the country draws about 175,000 cross-border workers every work-day from the neighbouring countries Germany, France, and Belgium.¹ This makes the rights of EU citizens living and/or working in the country a matter of great importance.

2. Overview of the legislative framework

In Luxembourg, Directive 2004/38/EC regarding EU freedom of movement and residence was transposed in August 2008, more than two years after the deadline.² Nevertheless, in line with established case law of the Court of Justice of the European Union (CJEU), the Luxembourg judiciary has repeatedly held the directive applicable in its case law since the expiry of the deadline, considering that the directive confers certain direct rights on Union citizens.³

The directive was transposed into the Luxembourg legal framework by the following act and regulations:

- Act of 29 August 2008 regarding free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*) ;⁴

¹ Luxembourg, Government Official Portal of the Grand Duchy of Luxembourg, "[Population](#)".

² The deadline for the [transposition of Directive 2004/38/EC](#) was on 30 April 2004.

³ As is explicitly foreseen by Directive 2004/38/EC, recital 11.

⁴ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

- Grand-ducal regulation of 5 September 2008 regarding the implementation of certain provisions related to the administrative formalities foreseen by the Act of 29 August 2008 regarding free movement of persons and immigration (*Règlement grand-ducal du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*) ;⁵
- Grand-ducal regulation of 5 September 2008 regarding sponsorship for foreign citizens foreseen by article 4 of the Act of 29 August 2008 regarding free movement of persons and immigration (*Règlement grand-ducal du 5 septembre 2008 portant sur l'attestation de prise en charge en faveur d'un étranger prévue à l'article 4 de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*) ;⁶
- Grand-ducal regulation of 5 September 2008 establishing the conditions and modalities for the issuance of a residence permit for employed workers (*Règlement grand-ducal du 5 septembre 2008 fixant les conditions et modalités relatives à la délivrance d'une autorisation de séjour en tant que travailleur salarié*) ;⁷
- Grand-ducal regulation of 5 September 2008 defining the resource and housing criteria foreseen by the Act of 29 August 2008 regarding free movement of persons and immigration (*Règlement grand-ducal du 5 septembre 2008 définissant les critères de ressources et de logement prévus par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*).⁸

⁵ Luxembourg, [Grand-ducal regulation of 5 September 2008 regarding the implementation of certain provisions related to the administrative formalities foreseen by the Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Règlement grand-ducal du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

⁶ Luxembourg, [Grand-ducal regulation of 5 September 2008 regarding sponsorship for foreign citizens foreseen by article 4 of the Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Règlement grand-ducal du 5 septembre 2008 portant sur l'attestation de prise en charge en faveur d'un étranger prévue à l'article 4 de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

⁷ Luxembourg, [Grand-ducal regulation of 5 September 2008 establishing the conditions and modalities for the issuance of a residence permit for employed workers](#) (*Règlement grand-ducal du 5 septembre 2008 fixant les conditions et modalités relatives à la délivrance d'une autorisation de séjour en tant que travailleur salarié*).

⁸ Luxembourg, [Grand-ducal regulation of 5 September 2008 defining the resource and housing criteria foreseen by the Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Règlement grand-ducal du 5 septembre 2008 définissant les critères de ressources et de logement prévus par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

In 2011, some of the abovementioned regulations were amended to correspond to EU Regulation CE 380/2008⁹ and to introduce biometrical data into the residence permits of third-country nationals,¹⁰ through the Grand-ducal regulation of 19 May 2011 (*Règlement grand-ducal du 19 mai 2011*).¹¹

Moreover, a series of subsequent acts have amended the abovementioned act regarding free movement of persons and immigration. Below is a summary of those acts, starting with the most recent:

- Act of 18 December 2015 regarding international protection and temporary protection;¹²
- Act of 26 June 2014 amending the amended Act of 29 August 2008 regarding free movement of persons and immigration;¹³
- Act of 9 April 2014 reinforcing the rights of victims of human trafficking;¹⁴

⁹ [Council Regulation \(EC\) No 380/2008 of 18 April 2008 amending Regulation \(EC\) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.](#)

¹⁰ Luxembourg, "[Government Council: Introduction of biometrical data in the residence permits of third-country nationals](#)" (*Conseil de gouvernement : introduction de données biométriques dans les titres de séjours pour ressortissants de pays tiers*), 24 March 2011.

¹¹ Luxembourg, [Grand-ducal regulation of 19 May 2011](#) (*Règlement grand-ducal du 19 mai 2011 modifiant 1. le règlement grand-ducal modifié du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration; 2. le règlement grand-ducal du 26 septembre 2008 portant création des traitements de données à caractère personnel nécessaires à l'exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration et déterminant les données à caractère personnel auxquelles le ministre ayant l'Immigration dans ses attributions peut accéder aux fins d'effectuer les contrôles prévus par la loi*).

¹² Luxembourg, [Act of 18 December 2015 regarding international protection and temporary protection](#) (*Loi du 18 décembre 2015 1. relative à la protection internationale et à la protection temporaire; 2. Modifiant - la loi modifiée du 10 août 1991 sur la profession d'avocat, - la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration, - la loi du 28 mai 2009 concernant le Centre de rétention; 3. abrogeant la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection*).

¹³ Luxembourg, [Act of 26 June 2014](#) (*Loi du 26 juin 2014 modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

¹⁴ Luxembourg, [Act of 9 April 2014 reinforcing the rights of victims of human trafficking](#) (*Loi du 9 avril 2014 renforçant le droit des victimes de la traite des êtres humains et portant modification (1) du Code pénal; (2) de la loi modifiée du 12 mars 1984 relative à l'indemnisation de certaines victimes de dommages corporels résultant d'une infraction et à la répression de l'insolvabilité frauduleuse; (3) de la loi du 8 mai 2009 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains et modifiant le Nouveau Code de procédure civile; (4) de la loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*).

- Act of 19 June 2013;¹⁵
- Act of 18 February 2013 regarding the reception of young *au pair*;¹⁶
- Act of 21 December 2012;¹⁷
- Act of 21 July 2012 approving the Protocol against the Smuggling of Migrants by Land, Sea and Air;¹⁸
- Act of 18 January 2012 establishing the Employment Development Agency;¹⁹
- Act of 8 December 2011 amending the amended Act of 29 August 2008 regarding free movement of persons and immigration;²⁰

¹⁵ Luxembourg, [Act of 19 June 2013](#) (*Loi du 19 juin 2013 portant modification de : 1. la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection ; 2. la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

¹⁶ Luxembourg, [Act of 18 February 2013 regarding the reception of young au pair](#) (*Loi du 18 février 2013 sur l'accueil de jeunes au pair, modifiant 1. la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration 2. la loi du 4 juillet 2008 sur la jeunesse 3. le Code de la sécurité sociale*).

¹⁷ Luxembourg, [Act of 21 December 2012](#) (*Loi du 21 décembre 2012 portant modification : 1) du Code du travail; 2) du Code pénal; 3) de la loi modifiée du 10 août 1991 sur la profession d'avocat; 4) de la loi modifiée du 27 juillet 1993 ayant pour objet 1. le développement et la diversification économiques, 2. l'amélioration de la structure générale et de l'équilibre régional de l'économie; 5) de la loi modifiée du 30 juin 2004 portant création d'un cadre général des régimes d'aides en faveur du secteur des classes moyennes; 6) de la loi du 15 juillet 2008 relative au développement économique régional; 7) de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration; 8) de la loi du 5 juin 2009 relative à la promotion de la recherche, du développement et de l'innovation; 9) de la loi du 18 février 2010 relative à un régime d'aides à la protection de l'environnement et l'utilisation rationnelle des ressources naturelles*).

¹⁸ Luxembourg, [Act of 21 July 2012](#) (*Loi du 21 juillet 2012 portant: 1) approbation du Protocole contre le trafic illicite de migrants par terre, air et mer, signé à Palerme, le 12 décembre 2000, additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée du 15 novembre 2000 ; 2) modification du Code pénal ; 3) modification du Code d'instruction criminelle ; 4) modification de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

¹⁹ Luxembourg, [Act of 18 January 2012](#) (*Loi du 18 janvier 2012 1. portant création de l'Agence pour le développement de l'emploi; 2. modifiant - le Code du travail; - la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; - la loi modifiée du 30 juin 1976 portant 1. création d'un fonds pour l'emploi; 2. réglementation de l'octroi des indemnités de chômage complet; - la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration; 3. abrogeant la loi modifiée du 21 février 1976 concernant l'organisation et le fonctionnement de l'Administration de l'emploi et portant création d'une Commission nationale de l'emploi*).

²⁰ Luxembourg, [Act of 8 December 2011 amending the amended Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 8 décembre 2011 modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

- Act of 1 July 2011;²¹
- Act of 28 May 2009 establishing the creation and organisation of the Retention Centre.²²

²¹ Luxembourg, [Act of 1 July 2011](#) (*Loi du 1er juillet 2011 modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection*).

²² Luxembourg, [Act of 28 May 2009 establishing the creation and organisation of the Retention Centre](#) (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*).

3. Table 1 – Case law

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| <p>CASE 1</p> <p>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;">- linked to which article of Directive 2004/38: Article 7 (Right of residence for more than three months); Article 14 (Retention of the right to residence)</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>15 March 2016</p> |
| <p>Deciding body (in original language)</p> | <p>Cour Administrative</p> |
| <p>Deciding body (in English)</p> | <p>Higher Administrative Court</p> |
| <p>Case number (also European Case Law Identifier where applicable)</p> | <p>37220C</p> |

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| Parties | The spouses ... and ... v. a judgment of the Administrative Court (first instance) |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ²³ |
| Key facts of the case (max. 500 chars) | <p>A married couple of Italian citizenship residing in Luxembourg had their residence permit withdrawn by the Luxembourg Minister of Labour, Employment and Immigration (<i>Ministre du Travail, de l'emploi et de l'immigration</i>).</p> <p>The grounds for the decision was the fact that the couple did not fulfil the criteria established by the law, since they did not have sufficient resources to avoid becoming an unreasonable burden on the social assistance system.</p> <p>The man, who arrived in Luxembourg in July 2011 to take up work, had been on social welfare and received the guaranteed minimum income since December 2011 due to a health issue.</p> <p>The Minister of Labour, Employment and Immigration first informed the man of the intention to withdraw his residence permit on 8 June 2012, but put off his decision repeatedly to allow the man to regularise his situation.</p> |

²³ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| | <p>On 21 June 2012, his wife joined him in Luxembourg and declared her arrival as the accompanying spouse.</p> <p>On 5 August 2014, the residence permit of the man (and his spouse) was finally withdrawn on the grounds that his situation has remained unaltered and the he continued not to fulfil the criteria foreseen by Article 6 of the Act of 29 August 2008 regarding free movement of persons and immigration, and that, in accordance with Article 24 of the same Act, he represented an unreasonable burden on the Luxembourg social assistance system. The man was given one month to leave the country.</p> <p>On 11 September 2014, the spouses introduced an action for annulment of the decision before the Administrative Court (<i>Tribunal administratif</i>), which was rejected on 28 October 2015.</p> <p>On 30 November 2015, the spouses appealed the decision to the Higher Administrative Court (<i>Cour administrative</i>). The decision by the appeals court confirmed the first decision and upheld the removal of the residence permits of the two spouses and their obligation to leave the country.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The main argumentation by the two judicial instances was that the man, who had first arrived in Luxembourg in July 2011 to take up work, had quickly after his arrival (1 December 2011) stopped working and received social welfare amounting to the guaranteed minimum income. The work activity he had carried out since then was extremely limited and could only be seen to amount to a marginal and accessory activity. Since 1 June 2013, the man had also received income for severely disabled persons (<i>personnes gravement handicapées</i>).</p> <p>While the spouses, in their appeal, argued that Article 7 of the Act of 29 August 2008 regarding free movement of persons and immigration (and which transposes Directive 2004/38/CE into the national legal framework) sets forth that a Union citizen maintains his/her status as a worker if he/she is temporarily unable to work as a consequence of an illness or accident,²⁴ the Luxembourg Court held that the small amount of work carried out by the man since his entry into the country (estimated to 68 work days) was insufficient to qualify him as a worker in the sense of Article 3 of the above-mentioned Act of 29 August 2008.</p> |

²⁴ As set forth also by Directive 2004/38/CE, Article 7.

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| | <p>Furthermore, although an expulsion measure is not an automatic consequence of a Union citizen's recourse to the social assistance system of the host Member State,²⁵ this can be the case when he/she becomes an unreasonable burden on the system. The court held that, in the given case, the Minister's decision to revoke the residence permit of the man and his dependent wife was justified.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>Definition of worker; Criteria for determining that a person has become an unreasonable burden on the Luxembourg social assistance system; Criteria for revoking residence permits and imposing an expulsion measure. The court made clear that there is a balance to be struck between the duration of residence in the country, the amount of time worked (number of working days), the personal situation of the person and the temporary (or permanent) character of the difficulties encountered, e.g. due to illness or accident, as well as the amount received in social assistance.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The key implication of the case was that the two Union citizens saw their residence permits revoked and had an expulsion measure imposed upon them.</p> |
| <p>Key quotations in original language and</p> | <p><i>"[L]e recours au système d'assistance sociale par un citoyen de l'Union européenne ou un membre de sa famille n'entraîne pas automatiquement une mesure d'éloignement, tel peut cependant être le cas s'ils deviennent une charge déraisonnable pour le système d'assistance sociale de l'Etat membre d'accueil qui</i></p> |

²⁵ Act of 29 August 2008, Article 24(3), and Directive 2004/38/CE, Article 14(3).

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| <p>translated into English with reference details (max. 500 chars)</p> | <p><i>devrait examiner si, dans ce cas, il s'agit de difficultés d'ordre temporaire et prendre en compte la durée du séjour, la situation personnelle et le montant de l'aide accordée, afin de déterminer si le bénéficiaire constitue une charge déraisonnable pour son système d'assistance sociale et de procéder, le cas échéant, à son éloignement."</i></p> <p>Unofficial translation:</p> <p>"Recourse to the social assistance system by a Union citizen or a member of his/her family does not automatically lead to an expulsion measure, but this can be the case if they become an unreasonable burden on the social assistance system of the host Member State, [the latter] should examine whether, in this case, it is a matter of temporary difficulties, and take into account the length of stay in the country, the personal situation, and the amount of aid granted, in order to determine whether the beneficiary constitutes an unreasonable burden for his social assistance system and proceed, if necessary, to remove him."²⁶</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

²⁶ Unofficial translation.

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| CASE 2 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 7 (Right of residence for more than three months); Article 14 (Retention of the right to residence) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 3 July 2014 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 34238C |
| Parties | Madame ... et consorts ... v. a decision of the Administrative Court (<i>Tribunal administratif</i>) |

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| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ²⁷ |
| Key facts of the case (max. 500 chars) | <p>A woman and her four children of British nationality had their residence permits withdrawn by the Luxembourg Minister of Labour, Employment and Immigration (<i>Ministre du Travail, de l'emploi et de l'immigration</i>) in December 2012, after the latter had found that the woman did not fulfil the criteria set forth by Article 6 of the above-mentioned Act of 29 August 2008. The woman, who had registered as a worker in October 2011, had a contract amounting to 10 h/week, granting her a monthly salary below the guaranteed minimum wage. The Minister therefore held that her work activity could be seen only as an accessory or marginal activity, and concluded that the woman did not qualify as a worker and did not have sufficient means to avoid representing an unreasonable burden on the Luxembourg social assistance system. Since the woman's four children were all minors and dependent on the woman, their right to reside in the country was revoked as well.</p> <p>The woman argued that she was regularly registered with the national employment agency (<i>Agence pour le développement de l'emploi</i>, ADEM) and that she had received a minimum income as part of an insertion programme in the labour market, not in the form of social assistance. In line with case law of the CJEU, she argued that financial contributions aimed at facilitating access to the labour market should not be perceived as</p> |

²⁷ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| | <p>social assistance. Moreover, she argued that Directive 2004/38/CE conferred a right to all Union citizens to reside in another Member State and that recourse to the social assistance system should not be automatically followed by an expulsion measure when the person has entered the territory of a host Member State to seek employment and actively does so. She argued that the directive had been incompletely transposed into Luxembourg law. Lastly, the woman added that since 2013, she was employed full-time.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Luxembourg Court of Appeal confirmed the analysis of the Court of First Instance that, firstly, the woman could not qualify as a worker given the accessory and marginal nature of her professional activity and, secondly, that the financial assistance the woman had received was indeed a form of social assistance and did not fall under the “insertion measures” (<i>mesure d’insertion</i>) foreseen by Article L.523-1 of the Labour Code (<i>Code du Travail</i>).²⁸</p> <p>Furthermore, the Luxembourg Court stressed that the woman could not base her request directly on the directive, which does not have direct effect, and should have argued on the basis of the act transposing the directive into national law (i.e. Act of 29 August 2008). The only reason for invoking the directive directly would be its incomplete transposition into the national legal framework – which the court rejected.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>Qualification of worker;</p> <p>Clarifying that receiving minimum guaranteed income amounts to receiving social assistance even if the aim of the person is to gain access to the labour market;</p> <p>Lack of direct effect of EU directives in the Luxembourg legal framework (unless in the particular case where a Directive has not been transposed within the deadline and confers certain specific and direct rights to Union citizens).</p> <p>(No mention whatsoever was done in the court’s analysis related to the woman’s four children and their potential integration in their host country (e.g. school attendance) or what the impact of an expulsion order would represent for them.)</p> |

²⁸ Luxembourg, Labour Code (*Code du Travail*), Article L.523-1 regarding professional insertion, professional reinsertion and activities for unemployed persons (*Insertion professionnelle, réinsertion professionnelle et occupation des demandeurs d’emploi*).

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| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The woman was obliged to bear the cost for the judicial proceedings.</p> <p>(Since the woman had found a full-time employment following the decision, she no longer risked an expulsion measure.)</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>« {...} le tribunal retint que le citoyen de l'Union européenne désireux d'exercer son droit à la libre circulation au sein de l'Union européenne doit s'adonner, sur le territoire de l'Etat d'accueil, à une activité salariée ou indépendante réelle et effective qui ne doit pas être tellement réduite qu'elle se présente comme purement marginale et accessoire mais qu'en l'espèce, Madame ... avait exercé une activité salariée pendant, selon ses propres dires, 10 heures rémunérées par semaine, touchant mensuellement une rémunération brute variant entre 200,67 euros et 218,21 euros d'octobre 2011 jusqu'en décembre 2012, de sorte qu'au moment de la prise de la décision litigieuse, son activité était à qualifier de purement marginale et accessoire, le nombre d'heures de travail et le salaire perçu à ce titre étant tellement réduits qu'ils ne pouvaient pas être considérés comme étant constitutifs d'une activité réelle et effective</p> <p>{...}</p> <p><i>Il en conclut que Madame ... n'avait jamais satisfait aux conditions de l'article 6, paragraphe 1er, de la loi du 29 août 2008, étant donné qu'elle n'était pas à qualifier ni de travailleur salarié, ni de travailleur indépendant</i></p> <p>{...} »</p> <p>Unofficial translation:</p> <p>"The Court held that the citizen of the European Union wishing to exercise his right to free movement within the European Union must engage in a real and effective employed or independent activity in the territory of the host State, which must not be so reduced that it appears to be purely marginal and ancillary, but that in this case, Mrs ... had been employed during, according to her own words, 10 paid hours per week, with a</p> |

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| | <p>monthly gross remuneration ranging between 200.67 and 218.21 euros from October 2011 until December 2012. The number of hours worked and the salary received being so limited, they could not be regarded as constituting a real and effective activity and, at the time of the contested decision, her activity was thus to be regarded as purely marginal and ancillary.</p> <p>[...]</p> <p>The Court concluded that Mrs ... had never satisfied the conditions of Article 6 (1) of the Act of 29 August 2008, since she could not be classified neither as an employed person nor as self-employed [...]”²⁹</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

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| <p>CASE 3</p> <p>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;">- linked to which article of Directive 2004/38: Article 7 (Right of residence for more than three months); Article 14 (Retention of the right to residence)</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> |
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²⁹ Unofficial translation.

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| | <input type="checkbox"/> 5) the right to petition |
| Decision date | 19 June 2014 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 34087C |
| Parties | Monsieur ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³⁰ |

³⁰ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la*

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| the rights under dispute | |
| Key facts of the case (max. 500 chars) | <p>A man of British nationality had his residence permit revoked by the Luxembourg Minister of Labour, Employment and Immigration (<i>Ministre du Travail, de l'emploi et de l'immigration</i>). The decision was made on the sole basis that the man had become an unreasonable burden on the Luxembourg social assistance system. However, the decision was made despite the fact that the man has a daughter of Luxembourgish nationality in the country. The girl had been placed in alternative care due to psychological problems of the mother, but the father maintained that he had had, and continued to have, a solid relationship with his daughter, whom he saw on a regular basis. He argued that a withdrawal of his residence permit would be a breach of the Convention on the Rights of the Child as well as against EU law as established by the CJEU (for instance in <i>Zambrano</i>) as well as the ECHR (Article 8).</p> <p>The Luxembourg Court (both first instance and appeal) rejected the man's claims and upheld the Minister's decision, because the man had not provided any evidence showing that he did not represent an unreasonable burden on the social assistance system.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The court rejected the man's arguments that the and upheld the Minister's decision based on the fact that the man had become an unreasonable burden on the Luxembourg social assistance system. During the proceedings, the man had made no claim to argue the opposite, but had invoked only the fact that he should not have his residence permit revoked because of his Luxembourgish daughter, to whom he was connected through a relationship although he did not have guardianship of the child.</p> |
| Key issues (concepts, interpretations) clarified by the | <p>The court underlined the principle according to which an administrative decision, in the framework of an action for annulment, shall be made based on the legal and factual situation at the time of the decision.</p> <p>In that regard, the court pointed out that the man had not mentioned the fact that he had a daughter of Luxembourgish nationality when he registered as a resident in the country in 2009, and had not made any</p> |

loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché.

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| <p>case (max. 500 chars)</p> | <p>mention of the existence of a daughter when the Minister first approached him by letter in 2012 to inform him of his intention to withdraw the residence permit. Therefore, the court argued, the Minister could not be aware of this fact, and his decision was made correctly.</p> <p>A key issue that was not even touched upon by the court was the best interest of the child. Indeed, the man had argued that the decision constituted a breach of the Convention on the Rights of the Child, but the court did not examine this argument at all, stating that the Minister had not been aware of the existence of the child at the time of his decision and that it was thus not part of the “legal and factual situation” at that time (although the child was born already in 2002 and was registered as the man’s daughter, and there was nothing to raise any doubts regarding his fatherhood).</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The decision of the Minister to revoke the residence permit was upheld, and the man had to bear the cost of the proceedings.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p><i>« s’il n’est pas contesté que la fille de Monsieur ... qui est née en 2002 et donc bien avant que le ministre ne prenne sa décision litigieuse, il ne ressort toutefois d’aucun élément du dossier que le ministre ait été ou aurait dû être au courant de son existence.</i></p> <p>{...}</p> <p><i>Les premiers juges ont partant valablement conclu que le ministre était dans l’ignorance de l’existence de la fille de l’appelant au moment de prendre la décision de retrait litigieuse, sans que cette ignorance puisse lui être reprochée, étant donné qu’il avait donné la possibilité à l’intéressé de faire valoir les spécificités de sa situation personnelle avant la prise de la décision et que l’appelant, de son côté, n’a pas informé l’autorité ministérielle en temps utile des raisons justifiant son maintien sur le territoire luxembourgeois, les</i></p> |

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| | <p><i>explications fournies pour la première fois dans le cadre de l'instance contentieuse étant ainsi inopérantes pour renverser les motifs de la décision de retrait et ne justifiant pas la carence de l'appellant à produire d'autres éléments en temps utile.</i></p> <p><i>Par suite, la Cour est également amenée à rejeter les moyens tirés d'une violation de l'article 3 de la Convention internationale relative aux droits de l'enfant du 20 novembre 1989 et de l'article 8 de la CEDH comme inopérants. »</i></p> <p>Unofficial translation:</p> <p>"If it is not disputed that the daughter of Mr. ... who was born in 2002 and thus well before the Minister took his contested decision, it is not apparent from any evidence that the Minister was or should have been aware of the child's existence.</p> <p>[...]</p> <p>The first judges validly concluded that the Minister was unaware of the appellant's daughter at the time of the decision to withdraw the complaint, and that this unawareness could not be held against him given that the appellant had the opportunity to present the specificities of his personal situation before the decision had been taken, and that the appellant had not informed the ministerial authority in good time of the reasons justifying his continued stay in Luxembourg. The explanations provided for the first time in the contentious proceedings are thus inoperative in reversing the grounds for the withdrawal decision and the failure of the appellant to produce such elements at an earlier stage is not justified.</p> <p>Consequently, the Court is also required to reject the pleas alleging infringement of Article 3 of the Convention on the Rights of the Child of 20 November 1989 and Article 8 of the ECHR as inoperative."</p> |
| <p>Has the deciding body referred to the</p> | <p>No.</p> |

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| Charter of Fundamental Rights? If yes, to which specific article. | |
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| CASE 4 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 7 (Right of residence for more than three months); Article 14 (Retention of the right to residence) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 20 May 2014 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law) | 33699C |

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| Identifier where applicable) | |
| Parties | The State of Luxembourg v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³¹ Amended Act of 29 April 1999 regarding the creation of a right to a guaranteed minimum income (<i>Loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti (RMG)</i>). ³² |
| Key facts of the case (max. 500 chars) | A woman of French nationality residing in Luxembourg with her minor daughter had her residence permit withdrawn by the Luxembourg Minister of Labour, Employment and Immigration (<i>Ministre du Travail, de l'emploi et de l'immigration</i>). The woman was employed through a labour market insertion initiative and the Minister did not consider that such an employment contract qualified the woman as a worker in the sense of the abovementioned Act of 29 August 2008. The Administrative Court, in first instance, held the Minister's decision to be erroneous and reversed it. In appeal, the Higher Administrative Court confirmed the decision, confirming that the woman qualified as a worker and should thus be entitled to legally reside in the country. |

³¹ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

³² Luxembourg, [Amended Act of 29 April 1999 regarding the creation of a right to a guaranteed minimum income](#) (*Loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti*).

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| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The main legal issue in the case regards the qualification of a worker under Article 3d) of the Act of 29 August 2008 and, more precisely, if a person who has contracted a work contract under a labour market insertion programme can qualify as a worker.</p> <p>The said law defines as a worker anyone who exercises a real and effective employed or independent activity, except such activities that are so limited that they can be considered purely marginal and accessory.</p> <p>Since the Act of 29 August 2008 transposes an EU directive, the court found it relevant to look at the case law of the CJEU in this matter. It pointed out that the CJEU has identified a three-pronged test to define a work relation. Firstly, that the worker exercises a real and effective economic activity; secondly, that the activity is exercised under the direction of another person; and, thirdly, that the activity is remunerated (and not so limited as to be considered purely marginal and accessory).</p> <p>The state argued that, in the convention attached to the labour market insertion programme contract through which the woman was employed, it was made clear that, in accordance with the abovementioned Act of 29 April 1999, the Labour Code did not apply, and that the woman could therefore not qualify as a worker under such a contract.</p> <p>The Administrative Court and the Higher Administrative Court both disagreed with the position of the state. In its examination of the case, the latter held that the CJEU conditions were fulfilled and that, although the remuneration granted through the labour market insertion programme is an indirect remuneration, it is clearly linked to the economic activity executed by the woman.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>A Union citizen who is legally employed through an “insertion contract” (i.e. in the framework of a labour market insertion programme) as established by the Act of 29 April 1999 regarding the creation of a right to a guaranteed minimum income, shall be considered as a worker in the sense of the Act of 29 August 2008 (which transposes Directive 2004/38/CE).</p> |

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| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The Higher Administrative Court upheld the decision of the Administrative Court to reverse the decision of the Minister of Labour, Employment and Immigration, and condemns the state to pay the cost of the proceedings.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p><i>« Il y a lieu d'ajouter, en second lieu, que si la CJUE insiste sur ce que ni le niveau limité de la rémunération, ni l'origine des ressources, qui peuvent être publiques, ne sont de nature à avoir une conséquence sur la qualité de travailleur, il importe de préciser, dans le contexte du contrat d'insertion régi par les dispositions de la loi RMG, que la rémunération doit constituer la contrepartie, directe ou indirecte, du travail fourni. Or, alors même que le paiement de l'indemnité d'insertion est assurée, aux termes de l'article 11, paragraphe 3, de la loi RMG, par le fonds national de solidarité sur déclaration certifiée sincère et conforme par le service national d'action sociale, elle constitue néanmoins la contrepartie, indirecte il est vrai, d'un travail fourni en faveur d'un tiers qui en retire un bénéfice économique. Ce constat est indépendant de la qualification de contrat de travail ou non de la relation du bénéficiaire de l'indemnité d'insertion avec le bénéficiaire de ses prestations ou l'organisme qui effectue le paiement de l'indemnité, ainsi que de l'applicabilité ou non des dispositions du Code du travail à la relation. »</i></p> <p>Unofficial translation:</p> <p>Secondly, it is noteworthy that if the CJEU insists that neither the limited level of remuneration nor the source of resources, which may be public, are likely to have any impact on the qualification of a worker, it is important to specify, in the context of the insertion contract governed by the provisions of the RMG Act, that the remuneration must constitute the direct or indirect counterpart of the work provided. Although the payment of the insertion allowance is ensured, in accordance with Article 11(3) of the RMG Act, by the</p> |

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| | National Solidarity Fund upon a certified declaration from the National Service for Social Action, it nevertheless constitutes the counterpart, albeit indirect, of work executed in favour of a third party who derives an economic benefit from it. This fact is independent from the relationship of the beneficiary of the insertion allowance with the recipient of the work executed or with the body that makes the payment of the allowance, as well as of the applicability or not of the provisions of the Labour Code. |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| CASE 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 type="checkbox"/> 5) the right to petition |
| Decision date | 12 October 2010 |

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| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 26864C |
| Parties | Madame ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 22 June 2000 regarding public financial aid for higher education (<i>Loi du 22 juin 2000 concernant l'aide financière de l'Etat pour études supérieures</i>). ³³ Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³⁴ |

³³ Luxembourg, [Act of 22 June 2000 regarding public financial aid for higher education](#) (*Loi du 22 juin 2000 concernant l'aide financière de l'Etat pour études supérieures*).

³⁴ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| <p>Key facts of the case (max. 500 chars)</p> | <p>A French citizen introduced an application to the Luxembourg Ministry of Culture, Higher Education and Research (<i>Ministère de la Culture, de l'Enseignement supérieur et de la Recherche</i>) for a financial incentive (<i>prime d'encouragement</i>) after having obtained her master's degree at the University of Luxembourg. While the woman had not taken up formal residence in the country during her studies, after having obtained her degree she decided to stay in Luxembourg to work and take up residence. This is also when she decided to apply for the financial incentive for her master's studies, an incentive which can be applied for up to one year following the obtainment of the diploma.</p> <p>The application was rejected on the basis that the woman did not fulfil the criteria to obtain such an incentive in the period for which she was seeking the incentive.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The decision to refuse the woman's application was based on the arguments that the woman was not yet, at the time when she received her master's degree, a resident in Luxembourg, nor did she qualify as a worker (in the sense of Directive 2004/38/EC) at the time.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The court held that the financial incentive that the woman had applied for constitutes a form of maintenance aid for studies in the sense of Article 24.2 of Directive 204/38/EC, and that there was no obligation to grant such a benefit during the first three months of reference (let alone before the person takes up formal residence) in the country.</p> <p>Even if the woman had taken up residency in the country and qualified as a worker at the time of her application for a financial incentive, this had not been the case during the period for which she was seeking the said incentive.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of</p> | <p>The woman's appeal was rejected and the Higher Administrative Court followed the line of the Court of First Instance and of the ministry that had initially denied the woman the financial incentive she had applied for. The court also decided that the woman should bear the cost of the proceedings.</p> |

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| the case (max. 500 chars) | |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p><i>« Dans ce contexte, il convient de relever spécialement que toutes les aides financières visées par la loi du 22 juin 2000 ont pour but de faciliter « l'accès » aux études supérieures, de sorte que les conditions d'obtention doivent être remplies au moment où l'étudiant poursuit le cycle d'étude visé par l'aide financière en question, même si l'octroi final de ladite aide dépend de l'obtention du diplôme ou certificat sanctionnant le cycle d'études concerné et que cette aide ne peut partant être sollicitée que suite à l'obtention du diplôme en question. »</i></p> <p>Unofficial translation:</p> <p>"In this context, it should be pointed out in particular that all types of financial aid covered by the Act of 22 June 2000 are intended to facilitate 'access' to higher education, meaning that the conditions for obtaining such an aid must be met at the time when the student is pursuing the study cycle covered by the financial aid in question, despite the fact that the final payment of the aid depends on the obtainment of the diploma or certificate attesting to the course of studies concerned, and that such an aid can, therefore, be sought only after obtaining the diploma in question."</p> |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| CASE 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 | 8 May 2007 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 22173C |
| Parties | The Minister of Culture, Higher Education and Research v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |

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| Legal basis in national law of the rights under dispute | <p>Act of 22 June 2000 regarding public financial aid for higher education (<i>Loi du 22 juin 2000 concernant l'aide financière de l'Etat pour études supérieures</i>).³⁵</p> <p>Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>).³⁶</p> |
| Key facts of the case (max. 500 chars) | <p>The Minister of Culture, Higher Education and Research decided to appeal a decision of the Administrative Court (first instance) to annul a decision by the relevant ministry to deny a student of French nationality who was pursuing her studies at the University of Luxembourg a financial bonus ("<i>prime d'encouragement</i>") that she had applied for upon successful completion of her studies.</p> <p>The Higher Administrative Court reversed the decision and held that the decision to deny the financial aid to the student had been justified.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>The Court of First Instance had not considered that the bonus ("<i>prime d'encouragement</i>") in question fell under Article 24.2 of Directive 2004/38/EC, for the reason that it could be paid only following the successful obtainment of a diploma and could therefore not be considered as a "maintenance aid" for studies.</p> <p>The court of appeals reversed the decision, arguing that it is necessary to look at the <i>scope</i> of the Act of 22 June 2000 regarding public financial aid for higher education, under which the said aid is conferred, in order to determine if it falls under Article 24.2. Indeed, Article 1 of the Act of 22 June 2000 states that financial aid for studies is aimed at facilitating access to higher education. Thus (despite the fact that successful completion of the studies is a requirement to obtain the bonus), the court held that that the aid constituted a form of maintenance aid for studies, in the sense of Article 24.2.</p> |

³⁵ Luxembourg, [Act of 22 June 2000 regarding public financial aid for higher education](#) (*Loi du 22 juin 2000 concernant l'aide financière de l'Etat pour études supérieures*).

³⁶ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>The character of financial maintenance aid for studies and whether such aid, even when it can be paid only upon obtainment of a diploma, falls under Article 24.2 of Directive 2004/38/EC.</p> <p>Had the Court of Appeals upheld the interpretation of the Court of First Instance, the applicant (a woman of French nationality) would have been entitled to the bonus on the basis of the principle of non-discrimination. By reclassifying the bonus as a financial maintenance aid, the Court of Appeals could apply an exception to that principle, and refuse the woman's application.</p> |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The Higher Administrative Court reversed the decision of the Administrative Court and held that the refusal by the Minister to grant the applicant the financial bonus ("<i>prime d'encouragement</i>") had been correct.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>« Considérant que le jugement dont appel, critiqué en ce point par le délégué du Gouvernement, a retenu que la prime d'encouragement « <i>du fait qu'elle n'est quérable qu'après l'accomplissement des études et conditionnée essentiellement par la réussite aux examens, ne saurait être confondue avec une aide d'entretien aux études</i> » ; »</p> <p>{...}</p> <p>« Considérant toutefois qu'il y a lieu d'examiner plus en avant le caractère de la prime notamment en ce qui concerne sa finalité ;</p> <p>qu'il y a lieu, en premier lieu, d'apprécier la portée et la nature de la prime d'encouragement en fonction de l'objet de la loi qui l'a créée ;</p> <p>qu'outre son intitulé visant « <i>l'aide financière de l'Etat pour études supérieures</i> », l'article premier de la loi porte qu'elle « <i>a pour objet de faciliter l'accès aux études supérieures par l'allocation d'une aide financière sous la forme de bourses, de prêts, avec ou sans charge d'intérêts, de subventions d'intérêts et de primes</i></p> |

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| | <p><i>d'encouragement</i> » ;</p> <p>que dès lors, la prime d'encouragement s'inscrit dans l'ensemble des mesures prises afin de « <i>faciliter l'accès aux études supérieures</i> », ce de quoi il échet {sic !} de conclure que la seule circonstance que la prime d'encouragement est accordée sans être subordonnée à des critères d'ordre social, mais seulement suivant le résultat d'examen obtenu n'est pas de nature à en supprimer le caractère d' « <i>aide à l'entretien</i> » ; »</p> <p>Unofficial translation:</p> <p>"Considering that the judgment up for appeal, criticized on this point by the Delegate of the Government, held that the incentive "because it is only paid after completion of the studies and is, essentially, conditioned by the passing of the examinations, cannot be confused with a maintenance aid for studies";"</p> <p>[...]</p> <p>"Considering, however, that the character of the aid should be further examined, in particular as regards its purpose;</p> <p>Whereas, in the first place, it is necessary to assess the scope and nature of the financial incentive in the light of the legislation that governs it;</p> <p>That in addition to its heading "State financial assistance for higher education", article 1 of the Act states that "its purpose is to facilitate access to higher education through the allocation of financial assistance in the form of grants, loans, with or without interest charges, interest subsidies and incentives";</p> <p>Therefore, the incentive is part of the package of measures taken to 'facilitate access to higher education', and it must be concluded that the mere fact that the financial incentive is granted without being subject to any criteria of a social nature, but is only related to the obtainment of a diploma, does not remove its nature as a 'maintenance aid';"</p> |
| <p>Has the deciding body referred to the Charter of</p> | <p>No.</p> |

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| Fundamental Rights? If yes, to which specific article. | |
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| CASE 7 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Articles 2, 5, 7, 15, 27 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 24 June 2008 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law) | 24242C |

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| Identifier where applicable) | |
| Parties | --- v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Amended Act of 28 March 1972 regarding 1) entry and residence of foreigners ; 2) medical examination of foreigners ; 3) employment of foreign workers and of article 96 of the Convention implementing the Schengen Agreement (<i>Loi modifiée du 28 mars 1972 concernant 1) l'entrée et le séjour des étrangers ; 2) le contrôle médical des étrangers ; 3) l'emploi de la main-d'œuvre étrangère et à l'article 96 de la Convention d'application de l'accord de Schengen du 14 juin 1985</i>). |
| Key facts of the case (max. 500 chars) | The case concerned a third-country national married to a woman of Portuguese nationality living in Luxembourg. The third-country national had applied for asylum in Luxembourg in 1998 and been rejected in 2000. Refusing to leave the country, the man had been placed in retention in 2003 and then repatriated to his country of origin in 2004. In 2007, he was again arrested in Luxembourg and placed in retention, following which was, again, repatriated. From his country of origin, he then applied for a residence permit in Luxembourg, on the basis that his wife and daughter, both Union citizens, reside there. The spouses declared to have been together since 2003 and that they got married in the man's country of origin in 2007. The residence permit was denied, and the spouses appealed the decision to the Administrative Court (which confirmed the decision) and then to the Higher Administrative Court (which again confirmed). |
| Main reasoning / argumentation (max. 500 chars) | The spouses invoked Directive 2004/38/EC, in particular Articles 2, 5, 7, 15, and 27 (despite the fact that Luxembourg had not yet transposed the directive at the time of the decision), as well as Article 8 of the ECHR regarding the right to family life. |

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| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The court did not hold Directive 2004/38/EC applicable, but not because it had not yet been transposed into national law. The reason was instead that the ministerial decision to reject the man's application for a residence permit had been made prior to the couple marrying. At the time of the decision, the applicant did not qualify as a family member of a Union citizen.</p> <p>It is noteworthy that, throughout the proceedings, there appears to have been no consideration whatsoever to the needs of the child born from the union between the man (third country national) and the woman (Union citizen).</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Higher Administrative Court upheld the decisions of the Administrative Court and of the Minister, rejecting the man's appeal and condemning him to bear the cost of the proceedings.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p><i>« les premiers juges estimèrent que l'atteinte à la vie familiale des époux ...-... ne saurait être qualifiée d'excessive en l'espèce, au motif que ceux-ci, lorsqu'ils ont noué leur relation amoureuse et contracté mariage, n'étaient pas sans ignorer la précarité de la situation de Monsieur ... en tant qu'étranger n'étant pas admis à séjourner légalement sur le territoire luxembourgeois et que partant un non-respect du principe de proportionnalité entre la décision ministérielle dans le chef des demandeurs et leur situation familiale ne pouvait être déduit des éléments de fait soumis. »</i></p> <p>Unofficial translation:</p> <p>"The first judges considered that the interference with the family life of the spouses ... could not be regarded as excessive in the present case, on the ground that they, when they had established their relationship, and contracted marriage, were not unaware of the precariousness of the situation of Mr ... as a foreigner without</p> |

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| | permission to stay legally on Luxembourg territory. Consequently, a breach of the principle of proportionality between the Ministerial decision regarding the applicants, and their family situation could not be inferred from the facts submitted." |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| CASE 8 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 3, 7 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 23 August 2010 |
| Deciding body (in original language) | Cour administrative |

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| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 27235C |
| Parties | Monsieur ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³⁷ |
| Key facts of the case (max. 500 chars) | A Nigerian national had his application for refugee status rejected by the Luxembourg Minister of Foreign Affairs in 2004. Following the decision, the man remained illegally in the country and was arrested and convicted for drug related offences. In 2009, the Luxembourg authorities issued a decree of residence refusal, ordering the man to leave the country. The man did not appeal this decision. He was subsequently |

³⁷ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| | <p>placed in the Luxembourg retention centre, awaiting his expulsion. The man appealed the decision to retain him, arguing that he had married a Dutch woman in France in 2006, and that the couple had a child together. The man considered that it was his right to circulate freely on Luxembourgish territory and also to leave the territory to join his spouse in the Netherlands without having to request a visa. He argued that the Luxembourgish authorities could not detain and expulse him.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>Both the Court of First Instance and the Court of Appeals held that the man should have appealed the first decision made, which consisted of a decree of residence refusal and order to leave the country. The restriction to move freely on the Luxembourg territory was a direct consequence of that decision.</p> <p>The court also underscored that the man had been illegally in the country since the rejection of his asylum application in 2006, and that he had never accompanied or joined his Dutch wife. Indeed, he had been arrested for drug related offences in Luxembourg only a few days after the couple's wedding in France in September 2006.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The court held that the man had appealed the wrong decision, namely the decision to place him in the retention centre, and not the decree of residence refusal and order to leave the country. It was this latter decision that implied a restriction of his freedom to move freely on the territory. The decision to retain him was merely a subsequent measure in order to ensure that the expulsion order could be executed.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The man's appeal was rejected and the decisions by the Ministry of Foreign Affairs and by the Court of First Instance upheld. The man was condemned to bear the cost of the proceedings.</p> |

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

« Concernant ensuite les moyens de Monsieur ... tirés de la considération qu'en tant que conjoint d'une citoyenne de l'Union européenne, il serait en droit de quitter le territoire du Luxembourg pour se rendre dans un autre Etat membre sans qu'un visa de sortie ou une obligation équivalente ne puisse lui être imposé, c'est à juste titre que le tribunal a relevé qu'il aurait appartenu à l'actuel appellant de faire valoir ces moyens dans le cadre d'un recours contre l'arrêté de refus de séjour du 18 août 2009, tel que prévu à l'article 113 de la loi du 29 août 2008. En effet, c'est ledit arrêté de refus de séjour qui empêche l'appellant à circuler librement depuis cette date sur le territoire luxembourgeois et non pas les décisions de placement subséquentes prises en exécution de l'arrêté de refus de séjour.

A cela s'ajoute que Monsieur ... se trouve en séjour irrégulier sur le territoire du Grand- Duché de Luxembourg depuis qu'il a été définitivement débouté de sa demande d'asile par arrêt de la Cour administrative du 21 février 2006 et qu'il n'a jamais accompagné respectivement rejoint son épouse néerlandaise sur le territoire national, étant donné qu'il a quitté son épouse quelques jours après la célébration de leur mariage en France le 23 septembre 2006 pour se faire arrêter au Luxembourg le 29 septembre 2006 en raison d'infractions à la loi précitée du 19 décembre 1973. »

Unofficial translation:

"As regards the arguments of Mr ... that as a spouse of a citizen of the European Union he would be entitled to leave the territory of Luxembourg to go to another Member State without an exit visa or an equivalent obligation being imposed on him, the Court {of first instance} has rightly pointed out that it would have been for the appellant to assert those pleas in an action against the decree of residence refusal and order to leave the country, as provided for in Article 113 of the Act of 29 August 2008. It is the said decree of refusal that prevents the appellant from circulating freely since that date on the Luxembourgish territory, and not the subsequent retention decisions taken in execution of the decree.

To this it must be added that Mr ... has been illegally staying in the territory of the Grand Duchy of Luxembourg since his asylum application was definitively dismissed by a judgment of the Administrative

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| | Court of 21 February 2006, and he never accompanied his Dutch wife on the national territory, since he left his wife a few days after the celebration of their marriage in France on 23 September 2006 to be arrested in Luxembourg on 29 September 2006 because of infringements of the aforementioned law of 19 December 1973." |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

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| CASE 9 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 3, 7 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 9 June 2008 |

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| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 24476C |
| Parties | Madame ... et Monsieur ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³⁸ |

³⁸ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| <p>Key facts of the case (max. 500 chars)</p> | <p>A man from Cape Verde and a woman of Portuguese nationality appealed a judgement of the Court of First Instance upholding an expulsion order against the man. Following the expulsion order, the man had been retained at the Luxembourg retention centre awaiting his expulsion, and he was subsequently repatriated to Cape Verde.</p> <p>The couple appealed the decision arguing that they were living as a couple since several years and that they, despite the fact that had not yet married, formed a family de facto. Several witnesses attested to the existence of a romantic relationship between the two, and confirmed that discussions about a future marriage had also been held.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Court of Appeals followed the line of reasoning of the Court of First Instance, and rejected the appeal on the grounds that evidence that the two persons were effectively a couple was too vague, and insufficient to prove a de facto family life. The court held that Directive 2004/38 did not apply, since the man did not fall within the scope of Articles 2.2 or 3.2 of the said directive.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The court made a strict interpretation of Article 3.2 of Directive 2004/38/EC, holding that the evidence provided by the couple to prove their stable and long-term relationship.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Higher Administrative Court upheld the decisions of the Court of First Instance and of the Ministry of Foreign Affairs, and rejected the couple's appeal, condemning them to bear the cost of the proceedings.</p> |

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

« Or, force est à la Cour de constater que Monsieur ... ne rentre dans aucune de ces quatre catégories définies par l'article 2, 2) de la directive 2004/38, étant donné plus particulièrement qu'il n'est lié à Madame ... ni par un mariage ni par un partenariat enregistré. Il s'ensuit qu'il ne peut pas invoquer directement à son bénéfice les dispositions contraignantes de la directive 2004/38.

En outre, Monsieur ... ne peut pas se prévaloir de la ligne directrice instaurée par l'article 3, 2. b) de la directive 2004/38 invitant les Etats membres à favoriser le séjour des partenaires de citoyens de l'Union européenne en cas de relation durable dûment attestée. En effet, ainsi qu'il se dégage des développements ci-dessus, les appelants sont restés en défaut d'établir l'existence d'une relation d'une durée suffisante caractérisée notamment par une cohabitation continue.

Par voie de conséquence, le moyen des appelants relatif au non-respect du droit communautaire laisse pareillement d'être fondé. »

Unofficial translation:

"However, the Court finds that Mr ... does not fall within any of the four categories defined by Article 2(2) of Directive 2004/38, in particular because he is not linked to Madame ... neither by a marriage nor by a registered partnership. It follows that he cannot invoke the binding provisions of Directive 2004/38 directly for its benefit.

Moreover, Mr ... cannot rely on the recommendation established by Article 3(2)(b) of Directive 2004/38, inviting the Member States to promote the residence of partners of citizens of the European Union in case of a duly attested lasting relationship. Indeed, as is clear from the above arguments, the appellants have failed to establish the existence of a sufficiently long relationship, in particular characterized by continuous cohabitation.

Consequently, the appellants' plea based on non-compliance with Community law cannot be considered justified."

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| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |
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| CASE 10 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 3, 7 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 25 February 2014 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |

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| Case number (also European Case Law Identifier where applicable) | 32165C |
| Parties | Madame ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ³⁹ |
| Key facts of the case (max. 500 chars) | In 2011, a woman of Russian nationality registered herself and her minor son, of Estonian nationality and thus a Union citizen, as arriving in Luxembourg to work. After an initial period of employment, the woman was on sick leave and received social assistance from the Luxembourg social security system, following which her residence permit was revoked by the Luxembourg Minister of Labour, Employment and Immigration. The woman argued that she, as a family member of a Union citizen (her son), was entitled to remain in the country on the basis of Directive 2004/38/EC. The Administrative Court instead confirmed the Minister's decision, and the woman made appeal to the Higher Administrative Court. |

³⁹ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The woman invoked Directive 2004/38/EC, and argued that she was entitled to a secondary right to reside in an EU Member State through her son, who is a Union citizen.</p> <p>The court stated that, firstly, the woman, as a Russian national, could not avail herself of the provisions of Directive 2004/38/EC directly. Secondly, although the woman had a secondary right to benefit from the provisions of the said directive, through her son who is a Union citizen, it must be noted that the woman is not dependent on her son, who is still a minor, or a member of his household.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>In the present case, the court clarified the limits regarding family ties between third country nationals and Union citizens, pointing out that even where there is a direct ascending line (e.g. mother – son) the parents cannot avail themselves of the provisions in Directive 2004/38/EC if they are not dependent on the child in the sense of Article 3.2 of the said directive. In the present case, it was rather the son who formed part of his mother’s household, than the opposite.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Higher Administrative Court rejected the woman’s appeal and upheld the decision of the Administrative Court, and condemned the woman to bear the cost of the proceedings.</p> |
| <p>Key quotations in original language and translated into English with</p> | <p><i>« l’appelante ne saurait invoquer directement à son profit personnel cette directive qui, au vœu de son article 2, n° 1), régit la situation des citoyens de l’Union définis comme « toute personne ayant la nationalité d’un État membre », étant donné que l’appelante est citoyenne de la Fédération de Russie et ne saurait partant être considérée comme citoyenne de l’Union, encore qu’elle eût disposé du statut de résident de longue durée dans un autre Etat membre de l’Union, à savoir en Estonie.</i></p> <p><i>En deuxième lieu, par rapport au droit dérivé que l’appelante entend déduire à son profit du fait que son fils</i></p> |

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| reference details (max. 500 chars) | <p><i>mineur est de nationalité estonienne et partant citoyen de l'Union, l'article 3, paragraphe 1^{er} de la directive 2004/38 limite le cercle des bénéficiaires des droits conférés par elle à « tout citoyen de l'Union qui se rend ou séjourne dans un État membre autre que celui dont il a la nationalité, ainsi qu'aux membres de sa famille, tels que définis à l'article 2, point 2), qui l'accompagnent ou le rejoignent » et l'article 2, point 2) admet comme ascendants seulement les « ascendants directs à charge » du citoyen de l'Union. Or, si l'appelante est certes la mère de l'enfant mineur ..., de sorte à être susceptible d'entrer dans la catégorie des ascendants directs d'un citoyen de l'Union, elle n'est cependant, d'après les données concordantes du dossier, pas à charge de son fils mineur, de sorte qu'elle ne saurait se prévaloir de cette catégorie de bénéficiaires des droits de circulation conférés par la directive 2004/38. »</i></p> <p>Unofficial translation:</p> <p>"The appellant cannot directly invoke, for her own benefit, the Directive, which, in accordance with Article 2.1 thereof, governs the situation of Union citizens defined as 'any person having the nationality of a Member State'. The appellant is a citizen of the Russian Federation and cannot therefore be regarded as a Union citizen, although she had long-term resident status in another EU Member State, namely Estonia.</p> <p>Secondly, in relation to the secondary right which the appellant intends to deduct for her benefit from the fact that her minor son is of Estonian nationality and therefore a Union citizen, Article 3.1 of Directive 2004/38 limits the circle of beneficiaries of the rights conferred by it to "any Union citizen who visits or resides in a Member State other than that of which he is a national, and to members of his family, as defined in Article 2.2, who accompanies or joins him, and Article 2.2 admits as ascendants only the 'direct dependent ancestors' of the Union citizen. While the appellant is certainly the mother of the minor child, and may be eligible for inclusion in the category of direct ascendant of a Union citizen, she is not, according to the information in the file, dependent on her minor son, and can therefore not fall under the category of beneficiaries who can benefit from the freedom of movement conferred by Directive 2004/38."</p> |
| Has the deciding body referred to | No. |

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| the Charter of Fundamental Rights? If yes, to which specific article. | |
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| CASE 11 Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: Article 7, 14 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 4 June 2013 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law) | 32144C |

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| Identifier where applicable) | |
| Parties | Madame ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ⁴⁰ |
| Key facts of the case (max. 500 chars) | A woman of Portuguese nationality who had registered in Luxembourg as a worker in 2008 had her residence permit withdrawn in 2011 by the Minister of Labour, Employment and Immigration. The woman was considered unable to prove that she had sufficient resources to avoid becoming an unreasonable burden on the Luxembourg social security system. While the Administrative Court upheld the decision of the Minister, the Higher Administrative Court annulled the decision. |
| Main reasoning / argumentation (max. 500 chars) | The woman had worked as a maid / cleaning lady in private houses, and her employers had not declared the full amount of her work, meaning that she had a formal employment of only 12 hours per week. The Administrative Court considered this small amount of work hours to represent only a "marginal and |

⁴⁰ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| | <p>accessory" activity, and held, contrary to the opinion of the Luxembourg advisory committee for foreigners (<i>Commission consultative des Etrangers</i>), that she did not qualify as a worker.</p> <p>In her appeal, the woman provided further details regarding the situation (of exploitation) in which she had found herself, and could also prove that she had continued to work part time as an employee, as well as part time as a volunteer for the Red Cross after reaching the legal age for pension.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The qualification as a worker under national law transposing Directive 2004/38/EC.</p> <p>The Higher Administrative Court clarified that a person can, under certain specific circumstances, qualify as a worker despite having been formally employed for a mere 12 hours per week, and that other elements (such as the evidence that a person has been exploited to work more) could influence the granting of a worker status.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Higher Administrative Court annulled the decision of the Minister (which had previously been confirmed by the Administrative Court (first instance)). The state was condemned to bear the cost of the proceedings.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p><i>« S'il est vrai que l'appelante n'a pas formellement rapporté la preuve de ce que ces trois premiers employeurs ont profité, de manière non rémunérée, de ses services bien au-delà des 3 fois 4 heures officiellement déclarées et rémunérées, il n'en reste pas moins que ces affirmations ne manquent pas de caractère plausible compte tenu de l'ensemble des éléments soumis et vérifiés en cause. Du moins ces éléments sont-ils suffisamment plausibles pour énerver la qualification de « purement marginales et accessoires » dans le chef des activités mises en avant par l'appelante aux dates respectives de prise des décisions ministérielles critiquées. » [...] « Dès lors, l'intéressée était à qualifier de travailleur »</i></p> |

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| | <p>Unofficial translation:</p> <p>“While it is true that the appellant did not formally provide evidence that the first three employers benefited, without paying, from her services well beyond the 3 to 4 hours officially declared and paid, the fact remains that these assertions are not lacking in plausibility in the light of the evidence submitted and verified. At least, these elements are sufficiently plausible to impede the characterisation of the appellant’s activities as “purely marginal and incidental” at the respective dates of making the relevant ministerial decisions.” [...] “Consequently, the applicant was to be classified as a worker”</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>The appellant referred to the Charter (Article 45 and Article 25) but the argument was not further taken into account or analysed by the court.</p> |

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| <p>CASE 12</p> <p>Subject matter concerned</p> | <ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> - linked to which article of Directive 2004/38: Article 16 <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 | 14 July 2011 |
| Deciding body (in original language) | Cour administrative |
| Deciding body (in English) | Higher Administrative Court |
| Case number (also European Case Law Identifier where applicable) | 28082C |
| Parties | Monsieur ... v. a decision of the Administrative Court |
| Web link to the decision (if available) | The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number. |
| Legal basis in national law of the rights under dispute | Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ⁴¹ |

⁴¹ Luxembourg, [Act of 29 August 2008 regarding free movement of persons and immigration](#) (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché*).

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| | Grand-ducal regulation of 28 March 1972 regarding procedural formalities for foreigners residing in the country (<i>Règlement grand-ducal du 28 mars 1972 relatif aux formalités à remplir par les étrangers séjournant au pays</i>). |
| Key facts of the case (max. 500 chars) | A man of Belgian nationality, who had registered in Luxembourg in 2004, applied for permanent residence in 2009, after five years in the country. The Minister of Labour, Employment and Immigration refused the man's application, and the decision was upheld by the Administrative Court. The man appealed the decision to the Higher Administrative Court, which confirmed the decision of the previous instances for the reason that the man could not prove that he had lived uninterruptedly in Luxembourg for five years. |
| Main reasoning / argumentation (max. 500 chars) | The court observed that, while the man had indeed registered as a resident in Luxembourg in 2004, there were several periods between 2005 and 2009 when the man could not prove that he had resided in the country, and during which the evidence gathered was rather of a nature as to show that the time spent in the country was, in certain periods, sporadic and rare. He could thus not prove an uninterrupted residence period of five consecutive years in the country. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The court interpreted the law transposing Directive 2004/38/EC as requiring that the person is able to prove a continuity of <i>de facto</i> residence during five consecutive years in order to obtain permanent residence. Holding that the man had several periods during which he was unable to prove his presence in the country, and during which evidence showed that he had very rarely been present at his indicated address of residence, the court considered that the man could not avail himself of the right to permanent residence, independent of the duration of his legal residence. |
| Results (e.g. sanctions) and key consequences or implications of | The Higher Administrative Court rejected the man's appeal and upheld the decision of the previous instances. The man was condemned to bear the cost of the proceedings. |

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| <p>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>S'il est exact que les absences pour des raisons professionnelles entre novembre 2005 et mars 2006 et pour la période du 1^{er} août 2006 au 15 janvier 2007 rentrent dans le cadre de l'article 9 (2) de la loi du 29 août 2008 et que Monsieur ... s'est présenté régulièrement auprès de l'administration de l'Emploi entre juin 2005 et juillet 2006, celui-ci n'a cependant pas rapporté la preuve d'un séjour continu au Luxembourg pour la période de septembre 2004 à mai 2005, ni pour la période entre le 15 janvier 2007 et le 14 septembre 2009, preuve qu'il aurait pu rapporter par tous moyens de preuve, comme p.ex. des attestations testimoniales. Bien au contraire, la seule personne qui a pu être contactée dans ce contexte, à savoir la gérante de l'immeuble dans lequel Monsieur ... a pris en location une chambre, a déposé que sa présence physique à ... serait très rare {...}.</i></p> <p><i>Au vu de ces faits, la Cour arrive à la conclusion que Monsieur ... ne peut pas utilement se prévaloir d'un séjour ininterrompu de 5 ans à partir du 14 septembre 2004, et ceci indépendamment du débat quant au caractère légal de son séjour au Luxembourg. »</i></p> <p>Unofficial translation:</p> <p>"While it is true that absences for professional reasons between November 2005 and March 2006 and for the period from 1 August 2006 to 15 January 2007 fall within the scope of Article 9 (2) of the Law of 29 August 2008, and that Mr ... presented himself regularly to the Employment Administration between June 2005 and July 2006, he did not, however, report proof of a continuous stay in Luxembourg for the period of September 2004 to May 2005, nor for the period between January 15, 2007 and September 14, 2009; evidence that he could have reported by any means of proof, such as testimony. On the contrary, the only person who could be contacted in this context, namely the manager of the building in which Mr. ... rented a room, testified that his physical presence at ... would be very rare [...].</p> |

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| | In view of these facts, the Court comes to the conclusion that Mr ... cannot claim an uninterrupted stay of 5 years from 14 September 2004, and this independently of the debate regarding his legal residence in Luxembourg.” |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |

4. 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 |
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| Please provide the total number of national cases decided and relevant for the objective of | 7, counting both decisions of the Court of First Instance and the Court of Appeals (of which 2 are | 30 (of which 10 are included in the report), including third country nationals that are family members of Union citizens. This | 0 | 0 | 0 |

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| <p>the research if this data is available (covering the reference period)</p> | <p>included in the report) N.B. NOT official data, but only numbers based on our own research findings.</p> | <p>number includes cases from the Court of First Instance and the Court of Appeals. N.B. NOT official data, but only numbers based on our own research findings. Does not include 5 cases concerned cases where one of the parties had acquired Luxembourgish nationality.</p> | | | |
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