

<b>Subject-matter concerned</b>	<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 the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	21 December 2009
<b>Deciding body (in original language)</b>	La Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE)
<b>Deciding body (in English)</b>	High Authority for the fight against discrimination and for equality
<b>Case number (also European Case Law Identifier (<a href="#">ECLI</a>) where applicable)</b>	Ruling No. 2009-412
<b>Parties</b>	Mrs. T. /Employment Agency
<b>Web link to the decision (if available)</b>	<a href="http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/deliberation-ndeg2009-412-du-21-decembre-2009">www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/deliberation-ndeg2009-412-du-21-decembre-2009</a>
<b>Legal basis in national law of the rights under dispute</b>	<p>Article L.121-2 of the CESEDA:</p> <p>...remain subject to holding a residence permit during the time of the validity of any transitional measures provided for by the Treaty of Accession for the country from where they originate, and unless this treaty stipulates otherwise, the same applies to</p>

	<p>citizens of the European Union who wish to work in France...</p> <p>When these citizens have successfully completed studies leading to a qualification at least equivalent to a masters, in a nationally accredited higher educational establishment, they are not subjected to the requirement of holding a residence permit to work in France.</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>On 21 October 2008, a Romanian national, Mrs. T. received a decision of refusal of registration on the list of the job seekers at the local employment agency. This decision was based on the fact that Mrs. T. “did not present a residence or work permit giving [her] access to the labour market”. In a letter of 24 October 2008, Mrs. T. referred to the HALDE.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>It arises from the provisions of the CESEDA that nationals of the new Member States subjected to transitional provisions and who hold a qualification at least equivalent to a masters can also ask to be registered on the list of job seekers. The claimant holds a Masters in Economics awarded by the Paris-Panthéon-Sorbonne University. Although she claims to have informed the local employment agency about her qualification, she was refused registration on the list of job seekers. It results that this refusal is illegal and, insofar as it is based on her nationality, is discriminatory in nature.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>Discrimination in employment.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The HALDE recommended Pôle Emploi remind all its local employment agencies of the applicable rules as regards registration of nationals of the new Member States governed by the transitional provisions provided for in the Treaty on lists of job seekers. It asked to be informed within three months of the actions taken pursuant to its recommendation.</p>
<b>Key quotations in original language and translated into English with reference details</b>	<p>The request of the ANPE to present a residence permit is in particular based on Articles L.121-2 of the Code for the entry and stay of foreigners (CESEDA) and R.5221-1 of the Employment code under the terms of which nationals of the new Member States governed by the transitional provisions provided for in the Treaty (Romanian and Bulgarian) are subjected to the obligation of having a residence permit if they wish to work in France.</p>

(max. 500 chars)	<p>In other words, they are subjected to an obligation of having a work permit.</p> <p>However, the last subparagraph of Article L.121-2 of the CESEDA exonerates the same Community nationals from the obligation of holding a work permit on the condition that they have successfully completed studies leading to a qualification at least equivalent to a masters, in a nationally accredited higher educational establishment...</p> <p>It arises from the derogation set out in these two laws that nationals of the new Member States subjected to transitional provisions and who hold such a qualification can also ask to be registered on the list of job seekers.</p> <p><i>La demande de l'ANPE de présenter un titre de séjour est notamment fondée sur les articles L.121-2 du code de l'entrée et du séjour des étrangers (CESEDA) et R.5221-1 du code du travail aux termes desquels les ressortissants des nouveaux Etats-membres régis par les dispositions transitoires prévues par le Traité (roumains et bulgares) sont soumis à l'obligation d'un titre de séjour s'ils souhaitent exercer en France une activité professionnelle.</i></p> <p><i>En d'autres termes, ils sont soumis à une obligation d'autorisation de travail.</i></p> <p><i>Cependant, le dernier alinéa de l'article L.121-2 du CESEDA exonère de l'obligation de détenir une autorisation de travail, matérialisée par un titre, les mêmes ressortissants communautaires à la condition qu'ils aient achevé avec succès, dans un établissement supérieur habilité au plan national, un cycle de formation conduisant à un diplôme au moins équivalent au master...</i></p> <p><i>Il découle de la dérogation fixée par ces deux textes que les ressortissants des nouveaux Etats membres soumis à dispositions transitoires et titulaires d'un tel diplôme peuvent également demander leur inscription sur la liste des demandeurs d'emploi.</i></p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	No