

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <p>Article 35 of Directive 2004/38/EC, paragraph 4.2 of the announcement of the Commission to the European Parliament and the Council of 2 July 2009 concerning guidelines for a better implementation and application of the Directive (COM(2000) 313 definite)</p> <p>- linked to which article of the Directive 2004/38</p> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	20 July 2016
Deciding body (in original language)	Raad van State
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RVS:2016:2006
Parties	Appellant, the Secretary of State of Security and Justice, v the alien (<i>de staatssecretaris van Veiligheid en Justitie, appellant v de vreemdeling</i>)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2016:2006&showbutton=true&keyword=ECLI%3aNL%3aRVS%3a2016%3a2006
Legal basis in national law of the rights under dispute	Vreemdelingenwet 2000 (Aliens Act 2000) and Aliens Decision 2000 8.17 and 8.19 (Vreemdelingenbesluit 2000 8.17 and 8.19)The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000

	The Netherlands, Aliens Decision 2000 (<i>Vreemdelingsbesluit 2000</i>), 23 November 2000
Key facts of the case (max. 500 chars)	The alien is a national from Ghana. His (female) partner has the British nationality and her descent is from Ghana. The alien alleges that he lawfully resides (apparently in the Netherlands) as a partner of a Union citizen on the basis of his relationship with his partner. The Secretary of State investigated the relationship and decided that it was fake. The question is whether there were “good indications” to justify this investigation, as this is what Community law requires. The District Court held there were no concrete (and therefore “good”) indications and stated that this is what Community law requires. The Secretary of State alleges, however, that the Community guidelines do not require concrete indications, and states that vaguer indications could be seen as “good” as well. In this case it was decided that the indications were slightly vague, but good enough to justify an investigation. The Council of State held that the Secretary of State has a margin of appreciation. Now that he had considered that the alien tried to get a residence permit unsuccessfully first and that there is an age difference of twelve years with his partner, and that the alien would be extradited, the Secretary of State was allowed to investigate the case. When both parties were heard separately, they differed in what they said about their relationship to such an extent, that the Secretary of State could rightfully conclude that the relationship was fake.
Main reasoning / argumentation (max. 500 chars)	The Court holds that investigations may not be systematical or arbitrary according to Community law. However, the Secretary of State based his investigation on certain aspects of the individual case, he had considered that the alien tried to get a residence permit unsuccessfully first and that there is an age difference of twelve years with his partner, and that the alien would be extradited. The Secretary of State was therefore allowed to investigate the case.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>This case makes clear that the Secretary of State has to base an investigation into a relationship, in order to find out whether it is fake, on aspects of the individual case.</p> <p>The case clarifies the notion of ‘systematic check’ for the purposes of Article 35 Directive 2004/38. As long as the decision to investigate is based on the individual circumstances of the case, there is not systematic check.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Secretary of State was entitled to investigate the relationship between a national of Ghana and a British national. Since that relationship was successfully challenged, the TCN national cannot derive a right to reside in the Netherlands based on his relationship with an EU citizen.
Key quotations in original language	4.3. Bij het antwoord op de vraag wanneer een vermoeden van misbruik mag worden aangenomen heeft de staatssecretaris beoordelingsruimte. De in de richtsnoeren opgenomen lijst met concrete aanwijzingen die kunnen leiden tot het instellen van een

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

onderzoek naar eventueel misbruik heeft een niet-limitatief karakter. Het staat de staatssecretaris dan ook vrij andere omstandigheden in de beoordeling te betrekken. . . .

De rechtbank heeft onbestreden overwogen dat de staatssecretaris de omstandigheden dat de vreemdeling eerder zonder succes een verblijfsprocedure heeft doorlopen en het leeftijdsverschil tussen de vreemdeling en referente 12 jaar bedraagt als relevante aanwijzingen mocht aanmerken. Voorts heeft de staatssecretaris, anders dan de rechtbank heeft overwogen, bij de besluitvorming niet ten onrechte in aanmerking genomen dat de vreemdeling de relatie met referente is aangegaan nadat was geprobeerd hem uit te zetten. Dat er enig tijdsverloop is geweest tussen de uitzettingsprocedure, het ontstaan van de relatie en de indiening van de onderhavige aanvraag, laat onverlet dat aan de omstandigheid dat het gezinsleven pas is ontwikkeld nadat het afwijzende besluit in de eerdere verblijfsprocedure is genomen, betekenis mag worden toegekend (zie ook de richtsnoeren).

Wat er ook zij van de overige door de staatssecretaris in aanmerking genomen factoren, reeds gelet op de hiervoor vermelde omstandigheden, in onderlinge samenhang bezien, heeft hij zich niet ten onrechte op het standpunt gesteld dat een nader onderzoek in dit geval gerechtvaardigd was. Nu het hier een combinatie van op de persoon van de vreemdeling toegespitste omstandigheden betreft, is, anders dan de vreemdeling betoogt, van een systematische controle geen sprake.

De grief slaagt.

4.3. Answering the question when it may be assumed that there is abuse the Secretary of State has a margin of appreciation. The list of concrete indications laid down in the guidelines which may lead to an investigation into possible abuse is of a non-exhaustive nature. The Secretary of State is therefore free to take into account other circumstances. . . .

It is not contested that the District Court considered that the Secretary of State was allowed to consider the circumstances relevant that the alien unsuccessfully applied for a residence permit first and that the age difference between the alien and the referee (the woman) is twelve years. Moreover, the Secretary of State did not unjustifiably take into account that the alien started the relationship with the referee after there had been attempts to extradite him. The Council of State does not agree with the District Court here. That there was some lapse of time between the procedure to extradite the alien, the coming into existence of the relationship and the present application, does not mean that the circumstances that the family life was only developed after the rejection in the prior residence procedure, has no significance (also see the guidelines). Whatever the other aspects taken into account by the Secretary of State were, on the basis of the above-mentioned circumstances, seen in each other's context, he was not unjustifiably of the opinion that a further investigation in this case was justified. As there is a combination of circumstances focussed on the person of the alien, there is no systematic check here, although the alien alleges otherwise.

	The Secretary of State is right.
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.