Subject-matter concerned	☒ **1) non-discrimination on grounds of nationality** ☐ **2) freedom of movement and residence** - **linked to which article of the Directive 2004/38** ☐ **3) voting rights** ☐ **4) diplomatic protection** ☐ **5) the right to petition**
Full reference	***Patmalniece v Secretary of State for Work and Pensions*, Supreme Court, 16 March 2011, [2011] UKSC 11, available at: www.supremecourt.uk/cases/uksc-2009-0177.html.**
Decision date	16 March 2011
Deciding body (in original language)	Supreme Court
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2011] UKSC 11
Parties	Patmalniece v Secretary of State for Work and Pensions
Web link to the decision (if available)	www.supremecourt.uk/cases/uksc-2009-0177.html
Legal basis in national law of the rights under dispute	Regulation 2 of the State Pension Credit Regulations 2002

Key facts of the case (max. 500 chars)	The appellant (P) appealed against a decision of the Court of Appeal which held that Regulation 2 (2) of the State Pension Credit were indirectly, as opposed to directly, discriminatory, and that the discrimination was justified. P was a Latvian national living in the UK. She had worked in Latvia, though not in the UK, and she had no income other than a retirement pension from the Latvian social security authorities. She claimed state pension credit in the UK. The general effect of Regulation 2 (2) of the 2002 Regulations was to restrict entitlement to state pension credit to those who had a right to reside in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland (the common travel area). P had no such right and her application was therefore refused. The question was whether the conditions of entitlement in Regulation 2 (2) were compatible with Article 3 (1) of Regulation 1408/71 which provided for equality of treatment, amongst those to whom it applied, in the application of social security schemes. The Secretary of State conceded that Regulation 2 (2) was indirectly discriminatory. The issues were (1) whether Regulation 2 (2) gave rise to direct discrimination for the purposes of Article 3 (1) of Regulation 1408/71; (2) if it gave rise only to indirect discrimination, whether that discrimination was objectively justified on grounds independent of nationality; (3) if the indirect discrimination would otherwise be objectively justified, whether that conclusion was undermined by the favourable treatment given by Regulation 2 (2) to Irish nationals.
Main reasoning / argumentation (max. 500 chars)	With regard to (1), the Court considered that, had a right to reside in the common travel area been the sole condition of entitlement to state pension credit, then it would undoubtedly have been directly discriminatory on grounds of nationality. However, the Court stated that the effect of Regulation 2 (2) had to be viewed in the context of Section 1 (2) (a) of the State Pension Credit Act 2002 and Regulation 2 as a whole. In order to be entitled, all claimants had to be habitually resident in the common travel area, and while all UK nationals had a right to reside in the UK, not all of them would be able to meet the test of habitual residence. The test was constructed in such a way that it was more likely to be satisfied by a UK national than by a national of another Member State. In terms of EU law, that meant that although it was not directly discriminatory on grounds of nationality, it was indirectly discriminatory and had to be justified. With regard to (2), the Court stated that the questions were whether the reasons for the difference in treatment provided an objective justification for that difference, and whether that justification was based on considerations that were independent of nationality. The purpose of the right-to-reside test was to safeguard the UK's social security system from exploitation by people who wished to enter in order to live off income-related benefits rather than to work. That was a legitimate reason for the imposition of the test. It was independent of nationality, arising from the principle that only those who were economically or socially integrated with the host Member State should have access to its social assistance system. There was, therefore, sufficient justification for the discrimination arising from Regulation 2 (2). With regard to (3), the Court held that the position of Irish nationals was protected by Article 2 of the Protocol on the Common Travel Area and it was not discriminatory not to extend the same entitlement to the nationals of other Member States.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court interpreted whether Regulation 2 of the State Pension Credit Regulations 2002 was compatible with Article 3 (1) of Regulation 1408/71.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court dismissed the appeal.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"Read in isolation, the right to reside requirement in regulation 2(2) sets out a test which no United Kingdom national could fail to meet. And it puts nationals of other Member States at a disadvantage. As already noted, a British citizen has, by virtue of his or her United Kingdom nationality, a right to reside in the United Kingdom by virtue of his right of abode under section 2(1) of the Immigration Act 1971. Those who do not have United Kingdom nationality do not have that right automatically. Nationals of other Member States of the EU who do not fall within the provisions of regulation 2(1) must do something else to acquire it. Under EU law they must be economically active or self-sufficient, or must be a member of the family of an EU citizen who meets these requirements. The disadvantage which nationals of other Member States will encounter in trying to meet the requirements of regulation 2(2) is due entirely to their nationality. Had a right to reside in the United Kingdom or elsewhere in the Common Travel Area been the sole condition of entitlement to state pension credit, it would without doubt have been directly discriminatory on grounds of nationality". [Para. 26] "The effect of regulation 2(2) of the 2002 Regulations must, however, be looked at in the context of section 1(2)(a) of the 2002 Act and regulation 2 as a whole. The condition which all claimants must meet, if they are to be treated as "in Great Britain" for the purposes of section 1(2)(a) of the 2002 Act, is that they must be habitually resident in the United Kingdom or elsewhere in the Common Travel Area. Everyone, including United Kingdom nationals, must meet this requirement. But while all United Kingdom nationals have a right to reside in the United Kingdom, not all of them will be able to meet the test of habitual residence. Most are, of course, habitually resident here. Others are not. They can all meet the "right to reside" requirement that regulation 2(2) sets out because of their nationality. But nationality alone does not enable them to meet the requirement in regulation 2(1). Katherine Fleay, an employee of the Department of Work and Pensions involved in formulating policy relating to access by people from abroad to income-related benefits, referred in para 17 of her witness statement to the Department's memorandum to the Social Security Advisory Committee in February 1994. In that statement it was pointed out that some UK nationals returning to the UK after a long period of absence may be held not to be habitually resident in this country. EU nationals who satisfy one of the conditions listed in regulation 2(1) do not need to meet the "right to reside" test, as they are to be treated as habitually resident here". [Para. 27]

	"In James v Eastleigh Borough Council [1990] 2 AC 751 a rule that those who were not of pensionable age had to pay for admission to a public swimming pool was held to directly discriminate between men and women because their pensionable ages were different. In that case there was an exact match between the difference in pensionable ages and the rule, as the right to free admission depended upon a single criterion – an exact coincidence, as Lady Hale puts it: see para 91, below. The statutory pensionable age alone determined whether the person had to pay or not. As Lord Ackner put it at p 769, if you were a male you had, vis-à-vis a female, a five-year handicap. This was true of every male, not just some or even most of them. That is not so in the present case. There is no such exact match. The composite test is one that some UK nationals may fail to meet too because, although they have a right of residence, they are not habitually resident here. Furthermore, we are not required in this case to say whether this amounts to direct discrimination in domestic law. The question for us is whether it amounts to direct discrimination for the purposes of article 3(1) of Regulation 1408/71". [Para. 29] "There is an obvious similarity between the provisions under consideration in Bressol and the circumstances in which a person is to be "treated" as being in Great Britain by regulation 2 of the 2002 Regulations. The tests are of the same type and they can be analysed in the same way. Just as in that case the specified courses were to be available to resident students only, here a person must be in Great Britain to be entitled to state pension credit. The European Court did not follow the Advocate General's invitation to concentrate exclusively on the second cumulative condition. Nor did it pick up the point that she made in footnote 34 to her opinion, where she drew attention to Advocate General Jacobs' opinion in Case C-79/99 Schnorbus v Land Hessen [2000] ECR I-10997, [2001] 1 CMLR 40, para 33 which has been discussed by Lord Walker (paras 66-68, below) and by Lady Hale (paras 88-91, below). Instead it looked at the conditions cumulatively Page 17 and treated them overall as importing a residence test which was indirectly discriminatory. So it would be wrong in this case to concentrate exclusively on the regulation 2(2) "right to reside" test which is linked to nationality. Looking at the regulation as a whole, in the context of section 1(2)(a) of the 2002 Act, the test which is laid down is that the claimant must be "in Great Britain". This test is constructed in a way that is more likely to be satisfied by a United Kingdom national than by a national of another Member State. The Court's reasoning in Bressol tells us that it is not directly discriminatory on grounds of nationality. But it puts nationals of other Member States at a particular disadvantage, so it is indirectly discriminatory. As such, to be lawful, it has to be justified". [Para. 35] "The principle on which the Secretary of State's justification relies underlies the EU rules as to whether, and if so on what terms, a right of residence in the host Member State should be granted. This is the issue to which Council Directive 90/364 EEC is directed. In that context there is no prohibition on discrimination on grounds of nationality under EU law. So there is no need to be concerned with the question whether the approach that is taken there can be justified on grounds that are independent of nationality. Three questions then arise. The first is whether the Secretary of State's justification can be regarded as relevant in the present context. The second is whether it is a sufficient justification given the effect of the rules that regulation 2 of the 2002 Regulations lays down. The third is whether it is

	independent of the nationality of the person concerned". [Para. 50] "The first and second questions can be taken together. The justification is relevant because the issues that arise with regard to the grant of a right of residence are so closely related to the issues that are raised by the appellant's claim to state pension credit. They are, at heart, the same because they are both concerned with a right of access to forms of social assistance in the host Member State. It is also a sufficient justification, in view of the importance that is attached to combating the risks of what the Advocate General in Trojani v Centre Public d'Aide Sociale de Bruxelles [2004] 3 CMLR 820, para 18 described as "social tourism"". [Para. 51] "As for the third question, the answer to it depends not just on what the Secretary of State himself said in his statement (see paras 37-38, above), but also on the wording of the regulation and its effect. They show that the Secretary of State's purpose was to protect the resources of the United Kingdom against resort to benefit, or social tourism by persons who are not economically or socially integrated with this country. This is not because of their nationality or because of Page 24 where they have come from. It is because of the principle that only those who are economical or socially integrated with the host Member State should have access to its social assistance system. The principle, which I take from the decision in Trojani, is that it is open to Member States to say that economical or social integration is required. A person's nationality does, of course, have a bearing on whether that test can be satisfied. But the justification itself is blind to the person's nationality. The requirement that there must be a right to reside here applies to everyone, irrespective of their nationality". [Para. 52]
Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.	No.