

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 – Article 7 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Full reference	<i>Mirga v Secretary of State for Work and Pensions and Samin v Westminster City Council</i> , Supreme Court, 27 January 2016, [2016] UKSC 1, available at: www.supremecourt.uk/cases/uksc-2013-0161.html .
Decision date	27 January 2016
Deciding body (in original language)	Supreme Court
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2016] UKSC 1
Parties	Mirga v Secretary of State for Work and Pensions and Samin v Westminster City Council
Web link to the decision (if available)	www.supremecourt.uk/cases/uksc-2013-0161.html
Legal basis in national law of the rights under dispute	Regulation 6 of the Immigration (European Economic Area) Regulations 2006 (EEA Regulations) (and others)

Key facts of the case (max. 500 chars)	The appellants, Ms Mirga and Mr Samin, appealed against decisions upholding determinations that they were not entitled to income support and housing assistance respectively. Ms Mirga was a Polish national who had spent much of her life in England. Although she had worked at various times, she was refused income support after becoming pregnant. The Secretary of State's position was as follows: at the time she applied for income support, Ms Mirga was ineligible for income support because she was a "person from abroad"; that was on the basis that she could not claim to be a "worker" as she was a Polish national who had not completed 12 months' registered employment under the Accession (Immigration and Worker Registration) Regulations 2004 and thus could not be a "qualifying person" for the purpose of the EEA Regulations 2006; there was no question of her having been a "jobseeker", a "self-employed person" or a "student" under the 2006 Regulations, nor could she claim to be a "self-sufficient person". Mr Samin was an Austrian citizen who had come to the UK in 2005. He was in poor health and had not worked since 2006. He applied for housing under the homelessness provisions of the Housing Act 1996, but his application was refused. The local authority's position was as follows: Mr Samin was not a "worker" within the EEA Regulations, as he was now permanently incapable of work; in any event, he could not claim to be a "worker", as he had not worked for 12 months in the UK; accordingly, he was not a "qualified person" under the EEA Regulations, from which it followed that he was "ineligible" for housing assistance; further, he could not claim to be "a self-sufficient person" within the EEA Regulations, as he had no assets and no health insurance. The issues were (i) whether the EEA Regulations which had led to the impugned decisions infringed the right under TFEU Article 21 (1) to "reside freely" within the EU and/or the right under Article 18 not to be discriminated against on nationality grounds; (ii) whether there should have been an investigation as to whether it was proportionate to refuse Ms Mirga and Mr Samin income support and housing assistance.
Main reasoning / argumentation (max. 500 chars)	The Court held that: (i) The appellants' TFEU rights had not been infringed. The right accorded by Article 21 (1) is qualified by the words "subject to the limitations and conditions laid down in the Treaties and in the measures adopted to give them effect". These measures include Directive 2004/38. It was a significant aim of the Directive that EU nationals from one Member State should not be able to exercise their rights of residence in another Member State so as to become an unreasonable burden on the social assistance system. Article 7 (1) limits the right of residence after three months to those who are workers, self-employed, students or persons with sufficient resources and health insurance "not to become a burden on the social assistance system of the host member state". Under Article 24, EU nationals' right of equal treatment in host Member States is "subject to ... secondary law" and they can be refused social assistance "where appropriate". Having regard to the Directive, Ms Mirga could not claim to be a worker because she had not done 12 months' work in the UK, and, because she was not a jobseeker, self-employed, a student or self-sufficient, she could validly be denied a right of residence and therefore could be excluded from social assistance. Therefore, Article 21 (1) could not assist her. The position was similar in relation to Article 18, on which Mr Samin had relied. The Article 18 right does not constitute a broad or general right not to be discriminated against. First, its ambit is limited to "the scope of the Treaties", which means that it only comes into play where there is discrimination in connection with a right in the TFEU or another EU Treaty. Second, the Article 18 right is "without prejudice to any special provisions contained [in the Treaties]". Further, the point raised by the appellants had to be rejected as <i>acte eclare</i> following the Grand Chamber judgments in <i>Dano v Jobcenter Leipzig</i> and <i>Jobcenter Berlin Neukolln v Alimanovic</i>. With regard to (ii), the Court held that it would severely

	undermine the whole thrust and purpose of the Directive if proportionality could be invoked to entitle a national of another Member State who is not a worker, self-employed or a student, and has no, or very limited, means of support and no medical insurance to have the right of residence and social assistance in another Member State. It would also place a substantial burden on a host Member State if it had to carry out a proportionality exercise in every case where the right of residence (or indeed the right against discrimination) was invoked.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Court clarified that the EEA Regulations did not breach the TFEU by denying two economically inactive EU citizens income support and housing assistance because the TFEU had to be read together with Directive 2004/38.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The appeals were dismissed.
Key quotations in original language and translated into English with reference details (max. 500 chars)	“It seems to me that these arguments face real difficulties. The right accorded by article 21.1 of TFEU, which is relied on by Ms Mirga, although fundamental and broad, is qualified by the words “subject to the limitations and conditions laid down in the Treaties and in the measures adopted to give them effect”. In the present case, the “measures” include the 2004 Directive, and presumably include the 2003 Accession Treaty, which was adopted under article 49 of the Treaty on European Union”. [Para. 43] “It appears clear from the terms of paragraph 10 of the preamble that it was a significant aim of the 2004 Directive that EU nationals from one member state should not be able to exercise their rights of residence in another member state so as to become “an unreasonable burden on the social assistance system”. It also seems clear that any right of residence after three months can be “subject to conditions”. This is reflected in the terms of article 7.1, in that it limits the right of residence after three months to those who are workers, self-employed, students, or with sufficient resources and health insurance “not to become a burden on the social assistance system of the host member state”. Indeed, it is worth noting that article 14.1 even limits the right of residence in the first three months. It further appears clear from article 24, that EU nationals’ right of equal treatment in host member states is “subject to ... secondary law”, and in particular that they can be refused social assistance “where appropriate”. [Para. 44]

“Accordingly, when one turns to the 2003 Accession Treaty and the 2004 Directive, I consider that, because Ms Mirga has not done 12 months’ work in this country, she cannot claim to be a “worker”, and, because she is not a “jobseeker”, “self-employed”, a “student”, or “self-sufficient”, it would seem to follow that she can be validly denied a right of residence in the UK, and therefore can be excluded from social assistance. In those circumstances, it must follow that article 21.1 TFEU cannot assist her”. [Para. 45]

“Mr Samin’s first argument appears to me to face similar difficulties. The article 18 right which he relies on does not constitute a broad or general right not to be discriminated against. First, its ambit is limited to “the scope of the Treaties”, which means that it only comes into play where there is discrimination in connection with a right in the TFEU or another EU Treaty. Secondly, the article 18 right is “without prejudice to any special provisions contained [in the Treaties]”. That brings one back to the argument raised on behalf of Ms Mirga”. [Para. 47]

“Contrary to the appellants’ argument, I do not consider that the decision of the Third Chamber in Pensionsversicherungsanstalt v Brey (Case C-140/12) [2014] 1 WLR 1080 provides the appellants with much assistance. However, it is unnecessary to consider that possibility, because it seems to me clear that the first point raised by each appellant must be rejected as acte éclairé following the recent Grand Chamber judgments in Dano and another v Jobcenter Leipzig (Case C- 333/13) [2015] 1 WLR 2519 (which was published after the Court of Appeal decided these cases) and in Alimanovic (Case C-67/14) EU:C:2015:597, which, as mentioned above, was published some time after the hearing of these appeals. It is appropriate to set out in summary terms the effect of those three decisions, not least because they have relevance to the second issue raised on behalf of each appellant, as well as the first” [Para. 48]

“Where a national of another member state is not a worker, self-employed or a student, and has no, or very limited, means of support and no medical insurance (as is sadly the position of Ms Mirga and Mr Samin), it would severely undermine the whole thrust and purpose of the 2004 Directive if proportionality could be invoked to entitle that person to have the right of residence and social assistance in another member state, save perhaps in extreme circumstances. It would also place a substantial burden on a host member state if it had to carry out a proportionality exercise in every case where the right of residence (or indeed the right against discrimination) was invoked”. [Para. 69]

“Even if there is a category of exceptional cases where proportionality could come into play, I do not consider that either Ms Mirga or Mr Samin could possibly satisfy it. They were in a wholly different position from Mr Baumbast: he was not seeking social assistance, he fell

	short of the self-sufficiency criteria to a very small extent indeed, and he had worked in this country for many years. By contrast Ms Mirga and Mr Samin were seeking social assistance, neither of them had any significant means of support or any medical insurance, and neither had worked for sustained periods in this country. The whole point of their appeals was to enable them to receive social assistance, and at least the main point of the self-sufficiency test is to assist applicants who would be very unlikely to need social assistance.” [Para. 70] “Whatever sympathy one may naturally feel for Ms Mirga and Mr Samin, their respective applications for income support and housing assistance represent precisely what was said by the Grand Chamber in Dano, para 75 (supported by its later reasoning in Alimanovic) to be the aim of the 2004 Directive to stop, namely “economically inactive Union citizens using the host member state’s welfare system to fund their means of subsistence”.” [Para. 71]
Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.	No.