

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 the 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	30 June 2014
Deciding body (in original language)	Grondwettelijk Hof van België / Cour Constitutionnelle de Belgique
Deciding body (in English)	Constitutional Court of Belgium
Case number (also European Case Law Identifier (ECLI) where applicable)	95/2014
Parties	Roger Halleman and others
Web link to the decision (if available)	http://www.const-court.be/public/n/2014/2014-095n.pdf
Legal basis in national law of the rights under dispute	Article 12 of the Law of 19 January 2012 amending the law relating to the reception of asylum seekers (Wet van 19 januari 2012 tot wijziging van de wetgeving met betrekking tot de opvang van asielzoekers / Loi du 19 Janvier 2012 modifiant la législation concernant l'accueil des demandeurs d'asile). The Article states that the Public Centre for Social Welfare (<i>Openbaar Centrum voor Maatschappelijk Welzijn</i> / <i>Centre Public d'Action Sociale</i>) is not obliged to provide social services to nationals of EU Member States or to their family members during the first three months of residence or, where appropriate, during the longer period during which they look for work, nor is it obliged to grant

	<p>livelihood aid prior to the acquisition of the right to permanent residency. This Article transposes Article 24 (2) of Directive 2004/38 into Belgian law (par. B.38 second indent).</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The applicants claim that the Article discontinues the right to social assistance, including the right to urgent medical help, for citizens of EU Member States and their family members during the first three months of residence in Belgium as well as for citizens of EU Member States who arrive in Belgium to find work and their family members during their job search. It also supposedly discontinues the right to livelihood support for citizens of EU Member States until they gain permanent residency.</p> <p>Applicants argue that this provision is in violation of the right to lead a dignified life including, among others, the right to social security and the right to family benefits (Article 23 of the Belgian Constitution) read in conjunction with the right to equality and non-discrimination (Articles 10 and 11 of the Belgian Constitution); Articles 2, 4, 9, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights; Article 3 of the European Convention on Human Rights; Articles 13, 16, 30 and E of the European Social Charter.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Due to the general wording of Article 12 of the Law of 19 January 2012, social services (social assistance as well as scholarships and student loans) can be refused to EU citizens, non-Belgians, who have or retain the status of employee and to their families. (par. B.41-B.44)</p> <p>The social assistance provided by the public centre for social welfare is not considered to be a payment of financial nature intended to facilitate access to the labour market which is excluded from the scope of application of Article 24 (2) of Directive 2004/38. If it was considered to constitute such a payment, every employment-seeking EU citizen could claim social assistance. This would be against Article 24(2), which seeks to exclude job seekers from the social assistance system while they look for work. (par. B.50.1)</p> <p>Article 12 creates a discriminatory difference in treatment, because EU citizens and their family members are not entitled to reimbursement of urgent medical aid expenses incurred by the public centre for social welfare during the first three months of residency, whereas persons who reside illegally in Belgium can claim such aid. (par. B.52.1) When EU citizens take recourse to the social assistance system, their right to residency can be terminated and they can be expelled. (par. 55.2)</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Interpretation of the equal treatment principle included in Article 24 of Directive 2004/38.</p> <p>Clarification of the scope of the notion “social assistance” in Article 24 (2) of Directive 2004/38. (par. B.49 and B.50)</p>
<p>Results (e.g. sanctions) and key consequences or implications of the</p>	<p>Social assistance provided by the public centre for social welfare is covered by Article 24 (2) of Directive 2004/38. (par. B.50.1)</p>

<p>case (max. 500 chars)</p>	<p>Article 12 of the Law of 19 January 2012 is annulled, in as much as it applies to citizens of the EU, non-Belgians, who have or retain the status of employee (whether or not they are in paid employment), as well as their family members who reside on Belgian territory legally. Violation of Articles 10, 11 and 23 of the Constitution read in conjunction with Article 24 of Directive 2004/38. (par. B.43 and B.44).</p> <p>On the other hand, this refusal of support for livelihood for EU citizens other than employees and their family members, before they obtain permanent residency, does not violate these Articles. (par. B.45-B.47)</p> <p>Article 12 of the Law of 19 January 2012 is annulled in as far as it allows the public centre for social welfare to refuse urgent medical care to EU citizens and their family members during the first three months of their residence. Violation of Articles 10 and 11 of the Constitution. (par. B.55.12)</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>Door het openbaar centrum voor maatschappelijk welzijn mogelijk te maken om aan de Europese burger, niet-Belg, die de hoedanigheid van werknemer heeft of behoudt, alsook aan zijn familieleden, het voordeel van de maatschappelijke dienstverlening te weigeren gedurende de eerste drie maanden van hun verblijf, alsook het voordeel van de steun voor levensonderhoud tot het verkrijgen van een duurzaam verblijfsrecht in België, heeft artikel 12 van de bestreden wet bovendien een verschil ingevoerd dat in strijd is met het gelijkheidsbeginsel vervat in artikel 24, lid 1, van de richtlijn. - By making it possible for the public centre for social welfare to refuse the benefit of social assistance to non-Belgian EU citizens (who have or retain the status of employee, as well as their family members during the first three months of their residency) as well as the benefit of support for livelihood until permanent residency has been obtained; moreover, Article 12 of the contested law has introduced a differentiation that is in violation of the equality principle included in Article 24 (1) of the Directive. (par. B.42.3)</i></p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.</p>	<p>No</p>