

Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to Articles 27 and 28 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	1 October 2014
Deciding body (in original language)	Conseil d'Etat
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	No.365054 ECLI:FR:CESSR:2014:365054.20141001
Parties	Mrs A/France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000029589886&fastReqId=1773877144&fastPos=2
Legal basis in national law of the rights under dispute	Article L. 121-1 the Code for the entry and stay of foreigners and the right to asylum provides that: The relevant administrative authority can, in a reasoned decision, oblige a national of a Member State of the European Union, another State which is party to the European economic area agreement, or the Swiss Confederation, or a member of their family, to leave the French territory when it finds: ... 3. [...] that, within three months of their entry into France, their personal conduct constitutes a real, present and sufficiently serious threat to a fundamental interest of French society... The relevant administrative authority takes into account all of the circumstances relating to

	their situation, in particular the duration of the stay of the person concerned in France, their age, their health, their family and economic situation, their social and cultural integration in France, and the strength of their bonds with their country of origin.
Key facts of the case (max. 500 chars)	Mrs. A. of Romanian nationality was arrested on 8 January 2012 and placed in police custody for soliciting, in a group, the payment of sums of money using false documentation bearing the letter heading of a charitable association. On 9 January 2012 the Prefect of police issued an order obliging her to leave the French territory, refusing her the benefit of a voluntary departure period, stating the destination country, and placing her in detention. In a ruling of 12 January 2012, the administrative court of Paris refused an application from Mrs. A. to cancel this order. On 4 October 2012, the Paris administrative court of appeal upheld the ruling of 12 January 2012. Mrs. A. took her case to the Council of State asking for the ruling of the 4 October 2012 to be overturned and for her appeal to be upheld.
Main reasoning / argumentation (max. 500 chars)	According to the Council of State, it rests with the administrative authority, which shall not base its decision only on the existence of an offence, to examine if the presence of the person concerned on the French territory is likely to constitute a real, present and sufficiently serious threat to a fundamental interest of French society, considering all the circumstances of the case. With these conditions being assessed according to the person's individual situation, in particular the duration of their stay in France, their family and economic situation and their integration into society. The Council of State noted that Mrs. A. had been arrested for 'defrauding public charity' (<i>d'escroquerie à la charité publique</i>), that she had already previously been reported for similar offences and that she disposed of no means of existence other than begging. Mrs. A. did not dispute that the facts reported by the Prefect of police had occurred within three months of her entry into France, or that her situation with regard to the duration of her stay therefore came under the case provided for in paragraph 3 of Article L. 511-3-1 of the CESEDA. Mrs. A. resided in a camp in the municipality of La Courneuve, and although she was the mother of four children, only one of them was in her charge. The Council of State considered that the administrative court of appeal did not commit a legal error in taking into account all of the circumstances relating to the particular situation of the applicant, in particular her family situation and her social integration in France, to assess the legality of the decision of the Prefect of police, in particular its proportionality. The administrative court of appeal correctly

	qualified the facts which were submitted to the court, by deducing from all cited elements that the presence of Mrs. A. in France constituted a real, present and sufficiently serious threat to public safety, which constitutes a fundamental interest of French society.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Right of a European citizen to stay Legal grounds for the obligation to leave the French territory
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Mrs. A's appeal was rejected by the Council of State. The order of 9 January 2012 of the Prefect of police, obliging her to leave the French territory, remained in force.
Key quotations in original language and translated into English with reference details (max. 500 chars)	1. Considering that the Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States determines the conditions under which these may restrict the freedom of movement and residence of a citizen of the European Union or a member of their family; that Article 27 of this directive provides that, in general, such freedom may be restricted on grounds of public order, public safety or public health, without these reasons being invoked for economic purposes; that the same Article provides that the measures taken in this respect must comply with the principle of proportionality and must be based on the personal conduct of the individual concerned, which must represent a real, present and sufficiently serious threat to a fundamental interest of society; that Article 28 of the Directive requires that the individual situation of the person concerned be taken into account before any expulsion measure, in particular the length of their stay, age, state of health, family and economic situation, social and cultural integration and the extent of their links with their country of origin; that this same Article provides for special protection for citizens who have acquired a permanent right of residence, those who have resided in the host Member State for the previous ten years, and minors, and expulsion of such persons must be based on serious grounds of public order or public security; 2. Considering that under the terms of Article L. 511-3-1 inserted into the Code for the entry and stay of foreigners and the right to asylum by the law of 16 June 2011 in order to ensure the transposition of these provisions: "The relevant administrative authority can, by a reasoned decision, oblige a national of a Member State of the European Union, another State which is party to the European economic area agreement, or the Swiss Confederation, or a member of their family, to leave the French territory when it finds: ... [...] 3. [...] that, within three months from their entry into France, their personal conduct constitutes a real, present and sufficiently serious threat to a fundamental interest of French society [...] The relevant administrative authority takes into account all of the circumstances relating to their situation, in particular the duration of the stay of the person concerned in France, their age, their health, their family and economic situation, their social and cultural integration in France, and the strength of their bonds with their country of origin;

3. Considering that these provisions must be interpreted in light of the objectives of the directive of 29 April 2004 and in particular Articles 27 and 28 mentioned in point 1; that it results in this respect that the terms of paragraph 3 of Article L. 511-3-1, which concerns nationals of a Member State who have not been in France for more than three months, do not target people benefiting from the protection provided for in Article 28 of the Directive, as to the particular degree of seriousness of the grounds of public order that a Member State must justify to be able take an expulsion measure; that nevertheless the administrative authority, which shall not base its decision only on the existence of an offence, shall examine if the presence of the person concerned on the French territory is likely to constitute a real, present and sufficiently serious threat to a fundamental interest of French society, considering all the circumstances of the case. With these conditions being assessed according to the person's individual situation, in particular the duration of their stay in France, their family and economic situation and their integration into society...

6. Considering, secondly, that to uphold the ruling of the administrative court, the administrative court of appeal revealed that Mrs. A... had been arrested in the company of ten other people, for the offence of 'defrauding public charity' (*d'escroquerie à la charité publique*), that she had already previously been reported for similar offences and that she disposed of no means of existence other than begging; that it arises from the case file submitted to the judges that Mrs. A... had not, in her records, disputed the materiality of the offences which she is accused of; that, consequently, the argument that the court failed to respond to the argument that the materiality of these facts was not established can only be rejected;

7. Considering, thirdly, that before the administrative court of appeal, Mrs. A... did not dispute that the facts reported by the Prefect of police had occurred within three months of her entry into France, or that her situation with regard to the duration of her stay therefore came under the case provided for in paragraph 3 of Article L. 511-3-1 of the CESEDA; that the court noted that the interested party resided in a camp in the municipality of La Courneuve, that she did not dispose of any means of existence other than begging and that, although she was the mother of four children, only one of them was in her charge; that, consequently, the court did not commit a legal error with regard to these provisions in taking into account all of the circumstances relating to the particular situation of the applicant, in particular her family situation and her social integration in France, to assess the legality of the decision of the Prefect of police, in particular its proportionality;

8. Considering, finally, that by deducing from all cited elements above that the presence of Mrs. A... in France constituted a real, present and sufficiently serious threat to public safety, which constitutes a fundamental interest of French society, the administrative court of appeal had not incorrectly considered the facts submitted to it;

9. Considering that it results from all that precedes that, without it being necessary to seek a preliminary ruling from the Court of Justice of the European Union, Mrs. A... does not have legal grounds to request the overruling of the ruling of the Paris administrative court of appeal which she is contesting.

1. *Considérant que la directive du Parlement européen et du Conseil du 29 avril 2004 relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des Etats membres détermine les conditions dans lesquelles ceux-ci peuvent restreindre la liberté de circulation et de séjour d'un citoyen de l'Union européenne ou d'un membre de sa famille ; que l'article 27 de cette directive prévoit que, de manière générale, cette liberté peut être restreinte pour des raisons d'ordre public, de sécurité publique ou de santé publique, sans que ces raisons puissent être invoquées à des fins économiques ; que ce même article prévoit que les mesures prises à ce titre doivent respecter le principe de proportionnalité et être fondées sur le comportement personnel de l'individu concerné, lequel doit représenter une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société ; que l'article 28 de la directive impose la prise en compte de la situation individuelle de la personne en cause avant toute mesure d'éloignement, notamment de la durée de son séjour, de son âge, de son état de santé, de sa situation familiale et économique, de son intégration sociale et culturelle et de l'intensité de ses liens avec son pays d'origine ; que ce même article prévoit une protection particulière pour les citoyens ayant acquis un droit de séjour permanent, à l'égard desquels des raisons impérieuses d'ordre public ou de sécurité publique doivent être établies, et pour ceux ayant séjourné dans l'Etat membre d'accueil pendant les dix années précédentes ainsi que pour les mineurs, dont l'éloignement doit reposer sur des motifs graves de sécurité publique ;*
2. *Considérant qu'aux termes de l'article L. 511-3-1 inséré dans le code de l'entrée et du séjour des étrangers et du droit d'asile par la loi du 16 juin 2011 afin d'assurer la transposition de ces dispositions : "L'autorité administrative compétente peut, par décision motivée, obliger un ressortissant d'un Etat membre de l'Union européenne, d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération suisse, ou un membre de sa famille à quitter le territoire français lorsqu'elle constate : (...) 3° Ou que, pendant la période de trois mois à compter de son entrée en France, son comportement personnel constitue une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société française. (...) L'autorité administrative compétente tient compte de l'ensemble des circonstances relatives à sa situation, notamment la durée du séjour de l'intéressé en France, son âge, son état de santé, sa situation familiale et économique, son intégration sociale et culturelle en France, et de l'intensité de ses liens avec son pays d'origine" ;*
3. *Considérant que ces dispositions doivent être interprétées à la lumière des objectifs de la directive du 29 avril 2004 et notamment de ses articles 27 et 28 mentionnés au point 1 ; qu'il résulte à cet égard des termes mêmes du 3° de l'article L. 511-3-1, qui concerne des ressortissants d'un Etat membre qui ne sont pas entrés en France depuis plus de trois mois, qu'elles ne visent pas les personnes bénéficiant de la protection prévue à l'article 28 de la directive, quant au degré particulier de gravité des motifs d'ordre public dont un Etat membre doit justifier pour pouvoir prendre à leur encontre une mesure d'éloignement ; qu'il appartient néanmoins à l'autorité administrative, qui ne saurait se fonder sur la seule existence d'une infraction à la loi, d'examiner, d'après l'ensemble des circonstances de l'affaire, si la présence de l'intéressé sur le territoire français est de nature à constituer une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société française, ces conditions étant appréciées en fonction de sa situation individuelle, notamment de la durée de son séjour en France, de sa situation familiale et économique et de son intégration ...*
6. *Considérant, en deuxième lieu, que pour confirmer le jugement du tribunal administratif, la cour administrative d'appel a relevé que Mme A...avait été interpellée en compagnie de dix autres personnes, pour des faits " d'escroquerie à la charité publique ", qu'elle avait déjà fait précédemment l'objet de signalements pour des faits similaires et qu'elle ne disposait d'aucun moyen d'existence autre que la mendicité ; qu'il ressort des pièces du dossier soumis aux juges du fond que Mme A...n'a pas, dans ses écritures, contesté la matérialité*

	<i>des faits qui lui étaient reprochés ; que, par suite, le moyen tiré de ce que la cour aurait omis de répondre au moyen tiré de ce que la matérialité de ces faits n'était pas établie ne peut qu'être écarté ;</i> <i>7. Considérant, en troisième lieu, que devant la cour administrative d'appel, Mme A...ne contestait pas que les faits retenus par le préfet de police s'étaient produits pendant la période de trois mois à compter de son entrée en France et que sa situation entraînait ainsi, en ce qui concerne la durée de son séjour, dans le cas prévu au 3° de l'article L. 511-3-1 du code de l'entrée et du séjour des étrangers et du droit d'asile ; que la cour a relevé que l'intéressée résidait dans un campement dans la commune de La Courneuve, qu'elle ne disposait d'aucun autre moyen d'existence que la mendicité et que, si elle était mère de quatre enfants, l'un d'entre eux seulement était à sa charge ; que, dès lors, la cour n'a pas commis d'erreur de droit au regard de ces dispositions en tenant compte de l'ensemble des circonstances relatives à la situation particulière de la requérante, en particulier de sa situation familiale et de son intégration sociale en France, pour apprécier la légalité de la décision du préfet de police, notamment son caractère proportionné ;</i> <i>8. Considérant, enfin, qu'en déduisant de l'ensemble des éléments cités ci-dessus que la présence de Mme A...en France constituait une menace réelle, actuelle et suffisamment grave pour la sécurité publique, qui constitue un intérêt fondamental de la société française, la cour administrative d'appel n'a pas inexactement qualifié les faits qui lui étaient soumis ;</i> <i>9. Considérant qu'il résulte de tout ce qui précède que, sans qu'il soit besoin de saisir la Cour de justice de l'Union européenne d'une question préjudicielle, Mme A...n'est pas fondée à demander l'annulation de l'arrêt de la cour administrative d'appel de Paris qu'elle attaque.</i>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No