

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38: Article 7 (Right of residence for more than three months); Article 14 (Retention of the right to residence) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	15 March 2016
Deciding body (in original language)	Cour Administrative
Deciding body (in English)	Higher Administrative Court
Case number (also European Case Law Identifier () where applicable)	37220C
Parties	The spouses ... and ... v. a judgment of the Administrative Court (first instance)
Web link to the decision (if available)	The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number.
Legal basis in national law of the rights under dispute	Act of 29 August 2008 regarding free movement of persons and immigration (<i>Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration</i>). ¹
Key facts of the case (max. 500 chars)	<p>A married couple of Italian citizenship residing in Luxembourg had their residence permit withdrawn by the Luxembourg Minister of Labour, Employment and Immigration (<i>Ministre du Travail, de l'emploi et de l'immigration</i>).</p> <p>The grounds for the decision was the fact that the couple did not fulfil the criteria established by the law, since they did not have sufficient resources to avoid becoming an unreasonable burden on the social assistance system.</p> <p>The man, who arrived in Luxembourg in July 2011 to take up work, had been on social welfare and received the guaranteed minimum income since December 2011 due to a health issue.</p> <p>The Minister of Labour, Employment and Immigration first informed the man of the intention to withdraw his residence permit on 8 June 2012, but put off his decision repeatedly to allow</p>

¹ Luxembourg, Act of 29 August 2008 regarding free movement of persons and immigration (*Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration* ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, - la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti, - le Code du travail, - le Code pénal ; 3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main-d'œuvre étrangère, - la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers, - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché), available at: <http://legilux.public.lu/eli/etat/leg/loi/2008/08/29/n1/jo>

	<p>the man to regularise his situation.</p> <p>On 21 June 2012, his wife joined him in Luxembourg and declared her arrival as the accompanying spouse.</p> <p>On 5 August 2014, the residence permit of the man (and his spouse) was finally withdrawn on the grounds that his situation has remained unaltered and the he continued not to fulfil the criteria foreseen by Article 6 of the Act of 29 August 2008 regarding free movement of persons and immigration, and that, in accordance with Article 24 of the same Act, he represented an unreasonable burden on the Luxembourg social assistance system. The man was given one month to leave the country.</p> <p>On 11 September 2014, the spouses introduced an action for annulment of the decision before the Administrative Court (<i>Tribunal administratif</i>), which was rejected on 28 October 2015.</p> <p>On 30 November 2015, the spouses appealed the decision to the Higher Administrative Court (<i>Cour administrative</i>). The decision by the appeals court confirmed the first decision and upheld the removal of the residence permits of the two spouses and their obligation to leave the country.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The main argumentation by the two judicial instances was that the man, who had first arrived in Luxembourg in July 2011 to take up work, had quickly after his arrival (1 December 2011) stopped working and received social welfare amounting to the guaranteed minimum income. The work activity he had carried out since then was extremely limited and could only be seen to amount to a marginal and accessory activity. Since 1 June 2013, the man had also received income for severely disabled persons (<i>personnes gravement handicapées</i>).</p> <p>While the spouses, in their appeal, argued that Article 7 of the Act of 29 August 2008 regarding free movement of persons and immigration (and which transposes Directive 2004/38/CE into the national legal framework) sets forth that a Union citizen maintains his/her status as a worker if he/she is temporarily unable to work as a consequence of an illness or accident,² the Luxembourg Court held that the small amount of work carried out by the man since his entry into the country (estimated to 68 work days) was insufficient to qualify him as a worker in the sense of Article 3 of the above-mentioned Act of 29 August 2008.</p> <p>Furthermore, although an expulsion measure is not an automatic consequence of a Union citizen's recourse to the social assistance system of the host Member State,³ this can be the case when he/she becomes an unreasonable burden on the system. The Court held that, in the given case, the Minister's decision to revoke the residence permit of the man and his dependent wife was justified.</p>

² As set forth also by Directive 2004/38/CE, Article 7.

³ Act of 29 August 2008, Article 24(3), and Directive 2004/38/CE, Article 14(3).

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Definition of worker;</p> <p>Criteria for determining that a person has become an unreasonable burden on the Luxembourg social assistance system;</p> <p>Criteria for revoking residence permits and imposing an expulsion measure.</p> <p>The Court made clear that there is a balance to be struck between the duration of residence in the country, the amount of time worked (number of working days), the personal situation of the person and the temporary (or permanent) character of the difficulties encountered, e.g. due to illness or accident, as well as the amount received in social assistance.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The key implication of the case was that the two Union citizens saw their residence permits revoked and had an expulsion measure imposed upon them.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“[L]e recours au système d’assistance sociale par un citoyen de l’Union européenne ou un membre de sa famille n’entraîne pas automatiquement une mesure d’éloignement, tel peut cependant être le cas s’ils deviennent une charge déraisonnable pour le système d’assistance sociale de l’Etat membre d’accueil qui devrait examiner si, dans ce cas, il s’agit de difficultés d’ordre temporaire et prendre en compte la durée du séjour, la situation personnelle et le montant de l’aide accordée, afin de déterminer si le bénéficiaire constitue une charge déraisonnable pour son système d’assistance sociale et de procéder, le cas échéant, à son éloignement.”</i></p> <p>Unofficial translation:</p> <p>“Recourse to the social assistance system by a Union citizen or a member of his/her family does not automatically lead to an expulsion measure, but this can be the case if they become an unreasonable burden on the social assistance system of the host Member State, [the latter] should examine whether, in this case, it is a matter of temporary difficulties, and take into account the length of stay in the country, the personal situation, and the amount of aid granted, in order to determine whether the beneficiary constitutes an unreasonable burden for his social assistance system and proceed, if necessary, to remove him.”⁴</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No.</p>

⁴ Unofficial translation.