

Subject-matter concerned	☒ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to which article of the Directive 2004/38; Articles 15, 27 and 30, par. 1 and 3 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	25 August 2011
Deciding body (in original language)	Rechtbank 's-Gravenhage
Deciding body (in English)	The Hague District Court
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBSGR:2011:BU3879
Parties	Plaintiff,, with the Polish nationality, v. the minister for Immigration and Asylum, previously the State Secretary of Justice, defendant [eiseres], van Poolse nationaliteit, tegen: de minister voor Immigratie en Asiel, voorheen de staatssecretaris van Justitie, verweerder
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBSGR:2011:BU3879&showbutton=true&keyword=ECLI%3aNL%3aRBSGR%3a2011%3aBU3879
Legal basis in national law of the rights under	Article 6:7 General Act on Administrative Law (Algemene wet bestuursrecht) and Article 69, first paragraph, Aliens Act 2000 (Vreemdelingenwet 2000)

dispute	
Key facts of the case (max. 500 chars)	The plaintiff, a Polish national, had a residence permit in the Netherlands from 28 November 2007 onwards, which was ended on 19 November 2008 by the Ministry of Justice. The reason for this withdrawal was that the plaintiff, according to the Ministry of Justice, was an unreasonable burden on public resources. The plaintiff objected to this decision on 23 December 2008. The Ministry declared that the objection was not admissible, because the objection had been filed too late. It should have been filed within four weeks on the basis of Article 69, first paragraph of the Aliens Act and it was filed after a month. In general, the period for filing objections or appeals is six weeks in the Netherlands (Article 6:7 General Act on Administrative Law). Later on, the plaintiff also appealed too late again. The plaintiff argues that the six-week period of the General Act on Administrative Law should have been applied, as she is a Union citizen. She states that she is discriminated in comparison to Dutch citizens, because it is especially non-Dutch people who will have to adhere to the four-week period in the Aliens Act. The court rejects her view, saying that the periods in the Aliens Act apply to everyone, irrespective of nationality. The nature of the case is decisive (right of residence, in this case). The argumentation of the plaintiff does not hold in the eyes of the court. The plaintiff also states that Directive 2004/38/EC implies that the period for objection and appeal should be six weeks, or at least a month. The court holds, however, that the periods referred to in the Directive only apply to the period within which someone is extradited from a Member State, and not to the periods within which one may object or appeal. Again, the argumentation of the plaintiff does not persuade the court.
Main reasoning / argumentation (max. 500 chars)	The court holds that the application of the Aliens Act instead of the General Act on Administrative Law to EU-citizens is not discriminatory, because it has nothing to do with their nationality, but with their right of residence. Moreover, Directive 2004/38/EC concerns the period of extradition and not the period within which one may object or appeal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Interpretation of Article 18 TFEU (it is not discriminatory to apply the Aliens Act instead of the General Act on Administrative Law to EU-citizens) and interpretation of Directive 2004/38/EC (the periods mentioned are not about filing an objection or appeal).
Results (e.g. sanctions) and key	The plaintiff should have filed an objection/appeal to the decision to withdraw her residence permit within four weeks, instead of a month or six weeks, and because she did not do so, her case is inadmissible. She had to leave the country.

consequences or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	2.9 . . . heeft eiseres voorts een beroep gedaan op artikel 18 van het Verdrag betreffende de werking van de Europese Unie (VWEU). Eiseres voert in dit verband aan dat door de beperking van de bezwaar- en beroepstermijn tot vier weken sprake is van discriminatie binnen de werkingsfeer van het verdrag op grond van nationaliteit. Daarnaast is volgens eiseres sprake van indirecte discriminatie nu met name niet-Nederlanders procedures op grond van de Vreemdelingenwet zullen voeren en nadeel zullen ondervinden van de kortere termijnen. 2.10 De rechtbank overweegt dat, zoals uit de Memories van Toelichting bij de Vreemdelingenwet 1994 en Vreemdelingenwet 2000 blijkt, het onderscheid in bezwaar- en beroepstermijnen tussen vreemdelingrechtelijke zaken en algemene bestuursrechtelijke zaken niet gemaakt is vanwege de nationaliteit van de vreemdeling, maar vanwege de aard van de zaken. Nu de termijnen neergelegd in de Vw gelden voor een ieder, ongeacht de nationaliteit, die procedures voert op basis van de Vreemdelingenwet, kan eiseres niet worden gevolgd in haar betoog dat sprake is van een met artikel 18 VWEU discriminatoire behandeling op basis van nationaliteit door het toepassen van de termijnen, zoals neergelegd in artikel 69 Vw. Gelet op het voorgaande wordt eiseres evenmin gevolgd in haar stelling dat sprake is van indirecte discriminatie. . . . 2.17 . . . Voor zover eiser bedoeld heeft te betogen dat verweerder dan wel de rechtbank, door de termijnen neergelegd in artikel 69 Vw te hanteren, afbreuk doet aan het doel en het nuttig effect van richtlijn 2004/38/EG, overweegt de rechtbank dienaangaande als volgt. Uit vaste jurisprudentie van het Hof volgt weliswaar dat verweerder zijn handelingsvrijheid op grond van de bepalingen van een richtlijn niet zo mag gebruiken dat afbreuk wordt gedaan aan het doel van de richtlijn, in dit geval het uitoefenen van vrij verkeer en verblijf van unieburgers en hun familieleden op het grondgebied van de lidstaten, en het nuttig effect daarvan (zie onder meer het arrest van het Hof inzake Chakroun, van 4 maart 2010, C-540/03), niet valt echter in te zien dat verweerder dan wel de rechtbank, door de termijnen neergelegd in artikel 69 Vw te hanteren, afbreuk doet aan het doel en het nuttig effect van richtlijn 2004/38/EG. 2.9 . . . The plaintiff also relied on Article 18 of the Treaty on the Functioning of the European Union (TFEU). The plaintiff argues in this context that the limitation of the period within which one may object or appeal to four weeks leads to discrimination within the scope of the treaty on the basis of nationality. In addition, the plaintiff feels that there is indirect discrimination, because especially non-Dutch citizens will bring cases to the court on the basis of the Aliens Act and they will suffer from the shorter periods. 2.10 The court holds that, as the Explanatory Memorandums to the Aliens Act 1994 and the Aliens Act 2000 prove, the difference between the periods within which one may object or appeal in cases that concern aliens and general administrative cases was not made on the basis of the nationality of the alien, but on the basis of the nature of the case. Now that these periods apply to anyone, irrespective of the nationality, who brings a case on the basis of the Aliens Act, the court cannot follow the plaintiff when she says that there is a discriminatory treatment which is in conflict with Article 18 TFEU by applying these periods, as laid down in Article 69 of the Aliens Act. In view of the above, the court cannot follow the plaintiff either where it concerns indirect discrimination.

	2.17 . . . Insofar as the plaintiff meant to argue that the defendant or the court, by using the periods laid down in Article 69 of the Aliens Act, infringes the aim and the useful effect of Directive 2004/38/eC, the court holds the following. It is true that leading cases by the ECJ show that the defendant is not allowed to use his margin of appreciation on the basis of the stipulations of a Directive in such a way that the aim of the Directive is infringed, in this case the free movement and residence of Union citizens and their relatives on the territory of the Member States, and their useful effect (see among other things the ECJ judgement in the case of Chakroun, 4 March 2010, C-540/03), but the court does not see that either the defendant or the district court, by using the periods laid down in Article 69 of the Aliens Act, infringes the aim and the useful effect of Directive 2004/38/EC.
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.