

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	25-02-2015
Deciding body (in original language)	Tribunal Constitucional
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	141/2015
Parties	Ombudsman versus Legislator (This case was brought before the Constitutional Court by the Portuguese Ombudsman under his power to request the Constitutional Court to declare the unconstitutionality or illegality of legal norms)
Web link to the decision (if available)	www.tribunalconstitucional.pt/tc/acordaos/20150141.html
Legal basis in national law of the	Law 13/2003 of 21 May, as amended by Decree-Law 133/2012 of 27 June ¹ : revoked the Minimum Guaranteed Income and created the Social Insertion Income. Relevant articles obliged Portuguese citizens (and their family members) and nationals of other EU Member

¹Portugal, Law 13/2003 as amended by Decree-Law 133/2012 of 27 June which revoked the Minimum Guaranteed Income established in Law 19-A/96 of 29 June, and created the Social Insertion Income (*Lei n.º 13/2003, de 21 de maio, alterada pelo Decreto-Lei n.º 133/2012, de 27 de junho, que revoga o rendimento mínimo garantido*)

rights under dispute	States to legally reside in Portugal for at least one year before they were entitled to the Social Insertion Income. The same obligation was imposed to nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement of persons.
Key facts of the case (max. 500 chars)	<p>The Ombudsman questioned the constitutionality of the legal obligation, imposed to Portuguese citizens (and their families), to reside in Portugal for a minimum period of time before they could ask for the Social Insertion Income.</p> <p>From the perspective of the Legislator (Government), the norms were not unconstitutional, taking into account: i) the nature of the benefit (social assistance benefit); ii) the need for ensuring the person's attachment to the country; iii) the respect for EU law, according to which no distinction can be made in relation to any EU citizen concerning the right of residence (EU citizens should be treated equally, regardless of whether they are from the host country or from another Member State).</p>
Main reasoning / argumentation (max. 500 chars)	<p>The law required a minimum period of residence in Portugal in order to allow access to Social Insertion Income. This requirement was applied to Portuguese citizens as well to citizens of other Member States of the EU (for both groups, that period was 1 year).</p> <p>The Ombudsman considered that this requirement, imposed on Portuguese citizens, resulted in an unjustified discrimination between Portuguese citizens residing in Portugal for more than a year and Portuguese citizens residing in Portugal for less than a year (the Court mentioned those who left the country and returned). So, the second group of Portuguese (those who live in Portugal for less than a year) was not able to ask for the Social Insertion Income until they had completed one year of residence in Portugal.</p> <p>The Ombudsman argued that excluding certain Portuguese citizens from the right to the Social Insertion Income wasn't in accordance with the principle of universality, was also in breach of the principle of equality (because it illegitimately discriminated against resident Portuguese citizens), and denied the right to a minimally dignified standard of living.</p> <p>The Legislator (in this case, the Government) justified the law by two cumulative arguments: i) the need for ensuring the person's attachment to the country; ii) the respect for EU law, according to which no distinction can be made in relation to any EU citizen concerning the right of residence (EU citizens should be treated equally, regardless of whether they are from the host country or from another Member State).</p> <p>The Court agreed with the Ombudsman, saying that the law cannot discriminate between Portuguese citizens (those who live in Portugal for more than a year and those who live in Portugal for less than a year).</p> <p>Concerning the Government's argument about the comparison between Portuguese citizens and other EU Member States citizens, the Court considered that EU law does not impose the uniform treatment of national citizens and citizens from other EU Member States in the particular case of social assistance benefits. For this reason, it maintained the minimum residence requirement of one year for nationals of other EU Member States.</p>

previsto na Lei n.º 19-A/96, de 29 de junho, e cria o rendimento social de inserção), 21 May. Available at:
www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2027&tabela=leis&ficha=1&pagina=1&so_miolo=&.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Court underlined that EU law does not always impose the uniform treatment of national citizens and citizens of other EU Member States.</p> <p>The fundamental principle of equal treatment for these two groups of citizens is subject to limitations and derogations established by EU law, including those concerning aspects of the freedom of movement and residence. Social assistance benefits, which include the Social Insertion Income, are among these.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court said that Portuguese citizens enjoy the fundamental right to live in the territory (the physical and geographical basis for the Portuguese community), which means that it is impossible for a Portuguese person to reside in Portugal illegally.</p> <p>The Constitutional Court declared the norms unconstitutional with generally binding force, considering that the obligation for Portuguese citizens to legally reside in Portugal for at least one year, promotes a discriminatory regime governing access to Social Insertion Income for one specific group of Portuguese citizens. So the norms violated the principle of equality.</p> <p>The Court considered that EU law does not impose the uniform treatment of national citizens and citizens from other EU Member States in the particular case of social assistance benefits. For this reason, it maintained the minimum residence requirement of one year for nationals of other EU Member States.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“(…) perante as disposições do direito da União Europeia e a interpretação que delas tem feito o TJUE, não há qualquer dúvida que o direito da União Europeia tolera um regime diferenciado entre cidadãos da União Europeia e cidadãos nacionais do Estado-Membro de acolhimento, no que respeita a prestações de um regime não contributivo que garante um mínimo de meios de subsistência”.</i></p> <p>In accordance with the provisions of EU law and the interpretation given to them by the CJEU, there is no doubt that, as regards to a non-contributory scheme which guarantees a minimum means of subsistence, EU law allows for a differentiated regime between citizens of the EU and nationals of the host Member State.</p> <p>See www.tribunalconstitucional.pt/tc/acordaos/20150141.html</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>The Charter is mentioned not specifically in the Court decision but in the explanation of vote of one of its judges: article 21 (2).</p>