

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)	97/2014
Parties	The chairman of the Parliament of the French Community and the chairwoman of the Assembly of the French Community Commission of the Brussels-Capital Region
Web link to the decision (if available)	http://www.const-court.be/public/n/2014/2014-097n.pdf
Legal basis in national law of the rights under dispute	Article 6, § 1, 4°, Article 7, second indent, and Article 8, §§2 and 3 of the Decree of the Flemish Community of 20 April 2012 concerning the organisation of childcare for infants and toddlers. (par. B.1.3.)

<p>Key facts of the case (max. 500 chars)</p>	<p>The case concerns an action for annulment of three Articles of the Decree of the Flemish Community of 20 April 2012 concerning the organisation of childcare for infants and toddlers.</p> <p>(1) According to Article 6, §1, 4° of the Decree, obtaining a mandatory license for child care in the Flemish Community is dependent on the active knowledge of Dutch by the person in charge and by one child supervisor. The applicants argue that this condition creates a limitation of the freedom of movement of workers and of the freedom of residence. Moreover, it discriminates on the basis of language or nationality. (par. B.5.2.)</p> <p>The applicants claim violation of Articles 10 and 11 of the Belgian Constitution; Articles 18, 45 and 49 of the Treaty on the Functioning of the EU; Articles 1 and 7 of Regulation No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union; Article 24 of Directive 2004/38 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; Article 21 of the CFEU (par. B.5.1.).</p> <p>(2) According to Article 7, second indent of the Decree, active knowledge of Dutch of all child supervisors and the use of Dutch in the operation of the child care location is a requirement for organisers with a license to receive a basic subsidy from the autonomous Flemish agency Child and Family (<i>Kind en Gezin</i>). This is argued to limit the right to free movement of workers and a discrimination on the basis of language or nationality. (par. B.20)</p> <p>The applicants claim a violation of Articles 10 and 11 of the Belgian Constitution; Articles 18 and 45 of the TFEU; Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community; Articles 21, 24, 34 and 36 of the CFEU (par. B.19).</p> <p>(3) According to Articles 8 §§2 and 3, children (of whom at least one parent has sufficient knowledge of Dutch) get precedence to child care locations subsidised by the Flemish Community in the bilingual area Brussels-Capital and this covers a maximum of 55 per cent of their reception capacity. Applicants claim that this leads to discrimination among children and among parents, depending on whether or not a family can provide proof that one parent has a sufficient knowledge of Dutch. (par. B.37)</p> <p>The applicants argue that this provision violates Articles 10 and 11 of the Belgian Constitution; Articles 18, 20, 21, 45, 49 and 56 of the TFEU; Articles 21, 24, 34 and 36 of the CFEU; Articles 2 and 3 of Directive 2004/38 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; Articles 1 and 7 of Regulation No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union; Article 24 of Directive 2004/38 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; Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. (par. B.37)</p>
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<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>(1) Concerning the alleged discrimination by Article 6, §1, 4° of the Decree, the Court argues that the requirement of knowing the Dutch language to obtain the mandatory license goes against the freedom of establishment and the freedom of movement as it has for effect to put in a more favourable position those who master the Dutch language over those who do not. (par. B 6.2.)</p> <p>However, the Court adds that the objective pursued by the Decree is a general interest objective which justifies the restriction to those freedoms. (par B. 7.3.) Furthermore, the Court argues that the restriction to those freedoms is not disproportionate because the requirement to know the Dutch language only applies to the organiser of the child care location and one child supervisor; it only goes as far as what is required to understand the necessary regulations adopted by the authorities and what is required to safeguard the quality of the care and safety of the children. (par. B. 8.2. and par. B. 8.5.)</p> <p>(2) Concerning the alleged discrimination by Article 7, second indent of the Decree, the Court applies the same reasoning used for Article 6, §1, 4° of the Decree. The requirement to know the Dutch language is a restriction to the freedom of establishment and the freedom of movement. (par. B.22.) However, the objective pursued by the Decree is a general interest objective that justifies the restriction to those freedoms. (par. B 24.1.) Furthermore, the requirement for all the child supervisors to speak Dutch is not disproportionate, given that it does not go beyond what is required to fulfil the objective of having a Dutch-speaking environment for the children. (par. B.24.3.)</p> <p>(3) As for Article 8, §§2 and 3 of the Decree, the Court first reminds that in the territory of Brussels-Capital, the Flemish Community is competent to regulate institutions which, with respect to their organisation, should be considered to belong to the Flemish Community exclusively. The Court argues that it is, therefore, not unreasonable that institutions, such as Flemish child care locations, provide for a minimum priority access for families, of which at least one parent has a sufficient knowledge of Dutch. The restriction is not considered to be disproportionate, because the priority enrolment right was fixed at maximum 55% and the proofs required from the parents are not difficult to provide. (par. B. 38.)</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>General interest objectives may justify that restrictions, such as the requirement of sufficient knowledge of a language, are put on the freedom of movement and residence. Those restrictions should not be disproportionate to the pursued goals of the general interest objectives.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Constitutional Court annuls the part of Article 7, indent 2 of the Decree which violates Articles 30 and 129 of the Constitution. This part of Article 7, indent 2 pertains to the usage of language in the functioning of the child care location and is not relevant with respect to the freedom of movement. As for the rest of the grounds, the Court rejects the request for annulment. Authorities may adopt language restrictions to the freedom of movement and the freedom of residence to safeguard general interest objectives if they are not disproportionate with the pursued goals of those general interest objectives.</p> <p>These language restrictions are not disproportionate if they apply to a minimum number of people, such as the organiser of the child care location and one child supervisor. It also not disproportionate if the language requirement is not more than what is necessary to safeguard</p>

	<p>the safety of the children and the quality of the child care provided. It is also not disproportionate if it is in place to maintain a Dutch-speaking environment for the children to learn the language. Language priority access to child care is not disproportionate if it applies to a maximum of 55% of the capacity of the child care location.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>La subordination de l'autorisation d'organiser une structure d'accueil d'enfants à la condition qu'au moins un des accompagnateurs d'enfants employés par cette structure dispose d'une connaissance active de la langue néerlandaise a pour effet de favoriser les personnes maîtrisant cette langue, par rapport à celles qui ne la maîtrisent pas, dans la recherche d'un emploi dans ce secteur. Cette disposition est dès lors de nature à gêner le droit à la libre circulation des travailleurs ressortissants d'autres Etats membres qui souhaitent exercer ce métier et qui ne peuvent prouver qu'ils possèdent une connaissance active de cette langue. / To make the authorisation to establish a child care location dependent upon the condition that at least one of the child supervisors employed in the child care location has an active knowledge of the Dutch language has the effect of favouring people who master that language, compared to those who do not, in their search for a job in this sector. This may, thus, hinder the right to free movement of workers from other Member States who would wish to exercise this profession and who cannot prove that they have an active knowledge of the language. (par. 6.2.)</i></p> <p><i>L'objectif poursuivi est donc un objectif d'intérêt général qui est de nature à justifier adéquatement les restrictions aux libertés d'établissement et de libre circulation garanties par le TFUE. / The goal pursued, thus, is a general interest objective which may adequately justify the restrictions to the freedom of establishment and the freedom of movement guaranteed by the TFEU. (par. 7.3.)</i></p> <p><i>La Cour doit examiner si la restriction contenue dans la disposition attaquée est proportionnée à l'objectif ainsi poursuivi. En effet, selon la Cour de justice, les exigences linguistiques ne peuvent pas aller au-delà de ce qui est nécessaire pour atteindre cet objectif. / The Court must examine whether the restriction contained in the contested provision is proportionate with the goal pursued. Indeed, according to the Court of Justice, the language requirements cannot go beyond what is necessary to achieve this goal. (par. B 8.1.)</i></p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.</p>	<p>Yes: Reference to Article 21 of the CFEU. (par. B.5.4.)</p>