

Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to Article 7 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	9 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.386029 ECLI:FR:CEORD:2014:386029.20141209
Parties	Mrs A/France
Web link to the decision (if available)	www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000029879913&fastReqId=1027809177&fastPos=1
Legal basis in national law of the rights under dispute	Article L. 521-2 of the Code of administrative justice: When referred to with a request justified as urgent, the judge for summary procedures can order any measure necessary for the safeguarding of a fundamental freedom which a legal entity in public law or an organization in private law responsible for the management of a public service has seriously and clearly breached in the exercising of one of their powers. The judge for summary procedures rules within forty-eight hours.
Key facts of the case	Mrs. A., a Cameroon national holding a residence permit delivered by Spain and valid until 2017, arrived in France in 2012 with her daughter Paola, a Spanish national born on 29 January 2011. On 26 September 2014 Mrs. A. was refused a residence permit by an order of

(max. 500 chars)	the Prefect of Loire-Atlantique accompanied by an obligation to leave the French territory. On the basis of Article L. 521-2 of the Code of administrative justice Mrs. A. referred to the judge for summary procedures of the administrative court of Nantes with a request for the suspension of the execution of this order, in as much that it denied the issuing of a residence permit to her. On 25 November 2014, the judge for summary procedures of the administrative court of Nantes refused her application. Mrs. A. appealed against the order of 25 November 2014 of the judge for summary procedures of the administrative court of Nantes.
Main reasoning / argumentation (max. 500 chars)	The Council of State considers that the effective enjoyment of the right of a minor citizen of the Union to reside in the host Member State necessarily implies the right for this minor to be accompanied by the person who is their primary carer. As such, Mrs. A. has, in her capacity as the mother of a minor who is a citizen of the Union, the right to remain in France, under the dual condition of having sufficient resources and suitable medical insurance cover. Mrs. A. has sole parental authority of her daughter, and she has worked under a permanent contract since 31 January 2013. This activity provides her with stable and regular resources. The social security contributions that she and her employer pay open the right to medical insurance to her. Under these conditions, Mrs. A. and her daughter could not be regarded as placing an unreasonable burden on French public finances. Therefore, in refusing to issue Mrs. A. a residence permit in her capacity as mother of a minor who is a citizen of the Union, the Prefect of Loire-Atlantique committed a serious and obviously illegal breach of the fundamental rights that European Union law attaches to the status of citizen of the Union. Following the contested refusal of a residence permit, Mrs. A. informed her employer who, for this reason alone, began a procedure to dismiss her. This same residence permit refusal is likely to lead to the cancellation of the rental agreement with Nantes Habitat. It follows from there that the contested refusal of a residence permit is likely to lead to serious consequences for the situation of Mrs. A. and of her daughter, from the point of view of their resources, their housing, and consequently the schooling conditions of the minor. Under these conditions, there is urgency, within the meaning of Article L. 521-2 of the Code of administrative justice, that the provisional measures necessary are taken to immediately end the serious and clear breach of the rights conferred by the European Union law that the order entails.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Right to residence of a member of family of a citizen of the European Union. Conditions for residence of a member of family of a citizen of the European Union.
Results (e.g. sanctions) and key consequences or	The Council of State overruled the decision from the judge for summary procedures of the administrative court of Nantes of 25 November 2014. The execution of the order of 26 September 2014 of the Prefect of Loire-Atlantique was suspended as it refuses the request for a

implications of the case (max. 500 chars)	residence permit for Mrs. A. The Prefect of Loire-Atlantique was asked to re-examine Mrs. A's request as soon as possible in light of the reasons for the ruling of the Council of State.
Key quotations in original language and translated into English with reference details (max. 500 chars)	3. Considering... that under the terms of article 7 of Directive 2004/38/CE of the European Parliament and the Council of 29 April 2004, relating to the right of citizens of the Union and the members of their families to move and remain freely on the territory of the Member States, entitled "Right of residence for more than three months: 1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: [...] b) have sufficient resources for themselves and their family members not to become a burden on the social welfare system of the host Member State during their period of residence and have comprehensive medical insurance cover in the host Member State [...] 2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that a such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c); that these combined provisions, as interpreted by the Court of Justice of the European Union... confer to the minor national of a Member State, in their capacity as citizen of the Union, as well as, consequently, a national of a Non-member state who is the parent of this minor and who is their primary carer, the right to reside in the host Member State on the dual condition that this minor is covered by medical insurance and that the parent who is their primary carer has sufficient resources; that the host Member State, which must ensure to citizens of the Union effective enjoyment of the rights that this status confers on them, cannot refuse a minor who is a citizen of the Union, or their parent, the right to reside on their territory unless at least one of these two conditions, the respect of which makes it possible to prevent the interested parties from becoming an unreasonable burden on their public finances, is not met; that, similarly, the forced removal of a national from a Non-member state and their child could not, if this is the case, be ordered to a destination other than the Member State which the person concerned is a national of, or any Member State in which they would be legally admitted; 4. Considering that the Minister of the Interior... holds, in effect, that Mrs. A. cannot remain on the French territory in her capacity as the mother of a minor who is a citizen of the Union, when she has neither sufficient resources nor suitable medical insurance cover; 5. Considering that the effective enjoyment of the right of a minor citizen of the Union to reside in the host Member State necessarily implies the right for this minor to be accompanied by the person who is their primary carer; that Mrs. A...has, in her capacity as the mother of a minor child who is a citizen of the Union, the right to remain in France, the host Member State, under the dual condition of having sufficient resources and suitable medical insurance cover; that it results from the investigation, as well as from elements collected at the time of the public hearing, that Mrs. A... has sole parental authority of her daughter, who has attended school in Nantes since 2013, under the terms of a non-conciliation custody order issued within the framework of divorce proceedings on 12 May 2014 by the judge for family affairs of Nantes Court; that this same order established the usual place of residence of the child as being with her mother; that after being accommodated with her daughter by her sister, the applicant signed a subsidised rental agreement with Nantes Habitat on 10 September 2014 in Nantes; that the applicant has worked under a permanent contract since 31 January 2013; that this activity provides her with stable and regular resources of a monthly amount of approximately 600 euros; that, on 1 October 2014, she signed an agreement temporarily increasing her working time and, therefore, her wages; that as shown from the pay slips in her case file, the social security contributions that she and her employer pay open the right to medical insurance to her; that if she is allowed State

medical aid, it is only, in the absence of a residence permit, to benefit from medical insurance cover which she has the right to have; that, under these conditions, Mrs. A... and her daughter could not be considered as placing an unreasonable burden on French public finances; that it follows from this that in refusing to issue Mrs. A... with a residence permit in her capacity as the mother of a minor who is a citizen of the Union, the Prefect of Loire-Atlantique committed a serious and obviously illegal breach of the fundamental rights that European Union law confers to the status of citizen of the Union;

6. Considering that it results from the investigation that following the contested refusal of a residence permit, Mrs. A. informed her employer who, for this reason alone, began a procedure to dismiss Mrs A... ; that this same residence permit refusal is likely to lead to the cancellation of the rental agreement with Nantes Habitat; that it follows from there that the contested refusal of a residence permit is likely to lead to serious consequences for the situation of Mrs. A. and of her daughter, from the point of view of their resources, their housing, and consequently the schooling conditions of the minor; that, under these conditions, there is urgency, within the meaning of Article L. 521-2 of the Code of administrative justice, that the provisional measures necessary are taken to immediately end the serious and clear breach of the rights conferred by European Union law that the contested order entails;

3. Considérant ...qu'aux termes de l'article 7 de la directive 2004/38/CE 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 États membres, intitulé "Droit de séjour de plus de trois mois" : " 1. Tout citoyen de l'Union a le droit de séjourner sur le territoire d'un autre État membre pour une durée de plus de trois mois: [...] b) s'il dispose, pour lui et pour les membres de sa famille, de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale de l'État membre d'accueil au cours de son séjour, et d'une assurance maladie complète dans l'État membre d'accueil [...] 2. Le droit de séjour prévu au paragraphe 1 s'étend aux membres de la famille n'ayant pas la nationalité d'un État membre lorsqu'ils accompagnent ou rejoignent dans l'État membre d'accueil le citoyen de l'Union, pour autant que ce dernier satisfasse aux conditions énoncées au paragraphe 1, points a), b) ou c) " ; que ces dispositions combinées, telles qu'interprétées par la Cour de justice de l'Union européenne ... confèrent au ressortissant mineur d'un Etat membre, en sa qualité de citoyen de l'Union, ainsi que, par voie de conséquence, au ressortissant d'un Etat tiers, parent de ce mineur et qui en assume la charge, un droit de séjour dans l'Etat membre d'accueil à la double condition que cet enfant soit couvert par une assurance maladie appropriée et que le parent qui en assume la charge dispose de ressources suffisantes ; que l'Etat membre d'accueil, qui doit assurer aux citoyens de l'Union la jouissance effective des droits que leur confère ce statut, ne peut refuser à l'enfant mineur, citoyen de l'Union, et à son parent, le droit de séjourner sur son territoire que si l'une au moins de ces deux conditions, dont le respect permet d'éviter que les intéressés ne deviennent une charge déraisonnable pour ses finances publiques, n'est pas remplie ; que, dans pareille hypothèse, l'éloignement forcé du ressortissant de l'Etat tiers et de son enfant mineur ne pourrait, le cas échéant, être ordonné qu'à destination de l'Etat membre dont ce dernier possède la nationalité ou de tout Etat membre dans lequel ils seraient légalement admissibles;

4. Considérant que le ministre de l'intérieur ... soutient, en effet, que Mme A. ne peut prétendre séjourner sur le territoire français en sa qualité de mère d'une mineure, citoyenne de l'Union, dès lors qu'elle ne justifie ni de ressources suffisantes ni d'une couverture par une assurance maladie appropriée ;

5. Considérant que la jouissance effective du droit de séjour dans l'Etat membre d'accueil par un citoyen de l'Union mineur implique nécessairement le droit pour celui-ci d'être accompagné par la personne qui en assure effectivement la garde ; que Mme A...tire ainsi de

	<i>sa qualité de mère d'un enfant mineur, citoyen de l'Union, le droit de séjourner en France, Etat membre d'accueil, sous la double condition de disposer de ressources suffisantes et d'une couverture d'assurance maladie appropriée ; qu'il résulte de l'instruction, ainsi que des éléments recueillis lors de l'audience publique, que Mme A...exerce exclusivement l'autorité parentale sur sa fille, qui est scolarisée à Nantes depuis 2013, en vertu d'une ordonnance de non conciliation rendue, dans le cadre d'une procédure de divorce, le 12 mai 2014, par le juge aux affaires familiales du tribunal de grande instance de Nantes ; que cette même ordonnance a fixé la résidence habituelle de l'enfant chez sa mère ; qu'après avoir été hébergée, avec sa fille, chez sa soeur, la requérante a signé avec Nantes Habitat, le 10 septembre 2014, un contrat de location d'un logement conventionné à Nantes ; que l'intéressée travaille, sous couvert d'un contrat à durée indéterminée, depuis le 31 janvier 2013 ; que cette activité lui procure des ressources stables et régulières d'un montant mensuel d'environ 600 euros ; que, le 1er octobre 2014, elle a signé un avenant augmentant temporairement son temps de travail et, partant, sa rémunération ; qu'ainsi qu'en attestent les fiches de paie qu'elle a versées au dossier, les cotisations de sécurité sociale qu'elle et son employeur acquittent lui ouvrent droit à l'assurance maladie ; que si elle est admise à l'aide médicale d'Etat, ce n'est qu'à défaut, en l'absence de titre de séjour, de bénéficier de la couverture d'assurance maladie qu'elle est en droit d'avoir ; que, dans ces conditions, Mme A...et sa fille ne sauraient être regardées comme faisant peser une charge déraisonnable sur les finances publiques françaises ; qu'il suit de là qu'en refusant de délivrer à Mme A...un titre de séjour en sa qualité de mère d'un enfant mineur, citoyen de l'Union, le préfet de la Loire-Atlantique a porté une atteinte grave et manifestement illégale aux libertés fondamentales que l'ordre juridique de l'Union européenne attache au statut de citoyen de l'Union ;</i> <i>6. Considérant qu'il résulte de l'instruction qu'à la suite du refus de séjour litigieux qu'elle a porté à la connaissance de son employeur, celui-ci a engagé, pour ce seul motif, une procédure de licenciement à l'encontre de MmeA... ; que ce même refus de séjour est susceptible d'entraîner la résiliation du contrat de location qu'elle a signé avec Nantes Habitat ; qu'il suit de là que le refus de séjour litigieux est de nature à entraîner des conséquences graves sur la situation de Mme A...et de sa fille, du point de vue de leurs ressources, de leur logement ainsi que, par voie de conséquence, des conditions de scolarisation de cette dernière ; que, dans ces conditions, il y a urgence, au sens de l'article L. 521-2 du code de justice administrative, à ce que soient prises les mesures provisoires nécessaires pour faire cesser immédiatement l'atteinte grave et manifeste que porte l'arrêté litigieux aux droits conférés par l'ordre juridique de l'Union Européenne;</i>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No