

<b>Subject-matter concerned</b>	<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
<b>Decision date</b>	3 July 2014
<b>Deciding body (in original language)</b>	Cour administrative
<b>Deciding body (in English)</b>	Higher Administrative Court
<b>Case number (also European Case Law Identifier () where applicable)</b>	34238C
<b>Parties</b>	Madame ... et consorts ... v. a decision of the Administrative Court ( <i>Tribunal administratif</i> )
<b>Web link to the decision (if available)</b>	The decision can be found on the website of the Administrative Court: <a href="http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php">http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php</a> , inserting the above-mentioned case number.
<b>Legal basis in national law of the rights under dispute</b>	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> ). <sup>1</sup>
<b>Key facts of the case</b> (max. 500 chars)	A woman and her 4 children of British nationality had their residence permits withdrawn by the Luxembourg Minister of Labour, Employment and Immigration ( <i>Ministre du Travail, de l'emploi et de l'immigration</i> ) in December 2012, after the latter had found that the woman did not fulfil the criteria set forth by Article 6 of the above-mentioned Act of 29 August 2008. The woman, who had registered as a worker in October 2011, had a contract amounting to 10 h/week, granting her a monthly salary below the guaranteed minimum wage. The Minister therefore held that her work activity could be seen only as an accessory or marginal activity, and concluded that the woman did not qualify as a worker and did not have sufficient means to avoid representing an unreasonable burden on the Luxembourg social assistance system. Since the woman's 4 children were all minors and dependent on the woman, their right to reside in the country was revoked as well.

<sup>1</sup> 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 woman argued that she was regularly registered with the national employment agency (<i>Agence pour le développement de l'emploi</i>, ADEM) and that she had received a minimum income as part of an insertion programme in the labour market, not in the form of social assistance. In line with case law of the CJEU, she argued that financial contributions aimed at facilitating access to the labour market should not be perceived as social assistance. Moreover, she argued that Directive 2004/38/CE conferred a right to all Union citizens to reside in another Member State and that recourse to the social assistance system should not be automatically followed by an expulsion measure when the person has entered the territory of a host Member State to seek employment and actively does so. She argued that the Directive had been incompletely transposed into Luxembourg law. Lastly, the woman added that since 2013, she was employed full time.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The Luxembourg Court of appeal confirmed the analysis of the court of 1<sup>st</sup> instance that, firstly, the woman could not qualify as a worker given the accessory and marginal nature of her professional activity and, secondly, that the financial assistance the woman had received was indeed a form of social assistance and did not fall under the “insertion measures” (<i>mesure d'insertion</i>) foreseen by Article L.523-1 of the Labour Code (<i>Code du Travail</i>).<sup>2</sup></p> <p>Furthermore, the Luxembourg Court stressed that the woman could not base her request directly on the Directive, which does not have direct effect, and should have argued on the basis of the Act transposing the Directive into national law (i.e. Act of 29 August 2008). The only reason for invoking the Directive directly would be its incomplete transposition into the national legal framework – which the Court rejected.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>Qualification of worker;</p> <p>Clarifying that receiving minimum guaranteed income amounts to receiving social assistance even if the aim of the person is to gain access to the labour market;</p> <p>Lack of direct effect of EU Directives in the Luxembourg legal framework (unless in the particular case where a Directive has not been transposed within the deadline and confers certain specific and direct rights to Union citizens).</p> <p>(No mention whatsoever was done in the Court's analysis related to the woman's 4 children and their potential integration in their host country (e.g. school attendance) or what the impact of an expulsion order would represent for them.)</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The woman was obliged to bear the cost for the judicial proceedings.</p> <p>(Since the woman had found a full-time employment following the decision, she no longer risked an expulsion measure.)</p>
<b>Key quotations in original language and translated into</b>	<p>« {...} le tribunal retint que le citoyen de l'Union européenne désireux d'exercer son droit à la libre circulation au sein de l'Union européenne</p>

<sup>2</sup> Luxembourg, Labour Code (Code du Travail), Article L.523-1 regarding professional insertion, professional reinsertion and activities for unemployed persons (*Insertion professionnelle, réinsertion professionnelle et occupation des demandeurs d'emploi*).

<p><b>English with reference details</b> (max. 500 chars)</p>	<p><i>doit s'adonner, sur le territoire de l'Etat d'accueil, à une activité salariée ou indépendante réelle et effective qui ne doit pas être tellement réduite qu'elle se présente comme purement marginale et accessoire mais qu'en l'espèce, Madame ... avait exercé une activité salariée pendant, selon ses propres dires, 10 heures rémunérées par semaine, touchant mensuellement une rémunération brute variant entre 200,67 euros et 218,21 euros d'octobre 2011 jusqu'en décembre 2012, de sorte qu'au moment de la prise de la décision litigieuse, son activité était à qualifier de purement marginale et accessoire, le nombre d'heures de travail et le salaire perçu à ce titre étant tellement réduits qu'ils ne pouvaient pas être considérés comme étant constitutifs d'une activité réelle et effective</i></p> <p>{...}</p> <p><i>Il en conclut que Madame ... n'avait jamais satisfait aux conditions de l'article 6, paragraphe 1er, de la loi du 29 août 2008, étant donné qu'elle n'était pas à qualifier ni de travailleur salarié, ni de travailleur indépendant {...} »</i></p> <p>Unofficial translation:</p> <p>“The Court held that the citizen of the European Union wishing to exercise his right to free movement within the European Union must engage in a real and effective employed or independent activity in the territory of the host State, which must not be so reduced that it appears to be purely marginal and ancillary, but that in this case, Mrs ... had been employed during, according to her own words, 10 paid hours per week, with a monthly gross remuneration ranging between 200.67 and 218.21 euros from October 2011 until December 2012. The number of hours worked and the salary received being so limited, they could not be regarded as constituting a real and effective activity and, at the time of the contested decision, her activity was thus to be regarded as purely marginal and ancillary.</p> <p>{...}</p> <p>The Court concluded that Mrs ... had never satisfied the conditions of Article 6 (1) of the Act of 29 August 2008, since she could not be classified neither as an employed person nor as self-employed {...}”<sup>3</sup></p>
<p><b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b></p>	<p>No.</p>

<sup>3</sup> Unofficial translation.