

Subject-matter concerned	<input checked="" type="checkbox"/> 1) <b>non-discrimination on grounds of nationality</b> <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	25-05-2015
Deciding body (in original language)	Tribunal Constitucional
Deciding body (in English)	Constitutional Court
Case number (also European Case Law Identifier ( <a href="#">ECLI</a> ) where applicable)	296/2015
Parties	Attorney-General ( <i>Procurador-Geral da República</i> ) versus Legislator ( <i>Legislador</i> ). This case was brought before the Constitutional Court by the Portuguese Attorney-General under his power to request the Constitutional Court to declare the unconstitutionality or illegality of legal norms)
Web link to the decision (if available)	<a href="http://www.tribunalconstitucional.pt/tc/acordaos/20150296.html">www.tribunalconstitucional.pt/tc/acordaos/20150296.html</a>

<b>Legal basis in national law of the rights under dispute</b>	Law 13/2003 of 21 May, as amended by Decree-Law 133/2012 of 27 June <sup>1</sup> : 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 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 that belong to the European Economic Area or with which the EU has an agreement providing for the free movement of persons. For non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the EU), the same law imposed a longer period of residence - at least the last three years – for getting the Social Insertion Income.
<b>Key facts of the case</b> (max. 500 chars)	The Attorney-General questioned the illegality (when faced with the Framework Law of Social Security) of the legal obligation, imposed to Portuguese citizens (and their families), nationals of other EU Member States and nationals of states that belong to the European Economic Area or with which the EU has an agreement providing for the free movement, of a legal residence in Portugal for a period of time (at least one year) before they were entitled to the Social Insertion Income. The Attorney-General questioned also the unconstitutionality and the illegality of the legal obligation, imposed to non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the European Union), of a legal residence in Portugal for a period of time (at least the last three years) before they were entitled to the Social Insertion Income. From the perspective of the Legislator (Government), the norms were not unconstitutional, taking into account the nature of the benefit (social assistance benefit) and the need for ensuring the person's link to the country.
<b>Main reasoning / argumentation</b> (max. 500 chars)	The Attorney-General argued the illegality of the norms when faced with a superior law (the Framework Law of Social Security), and also the unconstitutionality because they were in breach of the principle of equality and denied the right to a minimum dignified standard of living.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Concerning Portuguese citizens, the situation was resolved by case number 141/2015 (mentioned above). Concerning nationals of other EU Member States, nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement, the Constitutional Court recalled its previous case law (141/2015): the EU law and the interpretation given to them by the CJEU do not impose a uniform treatment of national citizens and citizens from other EU Member States.

<sup>1</sup>Portugal, 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 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=&](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2027&tabela=leis&ficha=1&pagina=1&so_miolo=&).

<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Court did not declare the illegality of the legal obligation (when faced with the Framework Law of Social Security) for a minimum period of residence (one year) for nationals of other EU Member States, nationals of states belonging to the European Economic Area or with which the EU has an agreement providing for the free movement. The Court did not decide the issue of the unconstitutionality of that norm on the grounds that the examination of the unconstitutionality was not expressly requested by the Attorney-General in his request (the Attorney-General only requested the question concerning illegality when faced with the Framework Law of the Social Security).</p> <p>The Court declared the unconstitutionality with generally binding force of the norm imposing a period of residence of three years for getting the Social Insertion Income for non-EU citizens or non-European Economic Area citizens (or citizens from countries that do not have a free movement agreement with the EU). The Court considered that this requirement was excessive and conflicted with the right to a welfare benefit to ensure the most basic means of subsistence, so the norm was in breach of the principle of proportionality.</p> <p>The decision raised many dissenting opinions, especially taking into account the incongruous situation created by the confluence of the declaration of unconstitutionality with generally binding force in case number 141/2015 (in which the Court ruled the part of the norm that required Portuguese citizens and their family members to reside in Portugal for a year before they could ask for the Social Insertion Income) and the Court's decision in this case: after this decision, European citizens who apply for the Social Insertion Income are submitted to a requirement to have resided in Portugal legally for a period of time (at least one year).</p>
<b>Key quotations in original language and translated into English with reference details</b> (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>(Recalling Constitutional Court case number 141/2015 mentioned above): 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 of 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 <a href="http://www.tribunalconstitucional.pt/tc/acordaos/20150296.html">www.tribunalconstitucional.pt/tc/acordaos/20150296.html</a></p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	<p>Articles 34 (2) and 45 (1).</p> <p>One judge also referred to article 21 (2) in his vote explanation.</p>