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| <b>Subject-matter concerned</b>   | <input type="checkbox"/> 1) non-discrimination on grounds of nationality<br><input checked="" type="checkbox"/> 2) freedom of movement and residence<br>- 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)<br><input type="checkbox"/> 3) voting rights<br><input type="checkbox"/> 4) diplomatic protection<br><input type="checkbox"/> 5) the right to petition  |
| <b>Decision date</b>  | 19 June 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> | 34087C  |
| <b>Parties</b>  | Monsieur ... v. a decision of the Administrative Court  |
| <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><br>(max. 500 chars)                            | A man of British nationality had his residence permit revoked by the Luxembourg Minister of Labour, Employment and Immigration ( <i>Ministre du Travail, de l'emploi et de l'immigration</i> ). The decision was made on the sole basis that the man had become an unreasonable burden on the Luxembourg social assistance system. However, the decision was made despite the fact that the man has a daughter of Luxembourgish nationality in the country. The girl had been placed in alternative care due to psychological problems of the mother, but the father maintained that he had had, and continued to have, a solid relationship with his daughter, whom he saw on a regular basis. He argued that a withdrawal of his residence permit would be a breach of the Convention on the Rights of the Child as well as against EU law as established by the CJEU (for instance in Zambrano) as well as the ECHR (Article 8). |

<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>

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|   | <p>The Luxembourg Court (both first instance and appeal) rejected the man's claims and upheld the Minister's decision, because the man had not provided any evidence showing that he did not represent an unreasonable burden on the social assistance system.</p>  |
| <p><b>Main reasoning / argumentation</b><br/>(max. 500 chars)</p>   | <p>The Court rejected the man's arguments that the and upheld the Minister's decision based on the fact that the man had become an unreasonable burden on the Luxembourg social assistance system. During the proceedings, the man had made no claim to argue the opposite, but had invoked only the fact that he should not have his residence permit revoked because of his Luxembourgish daughter, to whom he was connected through a relationship although he did not have guardianship of the child.</p>   |
| <p><b>Key issues (concepts, interpretations) clarified by the case</b><br/>(max. 500 chars)</p>                       | <p>The Court underlined the principle according to which an administrative decision, in the framework of an action for annulment, shall be made based on the legal and factual situation at the time of the decision.</p> <p>In that regard, the Court pointed out that the man had not mentioned the fact that he had a daughter of Luxembourgish nationality when he registered as a resident in the country in 2009, and had not made any mention of the existence of a daughter when the Minister first approached him by letter in 2012 to inform him of his intention to withdraw the residence permit. Therefore, the Court argued, the Minister could not be aware of this fact, and his decision was made correctly.</p> <p>A key issue that was not even touched upon by the Court was the best interest of the child. Indeed, the man had argued that the decision constituted a breach of the Convention on the Rights of the Child, but the Court did not examine this argument at all, stating that the Minister had not been aware of the existence of the child at the time of his decision and that it was thus not part of the "legal and factual situation" at that time (although the child was born already in 2002 and was registered as the man's daughter, and there was nothing to raise any doubts regarding his fatherhood).</p> |
| <p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>              | <p>The decision of the Minister to revoke the residence permit was upheld, and the man had to bear the cost of the proceedings.</p>   |
| <p><b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)</p> | <p><i>« s'il n'est pas contesté que la fille de Monsieur ... qui est née en 2002 et donc bien avant que le ministre ne prenne sa décision litigieuse, il ne ressort toutefois d'aucun élément du dossier que le ministre ait été ou aurait dû être au courant de son existence.</i></p> <p><i>{...}</i></p> <p><i>Les premiers juges ont partant valablement conclu que le ministre était dans l'ignorance de l'existence de la fille de l'appelant au moment de prendre la décision de retrait litigieuse, sans que cette ignorance puisse lui être reprochée, étant donné qu'il avait donné la possibilité à l'intéressé de faire valoir les spécificités de sa</i></p>   |

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|  | <p><i>situation personnelle avant la prise de la décision et que l'appelant, de son côté, n'a pas informé l'autorité ministérielle en temps utile des raisons justifiant son maintien sur le territoire luxembourgeois, les explications fournies pour la première fois dans le cadre de l'instance contentieuse étant ainsi inopérantes pour renverser les motifs de la décision de retrait et ne justifiant pas la carence de l'appelant à produire d'autres éléments en temps utile.</i></p> <p><i>Par suite, la Cour est également amenée à rejeter les moyens tirés d'une violation de l'article 3 de la Convention internationale relative aux droits de l'enfant du 20 novembre 1989 et de l'article 8 de la CEDH comme inopérants. »</i></p> <p>Unofficial translation:</p> <p>“If it is not disputed that the daughter of Mr. ... who was born in 2002 and thus well before the Minister took his contested decision, it is not apparent from any evidence that the Minister was or should have been aware of the child’s existence.</p> <p>{...}</p> <p>The first judges validly concluded that the Minister was unaware of the appellant's daughter at the time of the decision to withdraw the complaint, and that this unawareness could not be held against him given that the appellant had the opportunity to present the specificities of his personal situation before the decision had been taken, and that the appellant had not informed the ministerial authority in good time of the reasons justifying his continued stay in Luxembourg. The explanations provided for the first time in the contentious proceedings are thus inoperative in reversing the grounds for the withdrawal decision and the failure of the appellant to produce such elements at an earlier stage is not justified.</p> <p>Consequently, the Court is also required to reject the pleas alleging infringement of Article 3 of the Convention on the Rights of the Child of 20 November 1989 and Article 8 of the ECHR as inoperative.”</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>  |