

Subject-matter concerned	<input checked="" 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 – Articles 27 and 28 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Full reference	Supreme Court, <i>R. (on the application of Nouazli) v Secretary of State for the Home Department</i> , [2016] UKSC 16, 20 April 2016, available at: www.supremecourt.uk/cases/uksc-2014-0139.html .
Decision date	20 April 2016
Deciding body (in original language)	Supreme Court
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2016] UKSC 16
Parties	R. (on the application of Nouazli) v Secretary of State for the Home Department
Web link to the decision (if available)	www.supremecourt.uk/cases/uksc-2014-0139.html
Legal basis in national law of the	Regulations 21 and 24 of the Immigration (European Economic Area) Regulations 2006 (EEA Regulations)

rights under dispute	
Key facts of the case (max. 500 chars)	<p>The appellant, N., is an Algerian national who arrived in the UK in 1996. He was refused asylum. In 1997 he married a French national and was granted a right of residence as family member of an EEA national. They became estranged in 2005. N. had acquired a permanent right of residence in the UK under EU law. By the end of January 2012, the appellant had been subject to 28 criminal convictions for 48 offences. In 2012, when he was due to be released, he was served with notice of the Secretary of State's decision to make a deportation order against him under the EEA Regulations on the grounds that he would pose a threat to the interests of public policy if he were allowed to remain in the UK. On the same day, he was informed that he was to be detained under Regulation 24 (1) of the EEA Regulations and Schedule 3 of the Immigration Act 1971 pending his removal. N.'s claim for judicial review of the decision to detain him pending deportation and his appeal to the Court of Appeal were both dismissed. The main issues before the Supreme Court were: 1) whether the power detain under Regulation 24 (1) was discriminatory on the basis of nationality contrary to Article 18 TFEU, as there was no equivalent provision for pre-decision detention in relation to family members of British nationals or non-EEA nationals; and 2) whether Regulations 21 and 24 failed to accurately transpose the safeguards in Articles 27 and/or 28 of Directive 2004/38.</p>
Main reasoning / argumentation (max. 500 chars)	<p>With regard to 1) the Supreme Court explained that Article 18 TFEU is concerned only with the way in which EU citizens are treated in Member States other than those of which they are nationals and not with the way in which Member States treat nationals of other countries who reside in their territories. The Court held that "discrimination" against third country nationals was simply a function of the limited scope of the EU legal order and that it was not legitimate to draw a comparison between those exercising EU rights and other third country nationals for the purposes of EU discrimination law. The appellant's also claimed that there was discrimination between British nationals and EU nationals who have third country spouses, as the spouse of the EEA national who is liable to be detained might be hypothetically deterred from exercising their own free movement. However, the Court rejected that claim on the ground that there was no basis for holding that the actual or hypothetical rights of the appellant's spouse, who was long since estranged, would be so affected in this case. With regard to 2) the Court concluded that Regulations 21 and 24 had properly transposed the safeguards of Articles 27 and/or 28 as the power to detain under Regulation 24 is not free-standing but is purely ancillary to the powers of removal in the circumstances permitted by Regulation 21, which properly transposes Articles 27 and 28. The Court held that the power to detain is within the margin of appreciation given to the Member States under the Directive.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Court clarified that it was not legitimate to compare the situation of those exercising EU rights and other third country nationals. It also looked at whether there can be discrimination between British nationals and EU nationals with third country spouses. Finally it clarified that the power to detain pre-deportation is not in violation of the Directive.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The appeal was dismissed. The Court declined to make a preliminary reference to the CJEU.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“It was correctly conceded on behalf of the appellant that the Court of Appeal was right to hold that article 18 is concerned only with the way in which citizens of the Union are treated in member states other than those of which they are nationals. [...]”. [Para. 41]</p> <p>“Such “discrimination” is simply a function of the limited scope of the EU legal order. It is not legitimate to draw a comparison between those exercising EU rights and other third country nationals for the purposes of EU discrimination law. Thus, in R (Bhavyesh) v Secretary of State for the Home Department [2012] EWHC 2789 (Admin) Blake J held at para 27 that</p> <p style="padding-left: 40px;">“... members of such a class are the beneficiaries of a special legal regime, in a different position from either aliens or generally, or British citizens who fall altogether outside the scope of EU law. They are thus incapable of being a comparator class, or a group who are analogously situated with the claimants.””. [Para. 45]</p> <p>“ [...] It seems doubtful that it was intended to apply to a case where, as here, any practical link between the spouses came to an end eight years before the relevant actions of the Secretary of State. Any effect on the rights of Mr Nouazli’s spouse would surely be truly hypothetical because she was unlikely ever to exercise her rights and thus unlikely ever to be deterred from exercising them. It is important in any event to bear in mind that we are concerned not with the removal of the appellant, but merely with his temporary detention or Page 24 subjection to bail conditions for a few months, first pending a decision by the Secretary of State, and then pending his successful appeal. Whether in other circumstances any relevant discrimination might arise as a result of mere detention pending a decision to remove will also be a fact sensitive matter. It cannot be a reason for holding, as Mr Saini would submit, that regulation 24(1) is invalid in “each and every case”. At most, such a claim could justify the disapplication of the offending measure in a particular case”. [Para. 59]</p> <p>“On the facts of the present case I can see no conceivable basis for holding that any actual or hypothetical rights of the appellant’s former</p>

	<p>spouse have been affected by the appellant's detention for a few months in 2012, still less by the imposition of bail conditions". [Para. 60]</p> <p>"In my view there is a short answer to this point. The power to detain under regulation 24 is not free-standing, but is purely ancillary to the powers of removal in the circumstances permitted by regulation 21, which properly transposes articles 27 and 28. Where the Secretary of State has reason to believe that there is a case for removal under those provisions, it is clearly appropriate that she should have power to detain while the matter is being considered, and thereafter pending deportation, if otherwise there might be a risk of the subject absconding. The creation of such a power is well within the margin of appreciation given to the national authorities under the Directive, provided it is suitable and proportionate to its purpose and reasonably exercised (see for example R (Lumsdon) v Legal Services Board [2015] 3 WLR 121, para 55). It is not necessary to show that a decision under regulation 24 is itself an "EEA decision" within the meaning of article 2. It is enough that it is directly linked to regulation 19(3)(b) which in turn is made expressly subject to regulation, and hence to requirements equivalent to those in the Directive. Moreover, I can see no basis for concluding the regulations themselves are disproportionate and it is not said that the impugned decisions were arbitrary or disproportionate on the facts". [Para. 81]</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Yes, Articles 6, 21 and 52</p>