

Subject-matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <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	6 December 2012
Deciding body (in original language)	Cour du Travail de Bruxelles / Arbeidshof van Brussel
Deciding body (in English)	Labour Court of Brussels
Case number (also European Case Law Identifier ( <a href="#">ECLI</a> ) where applicable)	2012/AB/267
Parties	Public Centre for Social Welfare of Auderghem v. B.D.G.
Web link to the decision (if available)	<a href="http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20121206-11">http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20121206-11</a>
Legal basis in national law of the rights under dispute	Articles 18, 21, 45 of the TFEU. Articles 7, 14, 24 of Directive 2004/38.

	Articles 39/79, 40, §4, 42bis, §1, 42septies, of the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens ( <a href="#">Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</a> / <a href="#">Loi du 15 Decembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</a> )
<b>Key facts of the case</b> (max. 500 chars)	<p>B.D.G. was born in Tunisia, married in Spain and acquired Spanish nationality in 1996. In March 2010, he registered with the communal administration as an independent worker. His E-card is valid from 2010 to 2015. In June 2011, B.D.G. requested social assistance from the Public Centre for Social Welfare of Auderghem. The Centre refused the request for assistance on the grounds that he exercised his right to freedom of movement without the necessary financial resources and, thus, was in a state of illegal residence. B.D.G. contested the decision before the Labour Tribunal of Brussels and argued that he came to Belgium as an independent worker, opened a shop that failed to become profitable after a year and had to stop his activity with significant losses. In February 2012, the Labour Tribunal granted the request. The Centre appealed to the Labour Court of Brussels.</p> <p>The main issue in question concerned the condition of residence. The Centre argued that the defendant does not qualify for social assistance because he is in a state of illegal residence.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The Labour Court first points out that only the Minister or his delegate is qualified to remove the certificate of registration.</p> <p>The Labour Court states that according to the case-law of the Court of Justice, the removal of the residence permit cannot be a direct consequence of the granting of social assistance and must respect the general principles of the European Union. Furthermore, a European citizen can invoke the principle of equality of treatment as soon as he obtains a certificate of residence. For those reasons, the defendant should receive equal treatment regarding social assistance as long as his certificate of residence is not removed.</p> <p>Furthermore, allowing the Public Centre for Social Welfare to remove the effects of the residence permit would be a source of unwarranted difference in treatment between European citizens who have seen their residence permit removed by the Minister, and who can appeal with a suspensive effect, and European citizens for whom the Public Centre for Social Welfare has removed social assistance benefits due to an alleged irregularity in their residence permit, and who can appeal but without a suspensive effect.</p> <p>Moreover, allowing the Public Centre for Social Welfare to rule on the residence permit could create divergent administrative practice, which Directive 2004/38 intend to avoid.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The Public Centre for Social Welfare does not have the authority to decide whether a European citizen meets the requirements for legal residence.</p>

	Allowing the Public Centre for Social Welfare to ignore the effects of the residence permit would be discriminatory, because the appeal does not have a suspensive effect, whereas an appeal against the decision of removal of the residence certificate does have such a suspensive effect.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Labour Court decided that the Public Centre for Social Welfare cannot ignore the effects of the residence permit and does not have the authority to decide whether a European citizen meets the requirements for legal residence. After considering the facts, the Labour Court concluded that all of the conditions for social assistance were met in the case at hand.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<i>Permettre au CPAS d'écarter les effets du droit de séjour, même sous contrôle des juridictions du travail, pourrait être la source d'une différence de traitement injustifiée entre les ressortissants de l'Union européenne dont le droit de séjour a été retiré par le Ministre ou son délégué et qui disposent d'un recours suspensif et le ressortissant à qui le CPAS a retiré le bénéfice du revenu d'intégration en raison d'une prétendue irrégularité de son titre de séjour et qui ne dispose à cet égard, que d'un recours non suspensif devant les juridictions du travail. /</i> Allowing the Public Centre for Social Welfare to ignore the effects of the residence permit, even under the control of the labour courts, could be a source of unwarranted difference in treatment between European citizens whose residence permit has been removed by the Minister or his delegate and who have access to an appeal with suspensive effect on the one hand, and European citizens from whom the Centre has removed social assistance benefits due to an alleged irregularity in their residence permit and who can only launch a non-suspensive appeal before the labour courts on the other hand. (par. 18.)
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.</b>	No.