

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 7 and 24 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Full reference	Court of Appeal (Civil Division), <i>Ahmad v Secretary of State for the Home Department</i> , [2014] EWCA Civ 988, 16 July 2014, available at: www.bailii.org/ew/cases/EWCA/Civ/2014/988.html .
Decision date	16 July 2014
Deciding body (in original language)	Court of Appeal (Civil Division)
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2014] EWCA Civ 988
Parties	Ahmad v Secretary of State for the Home Department
Web link to the decision (if available)	www.bailii.org/ew/cases/EWCA/Civ/2014/988.html
Legal basis in national law of the rights under dispute	Immigration (European Economic Area) Regulations 2006 NHS (Charging of Overseas Visitors) Regulations 2011

Key facts of the case (max. 500 chars)	<p>The appellant, Mr Ahmad, a Pakistani national, appealed against a decision of the Secretary of State refusing him permanent residence. Mr. Ahmad was married to his Danish wife with whom he came to the UK in 2006. His permanent residence as a spouse of an EEA citizen was denied as Mrs Ahmad did not have comprehensive sickness insurance cover ("CSIC"). She had entered the UK as a worker but had become a student and was therefore required to have CSIC but had failed to obtain it. Before the Upper Tribunal, Mr Ahmad argued that Mrs Ahmad had satisfied Article 7 (1) of Directive 2004/38/EC as she was entitled to use the National Health Service (NHS) and did not need to have private insurance cover to do so, which the tribunal rejected. The Court of Appeal therefore considered: (1) whether CSIC was restricted to private systems; (2) whether the right to equal treatment had been breached; (3) whether requiring CSIC was disproportionate; (4) whether the Secretary of State ought to have investigated whether the costs of healthcare could be recovered from Denmark; and (5) whether EEA nationals and family members had a right to free NHS treatment under the National Health Service (Charges to Overseas Visitors) Regulations 2011.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Court of Appeal considered that (1) CSIC cannot include the public healthcare system of the host state because that would defeat the object of the Directive, namely it would not relieve that state of the cost of providing healthcare in the first five years. With regard to (2), the court held that the appellant could not rely on Article 24 of the Directive or Article 18 TFEU because he had not acquired a permanent right of residence. About (3) the court stated that nothing in the appellant's case made the requirement for CSIC disproportionate – the period of time during which the CSIC must be held was short, and there was no other way in that period of protecting the host state. Finally, regarding (4), the Court of Appeal held there was no basis for imposing an obligation on the Secretary of State to investigate the position in Denmark.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Court of Appeal clarified what the EU law requirement of CSIC means in the UK context. More specifically, it explained that free access to the NHS was not sufficient to comply with the obligation.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The appeal was dismissed.</p>
Key quotations in original language	<p>"The answer to this appeal depends on the interpretation of Article 7 of the Directive. The ultimate question of interpretation is the extent to which those conditions are to be interpreted under EU law in a dynamic way, so that it is enough if they are substantially or functionally</p>

<p>and translated into English with reference details (max. 500 chars)</p>	<p>fulfilled, or whether they are to be strictly interpreted on the basis that the right to a permanent residence card is a privilege which is not conferred unless there is strict and literal compliance with the conditions”. [Para. 7]</p> <p>“But it is not enough for Mr Kadri QC to establish that CSIC can include public healthcare provision. The Secretary of State accepts that it can. However, the Secretary of State does not accept that it can include the public healthcare system of the host state because that would defeat the object of the Directive: it would not relieve that state of the cost of providing healthcare in the first five years. It would also render the Directive meaningless since the burden on the host state can only arise if there is a health service. I agree with the submissions of the Secretary of State on this point. Moreover, the CJEU in Ziolkowski held that a person does not reside lawfully for the purposes of the Directive if he does not comply with the conditions contained in the Directive”. [Para. 36]</p> <p>“Mr Facenna submits that the appellant cannot rely on discrimination because he has no right of permanent residence under the Directive. This court so held in Abdirahman at paragraphs 41 to 44. This Court held that Article 12 of the EC Treaty now Article 18 TFEU, which prohibits discrimination on the grounds of nationality within the scope of the treaty, did not apply where the relevant person has no right of residence under EU or domestic law”. [Para. 42]</p> <p>“In my judgment, there is nothing in the appellant's case which makes the requirement for CSIC disproportionate. The period of time during which the CSIC must be held is short, and there is no other way in that period of protecting the host state”. [Para. 50]</p> <p>“It would clearly be unprincipled to make that assumption. There is also no basis for imposing an obligation on the Secretary of State to investigate the position in Denmark, which is no doubt an opinion open also to the appellant”. [Para. 56]</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Yes, Article 35.</p>