

Subject-matter concerned	<input 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 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	19 February 2015
Deciding body (in original language)	Le Conseil d'Etat / De Raad van State
Deciding body (in English)	The Council of State
Case number (also European Case Law Identifier ( <a href="#">ECLI</a> ) where applicable)	230.257
Parties	X v. the Belgian State.
Web link to the decision (if available)	<a href="http://www.raadvst-consetat.be/Arrets/230000/200/230257Dep.pdf#xml=http://www.raadvst-consetat.be/apps/dtsearch/getpdf.asp?DocId=27663&amp;Index=c%3a%5csoftware%5cdtsearch%5cindex%5carrets%5ffr%5c&amp;HitCount=2&amp;hits=14+15+&amp;04181720172013">http://www.raadvst-consetat.be/Arrets/230000/200/230257Dep.pdf#xml=http://www.raadvst-consetat.be/apps/dtsearch/getpdf.asp?DocId=27663&amp;Index=c%3a%5csoftware%5cdtsearch%5cindex%5carrets%5ffr%5c&amp;HitCount=2&amp;hits=14+15+&amp;04181720172013</a>
Legal basis in national law of the rights under dispute	Article 42quater, §1, third indent 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> )

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>In September 2011, X arrived in Belgium after being authorised to join her spouse. In May 2013, the residence permit of X, of unspecified nationality, was discontinued by the Belgian State. This decision was appealed before the Council for Alien Law Litigation in June 2013, but the appeal was rejected in December 2013. In January 2014, X lodged a request for annulment of the appeal before the Council of State.</p> <ul style="list-style-type: none"> <li>- X claims a violation of Articles 8 and 13 of the European Convention on Human Rights; Article 14, §1 of the International Covenant on Civil and Political Rights; Article 5 TFUE; Articles 41, 47, 48 and 51 of the Charter of Fundamental Rights of the European Union; Articles 13, 14, 15, 28, 31.3 of Directive 2004/38; Articles 10, 11, 149, 159 and 191 of the Constitution; Articles 1319, 1320 and 1322 of the Civil Code pertaining to the principle that documents must be construed in accordance with their actual terms; Articles 2 and 6 of the Judicial Code; Articles 39/2 §2, 39/65 and 42quater, §1 and §5 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens; the general principles of law, “<i>audit alteram partem</i>”, of thoroughness and prescribing the respect of the rights to be heard, of defence and to a fair hearing;</li> </ul> <p>X claims that, in order to comply with the above-mentioned provisions, the defendant should have heard the applicant on the elements which could contribute to maintaining the residence permit as opposed to just taking them into consideration without further investigation. The Council for Alien Law Litigation had ruled that the applicant can make her voice heard in a spontaneous manner and that it is not mandatory for the authority to hear the applicant if she does not spontaneously make herself heard before the decision to terminate the residence permit is taken.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>According to the Council of State, Directive 2004/38 does not specify if and how the rights of an alien to be heard should be respected before taking a decision to terminate the residence permit of that person. Furthermore, the right to be heard before the adoption of a decision, which could have negative effects on one’s interests, is a part of the rights of defence consecrated by the general principles of the law of the European Union. This right guarantees everyone the possibility to make their point of view known during the administrative procedure and prior to the adoption of any decision that could have negative effects on their interests.</p> <p>The Council states that Article 42quater, §1, third indent of the law of 15 December 1980 provides that a decision to terminate a residence permit should take the duration of the stay, age, health, economic and familial situation, social and cultural integration and the intensity of the link to the country of origin into account. The defendant is obliged to seek the information necessary to make an informed decision. The defendant must investigate the case and, thus, invite the alien to be heard on the reasons that would oppose the termination of the residence permit and thus deportation, such as the elements specified in Article 42quater, §1, third indent. Such an invitation is the only way that aliens can be given an effective and practical opportunity to make their point of view heard.</p>

<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The right to be heard implies that prior to the taking of a decision to terminate the residence permit of an alien is taken, the authority must invite the alien to make his/her point of view on the case heard.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Council of State concludes that by ruling that the right to be heard only implies that the applicant can make herself heard spontaneously, the Council for Alien Law Litigation has failed to have proper regard for that right. Therefore, the Council of State annulled the ruling of the Council for Alien Law Litigation.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>Eu égard à la finalité précitée du droit à être entendu, la partie adverse a l'obligation de rechercher les informations lui permettant de statuer en connaissance de cause. Il lui appartient en effet d'instruire le dossier et donc d'inviter l'étranger à être entendu au sujet des raisons qui s'opposeraient à ce que la partie adverse mette fin à son droit au séjour et l'éloigne du territoire, notamment au regard des éléments visés par l'Article 42quater, § 1er, alinéa 3, de la loi précitée du 15 décembre 1980. Seule une telle invitation offre, par ailleurs, une possibilité effective et utile à l'étranger de faire valoir son point de vue.</i> / Regarding the aforementioned aim of the right to be heard, the defendant has the obligation to seek the information necessary to making an informed decision. It is up to the defendant to investigate the case and, thus, to invite the alien to be heard on the reasons which would oppose to a termination of the residence permit and the deportation, such as the elements specified in Article 42quater, §1, third indent. Only such an invitation allows for an effective and practical opportunity for the alien to make his point of view heard. (p. 7)</p>
<b>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific Article.</b>	Yes, Article 41 of the Charter. (p. 6)