

Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to which article of the Directive 2004/38: Article 3, 7 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	9 June 2008
Deciding body (in original language)	Cour administrative
Deciding body (in English)	Higher Administrative Court
Case number (also European Case Law Identifier () where applicable)	24476C
Parties	Madame ... et Monsieur ... v. a decision of the Administrative Court
Web link to the decision (if available)	The decision can be found on the website of the Administrative Court: http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php , inserting the above-mentioned case number.
Legal basis in national law of the rights under dispute	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>). ¹
Key facts of the case (max. 500 chars)	A man from Cape Verde and a woman of Portuguese nationality appealed a judgement of the court of first instance upholding an expulsion order against the man. Following the expulsion order, the man had been retained at the Luxembourg retention centre awaiting his expulsion, and he was subsequently repatriated to Cape Verde. The couple appealed the decision arguing that they were living as a couple since several years and that they, despite the fact that had not yet married, formed a family de facto. Several witnesses attested to the existence of a romantic relationship between the two, and confirmed that discussions about a future marriage had also been held.
Main reasoning / argumentation (max. 500 chars)	The court of appeals followed the line of reasoning of the court of first instance, and rejected the appeal on the grounds that evidence that the two persons were effectively a couple was

¹ 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>

	too vague, and insufficient to prove a de facto family life. The court held that the Directive 2004/38 did not apply, since the man did not fall within the scope of Articles 2.2 or 3.2 of the said Directive.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court made a strict interpretation of Article 3.2 of Directive 2004/38/EC, holding that the evidence provided by the couple to prove their stable and long-term relationship.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Higher Administrative Court upheld the decisions of the court of first instance and of the Ministry of Foreign Affairs, and rejected the couple's appeal, condemning them to bear the cost of the proceedings.
Key quotations in original language and translated into English with reference details (max. 500 chars)	« Or, force est à la Cour de constater que Monsieur ... ne rentre dans aucune de ces quatre catégories définies par l'article 2, 2) de la directive 2004/38, étant donné plus particulièrement qu'il n'est lié à Madame ... ni par un mariage ni par un partenariat enregistré. Il s'ensuit qu'il ne peut pas invoquer directement à son bénéfice les dispositions contraignantes de la directive 2004/38. En outre, Monsieur ... ne peut pas se prévaloir de la ligne directrice instaurée par l'article 3, 2. b) de la directive 2004/38 invitant les Etats membres à favoriser le séjour des partenaires de citoyens de l'Union européenne en cas de relation durable dûment attestée. En effet, ainsi qu'il se dégage des développements ci-dessus, les appelants sont restés en défaut d'établir l'existence d'une relation d'une durée suffisante caractérisée notamment par une cohabitation continue. Par voie de conséquence, le moyen des appelants relatif au non-respect du droit communautaire laisse pareillement d'être fondé. » Unofficial translation: "However, the Court finds that Mr ... does not fall within any of the four categories defined by Article 2(2) of Directive 2004/38, in particular because he is not linked to Madame ... neither by a marriage nor by a registered partnership. It follows that he cannot invoke the binding provisions of Directive 2004/38 directly for its benefit. Moreover, Mr ... cannot rely on the recommendation established by Article 3(2)(b) of Directive 2004/38, inviting the Member States to promote the residence of partners of citizens of the European Union in case of a duly attested lasting relationship. Indeed, as is clear from the above arguments, the appellants have failed to establish the existence of a sufficiently long relationship, in particular characterized by continuous cohabitation. Consequently, the appellants' plea based on non-compliance with Community law cannot be considered justified."

Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.

No.