Subject-matter concerned	☐ 1) non-discrimination on grounds of nationality ☐x 2) freedom of movement and residence - Article 16, first paragraph, and Article 19, first paragraph of Directive 2004/38/EC to which article of the Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	28 May 2016
Deciding body (in original language)	Rechtbank Den Haag
Deciding body (in English)	District Court The Hague
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RBDHA:2016:4544
Parties	Plaintiff v the Secretary of the Ministry of Security and Justice (*eiseres en de staatssecretaris van Veiligheid en Justitie, verweerder*)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/#zoekverfijn/zt[0][zt]=ECLI%3ANL%3ARBDHA%3A2016%3A4544&zt[0][fi]=AlleVelden&zt[0][ft]=Alle+velden&so=Relevance&ps[]=ps1
Legal basis in national law of the rights under dispute	Articles 8.17, first paragraph, and 8.19 of the Aliens Decision 2000 (Vreemdelingenbesluit 2000). The Netherlands, Aliens Decision 2000 (*Vreemdelingbesluit 2000*), 23 November 2000
Key facts of the case (max. 500 chars)	The plaintiff, a Bulgarian national, started to live in the Netherlands on 4 March 2009. On 11 March 2015 the plaintiff applied for a document which shows that she is entitled to a permanent residence permit, as she is a Union citizen as referred to in Article 16, first paragraph of Directive 2004/38/EC. The Dutch authorities (IND, the Immigration and Naturalisation Service) rejected the application on 22 May 2015 because she had not proven that she had enough means of subsistence and had stayed lawfully in the Netherlands. The plaintiff objected, but the defendant claimed that the objection lacked good grounds. She did not stay legally in the Netherlands, as she did not

	have sufficient means to live on, according to the authorities. It is not clear what resources she lived on to sustain herself. The IND did not use this criterion (the requirement of having enough means of subsistence) until April 2015. Until then, just staying in the Netherlands for a continuous period of five years was enough, but the defendant alleges that this had been a wrong application of the law and that this had to be amended according to the Directive. The District Court holds that a more favourable application of the Directive, not requiring enough means of subsistence, is possible on the basis of Article 37 of the Directive, so that the previous procedure does not have to be amended in retrospect. The District Court concludes that the plaintiff had already stayed for five years in the Netherlands before April 2015, when only actual residence counted, and she is therefore entitled to a document that gives her the right of permanent residence on the basis of Article 19, first paragraph, of the Directive.
Main reasoning / argumentation (max. 500 chars)	The Court acknowledges that in order to acquire a right of permanent residence the conditions laid down by Article 16 have to be met but that national authorities may exercise their right to use more favourable administrative provisions when checking whether the conditions laid down by the Directive are met. EU citizens who have exercised their right to free movement should be able to benefit from this more favourable administrative policy if they fall within its temporal scope.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	This case makes clear that it is not necessary to require that someone has residence with, in the Netherlands, sufficient means to live on in a country in order to obtain a right to a permanent residence permit. National authorities may rely on Article 37 of the Directive and use more favourable national administrative provisions when assessing if EU citizens meet the conditions for the exercise of the rights laid down by the Directive (here, the right of permanent residence).
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	An EU-citizen who resided in the Netherlands for five years continuously before April 2015, is entitled to a document attesting her right of permanent residence, without having to prove that residence met the conditions of sufficient resources.
Key quotations in original language and translated into English with reference details (max. 500 chars)	12. De rechtbank volgt verweerder in zijn standpunt dat uit artikel 16, eerste lid, van de verblijfsrichtlijn volgt dat sprake moet zijn geweest van legaal verblijf gedurende vijf jaren op het grondgebied van het gastland. Artikel 37 van de verblijfsrichtlijn laat evenwel toe dat een lidstaat “wettelijke en bestuursrechtelijke bepalingen” toepast die gunstiger zijn voor personen waarop deze richtlijn van toepassing is. Uit de dossierstukken blijkt onmiskenbaar dat verweerder vóór april 2015 bij aanvragen als die van eiseres slechts beoordeelde of daadwerkelijk sprake was van verblijf in Nederland gedurende een aaneengesloten periode van vijf jaar. Eerst daarna is verweerder ook gaan controleren of gedurende die periode aan het middelenvereiste werd voldaan. Ter zitting heeft verweerder dit ook bevestigd. Verweerder heeft daarbij desgevraagd toegelicht dat dit geen nieuw beleid is, of een nieuwe vaste gedragslijn, maar dat deze toetsing altijd al op grond van de verblijfsrichtlijn had moeten plaatsvinden. De rechtbank kan dit standpunt niet volgen. Gelet op artikel 37 van de verblijfsrichtlijn laat deze richtlijn toe dat sprake is van een, ten opzichte van de bepalingen van de verblijfsrichtlijn, gunstiger

	uitvoeringspraktijk. Dit betekent dat uit de verblijfsrichtlijn geen dwingende verplichting voortvloeit om te controleren of in de vijf relevante jaren sprake was van legaal verblijf. Of deze uitvoeringspraktijk moet worden gekwalificeerd als nieuw beleid, dan wel als een gewijzigde vaste gedragslijn, kan in het midden blijven. Kennelijk heeft verweerder gedurende de periode vóór april 2015 stelselmatig slechts gecontroleerd of sprake was van feitelijk verblijf gedurende ten minste vijf jaar. Voorts wordt overwogen dat de termijn die geldt voor de beoordeling van het duurzaam verblijfsrecht van eiseres was volgelopen op 4 maart 2014, dus vóór de datum van het wijzigen van de uitvoeringspraktijk van verweerder. De rechtbank acht het in strijd met het unierechtelijke rechtszekerheidsbeginsel dat verweerder het voor eiseres ongunstiger uitvoeringsregime, dat pas in april 2015 van toepassing werd, ook op eiseres heeft toegepast. 12. The District Court agrees with the defendant that Article 16, first paragraph of Directive 2004/38/EC implies that someone must have resided legally during five years in the territory of the host state. However, Article 37 of the Directive allows that a Member State applies " any laws, regulations or administrative provisions" which would be more favourable to the persons covered by this Directive. The files clearly show that the defendant only judged whether there was actual residence for a continuous period of five years in the Netherlands in the case of applications such as the one filed by the plaintiff before April 2015. Only from that moment onwards did the defendant check whether the requirement of means of subsistence was met. The defendant acknowledged this during the hearing. He then, upon request, explained that this was not a new policy, or a new procedure, but that this should have happened all the time on the basis of the Directive. The District Court does not agree with this. In view of Article 37 of the Directive, this Directive allows a more favourable treatment in comparison with the stipulations of the Directive. This means that the Directive does not imply a mandatory obligation to check whether there was legal residence in the five years concerned. Whether this practice should be qualified as a new policy, or as an amended procedure, does not have to be dealt with. Obviously, the defendant only checked actual residence for a period of at least five years on a regular basis before April 2015. Moreover, it is considered by the Court that the term which applies to the assessment of the right to permanent residence of the plaintiff had already ended on 4 March 2014, therefore before the date that the defendant changed his practice. The District Court holds that it is in conflict with the principle of legal certainty that applies within the Union that the defendant also applied the new method of application of the law, which is less favourable for the defendant, and which only applied as of April 2015, to the plaintiff.
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.