

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 2, 6 and 16 of Directive 2004/38/EC 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	21 March 2007
Deciding body (in original language)	Raad van State
Deciding body (in English)	Council of State
Case number (also European Case Law Identifier (ECLI) where applicable)	ECLI:NL:RVS:2007:BA1807
Parties	Appellant v the Minister for Matters concerning Aliens and Integration (<i>appellante en de Minister voor Vreemdingenzaken en Integratie</i>)
Web link to the decision (if available)	https://uitspraken.rechtspraak.nl/#zoekverfijn/zt[0][zt]=ECLI%3ANL%3ARVS%3A2007%3ABA1807&zt[0][fi]=AlleVelden&zt[0][ft]=Alle+velden&so=Relevance&ps[]=ps1
Legal basis in national law of the rights under dispute	Articles 14 and 17, first paragraph, beginning and under b, of the Aliens Act 2000 (Vreemdelingenwet 2000). The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000
Key facts of the case (max. 500 chars)	Appellant, a woman, was married to a Dutchman on 7 January 2003. She is (apparently) a national of a third country and stayed in the Netherlands without having any permit. It is not clear from the judgment since when she resided in the Netherlands and since when they were or were not together. Her husband resided between 1993 and 1996 in France, and resided from August/September 1996 till

	<p>March/April 1997 in Germany because he studied theology and in the summer of 1997, he resided in France for two months in order to work for a church. In August 2004, the husband was in France to work for the same church and appellant accompanied him. The spouses of Union citizens who have made use of the freedom of movement of workers are entitled to a residence permit for a definite period without having a prior permit for temporary residence when coming back to the Netherlands. The appellant now claims that her Dutch husband should be regarded as a Union citizen working in another Member State, so that she is entitled to a Dutch residence permit for a definite period of time as she derives, as a family member, this right from his status. The Minister for Matters concerning Aliens and Integration rejected her application. The District Court held that it has not been proven that her husband performed real and genuine work in France during the two months of the summer of 1997 and the month of August in 2004, so that he cannot be seen as a worker in the sense of Community law. The Court therefore held that the appellant's application for a residence permit for a definite period of time without having a prior permit for temporary residence was rightfully rejected. The Council of State holds that the District Court is right. The appellant's husband's residence abroad in the 1990s was long before appellant and her husband were married. In 2004 appellant resided one month with her husband in France. According to the Council of State, she did not prove that he actually and genuinely worked there. The Council of State therefore assumes that he only stayed there for a short time, and not as a worker. Appellant therefore could not derive the right to a residence permit for a definite period of time without having a prior permit for temporary residence on the basis of this stay, as her husband need not be regarded as a Union citizen working in another Member State in the sense of the Directive.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Council of State rejected the application for a residence permit on the following grounds. The TCN spouse of an EU citizen enjoys a derived right of residence based on the EU citizen's exercise of free movement rights. In this case, the EU citizen claimed that he should be seen as having exercised free movement rights as an EU worker in France and Germany during three separate occasions, two of which occurred before the spouses were married or in a relationship. The court argues that no rights can be derived from the first two periods of exercise of free movement rights due to the long period of time elapsed between the exercise of free movement rights as a worker and the marriage. The third exercise of free movement rights by the husband took place after the marriage but it was of a short duration (1 month) leading the court to argue that there was no real and actual work performed as required by the definition of the notion of EU worker. A short stay of one month in another Member State does not give rise upon return to the NL to a right of residence on the basis of Directive 2004/38 to the TCN family member of an EU citizen.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The case clarifies the conditions under which a TCN family member of an EU citizen who has exercised his free movement rights in another Member State can claim a right of residence upon return to the state of nationality of the EU citizen. For the TCN spouse to claim such a derived right of residence, the EU citizen must have exercised free movement rights as an EU worker in the host state.</p> <p>This makes clear that one actually has to work in another Member State in order to be regarded as a Union citizen making use of the freedom of movement of workers. If one is such a Union citizen, one's spouse may be entitled to a residence permit for a definite period of time without having a prior permit for temporary residence in the state that the husband, in this case, is a national of.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The appellant, a third country national, is not entitled to a residence permit for a definite period of time without having a prior permit for temporary residence in the Netherlands.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>2.3.1.2. Appellante heeft niet samen met de man met wie zij in 2003 is gehuwd, tussen 1993 en 1996 in Frankrijk, van augustus/september 1996 tot maart/april 1997 in Duitsland en gedurende twee maanden in de zomer van 1997 in Frankrijk verbleven. Ten tijde van dit verblijf van hem op het grondgebied van deze lidstaten, was appellante Nederland nog niet binnengekomen. Niet is gesteld dat tussen hen destijds reeds een relatie bestond. Voorts is van belang dat tussen de hier bedoelde laatste uitoefening van het gemeenschapsrecht door de echtgenoot en de datum van het huwelijk met appellante geruime tijd verstreken is. Derhalve is er geen grond voor het oordeel dat appellante op grond van dat verblijf van de echtgenoot aanspraken aan het gemeenschapsrecht kon ontlelen.</p> <p>2.3.1.3. In 2004 verbleef appellante één maand met haar echtgenoot in Frankrijk. Appellante heeft niet aangetoond dat haar echtgenoot gedurende die maand reële en daadwerkelijke arbeid heeft verricht en derhalve in de hoedanigheid van werknemer gebruik heeft gemaakt van het recht op het vrije verkeer van werknemers. Daarom moet het ervoor worden gehouden dat hij gebruik heeft gemaakt van het kortdurend verblijfsrecht, als bedoeld in artikel 6 van richtlijn 2004/38/EG. Overwogen wordt voorts dat niet is gebleken dat appellante heeft beoogd in Frankrijk een zeker verblijf te bewerkstelligen. Daartoe wordt in aanmerking genomen dat, en dit is tussen partijen ook niet in geschil, appellante bij aankomst in Frankrijk wel een verblijfsvergunning bij de Franse autoriteiten heeft aangevraagd, maar deze aanvraag niet tot een beslissing heeft geleid, omdat zij niet op uitnodigingen van de autoriteiten heeft gereageerd. Onder die omstandigheden is het buiten . . . twijfel dat geen grond bestaat voor het oordeel dat appellante door dit kortdurend verblijf met haar echtgenoot in Frankrijk na terugkeer in Nederland aan artikel 6 van richtlijn 2004/38/EG aanspraak kon ontlelen op rechtmatig verblijf voor lange duur of op vrijstelling van de op grond van artikel 17, eerste lid, aanhef en onder b, van de Vw 2000 voor langdurig verblijf vereiste mvv.</p> <p>2.3.1.2. Appellant did not reside between 1993 and 1996 in France, from August/September until March/April 1997 in Germany and during two months in the summer of 1997 in France with the man whom she married in 2003. Appellant had not entered the Netherlands yet during his stay in the territory of these Member States. It has not been alleged that they already had a relationship at the time. Moreover, it is important that a considerable time elapsed between the latest exercise of Community law by the spouse that is referred to here and the date of the wedding with appellant. Therefore, there is no reason to judge that appellant could derive rights based on Community law in the context of this residence.</p> <p>2.3.1.3. Appellant spent one month with her spouse in France in 2004. Appellant did not prove that her husband performed real and</p>

	<p>actual work during that month and therefore used the right of the free movement of workers, him being a worker. It should therefore be assumed that he used the right to briefly stay in another Member State, as referred to in Article 6 of Directive 2004/38/EC. Furthermore, the Council of State considers that nothing has shown that appellant tried to reside in France. It is taken into account, and the parties do not differ in opinion about this, that appellant did ask for a residence permit from the French authorities when she entered France, but this request did not lead to a decision, because she did not react to invitations by the authorities. In these circumstances . . . it is without doubt that there is no reason for the judgement that appellant on the basis of this brief stay with her husband in France was, derived from Article 6 of Directive 2004/38/EC, entitled to a lawful stay for a long period of time or to an exemption on the basis of Article 17, first paragraph, beginning and under b, of the Aliens Act 2000 of the permit for temporary residence which is required for a longer stay, after returning to the Netherlands.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>