

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 not specified by the case (but the case is mainly linked to article 17, section 4 and article 24) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	15 April 2014
Deciding body (in original language)	<i>Högsta Förvaltningsdomstolen</i>
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	2785-13
Parties	A.A. and B.B. v. Swedish Social Insurance Agency
Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad; Domstol: Högsta Förvaltningsdomstolen; Målnummer: 2785-13</i></p>
Legal basis in national law of the rights under dispute	<ul style="list-style-type: none"> Social Insurance Code (<i>Socialförsäkringsbalk [2010:110]</i>), chapter 5, sections 2, 3 and 9
Key facts of the case (max. 500 chars)	B.B. and A.A., two British citizens living in Sweden since May/June 2009, applied for housing allowance in December 2010. The Social Insurance Office (<i>Försäkringskassan</i>) rejected their application on the grounds that they were not considered eligible for such entitlements. The case was reviewed by the Social Insurance Office in June 2011, and the Social Insurance Office stood by its earlier

	<p>decision and argued that a residence permit is required to consider a person to be a resident in Sweden and as such have the right to housing allowance. B.B. and A.A. could not be considered to have right to reside in Sweden, since they did not have employment or other means necessary to support themselves. B.B. and A.A. appealed to the Administrative Court (<i>Förvaltningsdomstolen</i>) and latter to the Administrative Court of Appeal in Jönköping (<i>Kammarrätten i Jönköping</i>). Both Courts agreed with the decision made by the Social Insurance Office. B.B. and A.A. appealed to the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) on the grounds that the two earlier court rulings had not taken into account that B.B. was later employed. The Supreme Administrative Court agreed with the arguments of the appeal and ruled that the rulings of both the Administrative Court and the Administrative Court of Appeal in Jönköping did not take into account the fact that B.B. was later employed. The Supreme Court further argued that the requirement that an EU citizen has to be employed in Sweden in order to be eligible for housing allowance constitutes indirect discrimination as of articles 2 and 3 of the Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Social Insurance Office (<i>Försäkringskassan</i>) argued that a residence permit is required to consider a person being a resident in Sweden. The Office considered BB and AA not to have right to reside in Sweden, since they did not have an employment or having enough means to be able to provide for themselves.</p> <p>Main reasoning by the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) is that there is no requirement of a right to residence in Sweden when it comes to persons, who are already registered in the National Register (<i>folkbokföringen</i>) and have been living in Sweden for a considerable length of time (2 years).</p> <p>B.B. and A.A. must be considered to have been settled (<i>bosatta</i>) in Sweden in accordance with the Social Insurance Code, as they were registered and had lived in Sweden for two years at the time of the decision made by the Social Insurance Office in June 2011. The Supreme Administrative Court argued that the Social Insurance Office has no grounds for rejecting their application for housing allowance with reference to their lack of right to residence.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The question in focus whether an EU citizen without residence permit have the right to housing allowance.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500	<p>The Supreme Administrative Court returned the case to the Social Insurance Office for renewed processing.</p>

chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Något krav på uppehållsrätt i Sverige uppställs varken i reglerna om bostadsbidrag eller i socialförsäkringsbalkens bestämmelser om bosättning. Bosättningsbegreppet inom socialförsäkringen har i princip samma innehåll som inom folkbokföringen (prop. 1998/99:119 s. 86ff.). I folkbokföringslagen finns sedan den 1 januari 2014 ett krav på uppehållsrätt för folkbokföring."</i></p> <p><i>"BB och AA var redan vid tidpunkten för Försäkringskassans beslut den 16 juni 2011 folkbokförda i Sverige och hade bott här sedan två år tillbaka. De får därför anses vara bosatta här i socialförsäkringsbalkens mening. Försäkringskassan har därför inte haft fog för att avslå ansöningen om bostadsbidrag på grund av att uppehållsrätt saknats."</i></p> <p>"There is no requirement of a right to residence in Sweden, either in the regulations governing housing allowances or in the Social Insurance Code, when it comes to settlement. The concept of settlement within the social insurance legislation has essentially the same content as the national registration. A residence permit has only been required for a national registration in accordance with Population Registration Act since 1 January 2014."</p> <p>"B.B. and A.A. were already at the time of the Social Insurance Office's decision of 16 June 2011 registered in Sweden and had lived here for two years. They must therefore be considered as settled here in the meaning of the Social Insurance Code. Therefore, the Social Insurance Office has not had any ground for rejecting their application for housing allowance with reference to their lack of right to residence."</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.