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 35. ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	27 March 2012
Deciding body (in original language)	Vestre Landsret
Deciding body (in English)	Western High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	U.2012.2187V
Parties	S v. the Ministry of Justice (*Justitsministeriet*)
Web link to the decision (if available)	Not included as login is required.
Legal basis in national law of the rights under dispute	The Danish EU Residence Administrative Order (*EU-opholdsbekendtgørelsen*), Section 13 The Danish Aliens Act, Section 2
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the "real life story") B entered Denmark in 1991 and in 2003, she became a Danish citizen. In 2006, she married her cousin, S, in Turkey, and S entered Denmark three times subsequently. From 15 January 2006, B had residence at an address in Randers, Denmark. On 5 March 2007, S entered Denmark for the first time. With effect from 15 March 2007, B rented a flat at an address in Niebüll, Germany. On 27 March 2007, she was registered at this address and on 28 March 2007, she was registered as having left Denmark. On 1 June 2007, S departed Denmark. On 17 September 2007, B was re-registered at the same address in Randers as previously. The same day, she was deregistered from her address in Germany. On 5 December 2008, S applied for family reunification with his wife, B, on the basis of EU law as well as the Aliens Act, which was refused by the Danish Immigration Service and upheld by the then Ministry of Integration. S claimed in a lawsuit that the decision of the Integration Ministry should be annulled. The case was brought before the Western High Court.

	2. the legal background against which the case unfolded (what are the relevant legal norms that are applied) The Immigration Service and the then Ministry of Integration refused S' application for family reunification with his wife, B, as S could not be granted a residence permit in accordance with the EU Residence Administrative Order, Section 13 stating: "To the extent that it follows from EU law, family members of a Danish national have a right of residence in Denmark extending for longer than the three- or six-month periods following from Section 2(1) and (2) of the Aliens Act". The Aliens Act, Section 2, paragraph 1 states: "Aliens who are nationals of a country which is a Member State of the European Union or comprised by the Agreement on the European Economic Area may enter and stay in Denmark for up to 3 months from their date of entry or, if the aliens are seeking work, for up to 6 months from their date of entry". And paragraph 2 states: "Aliens falling within the rules set out in paragraph (4) (the EU rules), but who are not nationals of any of the countries mentioned in paragraph (1) (third-country nationals) may enter and stay in Denmark for the same period of time as the persons mentioned in paragraph (1). Third-country nationals must have their passport or other travel document visaed before entry unless they are exempt from visa requirements, see section 39(2)".
Main reasoning / argumentation (max. 500 chars)	The High Court stated that S' spouse, B was a Danish citizen and, therefore, it is a condition for family reunification under the EU law's principle of free movement that B had returned to Denmark after having stayed in another Member State. When applying for a residence permit under EU law lodged while being sought for a residence permit under the Aliens Act, B had not provided information about her stay in Germany. The Court noted that B in March 2007 had rented a flat in Niebüll in Germany and that she was registered as a resident there in the period from March to September 2007. She stated that the reason for her move to Germany was that she considered opening a pizzeria in Germany, but she did not speak German. B had explained that during her stay in Germany, she looked for premises for the pizzeria, but she could not find any and, therefore, she gave up the idea of opening a pizzeria. Based on an overall assessment, the Court found that it was not substantiated that B had established a genuine and effective residence in Germany. In particular, the High Court emphasised that the plans for the establishment of a pizzeria in Germany as a livelihood for B were very nebulous; that she kept a very close connection to Denmark in relation to work and stay in the period when she was registered at the address in Germany; and that, after her return to Denmark, she moved into the same flat, which she had lived in before she went to Germany. Hence, B had not demonstrated that she had exercised her right to freedom of movement in such a way that there were grounds for family reunification under EU law. The Ministry of Justice (formerly, the Ministry of Integration) was acquitted.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The three key issues in this case related to EU law were: 1) Was the Member State allowed to set out criteria that demanded that the spouse of an EU citizen had genuinely and effectively exercised the right to freedom of movement in another EU Member State, and if so, was the stay in the other EU Member State efficiently documented? 2) Was the Member State allowed to require that the spouse of an EU citizen submitted his application for residence permit in natural prolongation of his spouse's return to her EU home State? 3) Was the Member State allowed to require that the spouse of an EU citizen had resided with his spouse, who was the EU citizen, during her exercise of the right to freedom of movement in another EU Member State?

	The Court found that the Danish authorities' requirement that B genuinely and effectively had exercised her EU rights in the Member State where she had been residing was substantiated by the aim of avoiding abuse of EU citizens' rights, which according to the EU Commission had a clear legal basis in EU law, namely Article 35 of Directive 2004/38. The Court found that it was not substantiated that B had established a genuine and effective residence in Germany.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Ministry of Justice (formerly, the Ministry of Integration) was acquitted, as B had not substantiated that she had exercised her right to freedom of movement in such a way that formed basis for family reunification under EU law.
Key quotations in original language and translated into English with reference details (max. 500 chars)	**The High Court on the issue of legal basis in EU law:** Danish: "De danske myndigheders krav om, at B reelt og faktisk skal have udøvet fællesskabsrettighederne i den medlemsstat, hvor hun har haft ophold, må anses for begrundet i et ønske om at undgå misbrug og har ifølge kommissionens udtalelse klar hjemmel i EU-retten". English: "The Danish authorities' requirement that B genuinely and effectively must have exercised Community rights in the Member State where she has resided must be regarded as justified by a desire to avoid abuse and, according to the Commission's opinion, has a clear legal basis in EU law".
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.