

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Denmark 2017

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Contents

| | |
|-----------------------------|----|
| 1. Table 1 – Case law | 3 |
| 2. Table 2 – Overview..... | 59 |

1. Table 1 – Case law

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| 1. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 28.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 13 November 2008 |
| 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.2009.581V or Tfk2009.124/1 |
| Parties | <i>Prosecution Authority (Anklagemyndigheden) v. T1 and T2</i> (however, focus will solely be on T1, as T2 was not an EU citizen) |

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| 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 Criminal Code (<i>Straffeloven</i>), Sections 261 and 288. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 22, 23, 26, 27 and 32. |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>The Slovak citizen, T1 was found guilty of two robberies and sentenced to four years and six months imprisonment. T1 had entered Denmark before Slovakia became a member of the EU in 2004, but the prosecutor stated that when deciding on the deportation issue, it could be assumed that T1's situation should be assessed as if Slovakia had been an EU member throughout his entire stay in Denmark. The District Court in Aarhus refused to deport T1. The decisions on both the punishment and the deportation were appealed to Western High Court.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>T1 was sentenced to prison for having violated the Criminal Code, Sections 261, paragraph 2 and 288, paragraph 1, number 1.</p> <p>Section 261, paragraph 2 states: “If the deprivation of liberty has been effected for the purpose of gain or if it has been of long duration or if it consisted of any person being unlawfully kept in custody as insane or mentally deficient or being enlisted for foreign military service or being taken into captivity or any other state of dependence in any foreign country, the penalty shall be imprisonment for any term not exceeding 12 years”.</p> <p>Section 288, paragraph 1, number 1 states: “Any person who, for the purpose of obtaining for himself or for others an unlawful gain, by violence or threat of immediate application of such, takes or extorts from any other</p> |

person a tangible object belonging to another person shall be guilty of robbery and liable to imprisonment for any term not exceeding six years”.

The District Court in Aarhus decided not to deport T1 on the basis of the Aliens Act, Section 26, paragraph 2, cf. paragraph 1.

Section 26, paragraph 2 states: “An alien must be expelled under Section 22(1)(iv) to (viii) and Section 25 unless the circumstances mentioned in paragraph 1 make it conclusively inappropriate”.

Section 26, paragraph 1 states: “In deciding on expulsion, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of: (i) the alien’s ties with the Danish society; (ii) the alien’s age, health, and other personal circumstances; (iii) the alien’s ties with persons living in Denmark; (iv) the consequences of the expulsion for the alien’s close relatives living in Denmark, including in relation to regard for family unity; (v) the alien’s slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and (vi) the risk that, in cases other than those mentioned in section 7(1) and (2) or section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence”.

On the other hand, the majority of Western High Court changed the decision on the deportation issue resulting in deportation with permanent entry ban on the basis of the Aliens Act, Section 23, number 1, cf. Section 22, number 6.

Section 23, number 1 states: “An alien who has lawfully lived in Denmark for more than the last 5 years may be expelled if any ground given in section 22 is applicable”.

Section 22, number 6 states: “An alien who has lawfully stayed in Denmark for more than the last 9 years and an alien issued with a residence permit under Section 7 or 8(1) or (2) who has lawfully stayed in Denmark for

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| | <p>more than the last 8 years may be expelled if the alien is sentenced, pursuant to [...] Section [...] 261 (2) [...], Section 288 [...]of the Criminal Code, to imprisonment or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature”.</p> <p>The decision to issue permanent entry ban was made on the basis of the Aliens Act, Section 32, paragraph 2, number 5 that states: “An entry prohibition in connection with expulsion under Sections 22 to 24 is given for ever if the alien is sentenced to imprisonment for more than 2 years or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration”.</p> <p>When the Court discussed the issue of deciding the period of time that T1 had stayed in Denmark it referred to the Aliens Act, Section 27, paragraphs 1 and 5.</p> <p>Paragraph 1 states: “The periods referred to in Section 11(3), first sentence, Section 11(4) and (5), Section 17(1), third sentence, and Sections 22, 23 and 25a are reckoned from the date of the alien’s registration with the National Register Office or, if his application for a residence permit was submitted in Denmark, from the date of submission of that application or from the date when the conditions for the residence permit are satisfied if such date is after the date of application”.</p> <p>Paragraph 5 states: “The time the alien has spent in custody prior to conviction or served in prison or been subject to other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in imprisonment is not included in the periods referred to in paragraph (1)”.</p> <p>It was in relation to the fixation of T1’s period of time for his stay in Denmark that the Court examined Article 28 of Directive 2004/38.</p> |
| <p>Main reasoning / argumentation</p> | <p>The High Court stated that the calculation of residence time for use in determining whether T1 was covered by Article 28, paragraph 3, letter a, should not be deducted for the periods referred to in the Aliens Act, Section 27, paragraph 5. The Court noted that the preparatory work to the Aliens Act did not provide any clarification</p> |

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| <p>(max. 500 chars)</p> | <p>on how the notion of residence in Article 28, paragraph 3, letter a, should be understood. The Court then referred to a statement by the Danish Public Prosecutor expressing that an EU citizen could not be deported if he had <i>legally</i> stayed in the Member State the previous 10 years unless deportation is strictly necessary when considering the need to protect the public security. The Court went on to examine Directive 2004/38 and observed that it did not include any provisions similar to the Aliens Act, Section 27, paragraph 5. Therefore, the Court found that in accordance with the Aliens Act, Section 2, paragraph 3 there was no basis for subtracting the periods mentioned under the Aliens Act, Section 27, paragraph 5 in the particular case.</p> <p>The Court then went on to examine if T1 could be deported from Denmark even though he had had residence in the previous 10 years. After a review of T1's personal circumstances, including that he had on several occasions committed serious crimes, the majority of the Court found that he was such a current and serious threat to the Danish public security that it was imperative to deport him.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law was whether it was in compliance with Article 28 of Directive 2004/38 to, when calculating an EU citizens' total residence period, not include the time the alien had spent in custody prior to conviction or served in prison or been subject to other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in imprisonment.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>Western High Court prolonged T1's prison sentence from four years to four years and six months. Furthermore, it changed the deportation decision of the District Court in Aarhus which resulted in a permanent deportation sentence.</p> |

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| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The High Court on the issue concerning fixation of the residence time:</p> <p><u>Danish:</u> "Direktivet indeholder ikke en bestemmelse om fradrag i opholdstider svarende til bestemmelsen i udlændingelovens § 27, stk. 5. Efter indholdet af udlændingelovens § 2, stk. 3, er der herefter ikke grundlag for at fastslå, at der ved beregningen af opholdstiden til brug for afgørelsen af, om den pågældende er omfattet af artikel 28, stk. 3, litra a, skal ske fradrag for de perioder, der er nævnt i udlændingelovens § 27, stk. 5."</p> <p><u>English:</u> "The Directive does not contain a provision for deduction in residence times similar to that of the Aliens Act, Section 27, paragraph 5. In line with the contents of the Aliens Act, Section 2, paragraph 3 there are not sufficient grounds for concluding that the calculation of residence time for use in determining whether the person concerned is covered by Article 28, paragraph 3, letter a, shall be deducted for the periods referred to in the Aliens Act, Section 27, paragraph 5".</p> <p>The High Court on the deportation issue:</p> <p><u>Danish:</u> "Efter en konkret bedømmelse af T1's personlige forhold, herunder at han ved flere lejligheder har begået alvorlig kriminalitet, udgør han en så aktuel og alvorlig fare for den danske offentlige sikkerhed, at det er bydende nødvendigt, at han udvises."</p> <p><u>English:</u> "Following a concrete assessment of T1's personal circumstances, including that he has repeatedly committed serious crimes, he is such a current and serious threat to the Danish public safety that it is imperative that he is deported".</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p> | <p>No.</p> |

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| to which specific article. | |
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| 2. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Articles 27, 28 and 33.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 29 December 2008 |
| Deciding body (in original language) | Højesteret |
| Deciding body (in English) | Supreme Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2009.808H or TfK2009.236/1 |
| Parties | <i>Public Prosecutor (Rigsadvokaten) v. T</i> |

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| 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 Criminal Code (<i>Straffeloven</i>), Section 119. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 22, 24, 26, 32 and 49. |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>The 25 years old, T assaulted a bus driver, as the bus driver did not allow T’s friend to bring a bottle of spirits in the bus. T, who was a British citizen born and raised in Great Britain, where three of his siblings lived, had lived and worked in Denmark since November 2005. He had an EU/EEA residence permit valid until November 2010. Also, his parents and his older brother lived in Denmark. The City Court of Copenhagen sentenced T to 60 days imprisonment. It, furthermore, found that T should be expelled from Denmark and issued an entry ban for five years. The Eastern High Court upheld this decision. Before the Supreme Court, T only appealed the decision of deportation and entry ban.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>T was by the City Court of Copenhagen, a decision upheld by the Eastern High Court, sentenced to 60 days imprisonment for having committed violence under the Criminal Code, Section 119, paragraph 1 that states: “Any person who, by the exertion of violence or threat of violence, assaults any person required to act by virtue of a public office or function, while executing the office or function or on the occasion of such office or function, or who similarly attempts to prevent such a person from discharging a lawful official function or to force him to discharge an official function, shall be liable to a fine or to imprisonment for any term not exceeding eight years”.</p> |

Furthermore, the Public Prosecutor pleaded that T should be expelled and banned from entering Denmark for at least five years pursuant to the Aliens Act, Section 49, paragraph 1, cf. Section 24, number 1, cf. Section 22, number 6, and Section 32, paragraph 3.

Section 49, paragraph 1 states: "When an alien is convicted of an offence, the judgment shall determine, upon the prosecutor's claim, whether the alien will be expelled pursuant to Sections 22-24 or Section 25c or be sentenced to suspended expulsion pursuant to section 24b. If the judgment stipulates expulsion, the judgment must state the period of the entry prohibition, see Section 32(1) to (4)".

Section 24, number 1 states: "Other aliens may be expelled if any ground given in Sections 22 or 23 is applicable".

Section 22, number 6 states: "An alien who has lawfully stayed in Denmark for more than the last 9 years and an alien issued with a residence permit under Sections 7 or 8(1) or (2) who has lawfully stayed in Denmark for more than the last 8 years may be expelled if the alien is sentenced, pursuant to [...] [Section] 119(1) [of the Criminal Code] [...] to imprisonment or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature".

Section 32, paragraph 3 states: "An entry prohibition in connection with expulsion under Section 22(1)(iv) to (viii) and expulsion by judgment of an alien who has not lawfully stayed in Denmark for longer than the last 6 months is given for at least 6 years".

Before the Supreme Court, T only appealed the decision on deportation and entry prohibition. The basis of the Supreme Court's decision was the Aliens Act, Section 26, paragraph 2 that states: "An alien must be expelled under Section 22(1)(iv) to (viii) and Section 25 unless the circumstances mentioned in paragraph 1 make it conclusively inappropriate".

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| | <p>Section 26, paragraph 1 states: "In deciding on expulsion, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of: (i) the alien's ties with the Danish society; (ii) the alien's age, health, and other personal circumstances; (iii) the alien's ties with persons living in Denmark; (iv) the consequences of the expulsion for the alien's close relatives living in Denmark, including in relation to regard for family unity; (v) the alien's slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and (vi) the risk that, in cases other than those mentioned in Section 7(1) and (2) or Section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Supreme Court noted that T's violence towards the bus driver was a spontaneous reaction to the fact that the bus driver did not allow T's friend to bring a bottle of spirits. The Court further observed that T had not been punished prior to the committed act of violence and stressed that a number of cases concerning fines should not be considered in the decision of deportation due to their nature. Subsequently, the Court struck a balance between, on the one hand, T's connection to Denmark and persons living in Denmark and, on the other hand, the nature of the committed, isolated act of violence, which decisively reasoned against deportation in accordance with the Aliens Act, Section 26, paragraph 2. It finally argued, that a deportation would be contrary to the principle of proportionality under Article 27, paragraph 2 in conjunction with Article 28, paragraph 1 of Directive 2004/38/EC.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law was whether an EU citizen could be deported on the ground of a first-time violent act.</p> |
| <p>Results (e.g. sanctions) and key consequences</p> | <p>The Supreme Court upheld the decision of Eastern High Court with the amendment that T should be acquitted for the claim regarding deportation.</p> |

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| <p>or implications of the case (max. 500 chars)</p> | |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The High Court on the deportation issue: <u>Danish:</u> "Fem dommere kan tiltræde det, som byretten har anført vedrørende udvisningspåstanden. Disse dommere bemærker, at tiltalte har overfaldet en buschauffør, som det påhvilede at handle i medfør af offentlig tjeneste eller hverv, under udførelsen heraf. Denne overtrædelse af straffelovens § 119, stk. 1, findes at udgøre en reel, umiddelbar og så alvorlig trussel mod den uforstyrrede afvikling af den offentlige trafik, der er en grundlæggende samfundsinteresse, at udvisning kan finde sted. Udvisning af tiltalte fremstår endvidere efter oplysningerne om hans tilknytning til Danmark og personlige forhold i øvrigt ikke som en uforholdsmæssig retsfølge henset til den forøvede kriminalitet, jf. i det hele udlændingelovens § 2, stk. 3, jf. Europaparlamentets og Rådets direktiv af 29. april 2004 (2004/38) artikel 33, jf. artikel 27 og 28." <u>English:</u> "Five judges accede to what the City Court has stated as regards the deportation claim. These judges note that the accused has attacked a bus driver who was required to act by virtue of a public office or function, while executing the office or function or on the occasion of such office or function. This violation of the Criminal Code, Section 119, paragraph 1 is considered to pose a genuine, present and serious threat to the undisturbed running of public transport, which is a fundamental interest of society after which deportation can take place. Deportation of the defendant appears also after information about his connection to Denmark and personal circumstances otherwise not as a disproportionate sanction in view of the perpetrated crime, cf. in general Aliens Act, Section 2, paragraph 3, cf. the European Parliament and the Council's Directive of 29 April 2004 (2004/38) Article 33, cf. Articles 27 and 28."</p> <p>The Supreme Court on the deportation issue:</p> |

Danish: "Da voldsforholdet blev begået den 22. februar 2007, havde T boet og arbejdet i Danmark siden november 2005. Han har EU/EØS-opholdstilladelse med gyldighed til november 2010. Også hans forældre og hans storebror har taget bopæl i Danmark.

Voldsforholdet, ved hvilket T spyttede og slog buschaufføren i ansigtet, blev begået som en spontan reaktion på, at buschaufføren ikke ville tillade, at en af T's venner medbragte en flaske spiritus i bussen, og i forbindelse hermed nægtede at køre videre og lukkede bussens døre.

T er ikke straffet forud for voldsforholdet, og de senere bødesager kan efter deres karakter ikke tillægges betydning ved afgørelsen af spørgsmålet om udvisning.

På den anførte baggrund finder Højesteret, at der efter en afvejning af på den ene side T's tilknytning til Danmark og herboende personer og på den anden side karakteren af det begåede enkeltstående voldsforhold foreligger hensyn, som afgørende taler imod udvisning, jf. udlændingelovens § 26, stk. 2.

Højesteret frifinder derfor T for påstanden om udvisning.

Det bemærkes, at udvisning efter Højesterets opfattelse også ville være i strid med proportionalitetsprincippet i artikel 27, stk. 2, sammenholdt med artikel 28, stk. 1, i direktiv 2004/38/EF af 29. april 2004 (opholdsdirektivet)."

English: "When the act of violence was committed on 22 February 2007, T had lived and worked in Denmark since November 2005. He has an EU/EEA residence permit valid until November 2010. Also, his parents and his older brother have taken up residence in Denmark.

The act of violence where T spat and punched the bus driver in the face was made as a spontaneous response

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| | <p>to the fact that the bus driver would not allow one of T's friends bring a bottle of spirits on the bus, and in this connection refused to continue to drive and closed the bus doors.</p> <p>T is not punished prior to the act of violence, and recent cases involving fines may, by their nature, not be attributed any importance in determining the issue of expulsion.</p> <p>On the above basis, the Supreme Court finds that after balancing, on the one hand, T's connection to Denmark and persons living in Denmark and, on the other hand, the nature of the committed, isolated act of violence, there exist conditions that decisively argue against deportation, cf. the Aliens Act Section 26, paragraph 2.</p> <p>Therefore, the Supreme Court acquits T for the claim concerning deportation.</p> <p>It should be noted that after the Supreme Court's opinion, deportation would also be contrary to the principle of proportionality in Article 27, paragraph 2 in conjunction with Article 28, paragraph 1 of Directive 2004/38/EC of 29 April 2004 (the Citizens' Rights Directive)."</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

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| 3. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Articles 27, 28 and 33.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 29 December 2008 |
| Deciding body (in original language) | Højesteret |
| Deciding body (in English) | Supreme Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2009.813H or TfK2009.236/2 |
| Parties | <i>Public Prosecutor (Rigsadvokaten) v. T</i> |
| Web link to the decision (if available) | Not included as login is required. |
| Legal basis in national law of | The Danish Criminal Code (<i>Straffeloven</i>), Sections 276. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 2, 24, 26, 32, and 49. |

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| <p>the rights under dispute</p> | |
| <p>Key facts of the case (max. 500 chars)</p> | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>The 28-year-old Lithuanian citizen, T entered Denmark from Sweden, and the same day he committed theft in a department store for a total value of 4,700 DKK. The City Court of Copenhagen sentenced T to prison for 30 days and ordered his deportation from Denmark and issued an entry ban for five years. The High Court upheld the decision. Before the Supreme Court, T appealed the decision of deportation and entry ban.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>T was sentenced by the City Court of Copenhagen, a decision upheld by the Eastern High Court, pursuant to the Criminal Code, Section 276 that states: “Any person who, without the consent of the possessor, carries away any tangible object for the purpose of obtaining for himself or for others an unlawful gain by its appropriation shall be guilty of theft. For the purpose of this and the following sections, any quantity of energy that is produced, conserved or utilised for the production of light, heat, power or motion or for any other financial purpose shall be recognised as equivalent to a tangible object”.</p> <p>Furthermore, the Public Prosecutor pleaded that T should be expelled and banned from entering Denmark for a defined period of time pursuant to the Aliens Act, Section 49, paragraph 1, cf. Section 24, number 2, and Section 32, paragraph 1.</p> <p>Section 49, paragraph 1 states: “When an alien is convicted of an offence, the judgment shall determine, upon the prosecutor’s claim, whether the alien will be expelled pursuant to Sections 22-24 or Section 25c or be sentenced to suspended expulsion pursuant to Section 24b. If the judgment stipulates expulsion, the judgment must state the period of the entry prohibition, see Section 32(1) to (4)”.</p> |

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| | <p>Section 24, number 2 states: "Other aliens may be expelled if the alien is sentenced to imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature".</p> <p>Section 32, paragraph 1 states: "As a consequence of a court judgment, court order or decision ordering an alien to be expelled, the alien's visa and residence permit will lapse, and the alien will not be allowed to re-enter Denmark and stay in this country without special permission (entry prohibition). An entry prohibition may be time-limited and is reckoned from the first day of the month following departure or return. The entry prohibition is valid from the time of the departure or return".</p> <p>Before the Supreme Court, T only appealed the decision on deportation and entry prohibition. The Supreme Court referred to the Aliens Act, Section 26, paragraph 1, in its decision that states: "In deciding on expulsion, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of: (i) the alien's ties with the Danish society; (ii) the alien's age, health, and other personal circumstances; (iii) the alien's ties with persons living in Denmark; (iv) the consequences of the expulsion for the alien's close relatives living in Denmark, including in relation to regard for family unity; (v) the alien's slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and (vi) the risk that, in cases other than those mentioned in Section 7(1) and (2) or Section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence".</p> <p>Finally, the Supreme Court examined Directive 2004/38, Articles 27, 28, and 33.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Supreme Court stated that the conditions for deportation under the Aliens Act Section 24, number 2, cf. Section 26, paragraph 1, were met and that the question therefore was whether the deportation would be compatible with Article 33 in conjunction with Articles 27 and 28 of Directive 2004/38. T had no connection to Denmark, and at the time of the arrest he was found in possession of a bag, which on the inside was fitted with foil or similar in order to bypass the shop alarms, as well as a pair of cutting pliers. Taking into</p> |

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| | <p>consideration the information about T's connection to Denmark in conjunction with the professional character of the theft, the Court found that the crime was expression of conduct which constituted a genuine, present and sufficiently serious threat affecting a fundamental interest of society, cf. Directive 2004/38, Article 27, paragraph 2. This was strengthened by the fact that T was previously sentenced to lengthy prison sentences in Lithuania. The Supreme Court upheld the decision of the High Court, as it did not consider the deportation and entry ban to be contrary to the principle of proportionality in Article 27, paragraph 2 in conjunction with Article 28, paragraph 1.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law was whether an EU citizen could be deported on the ground of theft for a total value of 4,700 DKK. In order to address this issue, the Court examined Article 33 in conjunction with Articles 27 and 28 of Directive 2004/38.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Supreme Court upheld the decisions of the City Court of Copenhagen and the Eastern High Court ordering the deportation of T and issuing an entry ban for five years.</p> |
| <p>Key quotations in original language and translated into English with</p> | <p>The Supreme Court on the deportation issue: <u>Danish:</u> "T begik tyveriet samme dag, som han var ankommet til Danmark. Med denne bemærkning og i øvrigt af de grunde, der er anført af landsretten, tiltræder Højesteret, at hans kriminalitet er udtryk for en adfærd, som udgør en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende</p> |

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| <p>reference details (max. 500 chars)</p> | <p>samfundsinteresse, jf. opholdsdirektivets artikel 27, stk. 2, 2. led. Dette bestyrkes af det for Højesteret oplyste om de straffe, han tidligere er idømt i Litauen.</p> <p>Da T ikke har nogen tilknytning til Danmark, kan udvisning med indrejseforbud i 5 år ikke anses for stridende mod proportionalitetsprincippet i direktivets artikel 27, stk. 2, 1. led, sammenholdt med artikel 28, stk. 1.”</p> <p><u>English:</u> “T committed the theft the same day that he arrived in Denmark. Based on this, and on the reasoning of the High Court, the Supreme Court finds that his crime reflects a behavior that represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, cf. the Citizens’ Rights Directive, Article 27, paragraph 2, second part. Before the Supreme Court, this is confirmed by the information about the penalties he has previously received in Lithuania.</p> <p>Since T has no connection to Denmark, the deportation and entry ban for five years is not considered contrary to the principle of proportionality in Article 27, paragraph 2, first part, in conjunction with Article 28, paragraph 1.”</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

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| 4. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Articles 27, 28, and 33.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 3 August 2009 |
| Deciding body (in original language) | Østre Landsret |
| Deciding body (in English) | Eastern High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2009.2834Ø or TfK2009.797/1 |
| Parties | <i>Prosecution Service v. T</i> |
| Web link to the decision (if available) | Not included as login is required. |
| Legal basis in national law of | The Danish Criminal Code (<i>Straffeloven</i>), Section 119. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 24, 32, and 49. |

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| <p>the rights under dispute</p> | |
| <p>Key facts of the case (max. 500 chars)</p> | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>On 27 June 2009, T assaulted an airport officer on duty in Copenhagen Airport by punching the officer in the stomach. T, who was a Lithuanian citizen, was arrested and charged for violation of the Criminal Code, Section 119. The City Court of Copenhagen sentenced T to 40 days imprisonment and acquitted him from the claim concerning deportation. The decision was appealed to Eastern High Court, which changed the prison sentence to 30 days of imprisonment and discussed the deportation issue in relation to Directive 2004/38.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>T was sentenced to 30 days imprisonment by the High Court for having violated the Criminal Code, Section 119, paragraph 1 that states: “Any person who, by the exertion of violence or threat of violence, assaults any person required to act by virtue of a public office or function, while executing the office or function or on the occasion of such office or function, or who similarly attempts to prevent such a person from discharging a lawful official function or to force him to discharge an official function, shall be liable to a fine or to imprisonment for any term not exceeding eight years”.</p> <p>The Prosecution Service claimed that T should be deported on the basis of the Aliens Act, Section 49, paragraph 1, cf. Section 24, number 2, and Section 32, paragraph 3.</p> <p>Section 49, paragraph 1 states: “When an alien is convicted of an offence, the judgment shall determine, upon the prosecutor’s claim, whether the alien will be expelled pursuant to Sections 22-24 or Section 25c or be sentenced to suspended expulsion pursuant to Section 24b. If the judgment stipulates expulsion, the judgment must state the period of the entry prohibition, see Section 32(1) to (4)”.</p> |

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| | <p>Section 24, number 2 states: "Other aliens may be expelled if the alien is sentenced to imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature".</p> <p>Section 32, paragraph 3 states: "An entry prohibition in connection with expulsion under Section 22(1)(iv) to (viii) and expulsion by judgment of an alien who has not lawfully stayed in Denmark for longer than the last 6 months is given for at least 6 years".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>Regarding the deportation claim, it was noted that at the time of the crime, T, who was a sailor, was on transit in Denmark in connection with the discharge from a Danish ship. The act of violence was committed as a spontaneous reaction to the fact that, due to T's intoxication, the airport staff would change his air ticket for a later departure, and T made limited use of violence. On these grounds, and in view of the inconveniences a deportation might have had for T's future business as a sailor, deportation would not comply with Article 33, cf. Article 27, paragraph 2 and Article 28, paragraph 1 of Directive 2004/38.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law was whether it was in compliance with Directive 2004/38 to deport an EU citizen for having committed an act of violence against an officer on duty.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The High Court decided not to deport T.</p> |

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| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The High Court on the deportation issue:</p> <p><u>Danish:</u> "Vedrørende spørgsmålet om udvisning bemærkes, at T, der er sømand, på gerningstidspunktet var på transit i Danmark i forbindelse med afmønstring fra et dansk skib. Forholdet blev begået som en spontan reaktion på, at lufthavnspersonalet på grund af T's beruselse ville ændre hans flybillet til en senere afgang, og der var alene tale om begrænset voldsudøvelse. På denne baggrund, og når henses til de gener, som en udvisning vil kunne have for T's fremtidige erhvervsudøvelse som sømand, findes udvisning ikke at være i overensstemmelse med EU-reglerne, jf. artikel 33, jf. artikel 27, stk. 2, og artikel 28, stk. 1, i direktiv 2004/38/EF af 29. april 2004 (opholdsdirektivet), hvorfor betingelserne for udvisning ikke er opfyldt, jf. udlændingelovens § 2, stk. 3."</p> <p><u>English:</u> "Regarding the issue of deportation, it is noted that T, who is a sailor, was on transit in Denmark in connection with the dischargement from a Danish ship at the time of the crime. The offence was committed as a spontaneous reaction to the fact that, due to T's intoxication, the airport staff would change his flight ticket for a later departure, and T made limited use of violence. On these ground, and taking into account the inconveniences a deportation might have for T's future occupation as a sailor, deportation does not appear to be in accordance with EU rules, cf. Article 33, cf. Article 27, paragraph 2, and Article 28, paragraph 1 of Directive 2004/38 /EC of 29 April 2004 (the Citizens' Rights Directive), and the conditions for deportation are thus not met, cf. the Aliens Act, Section 2, paragraph 3."</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p> | <p>No.</p> |

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| to which specific article. | |
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| 5. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 27.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 27 March 2010 |
| Deciding body (in original language) | Østre Landsret |
| Deciding body (in English) | Eastern High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | OE2010.S-968-10 or Tfk2010.618 |
| Parties | <i>Prosecution Service (Anklagemyndigheden) v. S</i> |

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| 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 Criminal Code (<i>Straffeloven</i>), Section 197. The Danish Aliens Act (<i>Udlændingeloven</i>), Section 35. |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>S, who was a Slovenian national, had been begging on the main shopping street in Copenhagen for which reason the police arrested her. S had arrived to Denmark from Slovenia one and half weeks prior to her arrest. She had come to Denmark to look for work, but could not get any work because she did not speak Danish or English. On 14 July 2002, S had been given a warning for begging by the Police of Copenhagen and another warning by the Police of Aarhus on 25 January 2010. S thought that the latter warning only applied in Aarhus. After arriving in Denmark, S slept in a church, where she also received food. Pursuant to the Danish Aliens Act, the City Court of Copenhagen ordered S to be remanded in police custody for five days, which S appealed to the Eastern High Court.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>S was charged with criminal offences under the Criminal Code, Section 197 stating: “Any person who, in spite of police warnings, is guilty of begging or who permits any person belonging to his household and being under the age of 18 to engage in begging shall be liable to imprisonment for any term not exceeding six months. In mitigating circumstances the punishment may be remitted. A warning under this provision shall be valid for five years”.</p> <p>S was then ordered to be remanded in police custody for five days pursuant to the Aliens Act, Section 35, paragraph 1, number 1 stating: “An alien may be remanded in custody when on definite grounds custody is</p> |

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| | <p>found to be necessary to ensure the alien's presence during his case and during a possible appeal until a decision on expulsion, if any, can be enforced, and if the alien is not permanently resident in Denmark and there are reasons to suspect that the alien has committed an offence that may lead to expulsion under Sections 22 to 24".</p> <p>The Eastern High Court addressed the Aliens Act, Section 2, paragraph 3 in its decision that states: "The limitations provided for by this Act only apply to aliens falling within the EU rules to the extent that it is compatible with those rules".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Eastern High Court noted that S was a Slovenian citizen and, hence, subject to the regulations for EU citizens. Thus, her access to stay in Denmark was regulated by Directive 2004/38. The Court found, without further explanation, that the criteria for remand in police custody were not fulfilled, cf. the Aliens Act, Section 2, paragraph 3, cf. Article 27 of Directive 2004/38.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law in this case was whether an EU citizen could be remanded in police custody prior to a potential deportation on the grounds of the criminal offence of begging. The Court found that Article 27 of Directive 2004/38 did not allow for remand in police custody prior to a potential deportation under such circumstances.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The High Court ordered the release of S.</p> |

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| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The City Court on the issues of deportation and remand in police custody: <u>Danish:</u> "Det lægges til grund at udlændingen, der er statsborger i et EU-land, ikke har fast bopæl her i landet, og der er under henvisning til advarslen af 25. januar 2010 særlig bestyrket mistanke om, at hun har begået en overtrædelse af straffelovens § 197. Det lægges til grund, at udlændingens tiggeri er systematisk og organiseret. På den baggrund finder retten på det foreliggende grundlag, at udvisning ikke er udelukket efter EU-reglerne. Fængsling kan derfor ske efter udlændingelovens § 35, stk. 1, nr. 1 [...]." <u>English:</u> "It is assumed that the alien who is a citizen of an EU country does not have a permanent residence here in the country, and with reference to the warning of 25 January 2010, reasons for suspicion that she has committed a violation of the Penal Code, Section 197 are increased. It is assumed that the alien's begging is systematic and organised. On this basis, the court finds on grounds of the existing evidence that deportation is not excluded under EU rules. Therefore, imprisonment is permitted in accordance with the Aliens Act, Section 35, paragraph 1, number 1 [...]."</p> <p>The High Court on the issue of remand in police custody: <u>Danish:</u> "S er slovensk statsborger, og som følge heraf omfattet af regler for statsborgere i EU, hvorfor hendes adgang til ophold i Danmark reguleres af reglerne i opholdsdirektivet. Herefter findes betingelserne for varetægtsfængsling ikke opfyldte, jf. udlændingelovens § 2, stk. 3, jf. opholdsdirektivets art. 27 [...]." <u>English:</u> "S is a Slovenian citizen and, therefore, subject to the regulations for citizens in the EU and her access to stay in Denmark is governed by the regulations of the Citizens' Rights Directive. Following this, the conditions for detention are not fulfilled, cf. the Aliens Act, Section 2, paragraph 3, cf. the Citizens' Rights Directive, Art. 27 [...]."</p> |
| <p>Has the deciding body referred to the Charter of</p> | <p>No.</p> |

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| 6. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Articles 27 and 28.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 31 March 2011 |
| Deciding body (in original language) | Højesteret |
| Deciding body (in English) | Supreme Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2011.1788H or Tfk2011.637/1 |
| Parties | <i>A and B v. the National Commissioner of Police (Rigspolitchefen)</i> |

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| Web link to the decision (if available) | Link to the Supreme Court's decision: http://domstol.fe1.tangora.com/media/-300016/files/143-2009.pdf (only in Danish). |
| Legal basis in national law of the rights under dispute | The Danish Criminal Code (<i>Straffeloven</i>), Sections 244 and 276. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 2, 25 a, 26, 36, and 37. |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the "real life story") A and B, who were citizens of Romania, entered the Schengen Area (Norway) on 22 October 2008. On 24 October, they were arrested in Denmark and charged with theft of a coat of the value of 4,800 DKK and in B's case also violence. They received a fine notice of 200 DKK for theft, and B also received a fine notice for the act of violence. Both were previously punished with fines for theft in Denmark. On 25 October 2008, the Immigration Service decided to deport A and B, who were detained under the Aliens Act for the purpose of deportation. The issue of detention was brought before the City Court of Copenhagen, which released A and B. The decision was appealed and the Eastern High Court found that the detentions were legal. A and B appealed the decision to the Supreme Court arguing that the decision of the City Court should be upheld. 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) A and B were arrested and charged for theft pursuant to the Criminal Code, Section 276 that states: "Any person who, without the consent of the possessor, carries away any tangible object for the purpose of obtaining for himself or for others an unlawful gain by its appropriation shall be guilty of theft. For the purpose of this and the following sections, any quantity of energy that is produced, conserved or utilised for the production of light, heat, power or motion or for any other financial purpose shall be recognised as equivalent to a tangible object". |

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| | <p>In addition, B was charged for violence under the Criminal Code, Section 244 that states: "Any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to imprisonment for any term not exceeding three years".</p> <p>The deportation issue in question was based on the Aliens Act, Section 25 a, paragraph 1, number 1 stating: "An alien who has not lawfully stayed in Denmark for more than the last 6 months may further be expelled if the alien, in cases other than those mentioned in Sections 22 to 24, has been sentenced for violation of [...] Section [...] 244 or [...] Sections 276 to 283 [...] of the Criminal Code [...]".</p> <p>The imprisonment of A and B was discussed with reference to the Aliens Act, Section 36, paragraph 1 stating: "If the measures referred to in section 34 are insufficient to ensure enforcement of a refusal of entry, of expulsion under Sections 25(1)(ii), 25a, 25b and 25c, of transfer or retransfer or of the return of an alien who is not otherwise entitled under the rules of Parts I and III to Va to stay in Denmark, the police may order that the alien is to be deprived of liberty [...]".</p> <p>Finally, the Supreme Court examined Articles 27 and 28 of Directive 2004/38 in accordance with the Aliens Act, Section 2, paragraph 3 that states: "The limitations provided for by this Act only apply to aliens falling within the EU rules to the extent that it is compatible with those rules".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Supreme Court noted that an alien who has not lawfully resided in the country for longer than the last six months may be deported under the Aliens Act, Section 25a paragraph 1, number 1 if he is convicted of theft or to the police has admitted the offense or was apprehended during or in direct connection with commission of the offense. Deportation of foreigners governed by EU law can be done only to the extent it is consistent with these rules. On the basis of the available information, the Supreme Court noted that A and B had admitted the shop theft, which was committed shortly after arriving in Denmark, and that they had no affiliation to Denmark and the criteria for deportation under the Aliens Act, Section 25 a, paragraph 1, number 1 had thus been met. The Court further found that A and B's behaviour may also be deemed to constitute a genuine, present and sufficiently serious threat affecting a fundamental interest of society, cf. Article 27 of Directive 2004/38, and</p> |

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| | since they had no affiliation to Denmark the deportation was not disproportionate, cf. Article 27 in conjunction with Article 28. Therefore, the Supreme Court held that the detention of A and B was needed to ensure the possibility of deportation, since less restrictive measures were insufficient. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The key issue related to EU law in question was whether EU citizens could be deported on the grounds of theft and violence. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The Supreme Court upheld the decision of the Eastern High Court, which ruled that the detention of A and B was legal. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | The Supreme Court on the deportation issue: <u>Danish:</u> "A's og B's adfærd må anses for at udgøre en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende samfundsinteresse, jf. artikel 27, stk. 2, 2. led., i direktiv 2004/38/EF af 29. april 2004 (opholdsdirektivet), og da de ikke har nogen tilknytning til Danmark, kan udvisning af dem endvidere ikke anses for stridende mod proportionalitetsprincippet i direktivets artikel 27, stk. 2, 1. led, sammenholdt med artikel 28, stk. 1. Opholdsdirektivet er således ikke til hinder for udvisning, jf. herved udlændingelovens § 2, stk. 3." |

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| | <p><u>English:</u> "A and B's behaviour is deemed to pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, cf. Article 27, paragraph 2, second part of Directive 2004/38/EC of 29 April 2004 (the Citizens' Rights Directive), and since they have no connection to Denmark, deportation of them cannot be considered contrary to the principle of proportionality in Article 27, paragraph 2, first part in conjunction with Article 28, paragraph 1. The Citizens' Rights Directive is, thus, not a hindrance to the deportation, cf. hereby the Aliens Act, Section 2, paragraph 3,"</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

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| <p>7. Subject matter concerned</p> | <p> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 27.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition </p> |
| <p>Decision date</p> | <p>31 March 2011</p> |

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| Deciding body (in original language) | Højesteret |
| Deciding body (in English) | Supreme Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2011.1794H or TfK2011.637/2 |
| Parties | <i>A v. the National Commissioner of Police (Rigspolitchefen)</i> |
| Web link to the decision (if available) | Link to the Supreme Court's decision: http://domstol.fe1.tangora.com/media/-300016/files/264-2010.pdf (only in Danish). |
| Legal basis in national law of the rights under dispute | The Danish Criminal Code (<i>Straffeloven</i>), Section 264. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 2, 25 a, and 36. |
| Key facts of the case (max. 500 chars) | Note that this executive summary has the purpose to make us understand the: 1. Facts of the case (so the "real life story") On 16 July 2010, A, who was a citizen of Romania, entered Denmark, and on 19 July 2010, he was arrested for having stayed in an allotment. A was granted a fine notice of 25 DKK for violation of domestic peace by having gained access to the allotment through a locked gate. On 20 July 2010, the Immigration Service decided to deport A, who was detained under the Aliens Act with the purpose of deportation. The detention issue was |

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| | <p>brought before the City Court of Copenhagen and later before the Eastern High Court, which upheld the decision concerning detention prior to deportation. A appealed the decision to the Supreme Court.</p> <p>2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) A was arrested and charged for violation of domestic peace pursuant to the Criminal Code, Section 264, paragraph 1 that states: “Any person who unlawfully obtains access to another person’s house or any other place not freely accessible shall be liable to a fine or to imprisonment for any term not exceeding six months”.</p> <p>The Immigration Service decided to deport A, a decision upheld by the City Court of Copenhagen and the Eastern High Court, in accordance with the Aliens Act, Section 25 a, paragraph 2, number 3 that states: “After entry, an alien who has not lawfully stayed in Denmark for more than the last 6 months may also be expelled if other reasons of public order, security, or health indicate that the alien should not be allowed to stay in Denmark”.</p> <p>The detention of A prior to his deportation was made under reference to the Aliens Act, Section 36, paragraph 1 stating: “If the measures referred to in Section 34 are insufficient to ensure enforcement of a refusal of entry, of expulsion under Sections 25(1)(ii), 25a, 25b and 25c, of transfer or retransfer or of the return of an alien who is not otherwise entitled under the rules of Parts I and III to Va to stay in Denmark, the police may order that the alien is to be deprived of liberty [...]”.</p> <p>Finally, the Supreme Court examined Articles 27 of Directive 2004/38 in accordance with the Aliens Act, Section 2, paragraph 3 that states: “The limitations provided for by this Act only apply to aliens falling within the EU law to the extent that it is compatible with those rules”.</p> |
| Main reasoning / argumentation | <p>The Supreme Court noted that an alien who has not lawfully resided in Denmark for longer than the last six months may be deported under the Aliens Act, Section 25 a, paragraph 2, number 3 if other aims of public order, security or health indicate that the alien should not be allowed to stay in the country. Deportation of foreigners who are covered by EU law can be done only to the extent it is consistent with these rules.</p> |

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| <p>(max. 500 chars)</p> | <p>A had stayed in an allotment in the house owner's absence and without his permission. A explained to the police that he had spent three days in the allotment hut. The case had been settled with a fine notice of 25 DKK. The act was committed shortly after his entry into Denmark where to he had no affiliation. Previously, he had been fined in Denmark of 1,000 DKK for the shoplifting of razor blades at a value of approximately 900 DKK. The Supreme Court found that a violation of domestic peace of a character as the one in question had such a random character and so limited adverse effect that the act could not be considered to be covered by the Aliens Act, Section 25 a, paragraph 2, number 3 concerning the consideration of the public order, as this provision had to be understood by its wording, history and preparatory work. Therefore, the detention of A was not lawful. Furthermore, the deportation of A would also be illegal because A's behaviour could not be considered to constitute a genuine, present and sufficiently serious threat affecting a fundamental interest of society, cf. Article 27 of Directive 2004/38.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law in question was whether it was in accordance with Directive 2004/38 to detain an EU citizen prior to his deportation for a violation of domestic peace.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Supreme Court ruled that the detention and deportation of A was illegal.</p> |

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| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The Supreme Court on the detention and deportation issue:</p> <p><u>Danish:</u> "Det bemærkes, at Højesteret finder, at frihedsberøvelsen også ville være ulovlig, fordi udvisning af A ville være i strid med direktiv 200[4]/38/EF af 29. april 2004 (opholdsdirektivet), jf. herved udlændingelovens § 2, stk. 3, idet husfredskrænkelsen har en så tilfældig karakter og så begrænset skadevirkning, at hans adfærd - uanset at han tidligere har begået tyveri og nu kort efter indrejse tillige husfredskrænkelse - ikke kan anses for at udgøre en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende samfundsinteresse, jf. direktivets artikel 27, stk. 2, 2. led."</p> <p><u>English:</u> "It is noted that the Supreme Court finds that the detention would also be illegal because the deportation of A would be contrary to Directive 200[4]/38/EC of 29 April 2004 (the Citizens' Right Directive), cf. hereby the Aliens Act, Section 2, paragraph 3, as the violation of domestic peace has such a random character and so limited adverse effect that his behaviour - although he has previously committed theft and now shortly after entry also violated domestic peace - cannot be considered to represent a genuine, present and sufficiently serious threat affecting fundamental interests of society, cf. the Directive, Article 27, paragraph 2, second part."</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p> | <p>No.</p> |

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| 8. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 27.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 31 March 2011 |
| Deciding body (in original language) | Højesteret |
| Deciding body (in English) | Supreme Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | U.2011.1800H or TfK2012.3/1 |
| Parties | <i>A v. the National Commissioner of Police (Rigspolitichefen)</i> |
| Web link to the decision (if available) | Link to the Supreme Court's decision: http://domstol.fe1.tangora.com/media/-300016/files/319-2010.pdf (only in Danish). |
| Legal basis in national law of | The Danish Criminal Code (<i>Straffeloven</i>), Sections 264 and 277. The Danish Aliens' Act (<i>Udlændingeloven</i>), Sections 2, 25 a, and 36. |

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| <p>the rights under dispute</p> | |
| <p>Key facts of the case (max. 500 chars)</p> | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the “real life story”) <p>On 18 August 2010, A, who was a citizen of Romania, entered Denmark, and on 20 August 2010, he was arrested in an abandoned building where he was about to break the lock of a bicycle. He received a warning for violation of domestic peace by having gained access to the abandoned building and for trafficking in lost property by having acquired the bike. On 20 August 2010, the Immigration Service decided to deport A, who was detained under the Aliens Act prior to his deportation. The detention issue was brought before the City Court of Copenhagen and later before the Eastern High Court, which upheld the decision of the Immigration Service. The case was appealed to the Supreme Court.</p> 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>A was arrested and charged for violation of domestic peace pursuant to the Criminal Code, Section 264, paragraph 1 and for trafficking in lost property under Section 277.</p> <p>Section 264, paragraph 1 states: “Any person who unlawfully obtains access to another person’s house or any other place not freely accessible shall be liable to a fine or to imprisonment for any term not exceeding six months”.</p> <p>Section 277 states: “Any person who, for the purpose of obtaining for himself or for others an unlawful gain, appropriates any tangible object which is not in the custody of any person or which has come into the hands of the perpetrator through carelessness on the part of the owner or in any similar accidental way shall be guilty of misappropriation of lost property”.</p> <p>The Immigration Service decided to deport A, a decision upheld by the City Court of Copenhagen and the Eastern High Court, in accordance with the Aliens Act, Section 25a, paragraph 1, number 1 that states: “An</p> |

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| | <p>alien who has not lawfully stayed in Denmark for more than the last 6 months may further be expelled if the alien, in cases other than those mentioned in sections 22 to 24, has been sentenced for violation of [...] Sections 276 to 283 [...] of the Criminal Code [...]”.</p> <p>The detention of A prior to his deportation was made under reference to the Aliens Act, Section 36, paragraph 1 stating: “If the measures referred to in section 34 are insufficient to ensure enforcement of a refusal of entry, of expulsion under Sections 25(1)(ii), 25a, 25b and 25c, of transfer or retransfer or of the return of an alien who is not otherwise entitled under the rules of Parts I and III to Va to stay in Denmark, the police may order that the alien be deprived of liberty [...]”.</p> <p>Finally, the Supreme Court examined Articles 27 of Directive 2004/38 in accordance with the Aliens Act, Section 2, paragraph 3 that states: “The limitations provided for by this Act only apply to aliens falling within the EU rules to the extent that it is compatible with those rules”.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Supreme Court noted that A had pleaded guilty to illegal trafficking in lost property, and that the bicycle he tried to break the lock on was found on a property of an abandoned house. There were no co-perpetrators and the case was settled with a warning. The act was committed shortly after his entry into Denmark where to A had no affiliation. A had not previously been convicted in Denmark. The Supreme Court found that the terms of the Aliens Act, Section 25a, paragraph 1, number 1, cf. Section 26, paragraph 1 for deporting A on the existing basis should be regarded as fulfilled. However, deportation of A was incompatible with Directive 2004/38, as the relationship had such a random character and was likely to have had such limited adverse effect that A's behaviour could not be considered to constitute a genuine, present and sufficiently serious threat affecting a fundamental interest of society, cf. Article 27. Therefore, the detention of A was illegal.</p> |
| <p>Key issues (concepts, interpretations) clarified by</p> | <p>The key issue related to EU law in question was whether it was in accordance with Directive 2004/38 to detain an EU citizen prior to his deportation for having committed trafficking in lost property.</p> |

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| <p>the case (max. 500 chars)</p> | |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Supreme Court found that the detention was illegal as A could not be deported from Denmark.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The Supreme Court on the detention and deportation issue:</p> <p><u>Danish:</u> "Uanset at det forhold, som er påberåbt som grundlag for udvisningen af A, er begået kort tid efter indreisen til Danmark, har det haft en sådan tilfældig karakter og må antages at have haft så begrænset skadevirkning, at hans adfærd ikke kan anses for at udgøre en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende samfundsinteresse, jf. artikel 27, stk. 2, 2. led, i direktiv 2004/38/EF af 29. april 2004 (opholdsdirektivet). Udvisning af A vil derfor være uforenelig med opholdsdirektivet, og frihedsberøvelsen af ham har således været uhjemlet, jf. herved udlændingelovens § 2, stk. 3."</p> <p><u>English:</u> "Regardless that the act, referred to as the basis for the deportation of A, is committed shortly after entry to Denmark, it has had such a fortuitous nature and is likely to have had such limited adverse effect that his behaviour cannot be considered to be a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, cf. Article 27, paragraph 2, second part of Directive 2004/38/EC of 29 April 2004 (the Citizens' Rights Directive). Deportation of A would, therefore, be incompatible with the Citizens' Rights Directive and the detention of him has, thus, been unlawful, cf. hereby the Aliens Act, Section 2, paragraph 3."</p> |

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| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | No. |
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| 9. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 35.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 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) | U.2012.2187V |

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| Identifier (ECLI) where applicable) | |
| Parties | <i>S v. the Ministry of Justice (Justitsministeriet)</i> |
| 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 (<i>EU-opholdsbekendtgørelsen</i>), Section 13 The Danish Aliens Act, Section 2 |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <p>1. Facts of the case (so the "real life story")</p> <p>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 left 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.</p> <p>2. Legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> |

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| | <p>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".</p> <p>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".</p> <p>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)".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The High Court stated that S's spouse, B was a Danish citizen and, therefore, it was 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 in March 2007 B 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 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</p> |

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| | <p>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.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>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?, and 3) Was the Member State allowed to require the spouse of an EU citizen to reside with his spouse, who was the EU citizen, during her exercise of the right to freedom of movement in another EU Member State?.</p> <p>The Court found that the Danish authorities' requirement that B genuinely and effectively 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.</p> |
| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>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.</p> |

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| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>The High Court on the issue of legal basis in EU law:</p> <p><u>Danish:</u> "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."</p> <p><u>English:</u> "The Danish authorities' requirement that B genuinely and effectively exercise 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."</p> |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article. | <p>No.</p> |

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| 10. Subject matter concerned | <ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> - linked to which article of Directive 2004/38: <u>Articles 4 and 6.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
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| Decision date | 27 June 2016 |
| Deciding body (in original language) | Retten i Aalborg |
| Deciding body (in English) | District Court in Aalborg |
| Case number (also European Case Law Identifier (ECLI) where applicable) | BS 5-1768/2013 |
| Parties | <i>X v. the Danish Board of Appeals (Ankestyrelsen)</i> |
| Web link to the decision (if available) | http://kammeradvokaten.dk/media/3590/11281784_1.pdf (only in Danish) |
| Legal basis in national law of the rights under dispute | The Danish Act on Social Services (<i>ServiceLOVEN</i>), Sections 2, 83, 95 The Danish Administrative Order on Services under the Act on Social Services during Temporary Stays Abroad (<i>Udlandsbekendtgørelsen</i>), Section 1 Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Articles 19 |
| Key facts of the case (max. 500 chars) | Note that this executive summary has the purpose to make us understand the: 1. Facts of the case (so the "real life story") The applicant, X, was a person with disabilities who had been granted 24 hour disability care pursuant to the Act on Social Services, Section 95, paragraph 3, cf. Section 83. X wanted to go abroad temporarily and applied at the municipality for a permit to bring her carer with her. The municipality refused the applications and the |

decision was later upheld by the Danish Board of Appeals, as it found that in pursuant to the Administrative Order on Services under the Act on Social Services during Temporary Stays Abroad, Section 1, paragraph 2, it was a prerequisite that X stayed in Denmark in order to benefit from the granted care. Therefore, X brought her claim before the District Court in Aalborg.

2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) In Denmark, X was granted 24 hours assistance pursuant to Act on Social Services, Section 95, paragraph 3, cf. Section 83. Section 95, paragraph 3 states: "The municipal council may, in special cases, decide that assistance under paragraph 2 continue to be provided in kind or paid to a closely related person, which in whole or part suits the concerned".

Paragraph 2 states: "A person with significant and permanent physical or mental impairment that need personal attention and care and support for solving the necessary practical tasks in the home for more than 20 hours a week can choose to receive a cash grant to help that the concerned carry out himself".

In its refusal of X's application to bring the provided assistance abroad, the municipality and the Appeals Board noted on the basis of the Act on Social Services, Section 2 that: "Anyone residing legally in this country are entitled to assistance under this Act".

The Appeals Board found that the assistance granted to X under the Act on Social Services could not be brought abroad as it was not encompassed in the Administrative Order on Services under the Act on Social Services during Temporary Stays Abroad, Section 1, paragraph 2 that states: "During temporary stays abroad the right to assistance is preserved by the Act on Social Services, Sections 41, 42, 45, 96, 97, 98, 100, 112, 113, 114 and 118 in accordance with the Administrative Order". It thus noted that since X was granted assistance under Section 95, this was not included in the Administrative Order, which could have omitted the principal rule requiring that the person needing the assistance should be in Denmark.

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| | <p>Rather, X was allowed to assistance in accordance with Regulation (EC) No. 883/2004 on the coordination of social security systems, Articles 19, paragraph 1 that states: “Unless otherwise provided for by paragraph 2, an insured person and the members of his family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation”.</p> <p>The findings of the municipality and the Appeals Board was upheld by the district court.</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The Court found that assistance granted under the Act on Social Services, Section 95 was not one of the forms of assistance which a person was allowed to bring abroad. For this reason, the decision of the Board of Appeals was in compliance with national law. As regards EU law, the Court observed that X was covered by Regulation 883/2004 pursuant to which Germany was required to provide medical assistance which was necessary for X’s temporary stay in Germany. As regards X’s remaining arguments concerning EU law, including TFEU Article 45, Directive 2004/38, Articles 4 and 6, and the Charter, Article 45 (all related to the right to freedom of movement), the Court noted that X could be granted the necessary assistance on equal basis as German citizens and, therefore, these provisions were not violated.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The key issue related to EU law was whether it was in compliance TFEU, Directive 2004/38, and the Charter, to refuse a person with disabilities to bring her personal assistance as granted under national law to another EU Member States during a temporary stay. On this issue, the Court observed that X was covered by Regulation 883/2004 after which Germany was required to provide medical assistance that was necessary for X’s temporary stay in Germany. As regards X’s remaining arguments concerning EU law, including TFEU Article 45, Directive 2004/38, Articles 4 and 6, and the Charter, Article 45 (all related to the right to freedom of movement), the Court noted that X could be granted the necessary assistance on equal basis as German citizens from which reason these provisions were not violated.</p> |

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| <p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Board of Appeals was acquitted.</p> |
| <p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p> | <p>The District Court on the right to freedom of movement:</p> <p><u>Danish:</u> "Som det fremgår ovenfor kan [X] på lige fod med borgere med bopæl i Tyskland modtage naturalydelser fra de tyske myndigheder under et midlertidigt ophold i Tyskland, og det udgør derfor ikke en hindring af [X's] traktatfæstede frie bevægelighedsrettigheder, at hun ikke kan medtage sin naturalydelse fra Danmark. Det udgør heller ikke en hindring af udøvelse af unionsborgerskabet eller opholdsdirektivet."</p> <p><u>English:</u> "As stated above, [X] can, on an equal footing with citizens with residence in Germany, receive benefits in kind from the German authorities during a temporary stay in Germany and it does not pose an obstacle to [X's] Treaty-based rights of freedom movement that she cannot bring her benefits in kind from Denmark. Neither does it constitute an obstacle to the exercise of EU citizenship or the Citizens' Rights Directive."</p> |
| <p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p> | <p>Yes, references were made to Articles 21 and 45 by the parties but not specifically mentioned by the Court, which overall dismissed that "other EU law" was violated.</p> |

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| 11. Subject matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38: <u>Article 27, however, not explicitly mentioned in the case.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 29 November 2016 |
| Deciding body (in original language) | Københavns Byret |
| Deciding body (in English) | City Court of Copenhagen |
| Case number (also European Case Law Identifier (ECLI) where applicable) | SS 4-27547/2016 |

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| Parties | <i>Prosecution Service (Anklagemyndigheden) v. Zuzana Lakatosova</i> |
| Web link to the decision (if available) | Not available online. |
| Legal basis in national law of the rights under dispute | The Danish Criminal Code (<i>Straffeloven</i>), Section 197. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 24, 32, and 49. |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the "real life story") Ms. Lakatosova, who was a Slovak citizen, was arrested and charged for begging on the streets of Copenhagen on 19 and 20 October 2016. Prior to this case, Ms. Lakatosova had been sentenced for begging in three incidents in Denmark. 2. Legal background against which the case unfolded (what are the relevant legal norms that are applied) Ms. Lakatosova was sentenced to imprisonment for begging under the Criminal Code, Section 197 that states: "Any person who, in spite of police warnings, is guilty of begging or who permits any person belonging to his household and being under the age of 18 to engage in begging shall be liable to imprisonment for any term not exceeding six months. In mitigating circumstances the punishment may be remitted. A warning under this provision shall be valid for five years". <p>Furthermore, she was ordered deported in accordance with the Aliens Act, Section 49, paragraph 1, cf. Section 24, number 2, and Section 32, paragraph 3, cf. paragraph 1.</p> <p>Section 49, paragraph 1 states: "When an alien is convicted of an offence, the judgment shall determine, upon the prosecutor's claim, whether the alien will be expelled pursuant to Sections 22-24 or Section 25c or be</p> |

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| | <p>sentenced to suspended expulsion pursuant to section 24b. If the judgment stipulates expulsion, the judgment must state the period of the entry prohibition, see Section 32(1) to (4)".</p> <p>Section 24, number 2 states: "Other aliens may be expelled if the alien is sentenced to imprisonment or suspended imprisonment, or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature".</p> <p>Section 32, paragraph 3 states: "An entry prohibition in connection with expulsion under Section 22(1)(iv) to (viii) and expulsion by judgment of an alien who has not lawfully stayed in Denmark for longer than the last 6 months is given for at least 6 years".</p> <p>Paragraph 1 states: "As a consequence of a court judgment, court order or decision ordering an alien to be expelled, the alien's visa and residence permit will lapse, and the alien will not be allowed to re-enter Denmark and stay in this country without special permission (entry prohibition). An entry prohibition may be time-limited and is reckoned from the first day of the month following departure or return. The entry prohibition is valid from the time of the departure or return".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>Ms. Lakatosova pleaded guilty to having committed the crime of begging, but protested against the deportation. She was sentenced to imprisonment for 40 days for the act of begging. Concerning the deportation, the Court found that Ms. Lakatosova should be deported and banned from entering Denmark for six years, as it emphasised that she had been convicted for begging several times prior to this case and, thus, now constituted a genuine, present and sufficiently serious threat affecting fundamental interests of society. Therefore, a deportation would not be contrary to Directive 2004/38.</p> |
| <p>Key issues (concepts, interpretations) clarified by</p> | <p>The main issue related to EU law was whether it was in compliance with Directive 2004/38 to order the deportation of an EU citizens for having begged on the streets several times despite warnings and previous sentences for the act of begging.</p> |

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| the case (max. 500 chars) | |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | Ms. Lakatosova was sentenced to 40 days imprisonment and deported with an entry ban for six years. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>The City Court on the deportation issue:</p> <p><u>Danish:</u> "Retten har lagt vægt på, at EU-opholdsdirektivets bestemmelser henset til tiltaltes forstraffe for ligeartet kriminalitet og de forhold, hun nu er kendt skyldig i, ikke er til hinder for udvisning, idet der ved de nu påkendte forhold foreligger en reel, umiddelbar og tilstrækkeligt alvorlig trussel, der berører grundlæggende samfundsinteresser."</p> <p><u>English:</u> "The Court has emphasised that the EU Citizens' Rights Directive's provisions, in view of the accused's previous sentences for crimes of a similar nature and the incidents she is now found guilty of, do not preclude deportation, as there, as a result of the acquainted circumstances, is a genuine, present and sufficiently serious threat affecting fundamental interests of society."</p> |
| Has the deciding body referred to the Charter of Fundamental | No. |

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| Rights? If yes, to which specific article. | |
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| 12. Subject matter concerned | <input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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 December 2007 |
| Deciding body (in original language) | Ankestyrelsen |
| Deciding body (in English) | National Social Appeals Board |
| Case number (also European Case Law Identifier (ECLI) where applicable) | A-27-07 |
| Parties | <i>X v. the Employment Appeals Board (Beskæftigelsesankenævnet)</i> |

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| Web link to the decision (if available) | https://www.retsinformation.dk/Forms/R0710.aspx?id=154061 |
| Legal basis in national law of the rights under dispute | The Danish Act on Active Social Policy (<i>Lov om aktiv socialpolitik</i>), Section 3 |
| Key facts of the case (max. 500 chars) | <p>Note that this executive summary has the purpose to make us understand the:</p> <ol style="list-style-type: none"> 1. Facts of the case (so the "real life story") <p>The municipality stopped social security and special support benefits for an EU citizen (nationality unknown). The reason for this was that the citizen was not entitled to reside in Denmark (which had been previously decided in another case not included in this case).</p> <p>The Employment Appeals Board (regional body) confirmed the municipality's decision. The board referred to the fact that the citizen no longer had the right to social security and the special EU-citizen support because the citizen did not have legal residence. The board did not try the conditions of the person's residency status but merely referred to this as a stated fact.</p> <p>The board also referred to the fact that the relevant authority in this field, the State Administration, had refused to make a new decision on the EU registration certificate because there was no significant new information in the case. It was thus the opinion of the State Administration that the application for a registration certificate was filed solely in order to obtain procedural residence in Denmark during the proceedings. The decision of rejection of a residence card was not a part of this case, but was under appeal with the Danish Immigration Service.</p> <p>The Employment Appeals Board found that it was crucial in the case that the right to social security and the special support was conditional on whether it was a so-called procedural stay (i.e. permission to stay while the</p> |

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| | <p>person's residency application was being processed). The board did not find that the person fulfilled the conditions to gain procedural stay. The reasons behind this decision is not described in the case.</p> <p>The citizen appealed the Employment Appeals Board's decision to the National Social Appeals Board.</p> <p>2. Legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>The Danish Act on Active Social Policy, Section 3, paragraph 1 of the that states: "Anyone who is legally residing in this country is entitled to assistance under this Act".</p> <p>The Danish Act on Active Social Policy, Section 3, paragraph 2 that states: "In order to receive continued assistance for care, the recipient must 1) be a Danish citizen; 2) be a citizen of an EU / EEA member or family member thereof and be entitled to stay under Community law or, 3) be subject to an agreement pursuant to Section 4".</p> |
| <p>Main reasoning / argumentation (max. 500 chars)</p> | <p>The National Social Appeals Board found that the municipality did not have the basis for stopping social security benefits for the citizen, since the citizen was allowed procedural stay in Denmark as long as the citizen's case of residence certificate was being processed by the Immigration Service.</p> <p>The Appeals Board emphasised that the citizen had applied for a new registration certificate in due time before the deadline set for the person's departure from Denmark. Furthermore, the Appeals Board emphasised that the Immigration Service had given information that the citizen's complaint about the State Administration's decision had automatically suspensive effect. Thus, the municipality had no right to halt payment of social security and special support benefits referring to the citizen's expected departure from Denmark.</p> |
| <p>Key issues (concepts, interpretations) clarified by</p> | <p>The key issue examined in this case was whether the EU citizen could receive social benefits while his/hers (new) application for legal residence was being processed..</p> |

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| the case (max. 500 chars) | |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The Appeals Board repealed the decisions of the municipality and the Employment Appeals Board. Therefore, the municipality should make a new decision as to whether there was a basis for social security benefits. |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>On the issue concerning legal residence:</p> <p><u>Danish:</u> "Kommunen havde ikke grundlag for at standse kontanthjælpen. Borgeren måtte anses for at have processuelt ophold i Danmark, så længe Udlændingetjenesten ikke havde truffet afgørelse i sagen om udstedelse af EU/EØS- opholdsbevis."</p> <p><u>English:</u> "The municipality did not have the basis for stopping social security benefits, since the citizen had procedural residence in Denmark as long as the citizen's case of residence certificate was being processed by the Immigration Service."</p> |
| Has the deciding body referred to the Charter of Fundamental Rights? If yes, | No. |

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2. Table 2 – Overview

| | non-discrimination on grounds of nationality | the right to move and reside freely in another Member State | the right to vote and to stand as candidates | the right to enjoy diplomatic protection of any Member State | the right to petition |
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| Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period) | | | | | |