

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 the 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	Prosecution Authority (<i>Anklagemyndigheden</i>) v. T1 and T2 (however, focus will solely be on T1, as T2 was not an EU citizen)
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)	Note that this executive summary has the purpose to make us understand: <ol style="list-style-type: none"> the 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> the 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>

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".

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 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 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".

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

	<p>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>
Main reasoning / argumentation (max. 500 chars)	<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 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>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<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>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<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>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>The High Court on the issue concerning fixation of the residence time: <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: <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>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No.</p>