

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 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	17 December 2010
Deciding body (in original language)	Tallinna Ringkonnakohus
Deciding body (in English)	Tallinn Circuit Court
Case number (also European Case Law Identifier (ECLI) where applicable)	3-09-1279/72
Parties	Erkki Johan Bäckman vs. Ministry of Internal Affairs
Web link to the decision (if available)	https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=109635510
Legal basis in national law of the rights under dispute	<ul style="list-style-type: none"> Obligation to Leave and Prohibition on Entry Act (OLPEA) (<i>väljasõidukohustuse ja sissesõidukeelu seadus</i>)¹ Art 29 sec 1 subsec 1 and 5; Art 29¹ sec 1; Art 31 sec 1

¹ Estonia, Obligation to Leave and Prohibition on Entry Act (*väljasõidukohustuse ja sissesõidukeelu seadus*), State Gazette 03.01.2017, 16, available in English: www.riigiteataja.ee/en/eli/517012017004/consolide

	<ul style="list-style-type: none"> • Constitution of the Republic of Estonia (<i>Eesti Vabariigi põhiseadus</i>)² Arts 41 and 45 • Charter of Fundamental Rights, art 11 • Directive 2004/38 Art 27 sec 1 and 2 • Article 39 sec 3 of TEC
Key facts of the case (max. 500 chars)	Ministry of the Interior (<i>Siseministeerium</i> , Mol) adopted two orders whereby Finnish citizen E.J. Bäckman was temporarily prohibited from entering Estonia on the grounds of public order and public security. The Mol was on the opinion that he incites political hatred and provokes conflict; he was also suspected of cooperating with extremist groups that organise anti-government campaigns. The prohibition orders covered the time periods when the authorities expected that campaigns aimed at provoking anti-Estonian sentiment would take place, which, it was feared, might result in violent clashes. According to the Minister, the decisions took into consideration the free movement rights of Union citizens and the requirements set out in Directive 2004/38.
Main reasoning / argumentation (max. 500 chars)	While the court of the first instance upheld the orders, they were overturned by the Circuit Court, which noted that while the appellant had expressed critical opinions about Estonian history, politics and relations between ethnic groups with which many people would disagree, these statements could not in themselves be considered to induce political hatred. Moreover, since it was not substantiated that the presence of the appellant at the planned public events would cause violent clashes, the measures taken against him were based on considerations of general prevention and therefore unlawful.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The judgment discussed, what should be the considerations of the state when prohibiting the entry of an EU citizen. The Circuit Court stressed that general prevention is not an allowed consideration in such cases; free movement of an EU citizen can be limited when the threat to public security and public order has to be concretely and directly connected with the person in question.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The appeal of Bäckman was granted and the orders of the Ministry of Interior were deemed contrary to law.

² Estonia, Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) State Gazette 21.05.2015, www.riigiteataja.ee/en/eli/521052015001/consolide

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"9. VSS § 29¹ lg 1 alusel võidakse Euroopa Liidu kodaniku suhtes kohaldada sissesõidukeeldu, kui on põhjendatult alust arvata, et nimetatud isiku viibimine võib ohustada Eesti Vabariigi julgeolekut, avalikku korda või teiste isikute tervist. Euroopa Parlamendi ja nõukogu direktiivi 2004/38/EÜ art 27 lg 1 keelab liikmesriikidel piirata avaliku korra, julgeoleku või tervishoiu huvides liidu kodanike ja nende perekonnaliikmete liikumisvabadust majanduslikel eesmärkidel. Direktiivi 2004/38/EÜ art 27 lg 2 näeb ette, et avaliku korra või julgeoleku huvides võetud meetmed on kooskõlas proportsionaalsuse põhimõttega ja põhinevad eranditult asjaomase isiku isiklikul käitumisel.</i></p> <p><i>Varasemate süüdimõistvate kohtuotsustega ei saa selliste meetmete võtmist iseenesest põhjendada. Asjaomase isiku käitumine peab kujutama endast tõelist, vahetut ja piisavalt tõsist ohtu, mis kahjustab mõnd ühiskonna põhihuvi. Põhjendused, mis ei ole juhtumi üksikasjadega seotud või mis rajanevad üldise preventsiiooni kaalutlusel, ei ole vastuvõetavad."</i></p> <p>9. Based on Art 29¹ section 1 of the OLPEA, a European Union citizen may be subject to a refusal of access, if there are reasonable grounds to believe that his presence could jeopardise the security of the Republic of Estonia, public order or health of other persons. European Parliament and Council Directive 2004/38/EC Article 27 Section 1 allows the Member States to restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on the grounds of public policy, public security or public health. Directive 2004/38/EC Article 27 Section 2 provides that, measures taken on the grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention are not accepted.</p> <p><i>"11. Olukorras, kus kaebaja pole varem vihkamisele üles kutsunud, ei ole põhjendatud ka arvamus, et ta õhutaks edaspidi toime panema õigusrikkumisi. Kuivõrd eeltoodust võib järeldada, et kõnealustel üritustel ei lähtunud võimalik oht Eesti Vabariigi avalikule korrale, julgeolekule ja ühiskondlikule turvalisusele mitte kaebajast, vaid üritustel osalevatest teistest isikutest, siis ei ole kaebaja suhtes sissesõidukeelu kohaldamine lisaks kooskõlas ka Euroopa Parlamendi ja nõukogu direktiivi 2004/38/EÜ art 27 lg-ga 2, sest ei põhinenud eranditult kaebaja käitumisel ja rajanes pigem üldise preventsiiooni kaalutlusel."</i></p>
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	<p>11. When the applicant has not previously incited hatred, the belief that he encourages henceforth future offences is not grounded. Based on the above, it can be concluded that the prior events, a possible threat to Estonian public order, security and social security, was not due based on the action of the complainant but were due to other persons involved in the events. Therefore, subjecting the applicant to a prohibition on entry is not in accordance with the European Parliament and Council Directive 2004/38/EC Art 27 para 2, since it is not exclusively based on the applicant's behaviour but on more general prevention considerations.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Reference to the Charter was made by the appellant. The court did not analyse the implementation of the Charter.</p>