

<b>Subject-matter concerned</b>	<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>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
<b>Decision date</b>	29 December 2008
<b>Deciding body (in original language)</b>	Højesteret
<b>Deciding body (in English)</b>	Supreme Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	U.2009.808H or TfK2009.236/1
<b>Parties</b>	Public Prosecutor ( <i>Rigsadvokaten</i> ) v. T
<b>Web link to the decision (if available)</b>	Not included as login is required.
<b>Legal basis in national law of the rights under dispute</b>	The Danish Criminal Code ( <i>Straffeloven</i> ), Section 119. The Danish Aliens Act ( <i>Udlændingeloven</i> ), Sections 22, 24, 26, 32 and 49.
<b>Key facts of the case</b> (max. 500 chars)	<p>Note that this executive summary has the purpose to make us understand:</p> <ol style="list-style-type: none"> <li>the 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 a 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> </li> <li>the 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</p> </li> </ol>

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”.

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”.

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”.

<b>Main reasoning / argumentation</b> (max. 500 chars)	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.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The key issue related to EU law was whether an EU citizen could be deported on the ground of a first-time violent act.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Supreme Court upheld the decision of Eastern High Court with the amendment that T should be acquitted for the claim regarding deportation.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><b>The High Court on the deportation issue:</b></p> <p><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".</p> <p><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><b>The Supreme Court on the deportation issue:</b></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 has 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 to the fact that the bus driver would not allow that one of T's friends brought a bottle of spirits in the bus, and in this connection refused to continue to drive and closed the bus doors.

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.

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 argues against deportation, cf. the Aliens Act Section 26, paragraph 2.

Therefore, the Supreme Court acquits T for the claim concerning deportation.

	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)".
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.