

<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 checked="" 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.2009.813H or TfK2009.236/2
<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> ), Sections 276. The Danish Aliens Act ( <i>Udlændingeloven</i> ), Sections 2, 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”)          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, furthermore, 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.</li> <li>the legal background against which the case unfolded (what are the relevant legal norms that are applied)          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 utilized for the production of light, heat, power or motion or for any other financial purpose shall be recognized as equivalent to a tangible object”.</li> </ol>

	<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> <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>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<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 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>

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