

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>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	Prosecution Service v. T
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 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:</p> <ol style="list-style-type: none"> the 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> the 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</p>

	<p>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> <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>
Main reasoning / argumentation (max. 500 chars)	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 dischargement 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The High Court decided not to deport T.
Key quotations in original language and translated into	<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</p>

English reference with details (max. 500 chars)	<p>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>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.