

Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - Articles 27-28 of Directive 2004/38/EC <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	2007.
Deciding body (in original language)	Legfelsőbb Bíróság.
Deciding body (in English)	Supreme Court.
Case number (also European Case Law Identifier (ECLI) where applicable)	Legf. Bír. Bfv. I. 970/2007.
Parties	The defendant in the criminal procedure was a Romanian national. The prosecutor represented the Government, and the appellate procedure described below was initiated by the prosecutor.
Web link to the decision (if available)	Not available.

Legal basis in national law of the rights under dispute	Article 1(1a) of Act I of 2007 on the admission and residence of persons with the right of free movement and residence. ¹ <i>“Hungary shall ensure the right of free movement and residence in accordance with the provisions of this Act: a) with the exception of Hungarian citizens, to nationals of any Member State of the European Union and States who are parties to the Agreement on the European Economic Area, and to persons enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area with respect to the right of free movement and residence.”</i>
Key facts of the case (max. 500 chars)	The first instance Criminal Court sentenced the Romanian defendant to a two-year entry ban on 10 October 2007. The defendant was found guilty of attempting to steal when he tried to break the lock on the victim’s garden shed. Neighbours apprehended him, however, before he had an opportunity to take anything, and called the police. The damage caused by the defendant was insignificant (approx. €1). The prosecutor appealed against the decision.
Main reasoning / argumentation (max. 500 chars)	The prosecutor claimed that a citizen of another EU Member State could not be expelled from the territory of Hungary unless his criminal acts incurred a minimum five-year custodial sentence. Since the defendant’s act qualified as an attempt, the Criminal Code ² carried a penalty of up to two years of imprisonment. As Romania joined the European Union on 1 January 2007, the defendant enjoyed the right of free movement and residence in Hungary, and could only have been expelled if he had committed a more serious crime. According to the prosecutor, the sentence was dis-proportionate to the crime.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue was whether or not the court can freely decide the penalty to be applied to the criminal act of an EU citizen, or if its options are limited by the privileges granted to EU citizens under the relevant laws.
Results (e.g. sanctions) and key consequences or implications of the	The Supreme Court found against the verdict of the first instance court and did not expel the defendant from Hungary, opting instead for a reprimand, in light of the low risk nature of the crime.

¹ Hungary, Act I of 2007 on the admission and residence of persons with the right of free movement and residence (2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról), 5 January 2007, Article 1(1a), available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700001.TV.

² Hungary, Act IV of 1978 on the Criminal Code (1978. évi IV. törvény a Büntető Törvénykönyvről), 31 December 1978 (the Act is not in effect since 1 July 2013), Article 61(6), available at: <http://www.mgyisz.hu/2009/jogszab/btk.pdf>.

case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Excerpt from the Decision:</p> <p><i>“Nem utasítható ki a Magyar Köztársaság területéről az Európai Unió másik tagországának az az állampolgára, aki olyan bűncselekményt követett el, amely a törvény szerint ötévi szabadságvesztésnél rövidebb tartamú szabadságvesztéssel büntetendő.”</i></p> <p><i>“A citizen of another EU Member State cannot be expelled from Hungary if he commits a crime that carries a penalty of fewer than five years in prison, as stated in the Criminal Code.”</i></p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.