

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 Article 6, article 7, article 7, section 1b, article 8, section 4 and article 14, section 1-4. <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	16 June 2011
Deciding body (in original language)	<i>Migrationsöverdomstolen</i>
Deciding body (in English)	Migration Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	UM10307-09
Parties	A. v. the Swedish Migration Agency
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad; Domstol: Högsta Förvaltningsdomstolen; Målnummer: UM10307-09</i>
Legal basis in national law of the rights under dispute	<ul style="list-style-type: none"> • Alien Act (<i>Utlänninslag [2005:716]</i>), chapter 3a, sections 3, 4, 5, chapter 8, sections 2 and 7. • Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (<i>Europaparlamentets och rådets direktiv 2004/38/EG av den 29 april 2004 om unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier [rörlighetsdirektivet]</i>), article 6, article

	7, article 7.1 b, article 8.4, article 14.1-4
Key facts of the case (max. 500 chars)	<p>A, a retired, economically inactive EU-citizen from Poland, was granted the right to reside in March 2008. As she had been considered to have sufficient resources, through the money in her bank account or through her daughters residing in Sweden, to support herself. After a while, the Migration Agency found that A. received maintenance support for elderly persons (<i>äldreförsörjningsstöd</i>) as well as housing supplement (<i>bostadstillägg för pensionärer</i>) from the Swedish Social Insurance Agency (<i>Försäkringskassan</i>) since February 2009. The Migration Agency equated both kinds of support as social assistance/social welfare, which it interpreted as proof that A. could in fact not support herself. Consequently, in May 2009, the Migration Agency decided that A. had abused the right to free movement for economically inactive EU-citizens and should therefore be expelled.</p> <p>A appealed the Migration Agency's decision to the Migration Court (that in its judgement repealed the Agency's decision. Thereafter, the Migration Agency appealed the Migration Court's ruling to the Migration Court of Appeal.</p>
Main reasoning / argumentation (max. 500 chars)	<p>A. argued that she has been granted the right to reside, and the fact that she enjoys social benefits that are granted her as an EEA-citizen cannot be understood as she burdens the social welfare system of the host country.</p> <p>The Migration Agency argued that the interpretation of what can be considered as "being an unreasonable burden on the social assistance system" in accordance with the Directive 2004/38/EC article 7.1 b must be determined within in the legal context of the European Union. According to the Agency, to only include financial aid given in accordance with the Social Service Act (<i>Socialtjänstlag (2001:453)</i>) must be considered to be a too narrow interpretation of what chapter 8 of the Alien Act defines as "being a burden on the social assistance system", since this is only one part of the overall social assistance system in Sweden. A. received a quite substantial financial support and her circumstances, as she is retired with severe health problems, were such that her need of support from the social assistance system could not be seen as temporary. Consequently, A. should not be considered to have sufficient resources to support herself, regardless of the credit in her bank account.</p> <p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) argued that the fact that a person receives maintenance support for elderly persons and housing supplement should not by itself be interpreted as his/her inability to be self-sufficient as required by chapter 3a, section 3, fourth paragraph of the Alien Act (<i>Utlänningslag [2005:716]</i>), since these support forms are not granted in accordance with the Social Service Act. Therefore, A. cannot be considered to lose her right to reside due to this circumstance.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue concerned the interpretation of "sufficient resources" and "unreasonable burden". Was the Migration Agency's interpretation correct its decision to expel A. was also correct, since A. could not be considered to have sufficient assets required by chapter 3a, section 3, fourth paragraph of the Alien Act (<i>Utlänningslag [2005:716]</i>), because she received maintenance support for elderly persons as well as housing supplement.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) rejected the decision of the Migration Court (<i>Migrationsdomstolen</i>) since it considered that A. was not to be considered unable to support herself .</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Eftersom äldreförsörjningsstöd eller bostadstillägg inte beviljas i enlighet med socialtjänstlagen kan A inte anses sakna tillräckliga tillgångar för sin försörjning enligt 3 a kap. 3 § 4 utlänningslagen endast på grund av att hon uppbär sådant stöd. A kan därför inte anses på den grunden ha förlorat sin uppehållsrätt.”</i></p> <p>“Since maintenance support for elderly persons and housing supplement is not granted in accordance with the Social Services Act, A. cannot be considered to lack sufficient resources to support herself, in accordance with Chapter 3a, section 3, fourth paragraph of the Alien Act, only on the grounds of her receiving such support. Therefore, A. cannot be considered to have lost her right of reside.”</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No</p>