

<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>Article 27.</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>	27 March 2010
<b>Deciding body (in original language)</b>	Østre Landsret
<b>Deciding body (in English)</b>	Eastern High Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	OE2010.S-968-10 or TfK2010.618
<b>Parties</b>	Prosecution Service ( <i>Anklagemyndigheden</i> ) v. S
<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 197. The Danish Aliens Act ( <i>Udlændingeloven</i> ), Section 35.
<b>Key facts of the case (max. 500 chars)</b>	<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”)          S, who was a Slovenian national, had been begging on the main shopping street in Copenhagen for which reason the police arrested her. S had arrived to Denmark from Slovenia one and half weeks prior to her arrest. She had come to Denmark to look for work, but could not get any work because she did not speak Danish or English. On 14 July 2002, S had been given a warning for begging by the Police of Copenhagen and another warning by the Police of Aarhus on 25 January 2010. S thought that the latter warning only applied in Aarhus. After arriving in Denmark, S slept in a church, where she also received food. Pursuant to the Danish Aliens Act, the City Court of Copenhagen ordered S to be remanded in police custody for five days, which S appealed to the Eastern High Court.</li> <li>the legal background against which the case unfolded (what are the relevant legal norms that are applied)          S was charged with criminal offences under the Criminal Code, Section 197 stating: “Any person who, in spite of police warnings, is guilty of begging or who permits any person belonging to his household and being under the age of 18 to engage in begging shall</li> </ol>

	<p>be liable to imprisonment for any term not exceeding six months. In mitigating circumstances the punishment may be remitted. A warning under this provision shall be valid for five years”.</p> <p>S was then ordered to be remanded in police custody for five days pursuant to the Aliens Act, Section 35, paragraph 1, number 1 stating: “An alien may be remanded in custody when on definite grounds custody is found to be necessary to ensure the alien’s presence during his case and during a possible appeal until a decision on expulsion, if any, can be enforced, and if the alien is not permanently resident in Denmark and there are reasons to suspect that the alien has committed an offence that may lead to expulsion under Sections 22 to 24”.</p> <p>The Eastern High Court addressed the Aliens Act, Section 2, paragraph 3 in its decision that states: “The limitations provided for by this Act only apply to aliens falling within the EU rules to the extent that it is compatible with those rules”.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	The Eastern High Court noted that S was a Slovenian citizen and, hence, subject to the regulations for EU citizens. Thus, her access to stay in Denmark was regulated by Directive 2004/38. The Court found, without further explanation, that the criteria for remand in police custody were not fulfilled, cf. the Aliens Act, Section 2, paragraph 3, cf. Article 27 of Directive 2004/38.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The key issue related to EU law in this case was whether an EU citizen could be remanded in police custody prior to a potential deportation on the grounds of the criminal offence of begging. The Court found that Article 27 of Directive 2004/38 did not allow for remand in police custody prior to a potential deportation under such circumstances.
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The High Court ordered the release of S.
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><b>The City Court on the issues of deportation and remand in police custody:</b></p> <p><u>Danish:</u> ”Det lægges til grund at udlændingen, der er statsborger i et EU-land, ikke har fast bopæl her i landet, og der er under henvisning til advarslen af 25. januar 2010 særlig bestyrket mistanke om, at hun har begået en overtrædelse af straffelovens § 197. Det lægges til grund, at udlændingens tiggeri er systematisk og organiseret. På den baggrund finder retten på det foreliggende grundlag, at udvisning ikke er udelukket efter EU-reglerne. Fængsling kan derfor ske efter udlændingelovens § 35, stk. 1, nr. 1 [...]”.</p> <p><u>English:</u> ”It is assumed that the alien who is a citizen of an EU country does not have a permanent residence here in the country, and with reference to the warning of 25 January 2010, reasons for suspicion that she has committed a violation of the Penal Code, Section 197 are increased. It is assumed that the alien’s begging is systematic and organised. On this basis, the court finds on grounds of the existing evidence that deportation is not excluded under EU rules. Therefore, imprisonment is permitted in accordance with the Aliens Act, Section 35, paragraph 1, number 1 [...]”.</p>

	<p><b>The High Court on the issue of remand in police custody:</b></p> <p><u>Danish:</u> "S er slovensk statsborger, og som følge heraf omfattet af regler for statsborgere i EU, hvorfor hendes adgang til ophold i Danmark reguleres af reglerne i opholdsdirektivet. Herefter findes betingelserne for varetægtsfængsling ikke opfyldte, jf. udlændingelovens § 2, stk. 3, jf. opholdsdirektivets art. 27 [...]".</p> <p><u>English:</u> "S is a Slovenian citizen, and, therefore, subject to the regulations for citizens in the EU and her access to stay in Denmark is governed by the regulations of the Citizens' Rights Directive. Following this, the conditions for detention are not fulfilled, cf. the Aliens Act, Section 2, paragraph 3, cf. the Citizens' Rights Directive, Art. 27 [...]".</p>
<p><b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b></p>	<p>No.</p>