

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>Article 27.</u> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	31 March 2011
Deciding body (in original language)	Højesteret
Deciding body (in English)	Supreme Court
Case number (also European Case Law Identifier (ECLI) where applicable)	U.2011.1794H or Tfk2011.637/2
Parties	A v. the National Commissioner of Police (<i>Rigspolitichefen</i>)
Web link to the decision (if available)	Link to the Supreme Court's decision: http://domstol.fe1.tangora.com/media/-300016/files/264-2010.pdf (only in Danish).
Legal basis in national law of the rights under dispute	The Danish Criminal Code (<i>Straffeloven</i>), Section 264. The Danish Aliens Act (<i>Udlændingeloven</i>), Sections 2, 25 a, and 36.
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") On 16 July 2010, A, who was a citizen of Romania, entered Denmark, and on 19 July 2010, he was arrested for having stayed in an allotment. A was granted a fine notice of 25 DKK for violation of domestic peace by having gained access to the allotment through a locked gate. On 20 July 2010, the Immigration Service decided to deport A, who was detained under the Aliens Act with the purpose of deportation. The detention issue was brought before the City Court of Copenhagen and later before the Eastern High Court, which upheld the decision concerning detention prior to deportation. A appealed the decision to the Supreme Court. the legal background against which the case unfolded (what are the relevant legal norms that are applied) A was arrested and charged for violation of domestic peace pursuant to the Criminal Code, Section 264, paragraph 1 that states: "Any person who unlawfully obtains access to another person's house or any other place not freely accessible shall be liable to a fine or to imprisonment for any term not exceeding six months".

	<p>The Immigration Service decided to deport A, a decision upheld by the City Court of Copenhagen and the Eastern High Court, in accordance with the Aliens Act, Section 25 a, paragraph 2, number 3 that states: “After entry, an alien who has not lawfully stayed in Denmark for more than the last 6 months may also be expelled if other reasons of public order, security, or health indicate that the alien should not be allowed to stay in Denmark”.</p> <p>The detention of A prior to his deportation was made under reference to the Aliens Act, Section 36, paragraph 1 stating: “If the measures referred to in section 34 are insufficient to ensure enforcement of a refusal of entry, of expulsion under Sections 25(1)(ii), 25a, 25b and 25c, of transfer or retransfer or of the return of an alien who is not otherwise entitled under the rules of Parts I and III to Va to stay in Denmark, the police may order that the alien is to be deprived of liberty [...]”.</p> <p>Finally, the Supreme Court examined Articles 27 of Directive 2004/38 in accordance with the Aliens Act, Section 2, paragraph 3 that states: “The limitations provided for by this Act only apply to aliens falling within the EU law to the extent that it is compatible with those rules”.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Supreme Court noted that an alien who has not lawfully resided in Denmark for longer than the last six months may be deported under the Aliens Act, Section 25 a, paragraph 2, number 3 if other aims of public order, security or health indicate that the alien should not be allowed to stay in the country. Deportation of foreigners who are covered by EU law can be done only to the extent it is consistent with these rules.</p> <p>A had stayed in an allotment in the house owner's absence and without his permission. A explained to the police that he had spent three days in the allotment hut. The case had been settled with a fine notice of 25 DKK. The act was committed shortly after his entry into Denmark where to he had no affiliation. Previously, he had been fined in Denmark of 1,000 DKK for the shoplifting of razor blades at a value of approximately 900 DKK. The Supreme Court found that a violation of domestic peace of a character as the one in question had such a random character and so limited adverse effect that the act could not be considered to be covered by the Aliens Act, Section 25 a, paragraph 2, number 3 concerning the consideration of the public order, as this provision had to be understood by its wording, history and preparatory work. Therefore, the detention of A was not lawful. Furthermore, the deportation of A would also be illegal because A's behaviour could not be considered to constitute a genuine, present and sufficiently serious threat affecting a fundamental interest of society, cf. Article 27 of Directive 2004/38.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue related to EU law in question was whether it was in accordance with Directive 2004/38 to detain an EU citizen prior to his deportation for a violation of domestic peace.</p>
Results (e.g. sanctions) and key consequences or	<p>The Supreme Court ruled that the detention and deportation of A was illegal.</p>

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>The Supreme Court on the detention and deportation issue:</p> <p><u>Danish:</u> "Det bemærkes, at Højesteret finder, at frihedsberøvelsen også ville være ulovlig, fordi udvisning af A ville være i strid med direktiv 200[4]/38/EF af 29. april 2004 (opholdsdirektivet), jf. herved udlændingelovens § 2, stk. 3, idet husfredskrænkelsen har en så tilfældig karakter og så begrænset skadevirkning, at hans adfærd - uanset at han tidligere har begået tyveri og nu kort efter indrejse tillige husfredskrænkelse - ikke kan anses for at udgøre en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende samfundsinteresse, jf. direktivets artikel 27, stk. 2, 2. led".</p> <p><u>English:</u> "It is noted that the Supreme Court finds that the detention would also be illegal because the deportation of A would be contrary to Directive 200[4]/38/EC of 29 April 2004 (the Citizens' Right Directive), cf. hereby the Aliens Act, Section 2, paragraph 3, as the violation of domestic peace has such a random character and so limited adverse effect that his behaviour - although he has previously committed theft and now shortly after entry also violated domestic peace - cannot be considered to represent a genuine, present and sufficiently serious threat affecting fundamental interests of society, cf. the Directive, Article 27, paragraph 2, second part".</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	<p>No.</p>