

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 and 32 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	07.06.2016
Deciding body (in original language)	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	KHO:2016:86 ECLI:FI:KHO:2016:86
Parties	X v the Finnish Immigration Service [<i>Maahanmuuttovirasto/Migrationsverket</i>]
Web link to the decision (if available)	www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201602545
Legal basis in national law of the rights under dispute	Aliens Act (<i>ulkomaalaislaki/utlänningslag</i>) no. 301/2004, as amended
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the “real life story”)

	<p>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>X, who was a third-country national, had been sentenced to several prison sentences in Finland during 2000-2007. He had been found guilty of, e.g., theft, drug offences, rape and two assaults. X had married a Finnish citizen in 2006 and the couple had moved to Sweden in 2008. In 2013, X was transferred from Sweden to Finland to serve a prison sentence. His wife also moved back to Finland. The Immigration Service had initially decided in 2009 that, because of his repeated offences and convictions in 2000-2007, X is to leave Finland for his home country (Kosovo). He was also banned from entering the Schengen area until further notice. In 2013, while serving his prison sentence in Finland, X requested that the entry ban is revoked. In November 2014, the Immigration Service decided that the prohibition of entry is restricted to Finland and is in force until 2019. At the time, X had already served his sentence and was residing in Kosovo with his wife.</p> <p>According to the Aliens Act, a third-country national who has been sentenced for an offence of aggravated or professional nature may be prohibited entry until further notice, when the person is considered a danger to public order or security. If an EU citizen or his or her family member is removed from the country on grounds of public order or security, he or she may at the same time be prohibited from entering the country for 15 years at most. A prohibition of entry may be revoked on the basis of a change in circumstances or for important personal reasons.</p> <p>The main issues in this case were whether X should be regarded as a third-country national or a family member of an EU citizen and whether he still constituted a danger to public order or security although he had not been engaged in criminal activities in Finland since 2007. In addition to the Aliens Act the Supreme Administrative Court based its decision on Directive 2004/38/EC and the case law of the CJEU (C-202/13 <i>McCarthy et al.</i>; C-33/07 <i>Jipa</i>; C-145/09 <i>Tsakouridis</i>).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>When X's wife had moved to Sweden, she had exercised her right of free movement as an EU citizen by settling in Sweden. When the couple had returned to Finland, it could be said that X had accompanied his wife to Finland as a family member of an EU citizen, despite the fact that he had returned to Finland for other reasons than family life.</p> <p>Prohibition of entry of an EU citizen or a family member on grounds of public order or security cannot be based solely on criminal convictions. However, this does not mean that past convictions should not be taken into account at all. Considering the nature and frequency of X's criminal activities, it could be held that X continued to be a genuine, present and sufficiently serious threat to public order and security, as determined in the Aliens Act and CJEU case law.</p>

	<p>When considering the prohibition of entry account must also be taken of X's family ties in Finland. X's wife had acquired Swedish citizenship in 2012. After X has served his sentence the couple can thus live in Sweden and the wife is not obliged to leave the EU area. X's child from his previous marriage had been taken into custody in Finland and X was no longer her guardian. Despite the entry ban X could continue to keep in touch with his child, e.g., per phone as he had done before. The decision prohibiting X from entering Finland for a fixed period of time was not against the child's best interests. The court concluded that there had been no change in circumstances or important personal reasons on the basis of which the entry ban could have been revoked in full.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>When deciding on the entry ban, the Immigration Service had applied the provisions in the Aliens Act concerning EU-citizens' family members. X appealed against the decision to the administrative court which agreed with the Immigration Service but based its own decision on the provisions in the Aliens Act concerning third-country nationals. X claimed the prohibition of entry could have been revoked in full or made shorter if the court had considered the conditions under EU law concerning prohibition of entry of EU citizens' family members. The Supreme Administrative Court confirmed that the administrative court had applied incorrect provisions of the Aliens Act whereas the interpretation by the Immigration Service was correct. This did not change the outcome of the case, though.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Supreme Administrative Court upheld the decision of the Immigration Service.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>(p. 13 of the decision): Muutoksenhakijan voidaan katsoa edelleen muodostavan ulkomaalaislain 156 §:n 1 momentissa ja 170 §:n 1 momentissa sekä unionin tuomioistuimen oikeuskäytännössä tarkoitettulla tavalla todellisen, välittömän ja riittävän vakavan uhan yleiselle järjestykselle ja yleiselle turvallisuudelle. Vaikka edellä tarkoitettu arvio ei voi vapaan liikkuvuuden direktiivin ja unionin tuomioistuimen oikeuskäytännön mukaan perustua yksinomaan rikoksiin, ei tämä tarkoita, ettei muutoksenhakijan aiempaa rikollisuutta tule lainkaan huomioida päätöksenteossa. Maahanmuuttovirasto on suorittanut 18.11.2014 muutoksenhakijan asiassa tapauskohtaisen arvion, joka on perustunut ainoastaan hänen omaan käyttäytymiseensä.</p> <p>Asiassa ei ole Suomen osalta ilmennyt ulkomaalaislain 170 §:n 2 momentissa tarkoitettua muutosta oloissa tai tärkeää henkilökohtaista syytä, joiden vuoksi muutoksenhakijalle vuonna 2009 määrätty maahantulokielto olisi tullut tältä osin peruuttaa. Maahanmuuttovirasto on ottanut huomioon muutoksenhakijan aviopuolison vuonna 2012 saaman Ruotsin kansalaisuuden peruuttamalla muutoksenhakijalle koko</p>

	<p>Schengen-aluetta koskevana määrätyn maahantulokiellon ja määrämällä maahantulokiellon olemaan voimassa kansallisena ainoastaan Suomea koskevana.</p> <p>The applicant can still be considered a genuine, present and sufficiently serious threat to public order and public security, as defined in sections 156(1) and 170(1) of the Aliens Act and in CJEU case law. According to the Free Movement Directive and CJEU case law, the assessment [of imposing an entry ban] cannot be based on criminal convictions alone. However, this does not mean that the applicant's past crimes should not be taken into account at all. The Immigration Service has on 18 November 2014 made an overall assessment in the applicant's case, based exclusively on his personal conduct.</p> <p>As far as entry into Finland is concerned it has not been shown that there would have been a change in circumstances or important personal reasons, as provided for in section 170(2) of the Aliens Act, on the basis of which the entry ban should be revoked in full. The Immigration Service has taken into account that the applicant's spouse has acquired Swedish citizenship in 2012, by revoking the prohibition to enter the Schengen area and by restricting the entry ban to Finland only.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>