

<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>	31 March 2011
<b>Deciding body (in original language)</b>	Højesteret
<b>Deciding body (in English)</b>	Supreme Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	U.2011.1800H or Tfk2012.3/1
<b>Parties</b>	A v. the National Commissioner of Police ( <i>Rigspolitichefen</i> )
<b>Web link to the decision (if available)</b>	Link to the Supreme Court's decision: <a href="http://domstol.fe1.tangora.com/media/-300016/files/319-2010.pdf">http://domstol.fe1.tangora.com/media/-300016/files/319-2010.pdf</a> (only in Danish).
<b>Legal basis in national law of the rights under dispute</b>	The Danish Criminal Code ( <i>Straffeloven</i> ), Sections 264 and 277. The Danish Aliens' Act ( <i>Udlændingeloven</i> ), Sections 2, 25 a, and 36.
<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")          On August 18 2010, A, who was a citizen of Romania, entered Denmark, and on 20 August 2010, he was arrested in an abandoned building where he was about to break the lock of a bicycle. He received a warning for violation of domestic peace by having gained access to the abandoned building and for trafficking in lost property by having acquired the bike. On 20 August 2010, the Immigration Service decided to deport A, who was detained under the Aliens Act prior to his deportation. The detention issue was brought before the City Court of Copenhagen and later before the Eastern High Court, which upheld the decision of the Immigration Service. The case was appealed to the Supreme Court.</li> <li>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 and for trafficking in lost property under Section 277.</li> </ol>

	<p>Section 264, paragraph 1 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> <p>Section 277 states: “Any person who, for the purpose of obtaining for himself or for others an unlawful gain, appropriates any tangible object which is not in the custody of any person or which has come into the hands of the perpetrator through carelessness on the part of the owner or in any similar accidental way shall be guilty of misappropriation of lost property”.</p> <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 1, number 1 that states: “An alien who has not lawfully stayed in Denmark for more than the last 6 months may further be expelled if the alien, in cases other than those mentioned in sections 22 to 24, has been sentenced for violation of [...] Sections 276 to 283 [...] of the Criminal Code [...]”.</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 rules to the extent that it is compatible with those rules”.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	The Supreme Court noted that A had pleaded guilty to illegal trafficking in lost property and that the bicycle he tried to break the lock on was found on a property of an abandoned house. There were no co-perpetrators and the case was settled with a warning. The act was committed shortly after his entry into Denmark where to A had no affiliation. A had not previously been convicted in Denmark. The Supreme Court found that the terms of the Aliens Act, Section 25 a, paragraph 1, number 1, cf. Section 26, paragraph 1 for deporting A on the existing basis should be regarded as fulfilled. However, deportation of A was incompatible with Directive 2004/38, as the relationship had such a random character and was likely to have had such limited adverse effect that 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. Therefore, the detention of A was illegal.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	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 having committed trafficking in lost property.
<b>Results (e.g. sanctions) and key consequences or</b>	The Supreme Court found that the detention was illegal as A could not be deported from Denmark.

<b>implications of the case</b> (max. 500 chars)	
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><b>The Supreme Court on the detention and deportation issue:</b></p> <p><u>Danish:</u> “Uanset at det forhold, som er påberåbt som grundlag for udvisningen af A, er begået kort tid efter indreisen til Danmark, har det haft en sådan tilfældig karakter og må antages at have haft så begrænset skadevirkning, at hans adfærd ikke kan anses for at udgøre en reel, umiddelbar og tilstrækkelig alvorlig trussel, der berører en grundlæggende samfundsinteresse, jf. artikel 27, stk. 2, 2. led, i direktiv 2004/38/EF af 29. april 2004 (opholdsdirektivet). Udvisning af A vil derfor være uforenelig med opholdsdirektivet, og frihedsberøvelsen af ham har således været uhjemlet, jf. herved udlændingelovens § 2, stk. 3”.</p> <p><u>English:</u> “Regardless of the act, referred to as the basis for the deportation of A, is committed shortly after entry to Denmark, it has had such a fortuitous nature and is likely to have had such limited adverse effect that his behaviour cannot be considered to be a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, cf. Article 27, paragraph 2, second part of Directive 2004/38/EC of 29 April 2004 (the Citizens’ Rights Directive). Deportation of A would, therefore, be incompatible with the Citizens’ Rights Directive and the detention of him has, thus, been unlawful, cf. hereby the Aliens Act, Section 2, paragraph 3”.</p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	<p>No.</p>