

<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 Article: 27.2 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	8 April 2011
<b>Deciding body (in original language)</b>	<i>Migrationsdomstolen</i>
<b>Deciding body (in English)</b>	The Migration Court
<b>Case number (also European Case Law Identifier (ECLI) where applicable)</b>	UM 832-11
<b>Parties</b>	The Swedish Migration Agency vs. a Romanian woman (anonymised in the judgement)
<b>Web link to the decision (if available)</b>	<p>Web link to the decision is not available.</p> <p>Search in <a href="http://www.rattsinfosok.dom.se/lagrummet/index.jsp">www.rattsinfosok.dom.se/lagrummet/index.jsp</a></p> <p>Choose: <i>Avancerad; Domstol: Migrationdomstolen; Målnummer: UM 832-11</i></p>
<b>Legal basis in national law of the rights under dispute</b>	<ul style="list-style-type: none"> <li>• Alien Act (<i>Utlänningslag [2005:716]</i>), chapter 8, section 2</li> <li>• 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</i>)</li> </ul>

	<i>[rörlighetsdirektivet]]</i> , article 27.2
<b>Key facts of the case</b> (max. 500 chars)	<p>In 2011, the Swedish Police expelled a Romanian woman, who had been residing in Sweden while working as a prostitute. In accordance with chapter 8 section 2 of the Alien Act (<i>Utlänningslag [2005:716]</i>), the Swedish Police found that the woman's behaviour (to work as a prostitute) must be considered to constitute a serious threat to the fundamental interests of society. The case was referred to the Migration Agency who supported the Swedish Police's decision to expel the woman. The Romanian woman appealed the case to the Migration Court.</p> <p>The Migration Court's verdict in this case cannot be repealed, in accordance with chapter 16, section 9 of the Alien Act (<i>Utlänningslag [2005:716]</i>), that states that a decision by a migration court regarding a expulsion which was initially decided by the Police, and then re-examined by the Migration Agency as well as a Migration Court may not be appealed to the Migration Court of Appeal. The logic is that a first decision should never be allowed to be examined by more than two instances. If the expulsion decision is taken by the Migration Agency it may accordingly be appealed both to a Migration Court and to the Migration Court of Appeal.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The Migration Agency reasoned that even though prostituting oneself is not illegal, buying sex is a criminal act. This in turn meant that in order to be able to support themselves as prostitutes other persons must be encouraged to commit criminal acts. In combination with Sweden's official position on prostitution and trafficking, prostitution must be considered to constitute a real, actual and sufficiently serious threat to the fundamental interests of society in accordance with chapter 8 section 2 of the Alien Act (<i>Utlänningslag [2005:716]</i>).</p> <p>The plaintiff argued that she had not committed a crime, since prostitution is not illegal in Sweden. Consequently, her way to support herself could not be interpreted as seriously threatening the fundamental interests of society. The Swedish government's position on the issue and the resources spent to combat prostitution should not be a factor in the case.</p> <p>The Migration Court (<i>Migrationsdomstolen</i>) reasoned that the woman had not committed a crime by working as a prostitute, and that her behaviour could not be interpreted as such a serious threat to the fundamental interests of society so it can justify the expulsion of her. Swedish Police's decision to expel the woman was therefore neither in accordance with Directive 2004/38/EC and nor in accordance with chapter 8, section 2 of the Alien Act (<i>Utlänningslag [2005:716]</i>).</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The key issue concerns whether all EU citizens are allowed to reside in Sweden if they support themselves even if their support comes from incomes from prostitution, or if this way of supporting themselves should be considered to constitute a serious threat to the fundamental interests of Swedish society, and therefore be grounds for expulsion.</p>

<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Migration Court (<i>Migrationsdomstolen</i>) ruled that the Swedish Police's decision to expel the woman was neither in accordance with Directive 2004/38/EC and nor in accordance with chapter 8, section 2 of the Alien Act (<i>Utlänningslag [2005:716]</i>). The woman had not committed a crime and her behaviour could not be interpreted as such a serious threat to the fundamental interests of society so it can justify the expulsion of her.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>“Migrationsdomstolen konstaterar att kvinnan inte har begått några brottsliga gärningar. Hennes personliga beteende - oavsett vad för aspekter i övrigt som lagts på det av olika anledningar - kan inte heller enligt migrationsdomstolens mening anses utgöra ett verkligt, faktiskt och tillräckligt allvarligt hot mot ett grundläggande samhällsintresse, såsom t.ex. svenska myndigheters arbete mot människohandel och prostitution.”</i></p> <p>“The Migration Court finds that the woman has not committed any criminal acts. Her personal behaviour – regardless of any other aspects that for various reasons may be attributed to it – cannot, in the opinion of the Migration Court, be considered as a real, actual and sufficiently serious threat to a fundamental public interest, such as, for example, Swedish authorities' work against trafficking of human beings and prostitution.”</p>
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	<p>No</p>