

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 – Article 27 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Full reference	<i>Secretary of State for the Home Department v Dumliauskas</i> , Court of Appeal (Civil Division), 26 February 2015, [2015] EWCA Civ 145, available at: www.bailii.org/ew/cases/EWCA/Civ/2015/145.html .
Decision date	26 February 2015
Deciding body (in original language)	Court of Appeal (Civil Division)
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2015] EWCA Civ 145
Parties	Secretary of State for the Home Department v Dumliauskas, Wozniak and M.E.
Web link to the decision (if available)	www.bailii.org/ew/cases/EWCA/Civ/2015/145.html
Legal basis in national law of the rights under dispute	Regulations 27 and 28 Immigration (European Economic Area) Regulations 2006

Key facts of the case (max. 500 chars)	<p>The Secretary of State appealed against the decisions of the Upper Tribunal refusing the deportation of three foreign criminals (AD, LW and ME). The tribunal held that the respondents had better prospects of rehabilitation in the UK so that it would be disproportionate for them to be expelled. AD was a Lithuanian national with a record of firearms and dishonesty offences who had weak family connections in the UK. He also struggled with a heroin addiction. LW was a Polish national convicted of robbery and a number of motoring offences, including causing death by careless driving with no family links in the UK. He also had a problem with alcohol abuse. ME was a Somalian national with schizophrenia. He had Dutch nationality and had lived in the UK for over five years, and had been convicted of arson and recklessness. He had a wife and children in the UK but was separated from them. AD and ME had no right of permanent residence, whereas W had such a right by concession of the secretary of state. All three were held to represent a serious threat to society justifying their deportation. The Secretary of State contended that (1) the relative prospects of rehabilitation were irrelevant in the case of someone who had no permanent right of residence in the UK; (2) the tribunal had given excessive weight to the issue of rehabilitation, and there had been insufficient evidence to justify its finding that rehabilitation of the offenders was more likely in the UK than in their respective countries of nationality.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Court of Appeal held, with regard to (1), that the Secretary of State's contention was wrong. The court stated that rehabilitation is frequently linked to the health of the offender and this was expressly recognised in Article 28 (1) of the Directive to be taken into account in the proportionality determination. With regard to (2), the court explained that the factors to be taken into account did not vary with the qualifications of the individual concerned. However, in the case of an offender without permanent right of residence, substantial weight should not be given to his rehabilitation. The court stated that the purpose of deportation was to remove someone whose offending rendered him a risk to the public and that the greater the risk of reoffending, the greater the right to deport. However, a deported offender would not normally have committed an offence within his own country and, therefore he would not normally have access to a probation officer or the equivalent. The court held that this fact must have been obvious to the European Parliament and Commission when they adopted the Directive and that, consequently, the lack of such support did not preclude deportation.</p> <p>On the facts of the case, the court considered that:</p> <ul style="list-style-type: none"> • AD: The tribunal had been wrong to find, or assume, that there was no rehabilitative programme for a recovering drug addict available in Lithuania. • LW: It was impossible to reconcile the tribunal's finding that it was his alcohol problem that made him a serious threat to society with its finding that there was a durable solution to his alcohol problem, and thus his offending, available in the UK. It had also given excessive weight to the advantages of W remaining in the UK. • ME: The tribunal had been wrong to accept that mental health care in the Netherlands was of a high quality but find that the Secretary of State had failed to produce evidence of any difference in the level of care available between the UK and the

	Netherlands.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court of Appeal clarified what factors should be considered when deciding on whether to deport foreign criminals and interpreted Articles 27 and 28 of the Directive.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Appeal allowed.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>"I am unable to accept the Secretary of State's submission that the prospects of rehabilitation are irrelevant unless the offender has a permanent right of residence. Quite apart from the authority of the judgment of the CA in <i>Daha Essa</i>, to which I have referred above, rehabilitation is not infrequently linked to the health of the offender. That is obviously the case in respect of ME and AD. ME's offending was inextricably linked to his mental health, as is the risk of his reoffending. In Article 28.1, health is expressly referred to as a factor to be taken into account in the determination of proportionality. If ME remains mentally healthy, he is unlikely to reoffend; if his mental health deteriorates, he is liable to reoffend". [Para. 48]</p> <p>"Much the same applies to AD. If he is drug free, he is less likely to offend. Keeping him drug free will promote his rehabilitation; it will also improve his health. If he were to resume his addiction to heroin, his health would undoubtedly suffer. So drugs are relevant to both health and offending". [Para. 49]</p> <p>"In the case of LW, it is the connection between alcohol and his offending that is involved. Excessive alcohol consumption is liable to damage health (and may lead to cirrhosis of the liver) as well as contributing to or causing offending behaviour". [Para. 50]</p>

"It is notorious that a great deal of offending is linked to illicit drugs and/or to alcohol. Addiction to drugs leads to crimes of acquisition, including theft, burglary and robbery, aimed at financing the purchase of drugs to feed the addiction. Alcohol affects self-restraint and is particularly associated with crimes of violence". [Para. 51]

"I am bound to accept, on the authority of the judgment of this court in *Daha Essa*, that the Secretary of State, and therefore the Tribunal, must consider the relative prospects of rehabilitation, in the sense of ceasing to commit crime, when considering whether an offender should be deported. I have to say that but for that authority, I would have said that this was a factor to be considered if raised by the offender, but not otherwise, just as the effect of deportation on the health of an offender need not be considered unless it is made known to the Secretary of State that it is a relevant factor". [Para. 52]

"However, different considerations apply to questions of evidence and the weight to be given to the prospects of rehabilitation. As to evidence, as a matter of practicality, it is easier for the Secretary of State to obtain evidence as to support services in other Member States. However, in my judgment, in the absence of evidence, it is not to be assumed that medical services and support for, by way of example, reforming drug addicts, are materially different in other Member States from those available here. This is not the occasion to conduct a comparative survey, but it is appropriate to mention, by way of example, that medical services in France are said to be excellent, and that Portugal has been innovative in relation to treating drug addiction". [Para. 53]

"Lastly, in agreement with what was said by the Upper Tribunal in *Vasconcelos*, I do not consider that in the case of an offender with no permanent right of residence substantial weight should be given to rehabilitation. I appreciate that all Member States have an interest in reducing criminality, and that deportation merely exports the offender, leaving him free to offend elsewhere. However, the whole point of deportation is to remove from this country someone whose offending renders him a risk to the public. The Directive recognises that the more serious the risk of reoffending, and the offences that he may commit, the greater the right to interfere with the right of residence. Article 28.3 requires the most serious risk, i.e. "imperative grounds of public security", if a Union citizen has resided in the host Member State for the previous 10 years. Such grounds will normally indicate a greater risk of offending in the country of nationality or elsewhere in the Union. In other words, the greater the risk of reoffending, the greater the right to deport". [Para. 54]

"Furthermore, as I mentioned above, a deported offender will not normally have committed an offence within the State of his nationality. There is a real risk of his reoffending, since otherwise the power to deport does not arise. Nonetheless, he will not normally have access to

	a probation officer or the equivalent. That must have been obvious to the European Parliament and to the Commission when they adopted the Directive. For the lack of such support to preclude deportation is difficult to reconcile with the express power to deport. In my judgment, it should not, in general, do so". [Para. 55]
Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.	No.