

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Sweden 2017

Contractor: Emerga Research and Consulting

Author: Hanna Sköld

Reviewed by: Elisabeth Abiri

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Contents

1. Table 1 – Case law	3
2. Table 2 – Overview	53

1. Table 1 – Case law

Case 1 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 4, Article 5, Sections 1 and 4, Article 6, Section 7, Article 8, Section 3, Article 10, Sections 2 and 2a, Article 25, Section 1 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	21 December 2007
Deciding body (in original language)	<i>Migrationsöverdomstolen</i>
Deciding body (in English)	Migration Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	UM991-07

Parties	A. v. Swedish Migration Agency (<i>Migrationsverket</i>)
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad</i> ; <i>Domstol: Migrationsöverdomstolen</i> ; <i>Målnummer: UM991-07</i>
Legal basis in national law of the rights under dispute	Alien Act (<i>Utlänningslag [2005:716]</i>), Chapter 2, Sections 1 and 9, Chapter 3a, Sections 1, 4, 9, 10, Chapter 8, Sections 1, 3, 5, 7 and 7a. Alien Ordinance (<i>Utlänningsförordning [2006:97]</i>), Chapter 3a, Section 9.
Key facts of the case (max. 500 chars)	A. applied for a residence permit on the ground of his alleged refugee status as well as on the ground of his connection to his live-in partner (<i>sambo</i>), a Finnish citizen. The Migration Agency (<i>Migrationsverket</i>) rejected A's applications in December 2004. Consequently, he was supposed to leave Sweden in accordance with the Alien Act (<i>Utlänningslag [1989:529]</i>) of 1989. A. appealed the decision to the Alien Appeal Board (<i>Utlänningsnämnden</i>) (the Board was replaced by Migration Courts [<i>Migrationsdomstolar</i>] in 2006). The Board rejected A's appeal for a residence permit on the first ground but referred the case back to the Migration Agency to be re-tried as a case of family reunification. Since A. married his live-in partner in February 2005, the Migration Agency was now to try the case in relation to Directive 2004/38/EC, as well as Chapter 3a of the new Alien Act (<i>Utlänningslag [2005:716]</i>) of 2005. The agency decided to deny A. a residence permit and expel him from Sweden because he was not able to present a valid passport from his home country, a requirement for a residence permit on the ground of family reunification. A. appealed the agency's decision to the Migration Court (<i>Migrationsdomstolen</i>), arguing that he was not able to obtain a valid passport from his home country. The Migration Court found that the Migration Agency was wrong to decide to expel A. to his home country on such grounds, since the agency had already approved the identification documents he presented in relation to his earlier asylum application. Therefore, the Migration Agency must have considered these documents as valid in the current case. The Migration Agency appealed the Migration Court's ruling to the Migration Court of Appeal (<i>Migrationsöverdomstolen</i>).

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Migration Agency (<i>Migrationsverket</i>) argued that a person must be able to prove his/her identity in order to be granted a residence permit, just as a person on entry must be able to prove his/her identity and nationality to show their right to reside in Sweden. As mentioned above, the Migration Court (<i>Migrationsdomstolen</i>) argued that since the Migration Agency had already approved the identification documents in the earlier asylum case, the documents should also have been considered valid in the current case.</p> <p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) reasoned that the identification document from A.'s home country that he presented in relation to the asylum process could not be considered to prove his right to residence under EU family reunification law. The court also noted that A. had been given the time necessary to be able to acquire a valid passport from his home country. Still, he did not present a passport and it must therefore be clear that he could not be granted a residence permit.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Does a third-country national whose immediate family member is an EEA-citizen with a Swedish residence permit need to be able to present a valid passport to confirm his/her right to reside in Sweden for more than three months?</p> <p>The court clarified that such a person must be able to present a valid passport but must also be given time enough to acquire and/or present this passport before the final expulsion decision is made.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) decided that a third-country national, whose family member is an EEA-citizen with Swedish residence permit, must present a valid passport to prove his/her right to be granted a residence permit. Consequently, A. had not the right to reside in Sweden as a family member to an EEA citizen since he did not present the required document. On 21 December 2007, the Migration Court of Appeal decided that A. should be expelled in accordance with Chapter 8, Section 7 of the Alien Act (<i>Utlänningslag [2005: 716]</i>) after having lived in Sweden for several years.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)

"En familjemedlem till en EES-medborgare med uppehållsrätt, t.ex. make, har enligt 3 a kap. 1 och 4 §§ utlänningslagen uppehållsrätt oavsett medborgarskap. För att en familjemedlem som är tredjelandsmedborgare skall få resa in och vistas i en medlemsstat med stöd av gemenskapsrätten krävs att denne har uppehållsrätt samt ett giltigt pass och i vissa fall visering. För att kunna styrka sin uppehållsrätt måste han eller hon bl.a. styrka sin identitet och nationalitet. Rörlighetsdirektivet föreskriver att denna identitetskontroll skall ske genom uppvisande av pass, dels vid resor in och ut ur territoriet, dels mellan medlemsstaterna (artiklarna 4 och 5 rörelsedirektivet). I utlänningslagen är dessa personer inte heller undantagna kravet på pass (2 kap. 1 och 8 §§ utlänningslagen). I samband med ändringarna i utlänningslagstiftningen på grund av rörlighetsdirektivet togs möjligheten enligt 1 kap. 6 § dåvarande utlänningsförordningen (1989:547) för tredjelandsmedborgare att resa in i Sverige med enbart ett identitetskort bort (se prop. 2005/06: 77 s. 63 f.). Om personen vid inresetillfället saknar de resehandlingar som krävs får inte utvisning ske innan han eller hon gets en rimlig möjlighet att inom rimlig tid visa att han eller hon omfattas av den fria rörligheten (artikel 5.4 rörlighetsdirektivet)."

Translation:

"A family member of an EEA citizen with a right to residence, e.g. husband, shall be entitled to residence regardless of citizenship in accordance with Chapter 3a, Sections 1 and 4 of the Alien Act. In order for a family member, who is a third-country national, to be allowed to travel and stay in a Member State under the Community law, it is required that they have a right of residence and a valid passport and, in some cases, visas. In order to prove their right of residence, they must be able to confirm their identity and nationality. The free movement directive stipulates that this identity control must be done by the presentation of passports, both when travelling in and out of the territory, as well as between Member States (Articles 4 and 5 of the Free Movement Directive). The Alien Act (Chapter 2, Sections 1 and 8 do not exempt the persons in question from the passport requirement. In connection with the amendments of the Alien legislation (*utlänningslagstiftningen*) brought on by the Free Movement Directive, the possibility for third country nationals to enter Sweden with only identity cards as of Chapter 1, Section 6 of the Alien Ordinance

	(1989:547) was removed. If a person at the time of entry lacks the required travel documents, the expulsion must not be carried out before he/she is given a fair opportunity to show that he/she is included in the freedom of movement (Article 5.4 of the Free Movement Directive) within a reasonable period of time."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

Case 2 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Articles not specified in the case (but the case is mainly linked to Article 8, Section 5) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	14 June 2016

Deciding body (in original language)	<i>Högsta Förvaltningsdomstolen</i>
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	3101-15
Parties	V.T. v. Swedish Tax Agency (<i>Skatteverket</i>)
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad</i> ; <i>Domstol: Högsta Förvaltningsdomstolen</i> ; <i>Målnummer: 3101-15</i>
Legal basis in national law of the rights under dispute	Population Registration Act (<i>Folkbokföringslag [1991:481]</i>), paragraphs 3, 4 and 26. Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>), para. 10. Alien Act (<i>Utlänningslag [2005:716]</i>) Chapter 3a, Sections 1, 2, 3 and 4.
Key facts of the case (max. 500 chars)	In the autumn of 2013, V.T. moved to Sweden from Bulgaria with her daughter and son-in-law, whom she had previously lived together with in Bulgaria. In November 2013, V.T. requested to be registered in the Swedish Population Register (<i>folkbokföringen</i>). V.T. stated that she had the right to reside in Sweden in accordance with the Alien Act's (<i>Utlänningslag [2005:716]</i>) stipulations on EU citizens and their family members.

	<p>Consequently, she should be registered in the Population Registration in accordance with the Population Registration Act (<i>Folkbokföringslag [1991:749]</i>). In January 2014, the Swedish Tax Agency (<i>Skatteverket</i>) denied her request since V.T. was unable to provide sufficient evidence to confirm her right to reside. The Tax Authority has the right to require other more specific forms of documentation issued by agencies in the country of origin showing that the person is financially dependent of, or was a part of the same household as the EU-citizen in question. Such documents may also be used to support a person's right to reside as a family member to an EU-citizen when it comes to cases regarding registration in the Swedish Population Register. A decision of the right to reside made by the Migration Agency is not necessarily considered sufficient proof of the right to reside that is required in the Population Registration Act. V.T. appealed the Tax Agency's decision to the Administrative Court in Malmö (<i>Förvaltningsdomstolen</i>) that repealed the agency's decision. The Tax Agency decided to appeal the ruling of the Administrative Court, first to the Administrative Court of Appeal in Gothenburg (<i>Kammarrätten i Göteborg</i>), that rejected the appeal. The Tax Agency then appealed the ruling to the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>V.T argued that she had the right to reside as a family member to an EU-citizen in accordance with Chapter 3a, Sections 4 in the Alien Act (<i>Utlänningslag [2005:716]</i>)</p> <p>The Tax Agency (<i>Skatteverket</i>) argued that V.T had been unable to provide sufficient evidence, in accordance with Section 10 in the Population Registration Ordinance (<i>Folkbokföringsförordning [1991:749]</i>), showing that her son-in-law had lived with her and her daughter in Bulgaria or that she had been financially dependent on her daughter and son-in-law before moving to Sweden. As the daughter was an economically inactive EU citizen (i.e she had what in Sweden is called a secondary right to reside), V.T. had to show her connection to the son-in-law in order the get the right to reside and therefore also the right to be registered in the Swedish Population Register.</p>

	<p>The Supreme Administrative Court (<i>Högsta Förvaltningsdomstolen</i>) assessed that even though V.T. could show that she had lived with her daughter already in Bulgaria, she was unable to provide documents issued by Bulgarian agencies showing that the son-in-law had lived with them back in Bulgaria or that she, before residing in Sweden, was financially dependent on her daughter and son-in-law, as required by Section 10 in the Population Registration Ordinance (<i>Folkbokföringsförordning [1991: 749]</i>).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The key issue is what kind of evidence a person must provide in order to be allowed the right to reside as a family member to an EU citizen in cases concerning registration in the Swedish Population Register in accordance with the Population Registration Act (<i>Folkbokföringslag [1991: 749]</i>) and the Population Registration Ordinance (<i>Folkbokföringsförordning [1991: 749]</i>).</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) decided to approve the appeal and confirm the Tax Authority's (<i>Skatteverket</i>) decision to deny V.T her request to be registered in the Swedish population register (<i>folkbokföringen</i>).</p>
<p>Key quotations in original language and translated into English with reference</p>	<p><i>"För att sekundär uppehållsrätt ska föreligga krävs för det andra att V.T. tillhör någon av de kategorier som räknas upp i 3 a kap. 2 § första stycket utlänningslagen. För hennes del är det i första hand tredje punkten som aktualiseras (släkting i rakt uppstigande led). Ett villkor för att omfattas av den bestämmelsen är att hon redan före flytten till Sverige var beroende av svärsonen eller dottern för sin försörjning (se rättsfallet MIG 2014:8). Om det villkoret inte är uppfyllt bör hon dock även kunna åberopa fjärde punkten (annan</i></p>

details (max. 500 chars)	<p><i>familjemedlem), enligt vilken sekundär uppehållsrätt föreligger bl.a. om hon ingick i svärsonens hushåll i Bulgarien."</i></p> <p><i>"Av 10 § första stycket folkbokföringsförordningen (1991: 749) framgår att Skatteverket i samband med en anmälan enligt 26 § folkbokföringslagen av en familjemedlem till en EES-medborgare som uppger sig ha uppehållsrätt enligt 3 a kap. 4 § utlänningslagen får begära att familjemedlemmen visar upp vissa närmare angivna handlingar.</i></p> <p><i>V.T. har således inte visat att hon i utlänningslagens mening är familjemedlem till svärsonen och att hon därmed har uppehållsrätt i Sverige. Några synnerliga skäl för att hon ändå ska folkbokföras har inte kommit fram. Överklagandet ska därmed bifallas."</i></p> <p>Translation:</p> <p><i>"For secondary right of residence (sekundär uppehållsrätt)¹ V.T. must belong to any of the categories listed in Chapter 3a, Section 2, first paragraph of the Alien Act. For her part, it is primarily the third point that is of relevance (relative in direct ascending line). A condition for being included in this provision is that she was dependent on the son-in-law or daughter for her support prior to moving to Sweden (see case MIG 2014: 8). However, if that condition is not met, she should also be able to invoke the fourth point (another family member), according to which a secondary right to residence exists if she was part of the son-in-law's household in Bulgaria."</i></p> <p><i>"Section 10 first paragraph of the Population Registration Ordinance (Folkbokföringsförordning [1991: 749]) states that the Swedish Tax Agency, in conjunction with a request in accordance with Section 26 of the</i></p>
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¹ Right to reside as family member of an EEA citizen is in Sweden referred to as secondary right of residence (*sekundär uppehållsrätt*).

	<p>Population Registration Act (<i>Folkbokföringslag [1991:481]</i>) concerning a family member of a EEA-citizen claiming the right to reside in accordance with Chapter 3a, Sections 4 in the Alien Act (<i>Utlänningslag [2005:716]</i>), has the right to require that the family member presents some specified documents.</p> <p>Thus, V.T. has not shown that she is a family member to her son-in-law in the meaning of the Alien Act, and therefore has a right of residence in Sweden. No particular reasons for why she nevertheless should be registered in the population register has not been presented. The appeal (of the Tax Agency) will therefore be approved."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

Case 3 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Articles not specified by the case (but the case is mainly linked to Article 13, Section 2 and Article 16, Section 2) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	2 June 2010
Deciding body (in original language)	Migrationsöverdomstolen
Deciding body (in English)	Migration Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	UM8184-09
Parties	A. v. the Swedish Migration Agency

Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad</i>; <i>Domstol: Migrationsöverdomstolen</i>; <i>Målnummer: UM8184-09</i></p>
Legal basis in national law of the rights under dispute	<p>Alien Ordinance of 1989 (<i>Utlänningsförordning [1989:547]</i>) Chapter 3, Section 5b.</p> <p>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 [rörlighetsdirektivet]</i>).</p>
Key facts of the case (max. 500 chars)	<p>A. applied for a residence permit in November 2007 on the grounds that he had lived together with his Danish wife B. in Sweden since 2002. They had separated in 2006, but stayed in touch and got back together again in June 2008. The Migration Agency (<i>Migrationsverket</i>) rejected A's application in July 2008, because his wife did not live in Sweden anymore and A. would not have been granted an extension of his residence permit under the former regulation of EEA permits (<i>EES-tillstånd</i>). The agency argued that the EEA-permit did not grant A. the right to continue to reside in Sweden. A. appealed the decision to the Migration Court (<i>Migrationsdomstolen</i>). The Migration Court reasoned that A. would not have any difficulties or extra costs if he returned to his home country and should therefore be able to apply for a new residence permit because of his connection to B.. A. appealed the ruling of the Migration Court to the Migration Court of Appeal (<i>Migrationsöverdomstolen</i>).</p>
Main reasoning / argumentation (max. 500 chars)	<p>A. argued that he had lived in Sweden for five years, a period during which he had established himself on the labour market and found his life partner. A. had adapted himself to the social life, language and customs of Swedish society, and was planning a future in Sweden. A. had nothing to return to in Gambia, and according to him, a rejection of his application must be considered as an offence to the general sense of justice and against the demands of humanity.</p> <p>The Migration Agency argued that Directive 2004/38/EC had been legally binding in Sweden since April 2006. Since A. was separated from his wife at that time and his EEA-permit expired in December 2007, he should not</p>

	<p>be granted a permanent or continued residence.</p> <p>The Migration Court Appeal argued that it was clear that A. had the right to permanent residence on the grounds of his extended time of residence in Sweden in accordance with both Directive 2004/38 and the Alien Ordinance (<i>Utlänningsförordning [1989:547]</i>) Chapter 3, Section 5b.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The key issue is whether or not holders of a five-year EEA-permit, whose permits expired after the implementation of Directive 2004/38/EC into Swedish law, should be considered to have the right to permanent residence even if they had separated from their partners.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Migration Court of Appeal annulled the Migration Agency's decisions, both to deny A. an extension of his residence permit and to leave the country.</p>
<p>Key quotations in original language and translated into English with</p>	<p><i>"Med anledning av genomförandet av rörlighetsdirektivet upphörde bestämmelserna om EES-tillstånd och ersattes av bestämmelser om uppehållsrätt och permanent uppehållsrätt. De nya bestämmelserna trädde i kraft den 30 april 2006. Vid genomförandet av rörlighetsdirektivet konstaterades att en innehavare av ett EES-tillstånd som uppfyller kravet på fem års hemvist i Sverige efter genomförandet av direktivet skulle komma att ha permanent uppehållsrätt i Sverige."</i></p>

reference details (max. 500 chars)	Translation: "The provisions of the EEA permits expired and were replaced by the provisions on the right to reside freely and permanent residence due to the implementation of the Free Movement Directive. The new provisions entered into force on 30 April 2006. It was established when implementing the Free Movement Directive, that a holder of an EEA permit who met the requirement of five years of residence in Sweden by the time of implementation of the directive would have the right to permanent residence in Sweden."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

Case 4 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 6, Article 7, Article 7, Section 1b, Article 8, Section 4 and Article 14, Section 1-4. <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	16 June 2011
Deciding body (in original language)	<i>Migrationsöverdomstolen</i>
Deciding body (in English)	Migration Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	UM10307-09
Parties	A. v. the Swedish Migration Agency

Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad</i>; <i>Domstol: Högsta Förvaltningsdomstolen</i>; <i>Målnummer: UM10307-09</i></p>
Legal basis in national law of the rights under dispute	<p>Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 3a, Sections 3, 4, 5, Chapter 8, Sections 2 and 7.</p> <p>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 [rörlighetsdirektivet]</i>), Article 6, Article 7, Article 7.1 b, Article 8.4, Article 14.1-4.</p>
Key facts of the case (max. 500 chars)	<p>A., a retired, economically inactive EU-citizen from Poland, was granted the right to reside in March 2008, as she had been considered to have sufficient resources to support herself, through the money in her bank account or through her daughters residing in Sweden. After a while, the Migration Agency found that A. had been receiving maintenance support for elderly persons (<i>äldreförsörjningsstöd</i>) as well as housing supplement (<i>bostadstillägg för pensionärer</i>) from the Swedish Social Insurance Agency (<i>Försäkringskassan</i>) since February 2009. The Migration Agency equated both kinds of support as social assistance/social welfare, which it interpreted as proof that A. could in fact not support herself. Consequently, in May 2009, the Migration Agency decided that A. had abused the right to free movement for economically inactive EU-citizens and should therefore be expelled.</p> <p>A. appealed the Migration Agency's decision to the Migration Court (that in its judgement repealed the agency's decision). Thereafter, the Migration Agency appealed the Migration Court's ruling to the Migration Court of Appeal.</p>
Main reasoning / argumentation	<p>A. argued that she had been granted the right to reside, and the fact that she enjoys social benefits that were granted to her as an EEA-citizen could not be seen as a proof that she was burdening the social welfare system of the host country.</p>

(max. 500 chars)	<p>The Migration Agency argued that the interpretation of what can be considered as “being an unreasonable burden on the social assistance system” in accordance with Directive 2004/38/EC Article 7.1 b must be determined within in the legal context of the European Union. According to the agency, to only include financial aid given in accordance with the Social Service Act (<i>Socialtjänstlag (2001:453)</i>) must be considered to be an interpretation too narrow of what Chapter 8 of the Alien Act defines as “being a burden on the social assistance system”, since this is only one part of the overall social assistance system in Sweden. A. received quite substantial financial support and her circumstances, as she was retired with severe health problems, were such that her need of support from the social assistance system could not be seen as temporary. Consequently, A. should not be considered to have sufficient resources to support herself, regardless of the credit in her bank account.</p> <p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) argued that the fact that a person received maintenance support for elderly persons and housing supplement should not by itself be interpreted as his/her inability to be self-sufficient as required by Chapter 3a, Section 3, fourth paragraph of the Alien Act (<i>Utlänningslag [2005:716]</i>), since these support forms were not granted in accordance with the Social Service Act. Therefore, A. could not be considered to have lost her right to reside due to this circumstance.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue concerned the interpretation of “sufficient resources” and “unreasonable burden”. Was the Migration Agency’s interpretation correct? Its decision to expel A. was also correct, since A. could not be considered to have sufficient assets required by Chapter 3a, Section 3, fourth paragraph of the Alien Act (<i>Utlänningslag [2005:716]</i>), because she received maintenance support for elderly persons as well as housing supplement.</p>
Results (e.g. sanctions) and key	<p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) rejected the decision of the Migration Court (<i>Migrationsdomstolen</i>) since it considered that A. was not to be considered unable to support herself .</p>

consequences or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Eftersom äldreförsörjningsstöd eller bostadstillägg inte beviljas i enlighet med socialtjänstlagen kan A inte anses sakna tillräckliga tillgångar för sin försörjning enligt 3 a kap. 3 § 4 utlänningslagen endast på grund av att hon uppbär sådant stöd. A kan därför inte anses på den grunden ha förlorat sin uppehållsrätt.”</i></p> <p>Translation:</p> <p>“Since maintenance support for elderly persons and housing supplement is not granted in accordance with the Social Services Act, A. cannot be considered to lack sufficient resources to support herself, in accordance with Chapter 3a, Section 3, fourth paragraph of the Alien Act, only on the grounds of her receiving such support. Therefore, A. cannot be considered to have lost her right of reside.”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

Case 5 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 31 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	11 December 2007
Deciding body (in original language)	<i>Migrationsöverdomstolen</i>
Deciding body (in English)	Migration Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	UM2261-07
Parties	A. v. the Swedish Migration Agency (<i>Migrationsverket</i>)

Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad</i>; <i>Domstol: Migrationsöverdomstolen</i>; <i>Målnummer: UM2261-07</i></p>
Legal basis in national law of the rights under dispute	<p>Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 3a, Sections 1, 3 and 4 and Chapter 8, Section 7a, para.1.</p> <p>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 [rörlighetsdirektivet]</i>), Article 31.</p>
Key facts of the case (max. 500 chars)	<p>A., a Polish citizen, arrived in Sweden in September 2006 and applied for residence permit (<i>uppehållstillstånd</i>) in November the same year. In her application she referred to her connection with two daughters already living in Sweden and argued that she, from time to time, lived with them. The daughters supported their mother with clothes, money and medicine. A. suffers from depression and Parkinson's disease, and has not had anyone to care for her since her daughter in Poland passed away in 2005. The Swedish Migration Agency (<i>Migrationsverket</i>) rejected A's application in March 2007 and she was therefore to be expelled from Sweden. The agency argued that A. did not have right to residence permit in Sweden in accordance with Chapter 3a, Section 3 of the Alien Act (<i>Utlänningslag [2005: 716]</i>) since she did not apply for residence permit shortly after her daughters had received permanent residence permits in Sweden. Furthermore, the agency did not consider A.'s health condition to constitute any extraordinary reasons for granting her a residence permit. A. appealed the Migration Agency's decision to the Migration Court (<i>Migrationsdomstolen</i>) arguing that she could not be deported because of her health condition. The Migration Court rejected A's appeal and supported the decision of the Migration Agency, since it assessed that there were no unusual or distressing circumstances that could be a reason to grant A. a residence permit according to the Alien Act (<i>Utlänningslag [2005: 716]</i>). At the same time the court decided not to try the question of A's right of residence in accordance to the directive.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Migration Court of Appeal granted a reviewing permit (<i>prövningstillstånd</i>) on the ground that the implementation of Directive 2004/38/EC of the European Parliament and the Council had ended the necessity to grant residence permits for union citizens and other EEA-citizens, when the concept of right to residence (<i>uppehållsrätt</i>) was introduced. Consequently, EEA citizens have the right to residence if they have sufficient assets to support themselves and if they have a valid health insurance. EEA citizens who have the right to residence cannot be deported, and according to the directive union citizens have the right to a review of their cases if decisions in focus can be said to restrict the freedom of movement.</p> <p>In its review the Migration Court of Appeal found that A. was a union citizen with a valid Polish passport and had to be covered by the legislation under Directive 2004/38/EC of the European Parliament and the Council that has resulted in abolition of the system of residence permits for Union citizens and other EEA citizens and their family members. Instead the concept of right to residence has been introduced in relation to this group of aliens. According to the Court of Appeal, Chapter 3a, Section 1 of the Alien Act (<i>Utlänningslag [2005: 716]</i>) defines this right of residence. Consequently, EEA nationals and their family members have a right to stay in Sweden for over three months without a applying for a residence permit in accordance with the provisions in question. Section 3 of the same Chapter specifies the conditions necessary for EEA citizens to have a right of residence. EEA citizens have a right of residence if they have sufficient assets to support themselves and comprehensive health insurances from their countries of origin.</p> <p>The Court of Appeal considered the fact that the Migration Court had not tried the question of A.'s right of residence to be a serious shortcoming in the court's application of the law, which could not be remedied by the Court of Appeal itself. Therefore, the decision by the Migration Court should be annulled and the case remanded to the Migration Court for further processing.</p>
<p>Key issues (concepts, interpretations)</p>	<p>A decision to deport an EEA citizen must be preceded by an investigation into the person's possible right of residence.</p>

) clarified by the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Migration Court of Appeal (<i>Migrationsöverdomstolen</i>) annulled the judgement of the Migration Court and referred the case back to the Migration Court for proceeding.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Migrationsöverdomstolen konstaterar att A genom att visa upp ett giltigt polskt hemlandspass är att anse som unionsmedborgare och att hon därför omfattas av rörlighetsdirektivets bestämmelser. Migrationsverket har också prövat frågan om hon har uppehållsrätt. Migrationsdomstolen har emellertid inte prövat denna fråga. Migrationsdomstolens dom innebär att Migrationsverkets beslut om utvisning fortfarande gäller. Eftersom EES-medborgare har rätt att vistas i Sverige om de har uppehållsrätt har det ålagt migrationsdomstolen att pröva om A har uppehållsrätt innan beslutet om utvisning fastställdes genom att hennes överklagande av Migrationsverket beslut avslogs.</i></p> <p><i>Att migrationsdomstolen inte har prövat frågan om A har uppehållsrätt utgör en allvarlig brist i domstolens rättstillämpning som inte kan avhjälpas i denna instans. Migrationsdomstolens dom skall därför undanröjas och målet visas åter till migrationsdomstolen för fortsatt handläggning."</i></p> <p>Translation:</p>

	<p>"The Migration Court of Appeal finds that A. through presenting a valid Polish homeland passport must be considered as a citizen of the Union, and therefore a subject to the provisions under the Mobility Directive. The Migration Agency has also tried whether A. has a right to residence. However, the Migration Court has not tried the question. The decision by the Migration Court means that the Migration Agency's decision of expulsion is still applicable. Since EEA citizens have the right to stay in Sweden if they have right of residence, the Migration Court should have tried A's right of residence before the expulsion decision was determined by the rejection of her appeal of the Migration Agency's decision.</p> <p>The fact that the Migration Court has not tried the question of A.'s right of residence constitutes a serious shortcoming in the court's application of the law, which cannot be remedied by this instance. Therefore, the decision by the Migration Court shall be annulled and the case remanded to the Migration Court for further processing."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

Case 6 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Articles not specified by the case (but the case is mainly linked to Article 28, Sections 1 and 2) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	27 August 2013
Deciding body (in original language)	<i>Hovrätten över Skåne och Blekinge</i>
Deciding body (in English)	Scania and Blekinge Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	B1713-13
Parties	M.K. v. Sweden

Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad</i> ; <i>Domstol: Hovrätten över Skåne och Blekinge</i> ; <i>Målnummer: B1713-13</i>
Legal basis in national law of the rights under dispute	Act on Penalties for Smuggling (<i>Lag [2000: 1225] om straff för smuggling</i>) Section 3, first paragraph, and Section 6, para.3. Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 8, Section 8, para.2. Sweden, Supreme Court (<i>Högsta domstolen</i>) Case NJA 2011.
Key facts of the case (max. 500 chars)	M.K. was convicted for a serious drug crime in October 2012. The crime was considered serious because of the large amount of narcotics involved in the case. The District Court of Malmö (<i>Malmö Tingsrätt</i>) sentenced M.K. to five years in prison and expulsion from Sweden until 5 June 2025 (12 years expulsion from the date of the sentence). The crime was considered to be of such nature that it constituted a real and sufficiently serious threat to the fundamental societal interest that is required for the expulsion of an EU citizen. The crime's seriousness meant that M.K. should be expelled in accordance with Chapter 8, Section 8, paragraph 2 of the Alien Act (<i>Utlänningslag [2005: 716]</i>). However, given the fact that M.K. was an EU citizen, the length of the return ban was decided to be 12 years (instead of 15 years). The prosecutor appealed the decision to the Scania and Blekinge Court of Appeal (<i>Hovrätten över Skåne och Blekinge</i>).
Main reasoning / argumentation (max. 500 chars)	The Court of Appeal argued that since M.K. completely lacked personal ties to Sweden, he would not suffer from the effects of the expulsion in such an extent that it should affect the meting out of punishment. In this case the return ban.
Key issues (concepts, interpretations)	The question concerns the length of the return ban for an EU citizen that has been sentenced for a serious crime (smuggling of 375 kilogram of cannabis) and expelled. In the case in focus the length of the ban had been shortened because the person in question was an EU citizen.

<p>) clarified by the case (max. 500 chars)</p>	
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Court of Appeal altered the District Court’s ruling to six years in prison and an expulsion/entry ban to Sweden until 5 June 2028. The Court of Appeal argued that there was no reason to allow for a shorter length of the expulsion/travel ban to Sweden than was the established practice in Swedish courts, despite the fact that M.K. was an EU citizen.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>“Eftersom han helt saknar anknytning till Sverige lider han inte något sådant men genom utvisning som ska inverka på straffmätningen.”</i></p> <p><i>“På skäl som tingsrätten angett ska M.K. utvisas. Det förhållandet att han är EU-medborgare bör inte föranleda en kortare tid för återreseförbudets längd än vad av hovrätten annars tillämpad praxis medför. Den tiden bör därför bestämmas till 15 år.”</i></p> <p>Translation:</p> <p>“Due to the fact that he completely lacks personal ties to Sweden, he does not suffer from the effects of the expulsion in such an extent that it should affect the meting out of punishment.”</p>

	“For the reasons mentioned by the District Court, M.K. shall be expelled. The fact that he is an EU citizen should not lead to a shorter duration of the return ban than is otherwise the established practice of the Court of Appeal. Therefore, the period should be 15 years.”
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

Case 7 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 27 and Article 28 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	23 October 2009

Deciding body (in original language)	<i>Hovrätten för Västra Sverige</i>
Deciding body (in English)	Court of Appeal for Western Sweden
Case number (also European Case Law Identifier (ECLI) where applicable)	B3034-09
Parties	R. and M. v Sweden
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad</i> ; <i>Domstol</i> : <i>Hovrätten för Västra Sverige</i> ; <i>Målnummer</i> : <i>B3034-09</i>
Legal basis in national law of the rights under dispute	Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 8 Sections 8, 11-13. 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 [rörlighetsdirektivet]</i>), Articles 27 and 28.
Key facts of the case (max. 500 chars)	R. and M., two Romanian citizens, were found guilty of serious larceny, attempted serious larceny, serious fraud, attempt and preparation of serious fraud, and convicted to five and three years' imprisonment respectively as well as expulsion with a return ban with no time limit. R. and M. were completely without ties

	to Sweden and their travel to and stay in Sweden had no other purpose than to commit the crimes. (No further information is given in this case.)
Main reasoning / argumentation (max. 500 chars)	R. and M. were completely without ties to Sweden, and their travelling and staying in Sweden had no other purpose in Sweden other than committing crimes. They were convicted of extensive and systematic crimes aimed primarily towards people who had had particular difficulties defending themselves from crime. Furthermore, a foreign citizen may be expelled from Sweden if he or she is found guilty for a crime that may lead to imprisonment, according to Chapter 8, Section 8, first paragraph of the Aliens Act (<i>Utlänningslag [2005: 716]</i>). However, an alien may only be expelled if he or she is sentenced to prison and if the crime itself or other circumstances are such that it is reasonable to assume that the person in question will continue to conduct crimes in Sweden. Expulsion is also allowed if the criminal offence is of a nature that the damage, danger or violation it posed for individuals or public interests was so serious that he or she should not be allowed to stay.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Expulsion of two EU citizens on the ground of them being found guilty of serious crimes must have precedence over the right to freedom of movement within the European Union.
Results (e.g. sanctions) and key consequences or implications of the case	The Court of Appeal (<i>Hovrätten för västra Sverige</i>) approved the decision made by the District Court (not defined) to expel R. and M. from Sweden and ban them from return with no time limit.

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"De saknar helt anknytning till Sverige. Deras resa hit och vistelsen här har såvitt framkommit inte haft något annat syfte än att begå den aktuella brottsligheten. De döms nu för omfattande och systematisk brottslighet som främst riktats mot personer som har haft särskilda svårigheter att freda sig. Även om restriktivet ska iakttas när det gäller att begränsa unionsmedborgares fria rörlighet inom unionen (jfr Europaparlamentets och rådets direktiv 2004/38/EG av den 29 april 2004, artiklarna 27 och 28) finner hovrätten att förutsättningar för att bifalla utvisningsyrkandena gentemot dem båda föreligger."</i></p> <p>Translation:</p> <p>"They are completely without ties to Sweden. Their travel to and the stay here appears to have had no other purpose than to commit the crimes in question. They are now sentenced for extensive and systematic criminal activities primarily aimed at persons who have had particular difficulties to protect themselves. Although the legal measures must be of a restrictive nature so to not limit the free movement of EU citizens within the union (see Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, Articles 27 and 28), the Court of Appeal finds the necessary conditions for approving the expulsion decisions are in place."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes,	No.

to which specific article.	
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Case 8 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 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
Decision date	8 April 2011
Deciding body (in original language)	<i>Migrationsdomstolen</i>
Deciding body (in English)	The Migration Court
Case number (also European Case Law Identifier)	UM 832-11

(ECLI) where applicable)	
Parties	The Swedish Migration Agency v. a Romanian woman (anonymised in the judgement)
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad</i> ; <i>Domstol: Migrationdomstolen</i> ; <i>Målnummer: UM 832-11</i>
Legal basis in national law of the rights under dispute	Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 8, Section 2. 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 [rörlighetsdirektivet]</i>), Article 27.2.
Key facts of the case (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) had to 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 could not 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 an 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>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Migration Agency reasoned that even though prostituting oneself was not illegal, buying sex was 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 the 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 was 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>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<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>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	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.
Key quotations in original language and translated into English with reference details (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>Translation:</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>
Has the deciding body referred to the Charter of	No.

Fundamental Rights? If yes, to which specific article.	
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Case 9 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 27, Section 2 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	5 May 2011
Deciding body (in original language)	<i>Hovrätten för Övre Norrland</i>
Deciding body (in English)	The Court of Appeal for Upper Norrland.
Case number (also European)	B223-11

Case Law Identifier (ECLI) where applicable)	
Parties	V.K., V.M., A.V. v. Sweden
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad; Domstol: Hovrätten för Övre Norrland; Målnummer: B223-11</i>
Legal basis in national law of the rights under dispute	Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 8, Section 8. 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 [rörlighetsdirektivet]</i>), Article 27, Section 2.
Key facts of the case (max. 500 chars)	V.K., V.M. and A.V., all Lithuanian citizens, were convicted for two cases of grand larceny that they had committed shortly after their arrival in Sweden. V.K. and A.V. were sentenced to 10 months in prison and V.M. to nine months in prison. Furthermore, V.K., V.M. and A.V. were expelled from the country and banned from returning for a five years period, as it was considered likely that they would commit further crimes in the future. V.K. and A.V. had previously committed similar crimes, while V.M. had no earlier sentences. V.K., V.M. and A.V. appealed their sentences to the Court of Appeal for Upper Norrland.
Main reasoning / argumentation	The Court of Appeal argued that determining if a crime should lead to expulsion, the prosecuted's previous behaviour regarding criminal activity must be taken into account. In this case V.M. had no previous criminal record, unlike V.K. and A.V. who had been convicted of similar crimes in the past. The Court of Appeal for Upper Norrland argued that there were sufficient grounds to expel V.K. and A.V., but in light of the proportionality

(max. 500 chars)	principle within EU law, the ban to return to Sweden should be shortened. Regarding V.M, the Court of Appeal argued that as his sentence was under two years and he had no previous convictions, he could not be said to behave in a way that seriously threatened society's fundamental interests in a way that would justify expulsion.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue of the case concerns whether the crime that V.K, V.M and A.V are convicted for, together with their previous history of crime, should be considered to be sufficient grounds for expulsion even though they are EEA citizens.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal for Upper Norrland ruled that there were sufficient grounds to expel V.K and A.V but in light of the proportionality principle within EU law, the ban to return to Sweden was changed from five years to three years. V.M´s prison sentence was changed to a conditional sentence and the decision to expel him was repealed.
Key quotations in original language and translated into English with	<i>"Frågan är därmed om brotten i detta mål är så allvarliga att utvisning bör ske trots att de tilltalade är medborgare i ett EU-land. Vid bedömningen av brottslighetens allvar kan enligt hovrättens uppfattning ett straffvärde om ca ett år och därutöver tjäna som utgångspunkt för när brottets allvar är sådant att det i många fall finns skäl att utvisa även EU-medborgare (jfr Högsta domstolens bedömning i rättsfallet NJA 2001</i>

reference details (max. 500 chars)	<p><i>s. 464 angående vilket straffvärde som bör krävas för utvisning på grund av "brottets allvar", se 8 kap. 8 § andra stycket 2 utlänningslagen). Hovrätten prövar utvisningsfrågan från dessa utgångspunkter."</i></p> <p>Translation:</p> <p>"The question is therefore whether the crimes in this case are so serious that expulsions should be implemented, despite the fact that the defendants are citizens of an EU country. In the assessment of the seriousness of the crime, the Court of Appeal finds that a penalty value of about one year or more may be used as a point of departure when the seriousness of the crime is such that there is reason to expel also an EU citizen (see the judgment of the Supreme Court in the case of NJA 2001, p. 464 concerning the penalty value that should be required in order to expel somebody due to the "seriousness of the crime", see Chapter 8, Section 8, second paragraph of the Alien Act). The Court of Appeal examines the expulsion question from these points of departure."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

Case 10 relating to the right to move and reside freely within the territory of the EU Member States (of EU citizens and their family members)

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 Directive 2004/38 Article 27 and Article 28 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	25 May 2006
Deciding body (in original language)	<i>Hovrätten för Västra Sverige</i>
Deciding body (in English)	Court of Appeal for Western Sweden
Case number (also European Case Law Identifier (ECLI) where applicable)	B2390-06
Parties	O.K. v. Sweden

Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad</i>; <i>Domstol: Hovrätten för Västra Sverige</i>; <i>Målnummer: B2390-06</i></p>
Legal basis in national law of the rights under dispute	<p>Alien Act (<i>Utlänningslag [2005: 716]</i>), Chapter 8 (8).</p> <p>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 [rörlighetsdirektivet]</i>), Articles 27 and 28.</p>
Key facts of the case (max. 500 chars)	<p>O.K., a Slovenian citizen, has been sentenced for unlawful appropriation (<i>tillgreppsbrott</i>) two times. His crimes include theft of a vehicle, an attempt to such crime, two accounts of petty theft and one account of theft just over the limit of petty theft. His latest crime resulted in a three months prison sentence. Borås District Court (<i>Borås Tingsrätt</i>) also found that there was a significant risk that O.K. would commit further crimes since he had committed six different acts of unlawful appropriation during a one-year period. As a result, he was also sentenced to expulsion and a return ban of with a duration of three years. O.K. appealed the expulsion decision to the Court of Appeal for Western Sweden (<i>Hovrätten för Västra Sverige</i>)</p>
Main reasoning / argumentation (max. 500 chars)	<p>O.K. has the right to reside in Sweden as an EEA citizen. An EEA citizen can be expelled if he/she can be considered to be a serious threat to a fundamental interest of the host society in accordance with Directive 2004/38/EC. The Court of Appeal argued that even if there was a risk that O.K. would commit further crimes, his actions could not be seen as a representing a serious enough threat to the interests of society to justify expulsion.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue of the case is whether the crime in question is of a seriousness that could be considered a ground for expulsion of a EEA citizen.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court of Appeal for Western Sweden repealed the Borås District Court decision regarding the expulsion of O.K..</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"O.K. har gjort sig skyldig till fem tillgreppsbrott (ett tillgrepp av fortskaffningsmedel, ett försök till sådant brott, två snatterier och en stöld, strax ovanför snatterigränsen) under cirka ett års tid och därtill en olovlig körning. Därutöver har han inom samma tidsrymd erhållit en åtalsunderlåtelse för snatteri. Av hans uppgifter har framkommit att han har viss anknytning till Sverige genom sina släktingar. Även om det föreligger viss risk för fortsatt brottslighet kan hans beteende, enligt hovrättens bedömning, inte anses utgöra ett sådant verkligt och tillräckligt allvarligt hot mot samhället att utvisning bör ske. Åklagarens yrkande om utvisning skall därför ogillas."</i></p> <p>Translation:</p>

	<p>"O.K is guilty to five accounts of unlawful appropriation (theft of a vehicle, an attempt to such crime, two accounts of petty theft and one account of theft just over the limit of petty theft) in the course of just under a year, as well as driving without a license. During this period of time he has also been granted an abstention from prosecution for petty theft charges. His information during the case has shown that he has some connection to Sweden through his relatives. Even though there is a risk of continued crime, according to the Court of Appeal, his behaviour cannot be regarded as such a real and sufficiently serious threat to society that expulsion should take place. The prosecution's claim for expulsion will therefore be rejected."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

Case 11 relating to non-discrimination on the grounds of nationality (and freedom of residence)

Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 Articles not specified by the case (but the case is mainly linked to Article 17, Section 4 and Article 24) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	15 April 2014
Deciding body (in original language)	<i>Högsta Förvaltningsdomstolen</i>
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	2785-13
Parties	A.A. and B.B. v. Swedish Social Insurance Agency

Web link to the decision (if available)	<p>Web link to the decision is not available.</p> <p>Search in www.rattsinfosok.dom.se/lagrummet/index.jsp</p> <p>Choose: <i>Avancerad</i>; <i>Domstol</i>: <i>Högsta Förvaltningsdomstolen</i>; <i>Målnummer</i>: <i>2785-13</i></p>
Legal basis in national law of the rights under dispute	<p>Social Insurance Code (<i>Socialförsäkringsbalk [2010:110]</i>), Chapter 5, Sections 2, 3 and 9.</p>
Key facts of the case (max. 500 chars)	<p>B.B. and A.A., two British citizens living in Sweden since May/June 2009, applied for a housing allowance in December 2010. The Social Insurance Office (<i>Försäkringskassan</i>) rejected their application on the grounds that they were not considered eligible for such entitlements. The case was reviewed by the Social Insurance Office in June 2011, and the Social Insurance Office stood by its earlier decision and argued that a residence permit was required to consider a person to be a resident in Sweden and as such have the right to a housing allowance. B.B. and A.A. could not be considered to have the right to reside in Sweden, since they did not have employment or other means necessary to support themselves. B.B. and A.A. appealed to the Administrative Court (<i>Förvaltningsdomstolen</i>) and later to the Administrative Court of Appeal in Jönköping (<i>Kammarrätten i Jönköping</i>). Both courts agreed with the decision made by the Social Insurance Office. B.B. and A.A. appealed to the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) on the grounds that the two earlier court rulings had not taken into account that B.B. was later employed. The Supreme Administrative Court agreed with the arguments of the appeal and ruled that the rulings of both the Administrative Court and the Administrative Court of Appeal in Jönköping did not take into account the fact that B.B. was later employed. The Supreme Court further argued that the requirement that an EU citizen has to be employed in Sweden in order to be eligible for a housing allowance constitutes indirect discrimination as per Articles 2 and 3 of the Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Social Insurance Office (<i>Försäkringskassan</i>) argued that a residence permit was required to consider a person a resident in Sweden. The office considered B.B. and A.A. not to have the right to reside in Sweden, since they did not have an employment or enough means to be able to provide for themselves.</p> <p>The main reasoning by the Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>) is that there is no requirement of a right to residence in Sweden when it comes to persons who are already registered in the National Register (<i>folkbokföringen</i>) and have been living in Sweden for a considerable length of time (two years).</p> <p>B.B. and A.A. must be considered to have been settled (<i>bosatta</i>) in Sweden in accordance with the Social Insurance Code, as they were registered and had lived in Sweden for two years at the time of the decision made by the Social Insurance Office in June 2011. The Supreme Administrative Court argued that the Social Insurance Office had no grounds for rejecting their application for a housing allowance with reference to their lack of right to residence.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The question is whether an EU citizen without residence permit has the right to a housing allowance.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case</p>	<p>The Supreme Administrative Court returned the case to the Social Insurance Office for renewed processing.</p>

(max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Något krav på uppehållsrätt i Sverige uppställs varken i reglerna om bostadsbidrag eller i socialförsäkringsbalkens bestämmelser om bosättning. Bosättningsbegreppet inom socialförsäkringen har i princip samma innehåll som inom folkbokföringen (prop. 1998/99: 119 s. 86ff.). I folkbokföringslagen finns sedan den 1 januari 2014 ett krav på uppehållsrätt för folkbokföring."</i></p> <p><i>"BB och AA var redan vid tidpunkten för Försäkringskassans beslut den 16 juni 2011 folkbokförda i Sverige och hade bott här sedan två år tillbaka. De får därför anses vara bosatta här i socialförsäkringsbalkens mening. Försäkringskassan har därför inte haft fog för att avslå ansöningen om bostadsbidrag på grund av att uppehållsrätt saknats."</i></p> <p>Translation;</p> <p>"There is no requirement of a right to residence in Sweden, either in the regulations governing housing allowances or in the Social Insurance Code, when it comes to settlement. The concept of settlement within the social insurance legislation has essentially the same content as the national registration. A residence permit has only been required for a national registration in accordance with Population Registration Act since 1 January 2014."</p> <p>"B.B. and A.A. were already at the time of the Social Insurance Office's decision of 16 June 2011 registered in Sweden and had lived here for two years. They must therefore be considered as settled here in the meaning of the Social Insurance Code. Therefore, the Social Insurance Office has not had any ground for rejecting their application for housing allowance with reference to their lack of right to residence."</p>

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.
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Case 12 relating to non-discrimination on grounds of nationality

Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of 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	30 November 2016
Deciding body (in original language)	<i>Högsta Domstolen</i>

Deciding body (in English)	Supreme Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	Ö 5052-16
Parties	P.R v. Sweden
Web link to the decision (if available)	Web link to the decision is not available. Search in www.rattsinfosok.dom.se/lagrummet/index.jsp Choose: <i>Avancerad; Domstol: Högsta Förvaltningsdomstolen; Målnummer: Ö 5052-16</i>
Legal basis in national law of the rights under dispute	Code of Judicial Procedure (<i>Rättegångsbalk [1942: 740]</i>) Chapter 24, Section 1 and 21 Act on Penalties for Smuggling (<i>Lag [2000: 1225] om straff för smuggling</i>) Section 3 and Section 6 The Treaty on the functioning of the European Union Articles 18, 20 and 21
Key facts of the case (max. 500 chars)	18 October 2016, P.R a Lithuanian citizen, was found guilty for smuggling narcotics and convicted to three months in prison by Attunda District Court (<i>Attunda tingsrätt</i>) in accordance with Sections 3 and 6 of the Act on Penalties for Smuggling (<i>Lag [2000: 1225] om straff för smuggling</i>) P.R was assessed to be an escape risk in accordance with Chapter 24, Section 1, paragraph 1 of the Code of Judicial Procedure (<i>Rättegångsbalk [1942: 740]</i>). Consequently, Attunda District Court ordered that P.R. should remain in custody (<i>häktet</i>) until P.R.'s prison time would start.

	<p>P.R argued that he, by being kept in custody, was treated differently from a Swedish citizen that in the same case would not have been kept in custody but rather would have been released in the wait for the prison sentence to start. Consequently, P.R. appealed Attunda District Court's ruling to the Svea Court of Appeal (<i>Svea Hovrätt</i>) because it violated the European Union's principle of equal treatment (<i>Likabehandlingsprincipen</i>). Svea Court of Appeal rejected this appeal, which led P.R to appeal the ruling of the Court of Appeal to the Supreme Court of Appeal (<i>Högsta Domstolen</i>) on the same grounds.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Supreme Court of Appeal argued that the short period of prison time that P.R. was sentenced to in practice meant that if P.R did not voluntarily return to Sweden when the court's decision was to be enforced, Swedish authorities could not demand that Lithuania should surrender P.R. to Sweden in accordance with the European arrest warrant and the surrender procedures between Member States. Due to these circumstances, a citizen of another Member State cannot be considered to be in the same situation as a Swedish citizen. Consequently, P.R cannot be seen as being discriminated on the grounds of nationality, because his situation was different from a Swedish citizen's.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The key issue in the case is whether the court's decision to order an EU citizen to remain in custody impending the court's ruling to take legal effect (<i>vinna laga kraft</i>) since the person in question is assessed to be an escape risk (<i>flyktrisk</i>) can be interpreted to constitute an act of discrimination on the grounds of the nationality of the said person.</p>
<p>Results (e.g. sanctions) and key consequences or implications</p>	<p>The Supreme Court approved the decision made by the Attunda District Court (<i>Attunda Tingrätt</i>) and reinforced by the Svea Court of Appeal (<i>Svea Hovrätt</i>). The implication of the ruling is that a Member State citizen can be kept in custody impending the court's ruling to take legal effect if the sentence in question does not give the Swedish authorities the right to demand the person to be surrendered to Sweden with reference to the European arrest warrant and the surrender procedures between Member States. Since this is not the</p>

of the case (max. 500 chars)	case with Swedish citizens in the same situation, the situations of Member State citizens and Swedish citizens differ, which in turn must lead to different treatment in order to receive the same result, i.e. the serving of their sentences. Consequently, the differences in treatment of a Member State citizen and a Swedish citizen that are both considered to be escape risks cannot be interpreted as discrimination on the grounds of nationality.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"När den dömdes uppehållsort medför en sådan skillnad i möjligheterna till verkställighet kan den med hemvist i ett annat EU-land inte anses vara i samma situation som den med hemvist i Sverige vid fråga om häktning på grund av flyktfara.</i></p> <p><i>P.R. kan alltså inte anses befinna sig i samma situation som någon med hemvist i Sverige. Därmed föreligger ingen diskriminering eller sådan särbehandling som kan utgöra en begränsning av den fria rörligheten."</i></p> <p>Translation:</p> <p>"When the sentenced person's place of residence may result in this kind of difference in the possibilities to enforce the sentence, a person residing in another EU country cannot be considered to be in the same situation as a person residing in Sweden in relation to custody on the grounds of being an escape risk.</p> <p>P.R. can thus not be considered to be in the same situation as somebody residing in Sweden. Therefore, no discrimination or special treatment (of a negative nature) (<i>särbehandling</i>) exist, which may constitute a restriction on the free movement."</p>
Has the deciding body referred to the Charter of Fundamental	No.

Rights? If yes, to which specific article.	
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2. Table 2 – Overview

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)	2: 2: 4	10: 11: 26	0	0	0

