

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

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1. Table 1 – Case law

<p>1. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <p style="padding-left: 40px;">- linked to which article of Directive 2004/38 – Article 3(2)</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>15 March 2013</p>
<p>Deciding body (in original language)</p>	<p>Wojewódzki Sąd Administracyjny w Warszawie</p>
<p>Deciding body (in English)</p>	<p>Voivodeship Administrative Court in Warsaw</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>Judgment in Case No. IV SA 154/13</p>

Parties	<i>S.V. v. the Chief Commander of Border Guard (S.V. przeciwko Komendantowi Głównemu Straży Granicznej)</i>
Web link to the decision (if available)	http://orzeczenia.nsa.gov.pl/doc/6DB8ABC90E (all hyperlinks were accessed on the 3 May 2017)
Legal basis in national law of the rights under dispute	Article 21 (1) and Article 24a (1) of the Act of 13 June 2003 on foreigners – repealed (<i>Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach – akt utracił moc</i>).
Key facts of the case (max. 500 chars)	In 2012, S.V., a Dominican citizen, who was travelling with his partner, was denied entry into the territory of Poland by an officer of Border Guard, despite possessing a residence card of a family member of a Union citizen issued by Great Britain's authorities. This residence card was issued as a result of S.V.'s entering into a registered partnership (this was a same-sex relationship) with T.F., a Polish citizen, in the place called W., most probably on the territory of the United Kingdom of Great Britain and Ireland (due to anonymisation of the judgment, it's not possible to state with certainty). The local commander of Border Guard issued a decision on denial of entry in respect to S.V. on grounds of lack of valid documents or visa (Article 21 (1) and Article 24a (1) of the Act on foreigners). In addition to that, a decision forcing him to stay in dedicated premises was issued – it was a temporary room for persons who have been denied entry (<i>pomieszczenie dla osób niezaakceptowanych do czasu wyjazdu z terytorium RP</i>). Afterwards, the Chief Commander of Border Guard upheld the decision concerning denial of entry in force.
Main reasoning / argumentation (max. 500 chars)	The argumentation of the Voivodeship Court in Warsaw stated that in the lack of proper reference to Article 3(2) of Directive 2004/38/EC in the national transposition measure (i.e. the Act of 14 of July 2006 Act on entry, stay, and departure from the territory of the Republic of Poland of EU citizens' and their family members), the administrative body should, nevertheless, act according to the rule set in Article 3(2) of the said directive, by using the available instruments of national law.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The case provided useful guidance for the Polish administrative bodies – mostly the Border Guard - on how to proceed in cases where the need for facilitation of entry of members of “extended families” (as defined in the Article 3(2) of Directive 2004/38/EC) might occur. The court reiterated that Directive 2004/38/EC provides for a Member States’ special obligation of an in-depth analysis of personal situation of a person applying for entry and requires that every denial of entry or stay should be duly explained. The Polish administrative bodies should interpret the law (especially the provisions of the Code of administrative procedure – <i>Kodeks postępowania administracyjnego</i>), in a way that makes it easier for “extended family” members to enter the territory of Poland.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Voivodeship Administrative Court has repealed the decision of the Chief Commander of Border Guard and adjudicated to S.V. 557 PLN of proceedings costs.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„Dyrektywa jednak w art. 3 ust. 2 nakłada na organ obowiązek ułatwienia wjazdu określonej grupie osób, przy wykorzystaniu mechanizmów zawartych w ustawodawstwie krajowym. Wykonując ten obowiązek organ powinien przy zastosowaniu przepisów kodeksu postępowania administracyjnego wyjaśnić, czy istnieją okoliczności faktyczne, istotne w świetle art. 3 ust. 2b Dyrektywy, ocenić je i wziąć pod uwagę przy wydawaniu decyzji administracyjnej o udzieleniu lub odmowie prawa wjazdu na terytorium RP.”</i></p> <p>Translation:</p>

	<p>"The Directive provides in Article 3(2) for an obligation of administrative bodies to facilitate the entry of a certain group of people, whilst using the mechanisms available in domestic legislation. By fulfilling this obligation, the administrative body should, using the provisions of the Code of administrative procedure, clarify if there are any factual circumstances, relevant from the perspective of Article 3(2) b of the Directive, assess them and consider them in the process of issuing of an administrative decision on granting or denying entry into the territory of Poland."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>The Voivodeship Administrative Court briefly stated that there is no indication in the circumstances of the case that Article 7 of the Charter of Fundamental Rights should result in treating S.V. as a member of a family of the Union citizen.</p>

<p>2. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <p style="padding-left: 40px;">- linked to which article of Directive 2004/38 – the formal burdens here do not relate to any specific article of Directive 2004/38, but should be in author’s opinion considered as affecting the EU citizen’s potential to move and organise family life in Poland</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p>
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	<input type="checkbox"/> 5) the right to petition
Decision date	17 December 2014
Deciding body (in original language)	Naczelny Sąd Administracyjny
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. II OSK 1298/13
Parties	<i>A. D. and S. D. v. the Voivode of Łódź</i> (A.D. I S.D. przeciwko Wojewodzie Łódzkiemu)
Web link to the decision (if available)	http://orzeczenia.nsa.gov.pl/doc/ADA943DFA1
Legal basis in national law of the rights under dispute	Article 73 (1) and Article 7 (4) of the Act of 29 September 1986 – the Law on Civil Statuses Records – repealed (<i>Ustawa z dnia 29 września 1986 r. – Prawo o aktach stanu cywilnego; akt utracił moc</i>).

Key facts of the case (max. 500 chars)

On 7 August, A.D. and S.D., who were residing in the United Kingdom and creating a same-sex couple, brought to the Town Hall of Łódź a motion to create a record of birth (*akt urodzenia*) of L.D. L.D. was born in December 2011 in London (UK). To the mentioned motion to the Town Hall of Łódź, the claimants attached a British official document "Certified copy of Entry to Records. Pursuant to the Birth and Deaths Registration Act 1953" together with a sworn translation of this document into Polish language. This document stated that S.D. (most probably a citizen of country other than Poland, but due to anonymisation it is impossible to state for sure) was the mother of L.D. The woman A.D. (a Polish citizen) was referred to as the parent of L.D. in this document.

The head of the registry office of Łódź, in October 2012, issued a decision denying the entry of the certificate of birth of L.D. in the book of births (*księga urodzeń*), basing this decision on Article 73 (1) and Article 7 (4) of the Law on Civil Statuses Records (the first article stated that the certificate of birth created abroad can be added to Polish Civil Statuses Records on the motion of interested party, and the second provided that the denial of such addition must take form of administrative decision). This decision was later upheld by the Voivode of Łódź, who claimed that in this particular situation the registration of certificate of birth (the "transcription") would create a document that would be inconsistent with the basic rules of Polish legal system (*treść sprzeczna z podstawowymi zasadami porządku prawnego*). The Voivode argued too that the Polish Family and Guardianship Code from 25 February 1964 contains provisions that, no matter how interpreted, always refer to a man in matters regarding paternity.

The parties contested these decisions before the Voivodship Administrative Court in Łódź. This court however, in the judgment from 14 February 2013 (Case No. III SA/Łd 1100/12), has found that the A.D. and S.D. complaints are unfounded. The transcription of certificate of birth would, in the court's view, create a Polish official document contrary to the basic rules of Polish legal system. A.D. and S.D. brought a cassation complaint against this decision to the Supreme Administrative Court. The women claimed, among others, that the denial of transcription was contrary to the Article 7 and Article 21 (1) of the EU Charter of Fundamental Rights.

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Supreme Administrative Court dismissed the cassation complaint launched by the women. The Supreme Administrative Court noted that in the process of transcription of foreign certificate of birth, a Polish certificate of birth of the child is created. The court pointed out that the contents of such Polish certificates of birth are defined by law; they need to mention the surnames of both parents and their places of residence (according to Article 40 (2) of the Law on Civil Statuses Records). The Polish legal system – as the court continues – provides that one of the parents must be male. In the court's opinion, A.D. and S.D. wrongfully assumed that the Voivodship Administrative Court breached the standards found in the EU Charter of Fundamental Rights or invaded their right to respect for their private and family life. The Supreme Administrative Court claimed that there are no formal obstacles for the claimants to use the foreign certificate of birth in Polish courts and public administration bodies, as the certificate is a constitutes merely a proof of the events that are mentioned in it.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Polish administrative bodies can deny transcription of foreign certificates of births if these certificates contain two persons of the same sex listed as parents of the child.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The couple could not transpose the foreign certificate of birth of L.D. into a Polish certificate of birth. This might bear severe consequences for the child L.D. if she wanted to obtain a Polish citizenship. The Polish legal system provides, for example, for a need to transcribe a foreign certificate of birth if a Polish citizen, to whom the foreign certificate of birth relates, wants to obtain an identity card or wants to be granted the personal identification number <i>PESEL</i> (as defined in Article 104 (5) of the currently binding Act of 28 November 2014 - the Law on Civil Statuses Records (<i>ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego</i>; Official Journal from 2014, No. 1741 as amended). Such administrative formalities make it harder for the family of EU citizens to move and reside in the territory of Poland.</p>

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

„Błędym również, w ocenie Naczelnego Sądu Administracyjnego, i niemającym uzasadnienia w stanie faktycznym jest zarzut naruszenia art. 7 i 21 ust. 1 Karty praw podstawowych Unii Europejskiej [...] Oddalenie przez Wojewódzki Sąd Administracyjny skargi na decyzję Kierownika Urzędu Stanu Cywilnego o odmowie wpisania do księgi urodzeń aktu urodzenia L. D. nie narusza w żaden sposób prawa skarżących do poszanowania ich życia prywatnego i rodzinnego. Jest bowiem rzeczą poza sporem, że przedmiotem tegoż postępowania nie było ani życie rodzinne skarżących, ani ich życie prywatne, ale kwestie dotyczące warunków formalnych, wymaganych dla dokonania danego wpisu do księgi urodzin USC [...] Nie sposób natomiast ze stanu faktycznego sprawy wywieść, że odmowa wpisu do księgi urodzeń aktu urodzenia dziecka spowodowana była dyskryminacją; w szczególności ze względu na płeć lub przekonania, wszelkie inne poglądy lub orientację seksualną, ani ze względu na inne okoliczności wymienione w ust. 1 art. 21 Karty praw podstawowych Unii Europejskiej. Przyczyną wyłączną odmowy dokonania wpisu był fakt, że wpis zgodny z wnioskiem byłby sprzeczny z obowiązującym na obszarze Rzeczypospolitej Polskiej prawem, słusznie przytoczonym w uzasadnieniu wyroku Sądu I instancji.”

Translation:

“In the Supreme Administrative Court’s view, the allegation that Article 7 and Article 21 (1) of the EU Charter of Fundamental Rights was breached is also unfounded [...] By dismissing the complaint on the decision of the head of the registry office on the denial of transcription of L.D.’s birth certificate, the Voivodship Administrative Court did not in any way intrude on the claimants’ right to respect for private and family life. It is beyond argument that the substance of the proceedings did not relate to either family or private life, but to the question of formal requirements necessary to make a concrete entry into the Civil Status Records [...] From the factual circumstances of the case, it is impossible to state that the denial of transposition was caused by discrimination; neither based on sex nor belief, nor sexual orientation, nor any other circumstance listed in Article 21 (1) of the EU Charter of Fundamental Rights. The sole reason for denying the transposition was that the entry according to the motion would be contrary to the law of the Republic of Poland, as has been rightfully noted by the Court of first instance.”

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>Yes.</p> <p>Article 7 and article 21 (1) – the quotation above contains details.</p>
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3. Subject matter concerned	<input 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 - Article 8, Article 10 (1) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	1 July 2015
Deciding body (in original language)	Wojewódzki Sąd Administracyjny w Warszawie

Deciding body (in English)	Voivodeship Administrative Court in Warsaw
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. IV SA/Wa 1284/15
Parties	<i>T.M. v. the Head of the Office for Foreigners</i> (T.M. przeciwko Szefowi Urzędu do Spraw Cudzoziemców)
Web link to the decision (if available)	http://orzeczenia.nsa.gov.pl/doc/297E6A767B
Legal basis in national law of the rights under dispute	Article 64 (1), point 2 of the Act of 13 June 2003 on foreigners – repealed (<i>Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach – akt utracił moc</i>).
Key facts of the case (max. 500 chars)	The woman called T.M. married a man in April 2004; by then T.M. was not a citizen of Poland, but her husband (called D.M.) was a citizen of one of an EU Member State (due to anonymization of court case it is not possible to state which one). D.M. obtained Polish citizenship in July 2013 from the President of the Republic of Poland. In April 2014, T.M. brought a motion to one of the voivodes to be granted leave to settle in Poland. She had been previously staying in Poland based on a permanent residence card issued in another Member State in 2008. In 2010, one of the voivodes issued for her a residence card for a member of a family of an EU citizen. In April 2014, she was staying in Poland based on the residence card for a member of a family of an EU citizen, but she did not have a residence permit for a fixed period (<i>zezwoleńie na zamieszkanie na czas oznaczony</i>).

	<p>T.M. has been permanently residing in Poland since 2010. In October 2004, a decision denying her the right to settle in Poland has been issued by the Voivode. In February 2015, the decision was upheld by the Head of the Office for Foreigners.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>T.M. argued that the faulty interpretation of Article 64 (1), point 2 of the Act on foreigners (which enlists, among others, temporal conditions to obtain the leave to settle in the territory of the Republic of Poland) resulted in T.M. not being able to credit her stay in Poland as a member of a family of an EU citizen (prior to her husband's obtaining Polish citizenship) for the purposes of obtaining the leave to settle as defined under the Act on foreigners.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court held that the obligation to have a residence permit for a fixed period of time must not be considered the one and only way of obtaining the leave to settle in Poland under Article 64 (1), point 2 of the Act on foreigners. The court noted that this provision should be interpreted in the light of Article 3 (2) and Article 10 (1) of Directive 2004/38/EC, as well as in the light of the need to unify the families connected with Poland. The residence card for a member of a family of an EU citizen should not be treated as merely an administrative formality.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court repealed the decision of the Head of the Office for Foreigners from February 2015 and adjudicated to T.M. 540 PLN of proceedings costs.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„Dlatego zasadnym jest zastosowanie rozszerzającej wykładni celowościowej przepisu art. 64 ust. 1 pkt 2 ustawy o cudzoziemcach nakazującej uznanie karty pobytowej - pełniącej jednocześnie funkcję rejestracyjną, o której mowa w art. 8 Dyrektywy, a wbrew twierdzeniom organu odwoławczego funkcja rejestracyjna karty pobytowej nie jest wyłącznym elementem dystynktywnym tego dokumentu - o charakterze analogicznym, jak zezwolenie na zamieszkanie na czas oznaczony, od którego m.in. uzależnione jest udzielenie zezwolenia na osiedlenie się.”</i></p> <p>Translation:</p> <p>“It is therefore reasonable to apply extensive interpretation of Article 64 (2), point 2 of the Act on foreigners, which would stipulate the acceptance of the residence card (that fulfils also the registration purpose, as defined in Article 8 of the directive; and contrary to the arguments of the appellate body the registration function of the residence card is not the only distinctive element of that document) as analogical to the residence permit for a fixed period of time, on which the granting of leave to settle is dependent.”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

4.	<input type="checkbox"/> 1) non-discrimination on grounds of nationality
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Subject matter concerned	<input type="checkbox"/> 2) freedom of movement and residence - linked to which article of Directive 2004/38 – Article 28 (1) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	11 May 2010
Deciding body (in original language)	Wojewódzki Sąd Administracyjny w Warszawie
Deciding body (in English)	Voivodeship Administrative Court in Warsaw
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. V SA/Wa 1451/09
Parties	<i>H.G. v. the Head of the Office for Foreigners</i> (H.G. przeciwko Szefowi Urzędu do Spraw Cudzoziemców)

Web link to the decision (if available)	http://www.orzeczenia-nsa.pl/wyrok/v-sa-wa-1451-09/wizy_zezwozenie_na_zamieszkanie_czas_oznaczony_osiedlenie_sie_wydalenie_z_terytorium/248914f.html
Legal basis in national law of the rights under dispute	Article 66 and Article 68a (1) and (2) of the Act of 14 July 2006 on entry, stay, and departure from the territory of the Republic of Poland of EU citizens and their family members (<i>Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin</i>) (Official Journal from 2014, No. 1525 as amended).
Key facts of the case (max. 500 chars)	In February 2009, the Chief Commander of the Police has brought a motion to the Voivode to expel H.G. (an EU citizen) from the territory of Poland. This was due to the fact that in January 2007, H.G. was sentenced for three years of imprisonment, among other things, for sexually molesting his daughter. The Voivode issued a decision on expulsion of H.G. from the territory of Poland in February 2009. The reasoning provided by the administrative body states that after the analysis of criminological prognosis of H.G. behaviour, his expulsion should be considered a preventive measure. The decision was upheld by the Head of the Office for Foreigners.
Main reasoning / argumentation (max. 500 chars)	H.G. argued that the administrative bodies wrongfully assumed that his stay would constitute threat for the safety and public order in Poland, despite the fact that after serving his sentence, he did not commit any crimes or misdemeanours. He claimed that the threat defined in Article 66 (1) of the Act of 14 July 2006 should be specific instead of general and intangible.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court clarified that the administrative bodies should undertake genuine measures to determine whether the threat posed by the EU citizen (as provided for in Article 66 (1) of the Act of 14 July 2006) is real, specific and sufficiently serious – the administrative bodies cannot in the administrative court’s opinion automatically transfer to the administrative proceedings previous findings from criminal proceedings.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The decision of the Head of Office for Foreigners has been repealed; the case was to be re-assessed taking into account the court's guidelines.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"To, czy skarżący stanowi obecnie zagrożenie dla interesu społecznego i czy zagrożenie to jest dostatecznie poważne, by uzasadniać podjęcie decyzji o wydaleniu organ powinien ocenić np. na podstawie opinii biegłych. Podjęcia takich ustaleń organ jednak zaniechał wprost uznając, że decyzja o wydaleniu skarżącego z Polski ma charakter prewencyjny."</i></p> <p>Translation:</p> <p>"To determine whether the claimant currently poses threat to the public interest and whether this threat is sufficiently serious to issue a decision on expulsion, the administrative body should assess, e.g. the expert's opinions. The administrative body has explicitly refrained from such activities stating that the decision on claimant's expulsion from Poland was of preventive nature."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes,	No.

to which specific article.	
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5. Subject matter concerned	<input 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 - Article 28 (1) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	26 April 2010
Deciding body (in original language)	Wojewódzki Sąd Administracyjny w Warszawie
Deciding body (in English)	Voivodeship Administrative Court in Warsaw
Case number (also European Case Law Identifier)	Judgment in Case No. V SA/Wa 2047/09

(ECLI) where applicable)	
Parties	<i>Y.C. v. the Head of the Office for Foreigners</i> (Y.C. przeciwko Szefowi Urzędu do Spraw Cudzoziemców)
Web link to the decision (if available)	http://www.orzeczenia-nsa.pl/wyrok/v-sa-wa-2047-09,wizy_zezwolenie_na_zamieszkanie_czas_oznaczony_osiedlenie_sie_wydalenie_z_terytoryum,37fb0b2.html
Legal basis in national law of the rights under dispute	Article 66 (1) and Article 68a (1) of the Act of 14 July 2006 on entry, stay, and departure from the territory of Republic of Poland of EU citizens and their family members (<i>Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin</i>) (Official Journal from 2014, No. 1525 as amended).
Key facts of the case (max. 500 chars)	In January 2005, Y.C. (an EU citizen) was sentenced to five years of imprisonment for sex-related offences, where his daughter was the victim. The Voivode issued in March 2009 an expulsion decision in relation to Y.C. following a motion of the Chief Commander of the Police. This decision was upheld by the Head of the Office for Foreigners. Both instances were univocal that the stay of Y.C. in the territory of the Republic of Poland would constitute a threat defined in Article 66 (1) of the Polish Act on entry, stay and departure from the territory of Republic of Poland of EU citizens and their family members (the threats listed in this article regard the defensive structure (<i>obronność</i>) and security of the state, public safety and order and public health). The administrative bodies stated that the risk of recurrence of criminal activities of Y.C. after leaving the detention facility was high (he intended to maintain contact with his three granddaughters).
Main reasoning / argumentation (max. 500 chars)	Y.C. claimed that the administrative bodies failed to take into account the whole evidence relevant for assessing premises for expulsion defined in Article 68a (1) of the Act of 14 July 2006. He argued, e.g. that they did not seek to obtain up-to-date expert opinions of psychologists and psychiatrists. Article 68a (1), which was added to the mentioned Act in July 2007, stated that the decision on expulsion should take into account

	<p>the principle of proportionality and be based solely on the conduct of the person in question which constitutes a real, current and sufficiently serious threat to public interest.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>In this judgment, the administrative court also states that the administrative bodies should undertake genuine measures to determine whether the threat posed by the EU citizen is real, specific and sufficiently serious to justify the decision on expulsions. The court pointed out to the circumstances of the case and stated that it is a big overstatement to deduct from the claimant's willingness to maintain contacts with his granddaughters the threat to public interests in Poland, because these children lived in another country.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The decision of the Head of Office for Foreigners has been repealed; the case was to be re-assessed considering the court's guidelines.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Jest to zatem decyzja oparta o uznanie administracyjne a przy jej podejmowaniu organ, zobowiązany art. 68a ustawy z 14 lipca 2006 r., powinien uwzględnić zasadę proporcjonalności i opierać się wyłącznie na zachowaniu danej osoby, które stanowi rzeczywiste, aktualne i dostatecznie poważne zagrożenie dla interesu społecznego. Wcześniejsza karalność nie może stanowić samoistnej podstawy do podjęcia decyzji o wydaleniu."</i></p> <p>Translation:</p> <p>„It is therefore a decision based on administrative discretion, and by determining it, the administrative body pursuant to Article 68a of the Act of 14 July 2006 should take into account the principle of proportionality and</p>

	rely solely on the conduct of the said person, which might constitute real, immediate and sufficiently serious threat to social interest. Previous criminal record cannot on its own constitute a basis to issue a decision on expulsion."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

6. Subject matter concerned	<input 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 – Article 3 (2) <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	22 May 2013

Deciding body (in original language)	Wojewódzki Sąd Administracyjny w Warszawie
Deciding body (in English)	Voivodeship Administrative Court in Warsaw
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. IV SA/Wa 2093/12
Parties	<i>M.C. v. the Chief Commander of Border Guard</i> (M.C. przeciwko Komendantowi Głównemu Straży Granicznej)
Web link to the decision (if available)	http://orzeczenia.nsa.gov.pl/doc/3690C2A6BA
Legal basis in national law of the rights under dispute	Article 21 and Article 24a of the Act of 13 June 2003 on foreigners – repealed (<i>Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach – akt utracił moc</i>).
Key facts of the case (max. 500 chars)	M.C. is a Philippine citizen who, on the 14 November 2011, wanted to enter the territory of Poland. He did not possess any visa or transit documents specifically entitling him to cross the Polish border. He only had a residence card of a member of a family of an EU citizen, issued by the authorities of the United Kingdom (valid from October 2010 to October 2015). The residence card was issued as a result of M.C. partnership with a Polish citizen which was registered in the United Kingdom. M.C. was travelling together with his partner. The

	decision on denial of entry to the territory of the Republic of Poland was based on the fact that according to the administrative bodies arguments, M.C. did not possess a visa for crossing the Polish border.
Main reasoning / argumentation (max. 500 chars)	M.C. argued that the Chief Commander of Border Guard had failed to apply Article 3 (2) of Directive 2004/38/EC, whereas in the circumstances of the case, this article should have been applied directly. He also claimed that his right to protection of private and family life (as defined in Article 7 of the European Union Charter of Fundamental Rights and Article 8 ECHR) had been breached.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Similarly as in the judgment of the Voivodeship Administrative Court in Warsaw in Case No. IV SA 154/13, the court has provided guidelines how the administrative bodies should deal with the cases of entry of members of "extended families". The court stated that the host Member State should, based on national legislation (in this situation the Code of administrative procedure), analyse the situation of persons who are not caught under the definition of "member of family" according to the directive, taking into account their relationship with the citizen of the EU and all other factors, e.g. the financial or physical dependence on such citizen.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The decisions on denial of entry issued by both instances have been repealed and M.C. has been adjudicated 540 PLN of proceedings costs.
Key quotations in original	<i>"W żadnym razie przez ułatwienie wjazdu nie można rozumieć możliwości uzyskania wizy, jak to próbował wywieść organ w odpowiedzi na skargę. Zgodnie z pkt (6) dyrektywy przyjmujące Państwo Członkowskie</i>

<p>language and translated into English with reference details (max. 500 chars)</p>	<p><i>powinno zbadać w oparciu o własne ustawodawstwo sytuację osób, które nie są objęte definicją członka rodziny na mocy dyrektywy i nie korzystają z automatycznego prawa do wjazdu i pobytu w przyjmującym Państwie Członkowskim (...) Wykonując ten obowiązek organ powinien - przy zastosowaniu przepisów kodeksu postępowania administracyjnego - wyjaśnić czy istnieją okoliczności faktyczne, istotne w świetle art. 3 ust. 2b dyrektywy, ocenić je i wziąć pod uwagę przy wydawaniu decyzji administracyjnej o udzieleniu lub odmowie prawa wjazdu na terytorium Rzeczypospolitej Polskiej."</i></p> <p>Translation:</p> <p>"Under no circumstances under the concept of facilitation of entry can one understand the possibility to obtain a visa, as the administrative body tried to argue in response to the claim. According to point 6 of the Directive, the host Member State should, on the basis of its own national legislation, assess the situation of those persons who are not included in the definition of family members under this directive, and who, therefore, do not enjoy an automatic right of entry and residence in the host Member State [...] In executing this obligation the administrative body should, using the provisions of the Code of administrative procedure, clarify if there are any factual circumstances, relevant from the perspective of Article 3(2)b of the directive, assess them and consider them in the process of issuing of an administrative decision on granting or denying entry into the territory of the Republic of Poland."</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes,</p>	<p>The court found that nothing in Article 7 of the EU Charter of Fundamental Rights or in Article 8 ECHR indicates that M.C. should be treated as a member of a family of an EU citizen. These documents do not define the concept of "family".</p>

to which specific article.	
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7. 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	16 November 2010
Deciding body (in original language)	Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie
Deciding body (in English)	District Court for Warsaw-Śródmieście in Warsaw
Case number (also European Case Law Identifier)	Judgment in Case No. VIII P 511/10

(ECLI) where applicable)	
Parties	<i>XYZ (Italian citizen) v. the Minister of Culture and National Heritage</i> (XYZ przeciwko Ministerstwu Kultury i Dziedzictwa Narodowego)
Web link to the decision (if available)	n.a.
Legal basis in national law of the rights under dispute	Article 18 (3) § 1 of the Labour code (<i>Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy</i>) (Uniform text: Official Journal from 2016, No. 1666 as amended).
Key facts of the case (max. 500 chars)	An Italian citizen applied for a vacancy in the Polish Ministry of Culture and National Heritage, in a unit responsible for international cooperation. He fulfilled all requirements except for one – he was not a Polish citizen. As a result, he filed a suit against the minister regarding discrimination in employment. He claimed that the Polish regulation on foreigners' access to civil service is breaching Article 45 (4) of the TFEU.
Main reasoning / argumentation (max. 500 chars)	The applicant claimed that the minister should, in the process of hiring new employees, have applied the regulations on foreigners' access to civil service with a view of respecting the principle of equality enshrined in Article 32 of the Polish Constitution and Article 45 (4) of the TFEU, which prohibits a general discarding of foreign EU citizens from working in the public domain. In the applicant's view, the employment in public service can be limited only in respect to activities concerning the execution of public authority.
Key issues (concepts, interpretations) clarified by	In the district court's opinion, the access to employment in public service for non-Polish nationals should be relatively broad, and any exceptions should pertain to limited circumstances. Such exceptional circumstances, which would justify the lack of access of foreigners to employment in public service, should relate to executing public authority and should be interpreted narrowly. The execution of public authority in the court's view is

the case (max. 500 chars)	connected with the possibility of sovereignly (<i>władcze</i>) influencing the situation of an individual e.g. by the issuing of an administrative decision.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant received compensation of 3,951.00 PLN.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„A zatem normą, jaką należy skonstruować na bazie wskazanych przepisów jest powszechny dostęp do zatrudnienia w służbie cywilnej – o ile praca, która ma być wykonywana nie będzie polegała na bezpośrednim lub pośrednim udziale w wykonywaniu władzy publicznej i funkcji mających na celu ochronę generalnych interesów państwa”.</i></p> <p>Translation:</p> <p>“And so the general norm, as constructed on the previously mentioned legislation, must be that the access to civil service should be open to the general public, as long as the work to be carried out does not include direct</p>

	<input type="checkbox"/> 5) the right to petition
Decision date	4 November 2014
Deciding body (in original language)	Naczelny Sąd Administracyjny
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. II FSK 2500/12
Parties	<i>S.G. v. the Director of the Tax Chamber in Łódź</i> (S.G. przeciwko Dyrektorowi Izby Skarbowej w Łodzi)
Web link to the decision (if available)	http://www.orzeczenia-nsa.pl/wyrok/ii-fsk-2500-12/podatek_dochodowy_od_osob_fizycznych_w_tym_zryczaltowane_formy_opodatkowania/1fc1731.html?q=ulg+meldunkowa
Legal basis in national law of the rights under dispute	Article 21 (1) (126) of the Act of 26 July 1991 on personal income tax (<i>Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych</i>). (The provision in question is no longer in force.)

<p>Key facts of the case (max. 500 chars)</p>	<p>In 2011, the Head of the Tax Office (<i>naczelnik urzędu skarbowego</i>) has determined the amount of advance personal income tax S.G. had to pay after selling an apartment in 2010 in Poland. He unsuccessfully tried to claim residency relief (a relief from having to pay the personal income tax following the selling of an apartment or building due to the fact that the seller was residing there for a specific period of time). In response to his claim, the Director of the Tax Chamber in Łódź stated that in order to apply for residency relief, S.G., according to Article 21 (1) (126) of the Act on personal income tax, would have to document that he had been registered for permanent residence (<i>zameldowanie na pobyt stały</i>) in the sold apartment for the period of at least 12 months before the date of transaction. S.G., on the other hand, was registered for permanent residence in France and had different temporary addresses in Poland in the period from 2008 to 2013. At the required, in this case address in Poland, S.G. was only registered for a temporary stay (<i>zameldowanie na pobyt czasowy</i>) from February 2008 until March 2010.</p> <p>The case first reached the Voivodeship Administrative Court, which repealed the administrative decision of the Director of Tax Chamber in Łódź in a judgment from 23 May 2012 (Case No. I SA/Łd 468/12). The court of first instance found that the additional criterion for being registered for permanent residence, determined on the basis of the length of stay in the territory of Poland, was a disadvantage for the citizens of other states and was <i>de facto</i> directed mainly against the citizens of other Member States (they would be in most cases unable to make use of the residency relief). Concerning this judgment, the Director of the Tax Chamber in Łódź brought a cassation appeal to the Supreme Administrative Court.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Supreme Administrative Court wanted to determine whether the requirement to have one's residence permanently registered in an apartment or building for a period no shorter than 12 months prior to the selling of the said apartment or building for the purposes of obtaining a residency relief, did not constitute a form of hidden discrimination of EU citizens. The Supreme Administrative Court stated that Article 18 of the TFEU did not in itself suffice to grant such residency relief; the national legislator requires interested parties to prove the domicile in order to make use of the relief.</p>

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Supreme Administrative Court found that such requirement as the one present in years 2007-2008 in Article 21 (1) (126) of the Act on personal income tax (to have one's residence permanently registered in an apartment or building for a period no shorter than 12 months prior to the selling of the said premises), could potentially lead to a breach of Article 18 of the TFEU, but this would have to be assessed on a case-by-case basis and taking into account the activities of the tax payer (see "Key quotations" below). The court stated that in the factual circumstances of the analysed case, it was necessary to determine whether the taxpayer, who was a French citizen, had at all undertaken steps to obtain permanent residence in Poland, and whether he showed the intention to live in the bought apartment, or whether he still maintained residence in France. If the former was true, one would have to analyse whether it was only the lack of passing of time mentioned in Article 16 of Directive 2004/38/EC (five year as a basic scenario) and Article 42 and Article 46 of the Act on entry and stay of EU citizens that precluded him from making use of the residency relief. The Supreme Administrative Court also stated that it was necessary for the tax authorities to, for example, determine how long S.G. had been staying in Poland before February 2008 when he started his temporary residence in the apartment, which was later sold.</p> <p>It is impossible though, in the court's view, to grant the right to residency relief unconditionally and solely based on Article 18 TFEU. The national legislator may require an official proof of domicile in order to be able to make use of the relief. The resignation from the obligation to prove one's stay by registration of permanent residence, would be advantageous towards the EU citizens who, apart from staying and willing to stay in Poland, still have their permanent address (<i>miejsce stałego pobytu i zameldowania</i>) in the territory of another Member State and are not willing to give it up. In the court's view, this would be disadvantageous towards Polish citizens who did not obtain their right to residency relief due to lack of registration for permanent residence.</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>The Supreme Administrative Court has rejected the cassation appeal of the Director of the Tax Chamber in Łódź concerning the judgment of the Voivodship Administrative Court in Łódź from 23 May 2012 in Case No. I SA/Łd 468/12, which in turn has become legally binding. In the said judgment of the Voivodship Administrative Court in Łódź, the court of first instance reversed the decision of the Director of the Tax Chamber in Łódź</p>

or implications of the case (max. 500 chars)	concerning the advance personal income tax in relation to the sold apartment. Unfortunately, the information about the later fiscal “situation” of S.G. in relation to the said sold apartment falls outside the analysed judgment – the author could not determine if he had made use of residency relief.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„Ustalenie jednak tej okoliczności będzie świadczyło o tym, czy rzeczywiście podatnik miał miejsce stałego zamieszkania i zamiar stałego pobytu w zakupionym w L. lokalu mieszkalnym w okresie poprzedzającym datę jego zbycia i tylko brak upływu odpowiedniego okresu wymaganego przez art. 16 Dyrektywy 2004/38/WE i art. 42 i art. 46 ustawy o wjeździe i pobycie obywateli państw członkowskich Unii Europejskiej, uniemożliwił mu skorzystanie ze zwolnienia, czy też nadal zachował zameldowanie na pobyt stały we Francji.”</i></p> <p>Translation:</p> <p>„The determining of this circumstance will prove, whether the taxpayer indeed had a permanent residence and willingness to stay permanently in the apartment bought in L. prior to selling it, and if it was only the lack of passing of a required amount of time (as indicated in Article 16 of Directive 2004/38/EC and Article 42, and Article 46 of the Act on entry and stay of EU citizens) that precluded him from making use of residency relief, or was it so that he maintained his permanent residence in France.”</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

9. 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	16 June 2015
Deciding body (in original language)	Sąd Okręgowy w Bydgoszczy
Deciding body (in English)	Regional Court in Bydgoszcz
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. VI U 3004/14 (upheld later by the judgment of Appellate Court in Gdańsk [<i>Sąd Apelacyjny w Gdańsku</i>] from 22 January 2016 in Case No. III AUa 1385/15).

Parties	M.C. v. Social Security Institution, B. branch (M.C. przeciwko Zakładowi Ubezpieczeń Społecznych, Oddział w B.)
Web link to the decision (if available)	http://orzeczenia.bydgoszcz.so.gov.pl/details/\$N/151005000003021_VI_U_003004_2014_Uz_2015-06-16_001 (The judgment of court of higher instance is available at the following website: http://orzeczenia.gdansk.sa.gov.pl/details/\$N/151000000001521_III_AUa_001385_2015_Uz_2016-01-22_001)
Legal basis in national law of the rights under dispute	Article 2 (1), point 2 of the Act on pre-retirement benefits (<i>Ustawa z dnia 30 kwietnia 2004 r. o świadczeniach przedemerytalnych</i>) (Uniform text: Official Journal from 2013, No. 170 as amended).
Key facts of the case (max. 500 chars)	M.C., who is a Polish national, has been working in Poland for a total period of 34 years 4 months and 18 days. Her total paid contribution (<i>staż składkowy</i>) amounted to 41 years 6 months and 28 days, because M.C. worked in the United Kingdom from November 2007 to February 2014. The facts of the case were not contested by the Social Security Institution. She has lost her job in the UK due to a reduction of available work places by her employer. The Social Security Institution claimed that termination of employment abroad in another EU Member State by the employer should not be considered as a loss of job from reasons attributable to the employer (<i>z przyczyn leżących po stronie zakładu pracy</i>) within the meaning of the Polish Act of 20 April 2004 on the promotion of employment and labour market institutions, which was one of the legal requirement to obtain pre-retirement benefit under Article 2 (1), point 2 of the Act on pre-retirement benefits. The Social Security Institution, therefore, denied M.C. the pre-retirement benefit in October 2014 solely on that ground (she fulfilled all other requirements).

Main reasoning / argumentation (max. 500 chars)	The Court in Bydgoszcz held that since the entry into force of Regulation 883/04/EC, the Polish social security institutions should take into account, for the purposes of granting pre-retirement benefits to participants of the Polish social security scheme, the terminations of employment made abroad in other EU Member States.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Regional Court clarified that it would be incorrect to assume that in order to be granted the pre-retirement benefit under Polish law, the requirement to lose one's job from reasons attributable to the employer would only be fulfilled if the employer was located in Poland.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Regional Court has changed the Social Security Institution's decision that denied M.C. the pre-retirement benefit and granted her the pre-retirement benefit with the effect from 16 September 2014. This judgment was later upheld by the judgment of Appellate Court in Gdańsk from 22 January 2016 in Case No. III AUa 1385/15.
Key quotations in original language and translated into English with	<i>"Nieuznanie ziszczenia się takiej przyczyny rozwiązania stosunku pracy w postaci likwidacji stanowiska pracy tylko z tego względu, że pracodawca znajduje się w jednym z państw członkowskim, jako przesłanki do uzyskania świadczenia przedemerytalnego, byłoby sprzeczne zarówno z artykułem 5b Rozporządzenia numer 883/04, z dyrektywą 2004/38WE Parlamentu Europejskiego i Rady z 29 kwietnia 2004 r. w sprawie prawa</i>

<p>reference details (max. 500 chars)</p>	<p><i>obywateli Unii i członków ich rodzin do swobodnego przemieszczania się i pobytu na terytorium państw członkowskich oraz byłoby sprzeczne z artykułem 21 ustęp 1 Traktatu o funkcjonowaniu Unii Europejskiej.</i>"</p> <p>Translation:</p> <p>"The failure to accept, for the purposes of granting pre-retirement benefit, that the loss of job happened due to a closure of job position only because the employer is located in another Member State, would be contrary both to Article 5b of Regulation 883/04, 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, and would be contrary to Article 21 (1) of the Treaty on the functioning of European Union."</p> <p>As far as the quotations of the Appellate Court's judgment issued on the 22 January 2016 in Case No. III AUa 1385/15 are concerned, please find the sentence picturing the general assessment of Regional Court's referral to EU legislation:</p> <p><i>"W ocenie Sądu Apelacyjnego, Sąd I instancji trafnie uznał, iż w związku z członkostwem Polski w Unii Europejskiej, dokonywana przez sądy kontrola stosowania prawa obejmuje też kontrolę pod względem zgodności z prawem wspólnotowym, która od 1 maja 2004 r. stała się częścią obowiązującego w Polsce porządku prawnego."</i></p> <p>Translation:</p> <p>„In the Appellate Court's view the court of first instance rightfully noted that due to the membership of Poland in the European Union, the judicial control of execution of law includes also the control of compliance with Community's legislation, since from 1 May 2004 it has become an integral part of the Polish legal system."</p>
<p>Has the deciding body referred to the Charter of</p>	<p>No (neither in the Regional, nor in the Appellate Court's judgment).</p>

Fundamental Rights? If yes, to which specific article.	
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10. Subject matter concerned	<input 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 checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	19 January 2017
Deciding body (in original language)	Wojewódzki Sąd Administracyjny w Lublinie
Deciding body (in English)	Voievodeship Administrative Court in Lublin
Case number (also European)	II SA/Lu 254/16

Case Law Identifier (ECLI) where applicable)	
Parties	<i>S.S. v. the City Council</i> (skarga S.S. na uchwałę Rady Miasta ...) (anonymised)
Web link to the decision (if available)	http://www.orzeczenia-nsa.pl/wyrok/ii-sa-lu-254-16/radni-skargi-na-uchwaly-rady-gminy-w-przedmiocie-art-i-a-ustawy-o-samorzadzie-gminnym/2e501e8.html
Legal basis in national law of the rights under dispute	Article 5, point 9 of the Electoral code (<i>Ustawa z dnia 5 stycznia 2011 r. - Kodeks wyborczy</i>) (Uniform text: Official Journal from 2017, No. 15).
Key facts of the case (max. 500 chars)	<p>The facts of the case did not directly refer to EU citizens' voting rights, but the interpretation of the place of residence under the Electoral code might be crucial for EU citizens willing to execute their voting rights in the future.</p> <p>The case regarded S.S.'s claim against the decision of the City Council of town K. The members of the council passed a resolution to end the mandate of S.S. as a member of the City Council, on the ground that he did not have his place of residence in K.</p>
Main reasoning / argumentation (max. 500 chars)	S.S. claimed that the City Council had wrongfully assumed that he did not have the passive voting right to the City Council of K., after claiming that he did not have a place of residence there. S.S. argued, on the other hand, that his professional and social activities were correlated with constant presence in K. He had an enterprise there and was a member of local entrepreneur's associations. He also stated that from October 2014 to July 2015 he lived in K., where he spent most of his free time, where he slept and met with friends. To these statements the City Council of K. replied that what the claimant said was mostly polemical – he was

	<p>sleeping in K. on an incidental basis, in reality he lived in D., where also the members of his family (wife including) lived. Having taken all facts into account, the court ultimately assessed that D. considered in psychological aspect town D. and not K. to be his “home”.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarified that one should understand the concept of “permanent residence” under Article 5, point 9 of the Electoral code as two joint factors: the physical presence in an area under specific address and the intent to permanently reside there. As far as the second factor is concerned, the intent to permanently reside at a specific address cannot be limited to a psychological aspect, but must also be visible in the concrete behaviour of the said person. This is important for EU citizens, because Article 10 § 1, point 3 (a) stipulates that the active right to vote in elections to the municipal council rests with Polish citizens and EU citizens who are not Polish citizens, and who, at the latest, on the day of voting turn 18 years old and permanently reside in the municipality.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court rejected the complaint of S.S.</p>
<p>Key quotations in original language and translated into English with</p>	<p><i>“O miejscu zamieszkiwania dla określenia praw wyborczych decydują zatem dwie przesłanki faktyczne występujące łącznie: przebywanie w znaczeniu fizycznym w określonej miejscowości pod oznaczonym adresem oraz zamiar stałego pobytu w tym miejscu. Na stałość pobytu w danej miejscowości wskazuje skupienie w niej życiowej aktywności, związanej z pracą, czy rodziną.”</i></p>

reference details (max. 500 chars)	<p>Translation:</p> <p>“When determining the place of residence for voting purposes, two conditions are to be met cumulatively: the physical stay in a specific area under specific address and the intent to permanently reside there. The concentration of life activities, connected with work or family, suggests that a stay in a specific municipality is permanent.”</p>
Has the deciding body referred to the Charter of Fundamental Right? If yes, to which specific article.	<p>No.</p>

11. Subject matter concerned	<ul style="list-style-type: none"> <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <ul style="list-style-type: none"> - linked to which article of Directive 2004/38 <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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Decision date	11 May 2005
Deciding body (in original language)	Trybunał Konstytucyjny
Deciding body (in English)	Constitutional Tribunal
Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. K 18/04
Parties	Proceedings before the Constitutional Tribunal initiated by motions of groups of deputies to Sejm
Web link to the decision (if available)	http://isap.sejm.gov.pl/DetailsServlet?id=WDU20050860744
Legal basis in national law of the rights under dispute	Review of constitutionality conducted by the Polish Constitutional Tribunal based on the Act of 1 August 1997 on the Constitutional Tribunal (<i>ustawa z dnia 1 sierpnia 1997 r. o Trybunale Konstytucyjnym</i>). (This act is now repealed.)

Key facts of the case (max. 500 chars)	<p>The analysed judgment of the Constitutional Tribunal was a result of three motions brought to the Constitutional Tribunal by groups of deputies to Sejm (motions from 19 April 2004, 30 April 2004 and 2 September 2004). The scope of the motions was not limited to voting rights of EU citizens who are not Polish nationals, but was indeed much broader (the motions were designed to undermine, e.g. the constitutionality of e.g. the Polish Accession Treaty from 2003).</p>
Main reasoning / argumentation (max. 500 chars)	<p>When it comes to the voting rights to the European Parliament, the applicants argued that Article 22 of the TFEU was contrary to Article 101 (1) of the Polish Constitution (this article provides that the validity of elections to Sejm and Senate is being controlled by the Supreme Court). They considered that the Polish Constitution should provide for a measure of assessing the validity of the elections to the European Parliament. They also claimed that the leaving of review of the elections to the European Parliament outside the scope of constitutional regulation is contrary to the principle of rule of law enshrined in Article 2 of the Polish Constitution.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The matter of the elections to the European Parliament cannot be considered in any regards as contrary to the Polish constitution – the Polish constitution neither prohibits nor expressly refers to it. The Constitutional Tribunal considered that the creators of the Polish Constitution in 1997 represented formally a lack of interest towards the issues of elections to the European Parliament. Therefore Article 22 of the TFEU and the provisions of the Polish Constitution (especially Article 101 (1) related to the assessment of the validity of elections to the Polish Parliament) remain neutral towards each other. The Constitutional Tribunal even stated that in their reasoning the applicants, in relation to the part of the motion in which the constitutionality of the article has been contested, confused notions (<i>wada "pomieszania" płaszczyzn rozumowania</i>), the first one of which is connected with European integration and regulated at an international level, while the second is strictly national. The Constitutional Tribunal assumed that it is not the function of the Polish constitution to regulate the rules governing elections to European Union bodies. The Constitutional Tribunal noted nevertheless that it is possible to regulate (in the form of an ordinary legislative act) the conduct of elections to the European Parliament which take place in the territory of Poland.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Constitutional Tribunal found that Article 22 of the TFEU is not contrary to Article 2 and Article 101 (1) of the Polish Constitution. The scopes of application of Article 22 of the TFEU and 101 (1) of the Polish Constitution are independent from each other. The issue of control of validity of elections to the European Parliament simply did not get regulated in the Polish Constitution. In 1997, when the constitution emerged, such regulation would have been, for obvious reasons, premature (since Poland acceded to the EU in 2004).
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>„Nie stoi to na przeszkodzie stosownemu uregulowaniu w Rzeczypospolitej Polskiej - w drodze ustawy zwykłej - samego przebiegu wyborów do Parlamentu Europejskiego, odbywanych na terytorium Rzeczypospolitej. Unormowanie to musi więc uwzględnić zasadę traktatową (jako konsekwencję jednolitego obywatelstwa Unii Europejskiej), że czynne oraz bierne prawo wyborcze do tegoż Parlamentu na terytoriach wszystkich państw członkowskich służy wszystkim obywatelom europejskim (nie zaś tylko obywatelom <<krajowym>>). Nadto wskazana tu regulacja ustawowa winna "uwzględniać konstytucyjną zasadę przychylności procesowi integracji europejskiej i współpracy między państwami"</i></p> <p>Translation:</p> <p>"It does not preclude the proper regulation in the territory of the Republic of Poland – by the means of ordinary legal act – of the process of elections to the European Parliament held in the territory of the Republic. This regulation must take into account the treaty principle (as a result of uniform citizenship of European Union) that active and passive electoral law to the said Parliament in the territories of all Member States belongs to all European citizens (not only <<national>> citizens). Also, the aforementioned regulation should "take into account the constitutional principle of empathy towards European integration and cooperation between countries."</p>
Has the deciding body	No.

referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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12. Subject matter concerned	<input 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 checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	20 February 2006
Deciding body (in original language)	Trybunał Konstytucyjny
Deciding body (in English)	Constitutional Tribunal

Case number (also European Case Law Identifier (ECLI) where applicable)	Judgment in Case No. K 9/05
Parties	Proceedings before the Constitutional Tribunal initiated by a motion of the Polish Ombudsman
Web link to the decision (if available)	http://dziennikustaw.gov.pl/du/2006/s/34/242
Legal basis in national law of the rights under dispute	Review of constitutionality conducted by the Polish Constitutional Tribunal based on the Act of 1 August 1997 on the Constitutional Tribunal – repealed (<i>ustawa z dnia 1 sierpnia 1997 r. o Trybunale Konstytucyjnym – akt utracił moc</i>); Article 6 (1) in conjunction with Article 5 (1), Article 6a (1) and Article 7 (1) of the Electoral ordinance to the municipal councils, district councils and the Voivodeship assemblies (<i>Ustawa z dnia 16 lipca 1998 r. - Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw</i>). (The act is now repealed)
Key facts of the case (max. 500 chars)	The Polish Ombudsman questioned the constitutionality of the Electoral ordinance provisions stipulating that the right to vote or stand as candidates in local election was conditional on the fact that one was entered, no later than 12 months to the date of vote, to a permanent register of voters kept in municipalities.
Main reasoning / argumentation (max. 500 chars)	The Constitutional Tribunal found that the situation in which a Polish citizen who failed to obtain the registration by the 12 months deadline would be not permitted to vote, was contrary to e.g. the principle of proportionality enshrined in the constitution. The Constitutional Tribunal also found that such an analogical requirement towards EU citizens who are not Polish nationals would be contrary to Poland's obligations stemming, among others, from Article 22 (1) of the TFEU.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Constitutional Tribunal underlined the need to treat EU citizens in a "national" (meaning, equal in comparison to Polish citizens) manner, even if the Polish Constitution does not expressly provide them with political right.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Constitutional Tribunal found that Article 6a (1) in conjunction with Article 7 (1) of the Electoral ordinance, in extent in which it deprived EU citizens of the voting rights in elections to municipal councils if they have been included in the municipal voters register for less than 12 months, was contrary to Article 169 (2) and Article 16 (1) of the constitution.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Sytuacja normowana w art. 6a ust. 1 ordynacji wyborczej odpowiada treści art. 19 ust. 1 TWE (i art. 2 ust. 1 lit. b dyrektywy 94/80). W szczególności istotny jest tu wymóg równego (<<narodowego>>) traktowania obywateli Unii Europejskiej niebędących obywatelami polskimi w zestawieniu z obywatelami polskimi."</i></p> <p>Translation:</p> <p>"The situation defined in Article 6a (1) of the Electoral ordinance corresponds with Article 22 (1) TFEU (and Article 2 (1) (b) of Directive 94/80). Especially important is the requirement of equal [<<national>>] treatment of citizens of the European Union who are not Polish nationals in comparison to Polish citizens."</p>
Has the deciding body referred to the	<p>No.</p>

Charter of Fundamental 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	n.a. ²	n.a.	n.a.	n.a.	n.a.

² For this part of the research, the author has accessed annual and multiannual statistical reports available in the [Statistical Informator of the Judiciary](#) (*Informator Statystyczny Wymiaru Sprawiedliwości*), an online information platform operated by the Ministry of Justice. The author has also received information from the Ministry of Justice (on 11 May 2017), which gathers statistical information from common courts, that the data received from the courts is systematised according to editorial units of legal acts. The Ministry was thus unable to provide the author with general statistical information on the total number of national cases decided and relevant for the objective of the research, that is categorised based on the specific rights of EU citizens.

objective of the research if this data is available (covering the reference period)					
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