

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38: Article 27 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	26. 7. 2011
Deciding body (in original language)	Nejvyšší správní soud
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	3 As 4/2010 - 151
Parties	A. Ch., the applicant, v. the Police of the Czech Republic
Web link to the decision (if available)	http://nssoud.cz/files/SOUDNI_VYKON/2010/0004_3As_100_20110824101119_prevedeno.pdf
Legal basis in national law of the rights under dispute	§ 119, section 2, letter b) of the Law on the Residence of Foreigners
Key facts of the case (max. 500 chars)	The applicant, A.C., had administrative expulsion from the territory of the Czech Republic imposed on him owing to a serious violation of public order. The Police of the Czech Republic argued that the fact that the applicant had not respected previous expulsions from the territory of the Czech Republic and, despite the existence of expulsion orders, continued to reside in the Czech Republic, represents such a violation. The applicant was a family member of an EU citizen. § 119, section 2, of the Act on the Residence of Foreign Nationals makes it possible to impose the sanction of administrative expulsion on an EU citizen or his/her relatives in the case of violation of public order. The case was submitted to the extended senate of the Supreme Administrative Court as, up to the time of the present decision, there was no uniform interpretation of the term “serious violation of public order” in the case law of the Supreme Administrative Court.
Main reasoning / argumentation (max. 500 chars)	The extended senate of the Supreme Administrative Court explained that the fact of illegally entering or illegally staying on the territory of the Czech Republic could not be considered a real, current and serious violation of some of the basic interests of society. Moreover, such conduct on its own cannot serve as the basis for such a serious intrusion into the rights of an individual as expulsion from the territory when the person at stake is a family member of an EU citizen or a family member of a citizen of the Czech Republic.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Furthermore, the extended senate of the Supreme Administrative Court is of the opinion that the sole fact of concluding a fake marriage cannot be understood as a violation of public order as, in most of the cases, it does not represent a real, current and sufficiently serious endangering of some of the basic interests of the society that would on its own serve as grounds for such a serious intrusion into the rights of a foreign national, as expulsion from the territory of the Czech Republic. Moreover, a fake marriage cannot provide a basis for a “serious” violation of the public order in the sense of § 119, section 2, letter b) of the Foreign Nationals Act.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The extended senate returned the case to the third senate of the Supreme Administrative Court to decide the case in line with the legal opinion provided by the extended senate.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Při výkladu pojmů "veřejný pořádek", resp. "závažné narušení veřejného pořádku", používaných v různých kontextech zákona č. 326/1999 Sb., o pobytu cizinců na území České republiky, je třeba brát v úvahu nejen celkový smysl dané právní úpravy, ale přihlížet i k rozdílným okolnostech vzniku, původu a účelu jednotlivých ustanovení, v nichž jsou tyto pojmy užity.</p> <p>Narušením veřejného pořádku podle § 119 odst. 2 písm. b) zákona č. 326/1999 Sb., o pobytu cizinců na území České republiky, může být jen takové jednání, které bude představovat skutečné, aktuální a dostatečně závažné ohrožení některého ze základních zájmů společnosti (viz čl. 27 odst. 2 směrnice Evropského parlamentu a Rady 2004/38/ES). I v takovém případě je však nutno zohlednit individuální okolnosti života cizince a přihlídnout k jeho celkové životní situaci.</p> <p><i>When interpreting the terms “public order” and “serious violation of public order” that are used in various contexts of the Act 326/1999, on the Residence of Foreign Nationals on the Territory of the Czech Republic, it is necessary to take into account not only the overall meaning of the legal regulation as a whole, but also the varying circumstances of the particular provisions that are using these terms, their origin and purpose.</i></p> <p><i>A violation of public order according to § 119, section 2, letter b) of the Act 326/1999, on the Residence of Foreign Nationals, can only be considered such conduct that represents a real, current and sufficiently serious threat to some of the fundamental interests of society (see Article 27, section 2 of the EU Directive 2004/38/EC). Even in such a case, it is necessary to take into account individual circumstances in the life of a specific foreigner and to consider his/her overall life situation.</i></p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.