

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 the 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	15 March 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 154/13
Parties	S.V. against the Chief Commander of Border Guard (<i>S.V. przeciwko Komendantowi Głównemu Straży Granicznej</i>)
Web link to the decision (if available)	http://orzeczenia.nsa.gov.pl/doc/6DB8ABC90E (all hyperlinks 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national law of the rights under dispute	Article 21 (1) and Article 24a (1) of the Act of 13 June 2003 on foreigners – repealed (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 entering by S.V. into a registered partnership with T.F. (a Polish citizen – this was a same-sex relationship), in the place called W. (most probably on the territory of the United Kingdom of Great Britain and Ireland – due to anonymization of the

	<p>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 (art. 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>). The Chief Commander of Border Guard has afterwards upheld the decision concerning denial of entry in force.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The argumentation of the Voivodeship Court in Warsaw stated that in the lack of proper reference to art. 3(2) of the Directive 2004/38/EC in the national transposition measure (i.e. the Act of 14th of July 2006 Act on entry, stay, and departure from the territory of Republic of Poland of EU citizens' and their family members), the administrative body should nevertheless act according to the rule set in art. 3(2) of the said Directive, by using the available instruments of national law.</p>
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 art. 3[2] of the Directive 2004/38/EC) might occur. The court reiterated that the 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 members of “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>„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.”</p> <p>„The Directive provides in art. 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 art. 3(2) b of the</p>

	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.”
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	The Voivodeship Administrative Court briefly stated that there is no indication in the circumstances of the case that art. 7 of the Charter of Fundamental Rights should result in treating S.V. as a member of a family of the Union citizen.