

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 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 (ECLI) where applicable)	Judgment in case no. V SA/Wa 2047/09
Parties	Y.C. against the Head of the Office for Foreigners (<i>Y.C. przeciwko Szefowi Urzędu do Spraw Cudzoziemców</i>)
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 pos. 1525 as amended)
Key facts of the case	Y.C. (an EU citizen) has been sentenced in January 2005 for 5 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

(max. 500 chars)	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. was high after he would leave the detention facility – he intended to maintain contact with his three grand-daughters.
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 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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 grand-daughters the threat to public interests in Poland, because these children lived in another country.
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 considering the court's guidelines.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<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 samostnej podstawy do podjęcia decyzji o wydaleniu.”</i></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 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</p>

	issue a decision on expulsion.”
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No