

<b>Subject-matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality x <input type="checkbox"/> 2) freedom of movement and residence Article 27 of the Directive 2004/38/EC. - to which article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	1 February 2016
<b>Deciding body (in original language)</b>	Rechtbank Den Haag
<b>Deciding body (in English)</b>	District Court The Hague
<b>Case number (also European Case Law Identifier (<a href="#">ECLI</a>) where applicable)</b>	ECLI:NL:RBDHA:2016:838
<b>Parties</b>	Public Prosecutor v accused ( <i>officier van justitie tegen verdachte</i> )
<b>Web link to the decision (if available)</b>	<a href="https://uitspraken.rechtspraak.nl/#zoekverfijn/zt[0][zt]=ECLI%3ANL%3ARBDHA%3A2016%3A838&amp;zt[0][fi]=AlleVelden&amp;zt[0][ft]=Alle+velden&amp;so=Relevance&amp;ps]=ps1">https://uitspraken.rechtspraak.nl/#zoekverfijn/zt[0][zt]=ECLI%3ANL%3ARBDHA%3A2016%3A838&amp;zt[0][fi]=AlleVelden&amp;zt[0][ft]=Alle+velden&amp;so=Relevance&amp;ps]=ps1</a>
<b>Legal basis in national law of the rights under dispute</b>	Article 197 Penal Code (Wetboek van Strafrecht 1881), Article 52 and 27 of the Code on Criminal Procedure (Wetboek van Strafvordering 1921)in , Article 67, first paragraph, beginning and under b, of the Aliens Act 2000 (Vreemdelingenwet 2000)  The Netherlands, Penal Code ( <i>Wetboek van Strafrecht</i> ) , Article 4a , as changed by the following act: The Netherlands, Act implementing Directive 2008/115/EU ( <i>Wet ter implementatie van de richtlijn nr. 2008/115/EG</i> ), 15 December 2011

	<p>The Netherlands, Code of Criminal Procedure (<i>Wetboek van strafvordering</i>) , Article 27, as amended by the following act: The Netherlands, Act implementing Directive 2010/64/EU (<i>Wet tot implementatie van richtlijn nr. 2010/64/EU</i>), 28 February 2013</p> <p>The Netherlands, Code of Criminal Procedure (<i>Wetboek van strafvordering</i>), Article 52 as amended by: The Netherlands, Act on determining identity of suspects, convicts and witnesses (<i>Wet identiteitsvaststelling verdachten, veroordeelden en getuigen</i>), 18 July 2009</p> <p>The Netherlands, Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>), 23 November 2000</p>
<b>Key facts of the case</b> (max. 500 chars)	<p>The police stopped the accused, a person with the Polish nationality, when he was walking in a street in The Hague, a drugs scene, at 5.40 in the morning, on 4 October 2015 with a drugs user. The question is whether the police was allowed to stop him because there has to be a reasonable suspicion in the context of an offence or a crime if someone is stopped. In this case, the Polish national is accused of being in the Netherlands, knowing that he had been extradited. The District Court holds that it is sufficient that the accused had been accompanied by the drugs user, in the circumstances mentioned. It could be assumed that he did something illegal (drugs) even though this has nothing to do with the fact that he had entered the Netherlands after having been extradited. On 28 August 2013, so two years earlier, the accused had been told that he would be removed from the Netherlands and he was issued an entry ban (his freedom of movement was restricted) in the Netherlands. The District Court holds that the entry ban is allowed under Article 27 of Directive 2004/38/EC for reasons of public order or public security. This only has effect, however, if the behaviour of the accused represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, The District Court considers that the accused was sentenced to prison for four years on 7 December 2012 on the basis of a very serious crime, in which the victim died. On 17 December 2014, he was actively removed from the Netherlands. The District Court holds that the circumstances of the case do not show that the accused has improved his life, and the requirements laid down by Article 27 of Directive 2004/38/EC are met. The accused knew that he breached Article 197 of the Penal Code (not allowing a persona non grata to enter the Netherlands) and is sentenced to two months of imprisonment.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The District Court holds that the accused is still a threat to a fundamental interest in society, and that he, already being a persona non grata, breached Article 197 of the Penal Code (not allowing a persona non grata to enter the Netherlands).</p>

<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>This case makes clear that Article 27 of Directive 2004/38/EC, laying down the requirements for being issued an entry ban (the behaviour of the accused represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society) still apply in a case where a Polish national is accompanied by a drugs dealer in a drugs scene in the Netherlands, having come back after he has been removed from the country. It is not clear whether he was a drugs user or dealer himself.</p> <p>The issue in this case seems to be the interpretation given to the notion of public policy/public order and in particular what elements are relevant in reaching the conclusion that the person's behaviour still represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society so that his exclusion from the Netherlands should not be lifted. There is a link between Art 32 of directive 2004/38 and Art 27 in the sense that an exclusion order can be issued only on grounds of public policy or public security and can be lifted only when the circumstances that gave rise to it have changed.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The Polish national is sentenced to two months' imprisonment because he knew that he was extradited from the Netherlands and still came back. So his entry was illegal. The order to exclude him from the Netherlands is not lifted because he still constitutes a threat to public policy.</p>
<b>Key quotations in original language and translated into English with reference details</b> (max. 500 chars)	<p>3.4. . . . De rechtbank constateert dat verdachte op 7 december 2012 wegens een zeer ernstig delict, waarbij het slachtoffer is overleden, is veroordeeld tot een gevangenisstraf voor de duur van vier jaren. Gelet op de ernst en de aard van deze veroordeling en op het feit dat verdachte niet lang vóór 4 oktober 2015, te weten op 17 december 2014, actief uit Nederland is verwijderd, is de rechtbank van oordeel dat de bedreiging voor een fundamenteel belang van de samenleving nog steeds actueel, werkelijk en voldoende ernstig is. Voorts heeft de rechtbank daarbij de omstandigheid in aanmerking genomen dat verdachte op 4 oktober 2015 diep in de nacht in het bijzijn van een drugsgebruiker, in een omgeving waar regelmatig overlast is van drugsgebruikers en drugshandelaren, werd aangehouden. Daaruit blijkt in ieder geval niet dat verdachte zijn leven heeft verbeterd.</p> <p>De rechtbank ziet derhalve geen aanknopingspunten om te veronderstellen dat de ongewenstverklaring zijn rechtskracht heeft verloren.</p> <p>3.4. . . . The District Court notes that the accused was sentenced to four years of imprisonment on 7 December 2012, on the basis of a very serious crime, resulting in the death of the victim. In view of the seriousness and the nature of this sentence and the fact that the accused not long before 4 October 2015, i.e. on 17 December 2014, was actively removed from the Netherlands, the District Court holds that the threat affecting one of the fundamental interests of society is still genuine, present and sufficiently serious. Moreover, the District Court has taken into account that the accused was stopped by the police late in the night of 4 October 2015 accompanied by a drugs user, in an environment where drugs users and drugs dealers regularly act in conflict with public order. This shows in any case that the accused</p>

	has not improved his life. The District Court therefore does not see any reasons to assume that the effect of declaring the Polish national a persona non grata no longer exists.
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	No.