

4.3.2. Ongoing criminal proceedings

The existence of ongoing criminal proceedings is similarly insufficient on its own to establish that an applicant constitutes a danger to the community or the security of a Member State. The Polish SAC adopted this reasoning in *D.K. v Head of the Office for Foreigners* (5 February 2025) leading to an annulment of an exclusion decision against an applicant who had a criminal investigation ongoing, but which had been temporarily suspended for procedural reasons and no final conclusions had been reached on the guilt of the applicant. SAC found that the lower authorities and the Regional Administrative Court in Warsaw erroneously assumed that the facts of the case had been properly explained, resulting in an inadequate determination of the facts. SAC also held that the evidence was incorrectly assessed and it was wrongly concluded that the applicant had left Poland with his whereabouts unknown. It held that the existence of an investigation alone does not constitute a sufficient basis to conclude that the applicant poses a real and ongoing threat to state or societal security, underlining the need for a present and future-oriented assessment of danger.

In relation to past misconduct by an applicant, SAC held that the decisive factor is not what the applicant has done in the past and what acts he has committed, but how they translate into the current assessment of the threat to the security of the state or society in connection with his stay in Poland. This approach aligns with the broader preventive rationale of Article 17(1)(d), as the focus is not retrospective punishment but a threat assessment that considers how past behaviour may manifest as a present danger.

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