

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 articles 27-29 and 33 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
Decision date	10 May 2012
Deciding body (in original language)	Ustavno sodišče Republike Slovenije
Deciding body (in English)	Constitutional Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	Up-690/10 ECLI:ECLI:SI:USRS:2012:Up.690.10
Parties	Claimant: Danas Vizgird
Web link to the decision (if available)	http://odlocitve.us-rs.si/sl/odlocitev/US29756
Legal basis in national law of the rights under dispute	Art. 417 of the Criminal Procedure Act (<i>Zakon o kazenskem postopku</i> ¹)
Key facts of the case (max. 500 chars)	The claimant filed a request for extraordinary mitigation of sentence with the Supreme Court of the Republic of Slovenia, available under Criminal Procedure Act as in force at the time; the remedy allowed convicted offenders to seek a reconsideration of a sentence due to circumstances arising after the judgement became final. The claimant was issued with a sentence of expulsion from the territory of the Republic of Slovenia and was a national of Lithuania, an EU Member State. He relied on new circumstances regarding his family life, i.e. birth of a second child, living in Slovenia, having Slovenian citizenship. The Supreme court rejected his request, arguing that his family status (a child living in Lithuania) has already been considered upon issuing of the sentence.

1 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku*), 13 October 1994, with subsequent amendments, , available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362.

Main reasoning / argumentation (max. 500 chars)	The court relied on Arts. 53-56 of the Constitution, ² Art. 8 of the ECHR and Art. 28-29 and 33 of the Directive, along with Recital 23 of the Directive, stressing the need to respect the right to family life, applying the proportionality principle to the sentence of expulsion. The court found that the position of the Supreme Court runs contrary to the right for the respect of family life of the claimant, as well as contrary to the best interests of the child, living in Slovenia.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court stressed the need to apply the proportionality principle when (re)considering the sentence of expulsion of Member States' citizen due to circumstances regarding their family life.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The decision of the Supreme Court was annulled and a fresh examination was ordered.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Stališče Vrhovnega sodišča, po katerem očetovstvo pritožnika v Republiki Sloveniji ni nova okoliščina osebne narave, ki bi jo sodišče moralo upoštevati pri odločanju o izredni omilitvi stranske kazni izгона iz države, saj je že pri odmeri kazni upoštevalo, da je pritožnik oče triletnega otroka, ki biva z materjo v Litvi, krši pravico pritožnika do družinskega življenja (53., 54. in 56. člen Ustave). To stališče hkrati pomeni tudi kršitev pravice do družinskega življenja, ki jo uživa njegova hči, ki biva v Republiki Sloveniji.</p> <p>The position of the Supreme Court, according to which paternity of the complainant in the Republic of Slovenia is not a new fact of a personal nature that the court should take into account when deciding on the extraordinary mitigation of expulsion from the country, because it already took into account that the applicant was the father of a (previous) child three years old, violates the applicant's right to family life (53, 54 and 56 of the Constitution³). This position also implies the violation of the right to family life enjoyed by his daughter, who lives in the Republic of Slovenia.</p> <p>Reference: see the URL above.</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	Yes. Art. 7, 52.

² Slovenia, Constitution of the Republic of Slovenia (Ustava Republike Slovenije), 28 December 1991, with subsequent amendments, available at www.pisrs.si/Pis.web/pregledPredpisa?id=USTAI1.

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