

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - Articles 16, 27-33, 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	12/10/2014
Deciding body (in original language)	The High Court
Deciding body (in English)	The High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	[2014] IEHC 624
Parties	Kovalenko and others v Minister for Justice and Equality and others
Web link to the decision (if available)	http://www.courts.ie/Judgments.nsf/0/6FA41D0982A0011C80257DDC004D8099
Legal basis in national law of the rights under dispute	Regulation 20(1)(a)(iv) European Communities (Free Movement of Persons) Regulations 2006 and 2008
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the “real life story”)

	<p>The second named applicant was convicted of rape in Ireland in 2006 and sentenced to 7 years in prison. He had lived in Ireland since 2003 and married the first named applicant, also originally from Latvia, in August 2005 in Ireland, and they had had a child together, born in Ireland on 19 February 2006, the third named applicant. The first named applicant was released from prison in 2011 and lived with his family in Ireland until his removal from the state on 13 June 2013.</p> <p>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>Following his release from prison, the second named applicant was informed about a proposal to issue a removal order against him alone, in line with powers vested in the Minister on the basis that it would be contrary to public policy for him to remain in the state and the Minister proposed to exclude him for a ten year period.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The applicants requested “[l]eave to apply for judicial review of the review of removal and exclusion orders was granted [...] to seek an order of <i>certiorari</i> quashing the Minister's decision,” on the grounds of violating the applicant’s rights under the Directive 2004/38 EC, provisions of the European Communities (Free Movement of Persons) (No 2) Regulations 2006, and certain Charter rights [para. 40].</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The Court considered various aspects of the European Communities (Free Movement of Persons) Regulations 2006 and 2008, and the Directive 2004/38 EC in Ireland, the grounds under both which could lead to removal and exclusion. Whilst the Court found that the Minister had considered the relevant factors in determining that there was a serious risk to public policy, such as the proportionality of the exclusion against other factors, such as family relationships, the Court was of the opinion that the procedures were lacking in two significant ways.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>Materials were relied upon from the prison service, which the second named applicant had no opportunity to contest, contrary to the spirit of the Directive 2004/38 EC and regulatory framework transposing the directive in Irish law. Furthermore, during the review process, an executive officer’s involvement at two levels of the process lacked independence, which was required by the European Communities (Free Movement of Persons) Regulations 2006. In these circumstances, the Court quashed the removal and exclusion order issued by the Minister, and approved a full judicial review.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“A challenge made to findings in respect of whether the Applicant would represent a serious risk to public policy concerning his social and cultural bonds or the weight given to his claim of good behaviour since release and his family relationships, are matters to be considered and were considered by the Minister on the review. All these factors were balanced in the additional consideration carried out and ultimately considered by the decision maker. The proportionality of the expulsion was also considered and apart from two matters to which I will return, the court is satisfied that the correct legal principles were applied in the review process.” [para. 58]</p>

Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	Yes, Articles 7, 47