

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Slovenia 2017

Contractor: Institute of Criminology at Ljubljana

Faculty of Law

Author: Primož Gorkič

Reviewed by: Matjaž Jager

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1. Table 1 – Case law

Some cases refer to residence permits of family members, non-EU nationals, and in none of the cases the beneficiary is a national of another EU Member State residing in Slovenia. However, the definition of "family member" is identical for both Slovenian nationals and nationals of other EU Member States ([Articles 93k and 93l of the Aliens Act](#)) (*Zakon o tujcih*), 30 July 1999; [Articles 127 and 128 of the Aliens Act](#) (*Zakon o tujcih*), 27 June 2011. Also, the conditions for a residence permit are identical for family members regardless of the nationality of the beneficiary. The rules applicable to these cases are identical to rules applicable if the beneficiary were a national of an EU Member State other than Slovenia.

<p>1. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence - linked to Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>12 April 2006</p>
<p>Deciding body (in original language)</p>	<p>Višje sodišče v Ljubljani</p>
<p>Deciding body (in English)</p>	<p>Ljubljana Higher Court</p>
<p>Case number (also European Case Law Identifier)</p>	<p>II Cp 5686/2005 ECLI: SI: VSLJ: 2006: II.CP.5686.2005</p>

(ECLI) where applicable)	
Parties	Anonymous
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:38601&database[SOVS]=SOVS&database[IESP]=IESP&database[VDS S]=VDSS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=38601
Legal basis in national law of the rights under dispute	Arts. 90, 91 of the Private International Law and Procedure Act (<i>Zakon o mednarodnem zasebnem pravu in postopku</i> ¹).
Key facts of the case (max. 500 chars)	<p>The case involves a dispute between claimants, a citizen of Austria, and several defendants, Slovenian citizens. The nature of the dispute is not clear. However, the facts of the case show, that the defendants required the claimant to provide a security deposit for their (future) litigation costs. They relied on Article 90 and 91 of the Private International Law and Procedure Act (cited above). Article 90 of the Act requires that foreign citizens with no permanent residence in the Republic of Slovenia, pay the abovementioned security deposit.</p> <p>The court of first instance rejected the request of the defendants, relying on Article 17 of the Hague Convention of 1 March 1954 on civil procedure. The convention states no "security, bond or deposit of any kind, may be imposed by reason of their foreign nationality, or of lack of domicile or residence in the country, upon nationals of one of the Contracting States, having their domicile in one of these States, who are plaintiffs or parties intervening before the courts of another of those States". Two of the defendants appealed, claiming the conditions for the security deposit were met.</p>

¹ Slovenia, Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*), 13 July 1999, available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258.

Main reasoning / argumentation (max. 500 chars)	<p>On appeal, the court agreed with the decision, but not with the reasoning of the court of first instance. The appellate court held that the national legal rules (including ratified international treaties) need to be put aside due to the primacy of EU law. It applied Article 12 of the TEC, finding that the application of Articles 90-91 of the Act as well as the application of the Hague Convention would violate the prohibition of discrimination on the grounds of nationality. The application of Article 12 of the TEC leads to the same result, i.e. no security deposit may be required from the claimants, citizens of another Member State.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Prohibition of discrimination on the grounds of nationality applies to the right to access to court in civil matters, where citizens of other Member States file suit against Slovenian citizens with the Slovenian courts.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The challenged decision was affirmed, but on different legal grounds.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Upoštevajoč 12. člen Pogodbe, slovenska sodišča za državljane držav članic EU oziroma pravne osebe s sedežem v državi članice EU ne smejo več zahtevati plačila tožniške varščine, kadar ti tožijo državljane Slovenije oziroma državljane drugih držav članic EU oziroma pravne osebe s sedežem v Sloveniji ali v drugi državi članici EU.</i></p> <p>Translation:</p>

	<p>Considering Article 12 of the Treaty, the Slovenian courts for citizens of EU Member States or legal entities established in the Member States of the EU should no longer be required to pay cost security deposit for defendant's costs when they sue Slovenian citizens or citizens of other EU Member States or legal entities established in Slovenia or another EU Member State.</p> <p>Reference: see URL above.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

2. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to 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	3 June 2008
Deciding body (in original language)	Upravno sodišče Republike Slovenije
Deciding body (in English)	Administrative Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	U 3009/2006 ECLI: SI: UPRS: 2008: U.3009.2006
Parties	Claimant: anonymised; defendant: Ministry of the environment and spatial planning
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:60457&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&_submit=i%C5%A1%C4%8Di&page=0&iid=60457

Legal basis in national law of the rights under dispute	Articles 2, 6 and 18 of the Denationalisation Act (<i>Zakon o denacionalizaciji</i> ²).
Key facts of the case (max. 500 chars)	The case involves a dispute over restitution of ownership under the Denationalisation Act (cited above). The intention of the act is to undo the effects of nationalisation that took place after 1945. The claimant, an Italian citizen, requested the restitution of ownership of several pieces of real estate. In principle, the restitution is to take place in kind. His request was rejected by the ministry and an alternative manner of restitution was ordered (by providing the claimant with state-issued bonds). The ministry relied on Article 68 of the Constitution of the Republic of Slovenia, ³ limiting the right of foreigners to acquire ownership of real estate. Under Article 68 of the Constitution, foreign nationals may acquire ownership of real estate if so stipulated by law or an international treaty. The ministry also cited a decision of the Supreme Court, stating that the Denationalisation Act was not a valid legal basis for foreigners to acquire ownership of real estate in Slovenia. For this reason, the claimant was awarded restitution in state-issued bonds. The ministry did not take into account that as of 1 May 2004, Slovenia is an EU Member State.
Main reasoning / argumentation (max. 500 chars)	The Administrative Court disagreed with the ministry's decision, arguing that a different approach is needed after Slovenia's accession to the EU. The court rejected the position that a citizen of an EU Member State cannot be granted ownership of real estate under the Denationalisation Act, if the prescribed conditions are met. The court also found that the TEC was applicable to the denationalisation procedures. It relied on Article 12 of the TEC (Article 18 TFEU), stating that prohibition of discrimination on the grounds of nationality applied as well. Therefore, same conditions applied to Slovenian citizens and to the citizens of other Member State. The claimant should not, therefore, be excluded from restitution of ownership in kind, due to his Italian citizenship.

2 Slovenia, [Denationalisation Act](#) (*Zakon o denacionalizaciji*), 29 November 1991, with subsequent amendments.

3 Slovenia, [Constitution of the Republic of Slovenia](#) (*Ustava Republike Slovenije*), 28 December 1991, with subsequent amendments.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court applied Article 12 of the TEC to the regime of real estate ownership under the Denationalisation Act.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The challenged decision was annulled and a fresh examination was ordered.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Od vstopa RS v EU 1. 5. 2004 lahko državljani držav članic EU pridobijo lastninsko pravico na nepremičninah pod enakimi pogoji kot državljani RS, torej na podlagi vseh pravnih temeljev pod enakimi pogoji, kot veljajo za državljane RS, tudi na podlagi ZDen z odločbo državnega organa, če izpolnjujejo pogoje za upravičenca.</i></p> <p>Translation:</p> <p>Since accession of the Republic of Slovenia to the EU, the citizens of EU Member States may acquire ownership rights to real estate under the same conditions as nationals of the Republic of Slovenia, on the same legal basis and under the same conditions as nationals of the Republic of Slovenia. This includes the Denationalisation Act, if the conditions for the beneficiary are met.</p> <p>Reference: see URL above.</p>
Has the deciding body referred to	No.

the Charter of Fundamental Rights? If yes, to which specific article.	
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3. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Articles 27-29 and 33 of 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	Article 417 of the Criminal Procedure Act (<i>Zakon o kazenskem postopku</i> ⁴).
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 the 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 had become 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) had already been considered upon issuing of the sentence.
Main reasoning / argumentation (max. 500 chars)	The court relied on Articles 53-56 of the Constitution, 5 Article 8 of the ECHR and Articles 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 ran 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' citizens due to circumstances regarding their family life.
Results (e.g. sanctions) and key consequences or	The decision of the Supreme Court was annulled and a fresh examination was ordered.

4 Slovenia, [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 13 October 1994, with subsequent amendments.

5 Slovenia, [Constitution of the Republic of Slovenia](#) (*Ustava Republike Slovenije*), 28 December 1991, with subsequent amendments.

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>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.</i></p> <p>Translation:</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 Constitution⁶). 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 referred to the Charter of Fundamental Rights? If yes, to	<p>Yes, Articles 7, 52.</p>

⁶ 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=USTA1.

**which specific
article.**

4. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 28 of 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	17 October 2007
Deciding body (in original language)	Višje sodišče v Kopru
Deciding body (in English)	Koper Higher Court
Case number (also European Case Law Identifier (ECLI) where applicable)	Kp 213/2007 ECLI: SI: VSKP: 2007: KP.213.2007
Parties	Prosecutor: P. T.; defendant: I. M. D. (anonymised)
Web link to the decision (if available)	www.sodnapraksa.si/?q=Kp%20213/2007&database[SOVS]=SOVS&database[IESP]=IESP&_submit=i%C5%1%C4%8Di&rowsPerPage=20&page=0&id=41526

Legal basis in national law of the rights under dispute	Article 40 of the Criminal Code (<i>Kazenski zakonik</i> ⁷).
Key facts of the case (max. 500 chars)	The Koper Higher Court (<i>Višje sodišče v Kopru</i>) affirmed the decision of the court of first instance that issued the defendant with a sanction of expulsion from the territory of the Republic of Slovenia under Article 40 of the Criminal Code. The defendant was a citizen of Romania, already an EU Member State at the time. The defendant was found guilty of grand larceny. The offence was committed in association with co-perpetrator against an elderly woman.
Main reasoning / argumentation (max. 500 chars)	The court applied Article 28 of the directive and found that the expulsion was justified for the purpose of protecting the public order due to the single fact that the defendant was found guilty of a criminal offence. It also found that the circumstances under Article 28 of the directive do not prevent issuing of an expulsion order.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court applied the public order exception. It took a broad approach and found the exception applicable due to the very fact that the person was found guilty of a criminal offence. The court did not perform a detailed analysis of the defendant's conduct (apart from the offence itself).
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The conviction as well as the sanction of expulsion was affirmed.

⁷ Slovenia, [Criminal Code](#) (*Kazenski zakonik*), 13 October 1994, with subsequent amendments.

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>Gotovo je, da je obravnavano kaznivo dejanje bilo uperjeno zoper javni red naše države, ki ima zato interes, da se obtoženca odstraniti z našega ozemlja. Navedeni pogoj iz direktive je torej izpolnjen, pri čimer pri obeh obtožencih niso podane nobene izmed okoliščin, ki jih našteva 28. člen Direktive. Zato se izkaže, da je izrečena stranska kazen tudi sedaj, ko je Romunija postala članica EU, povsem na mestu.</i></p> <p>Translation:</p> <p>The criminal offence in question was no doubt aimed against the public order of the state. The state may, therefore, pursue its interest to remove the defendant from its territory. The relevant conditions under the directive were met and no circumstances set out under Article 28 of the directive exist. The order stands even as Romania became an EU Member State.</p> <p>Reference: see URL above.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

<p>5. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 27 of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>27 February 2013</p>
<p>Deciding body (in original language)</p>	<p>Upravno sodišče Republike Slovenije</p>
<p>Deciding body (in English)</p>	<p>Administrative Court of the Republic of Slovenia</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>I U 1055/2012 ECLI:SI:UPRS:2013:I.U.1055.2012</p>
<p>Parties</p>	<p>Claimant: anonymised; defendant: Ministry of Interior</p>
<p>Web link to the decision (if available)</p>	<p>http://www.sodnapraksa.si/?q=id:2012032113074705&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2012032113074705</p>

Legal basis in national law of the rights under dispute	Articles 93h, 93h/1, 93h/1-2, 93l of the Aliens Act (<i>Zakon o tujcih</i> ⁸).
Key facts of the case (max. 500 chars)	The claimant, a Slovenian national, was denied his application for temporary residence permit of his family member. The administrative bodies rejected the application on the grounds set out in Article 93h of the Aliens Act (the protection of public order and security, protection of international relations of the Republic of Slovenia, suspicion that residence will be related to terrorist activities, violent acts, illegal intelligence activities, possession of illicit drugs or other criminal offences).
Main reasoning / argumentation (max. 500 chars)	The court affirmed the decision of the administrative unit. They found that the family member was convicted of grand larceny and trading in illicit drugs, with one more criminal procedure pending, all in a short period of time. The family member was conditionally released from prison. The court affirmed that the administrative unit correctly assessed that the protection of public order was sufficient to deny temporary residence; the administrative unit was not bound by the decisions taken for purposes of conditional release. The court also weighted the conduct of the family member against interests protected by the right to respect of family life (Article 8 of the ECHR) and against his material interests (as he is an owner of a residential real-estate).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court applied the public order restriction on the right to residence. Although the judgement does not involve citizens of other Member States, same rules apply (to avoid reverse discrimination).
Results (e.g. sanctions) and key consequences	The claim was rejected.

⁸ Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 30 July 1999, with subsequent amendments.

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Prvostopenjski organ je pravilno ugotovil, da je bil tožnik v kratkem obdobju obravnavan s strani organov pregona in sodišča, zato iz navedenih razlogov obstajajo zavrnilni razlogi za izdajo dovoljenja za prebivanje za družinskega člana slovenskega državljana, pri čemer pa Ustava v tretjem odstavku 53. člena sicer res določa, da država varuje družino ter ustvarja za to varstvo ustrezne razmere, vendar pa v 15. členu tudi določa, da so človekove temeljne pravice in svoboščine omejene s pravicami drugih. Upravni organ pri ocenjevanju okoliščin, ali je prebivanje tujca lahko povezano z izvrševanjem kaznivih dejanj, ni vezan na odločitve Komisije za pogojne odpuste, ampak je pri svojem odločanju povsem neodvisen in odloča po svojih kriterijih.</i></p> <p>Translation:</p> <p>The body of first instance rightly held that the plaintiff was in a short period examined by the prosecuting authorities and the courts, so for these reasons, there are grounds for refusal to issue a residence permit for a family member of a Slovenian citizen. While the Constitution in the third paragraph of Article 53 provides that the State shall protect the family, Article 15 also provides that fundamental human rights and freedoms are limited by the rights of others. Administrative authority in assessing the circumstances, if the residence of aliens may be associated with the criminal activities, it is not bound by the decision of the Commission for conditional release; instead, they are completely independent and shall act according to their own criteria.</p> <p>Reference: see URL above.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to	No.

**which specific
article.**

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<p>6. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input type="checkbox"/> 2) freedom of movement and residence</p> <p style="padding-left: 40px;">- linked to Article 27 of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p> <p><input type="checkbox"/> 4) diplomatic protection</p> <p><input type="checkbox"/> 5) the right to petition</p>
<p>Decision date</p>	<p>5 December 2012</p>
<p>Deciding body (in original language)</p>	<p>Upravno sodišče Republike Slovenije</p>
<p>Deciding body (in English)</p>	<p>Administrative Court of the Republic of Slovenia</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>I U 1337/2012 ECLI:SI:UPRS:2012:I.U.1337.2012.L</p>

Parties	Claimant: anonymous; defendant: Ministry of Interior
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:2012032113074704&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2012032113074704
Legal basis in national law of the rights under dispute	Article 93h of the Aliens Act ⁹ ; Article 25 of the Convention implementing the Schengen Agreement. ¹⁰
Key facts of the case (max. 500 chars)	The claimant was a family member of a Slovenian citizen and a third-country national. The claimant applied for a prolongation of a temporary residence permit. The application was rejected. The competent authorities found that the applicant (i) was due to stand trial for a criminal offence in Slovenia, and (ii) was prohibited from entering Germany. The measure was entered into the Schengen Information System. Additionally, the applicant was subject to a national (German) arrest warrant for the purposes of sentencing due to a conviction of a sexual offence against a minor. The competent authorities cited Article 93h of the Aliens Act allowing for a refusal of a residence permit if so required by interest of public order, international relations and future criminal activities, taking into account the interests of Germany, citing Article 25 of the CISA.
Main reasoning / argumentation (max. 500 chars)	The court found that the authorities failed to fully establish the facts of the case. First, they failed to notify and consult with German authorities; the court found that consultations are necessary to fully consider the interests of the German authorities and to establish the facts of the offence the applicant was convicted of in Germany. And second, they failed to provide the applicant with an opportunity to be heard regarding his family life. The court found that both are necessary for the authorities to fully implement the proportionality principle, i.e. to weigh the interests of German authorities against the interests of the applicant and his family life.

⁹ Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 13 July 1999, with subsequent amendments.

¹⁰ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal L 239 , 22 September 2000, p. 19 - 62.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Proportionality principle; the right to be heard; interests of other Member States when considering refusal of a residence permit to a third-country family member.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The challenged decision was annulled and a fresh examination was ordered.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>V tem postopku tožniku pred izdajo drugostopenjske odločbe ni bila dana možnost, da se izjasni o svojem družinskem življenju. V ponovljenem postopku bo moral prvostopenjski organ pred izdajo odločbe opraviti posvet s pristojnimi organi Nemčije in upoštevati njene interese, poizvedeti nekoliko več o kaznivem dejanju, ki naj bi ga tožnik storil, dati tožniku možnost, da pojasni svoje vezi z družino in šele potem odločiti, ali razlog združitve z družino pretehta nad tem, da je bil razpisan ukrep zavrnitve vstopa.</i></p> <p>Translation:</p> <p>In this procedure, the claimant has not been given an opportunity to be heard about his family life before issuing the second instance decision. In the second procedure the competent body will have to carry out consultations with the competent German authorities and to take into account its interests, inquire a bit more about the alleged offence of the claimant and give him the opportunity to explain his ties with his family. Only then will it be possible to weigh the interests of family reunification against interests underlying the prohibition of entry by the German authorities.</p>

	Reference: see URL above.
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

7. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence linked to Article 2(2)(d) of 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	20 September 2013
Deciding body (in original language)	Upravno sodišče Republike Slovenije
Deciding body (in English)	Administrative Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	III U 26/2013 ECLI:SI:UPRS:2013:III.U.26.2013
Parties	Claimant: anonymised; defendant: Ministry of Interior

Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:2012032113070566&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDS%5D=VDSS&database%5BUPRS%5D=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2012032113070566
Legal basis in national law of the rights under dispute	Articles 93k and 93l of the Aliens Act (<i>Zakon o tujcih</i> ¹¹).
Key facts of the case (max. 500 chars)	The claimant, a Slovenian citizen, applied for a residence permit for her father, a citizen of Bosnia and Herzegovina. The application was rejected. The authorities found her father was receiving a pension in the amount 296.35 KM, twice the amount set by the Bosnian legislation as the amount required for a person to sustain himself in Bosnia. The authorities applied the Slovenian Marriage and Family Relations Act ¹² that stipulates the conditions of children's duty to provide for their parents when parents lack the means to sustain themselves.
Main reasoning / argumentation (max. 500 chars)	The court agreed with the challenged decision and found that the father of the applicant cannot be considered a family member in terms of Article 93k of the Aliens Act.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court clarified the concept of a dependent direct relative as a family member.
Results (e.g. sanctions) and key consequences	The claim was rejected.

11 Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 13 July 1999, with subsequent amendments.

12 Slovenia, [Marriage and Family Relations Act](#) (*Zakon o zakonski zvezi in družinskih razmerij*), 4 June 1976, with subsequent amendments.

or implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Tožniččin oče živi v BIH in prejema pokojnino, ki za več kot enkrat presega minimalni znesek, ki je za življenje ene osebe potreben v Republiki BIH, upošteva je zakonodajo BIH. Tožnica ga zato ni dolžna preživljati in oče se posledično ne šteje za družinskega člana v smislu določbe 4. točke prvega odstavka 93. k členu ZTuj-1.</i></p> <p>Translation:</p> <p>The claimant's father lives in Bosnia and Herzegovina and is receiving a pension that twice exceeds the minimum amount for the life of one person needed in the Republic of Bosnia and Herzegovina, taking into account the laws of Bosnia and Herzegovina. The complainant is therefore not obliged to support him and her father cannot be considered to be a family member in the meaning of clause 4 of the first paragraph of Article 93 of the Aliens Act.</p> <p>Reference: see URL above.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

8. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 35 of 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	16 December 2011
Deciding body (in original language)	Upravno sodišče Republike Slovenije
Deciding body (in English)	Administrative Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	I U 1505/2010 ECLI:SI:UPRS:2011:I.U.1505.2010
Parties	Claimant: anonymised; defendant: Ministry of Interior
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:2012032113049252&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2012032113049252

Legal basis in national law of the rights under dispute	Article 93k of the Aliens Act (<i>Zakon o tujcih</i> ¹³).
Key facts of the case (max. 500 chars)	The claimant, a Slovenian national, filed suit against a decision denying the issuance of a visa for her husband, a third-country national. Visa was denied as the administrative bodies found their marriage was one of convenience; the claimant and her spouse, during an interview in the course of visa proceedings, failed to answer questions related to their employment, education, siblings, financial arrangements and family plans. The court affirmed.
Main reasoning / argumentation (max. 500 chars)	The court relied on Article 93k of the Aliens Act. The cited article requires that family members, third-country citizens, obtain an entry visa, unless no visa is required. The court also agreed that their marriage was a marriage of convenience, amounting to abuse of their right to marriage for the sole purpose of obtaining a visa (Article 20 of the Aliens Act).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Marriage of convenience; abuse of rights. Same provisions apply to family members of Slovenian citizens and to family members of citizens of other Member States.
Results (e.g. sanctions) and key consequences or implications of the	The claim was rejected.

13 Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 13 July 1999, with subsequent amendments.

case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Če je zakonska zveza sklenjena izključno zaradi pridobitve vizuma, potem v takem primeru zakonska določba 20. člena ZTuj-1 niti ne pomeni posega v pravico do združevanja družine, ampak gre zgolj za predpisan način uresničevanja te pravice.</i></p> <p>Translation:</p> <p>If the marriage was concluded solely to obtain a visa, then Article 20 of the Aliens Act does not affect the right to family reunification, but merely regulates the manner of exercising these rights.</p> <p>Reference: see URL above.</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

9. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 7(2) and 7 (1)(b) of 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	9 May 2012
Deciding body (in original language)	Upravno sodišče Republike Slovenije
Deciding body (in English)	Administrative Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	I U 1842/2011 ECLI: SI:UPRS:2012:I.U.1842.2011
Parties	Claimant: anonymised; defendant: Ministry of Interior
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:2012032113057428&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2012032113057428

Legal basis in national law of the rights under dispute	Article 93I of the Aliens Act. ¹⁴
Key facts of the case (max. 500 chars)	The claimant, a Slovenian citizen, applied for a temporary residence permit for his mother, a third-country (non-EU) citizen. The application was rejected stating the applicant failed to establish some of the conditions set out under Article 93I of the Aliens Act. The applicant, according to the competent bodies (Ljubljana Administrative Unit), failed to provide proof of health insurance in the host state and proof of having sufficient resources. The Ljubljana Administrative Unit, as the body of first instance, refused to extend the deadline for the applicant to submit the required documents (attesting to his mother's health insurance in Slovenia) and failed to account for some of the documents already presented (attesting to having sufficient resources not to burden the social services).
Main reasoning / argumentation (max. 500 chars)	The court found that the competent bodies (Ljubljana Administrative Unit) failed to provide reasons for refusing the (final) extension of the deadline to submit documents attesting to health insurance of applicant's mother, even though the request for extension was substantiated by the applicant. The court also found that the competent bodied failed to provide reasons for not taking into account the proof submitted by the applicant that his mother has sufficient resources.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court clarified the standards of the right to be heard. It held that the challenged decision failed to provide adequate reasons and could not be adequately put to the test.
Results (e.g. sanctions) and key consequences or	The court annulled the decision and ordered a fresh examination of the case.

¹⁴ Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 13 July 1999, with subsequent amendments.

implications of the case (max. 500 chars)	
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>Prvostopenjski organ se ni opredelil do dokazil, s katerimi je tožnik skušal dokazati, da ima dovolj sredstev za preživljanje. Organ ni navedel razlogov, ki so odločilni za presojo posameznih dokazov in se ni opredelil do zadnjega zahtevka tožnika za podaljšanje roka, zato odločba ne obsega vsega, kar bi morala po prvem odstavku 214. člena ZUP, zaradi česar je pomanjkljivo obrazložena in se je ne da preizkusiti.</i></p> <p>Translation:</p> <p>The first instance authority has not identified the evidence which the plaintiff sought to demonstrate that he has sufficient means of subsistence. The authority did not specify the reasons, which are crucial for the assessment of individual pieces of evidence and did not respond to the last claim for deadline extension. The decision fails to provide the elements required under the first paragraph of Article 214 of the Administrative Procedure Act and cannot be adequately put to the test.</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.	<p>No.</p>

10. Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to Article 3(1) and 10 of 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	11 December 2012
Deciding body (in original language)	Upravno sodišče Republike Slovenije
Deciding body (in English)	Administrative Court of the Republic of Slovenia
Case number (also European Case Law Identifier (ECLI) where applicable)	I U 915/2013 ECLI:SI:UPRS:2012:I.U.915.2013
Parties	Claimant: anonymised; defendant: Ministry of Interior
Web link to the decision (if available)	http://www.sodnapraksa.si/?q=id:2012032113067819&database%5BSOVS%5D=SOVS&database%5BIESP%5D=IESP&database%5BVDSS%5D=VDSS&database%5BUPRS%5D=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2012032113067819

Legal basis in national law of the rights under dispute	Article 128 of the Aliens Act (<i>Zakon o tujcih</i> ¹⁵).
Key facts of the case (max. 500 chars)	The claimant was a Slovenian national. His application for a temporary residence permit for his spouse, a third-country national, was rejected on the basis of Article 128(1)(5) of the Aliens Act, that - by virtue of Article 127(3) of the Act, requires that family members enter the state in a lawful manner. In this case, the spouse was a citizen of a third country, for which there was a visa requirement under national law. The spouse entered Slovenia via Italy, with no residence permit issued by Italy or any other EU Member State. The competent bodies refused to apply the <i>Metock</i> judgement (Court of Justice of the European Union, C-127/08, <i>Metock and Others v. Minister for Justice, Equality and Law Reform</i> , 25 July 2008), arguing it only applied to those applying for international protection.
Main reasoning / argumentation (max. 500 chars)	The court disagreed and applied the judgement in <i>Metock and others</i> (cited above). According to the Administrative Court, Directive 2004/38 should be interpreted so that the manner of entry into the Republic of Slovenia is not relevant for Directive 2004/38 to apply. The court applied the directive regardless of the fact that the claimant was a Slovenian citizen. At the same time, it recognised that the directive in Article 5 allows that the family members be subject to visa requirement. The court also found that the competent bodies failed to take into account the protection of family life as proscribed by the Constitution and the ECHR. Given that the spouse had already entered Slovenia, the court felt that the competent bodies, deciding on the issue of the residence permit, had to take into account the circumstances relevant under the right to respect for family life.
Key issues (concepts, interpretations) clarified by the	The court applied Article 8 of the ECHR and Article 53 (3) of the Slovenian Constitution ¹⁶ in order to clarify whether the requirement of a valid passport absolutely precluded the issuance of a residence permit. The court allowed that the requirement can be waived if circumstances of the case so demanded.

¹⁵ Slovenia, [Aliens Act](#) (*Zakon o tujcih*), 27 June 2011, with subsequent amendments.

¹⁶ Slovenia, [Constitution of the Republic of Slovenia](#) (*Ustava Republike Slovenije*), 28 December 1991, with subsequent amendments. Article 53 (3) of the Slovenian Constitution: "The state shall protect the family, motherhood, fatherhood, children, and young people and shall create the necessary conditions for such protection."

case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The decisions were annulled and a fresh examination of the case was ordered.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>V obravnavani zadevi niti prvostopenjski organ niti tožena stranka nista presojala pravice družinskega člana oziroma tožnice do zasebnega in družinskega življenja ter dejstev in okoliščin nista presojala tudi z vidika Ustave RS in EKČP. Zato je obrazložitev odločbe pomanjkljiva, obenem pa je bilo tudi materialno pravo napačno uporabljeno. V ponovljenem postopku bo moral prvostopenjski organ upoštevati tudi pravico tujca oziroma tožnice do zasebnega in družinskega življenja in ob presoji, kako močna vez se je ustvarila med njima, pretehtati, ali ima ta pravica prednost pred tem, da je tujec v Slovenijo vstopil brez vizuma.</i></p> <p>Translation:</p> <p>In the present case, neither the body of first instance neither the defendant assessed the rights of a family member or the claimant to private and family life and failed to consider the facts and circumstances in the light of the Constitution and the ECHR. Therefore, the decision is incomplete. In the second procedure, the body of first instance will also take into account the right of a foreigner or the claimant to private and family life and consider how strong a bond has been created between them, consider whether this right has priority over the violation of visa requirement.</p> <p>Reference: see URL above.</p>
Has the deciding body	No.

referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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2. Table 2 – Overview

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)	3	11	0	0	2