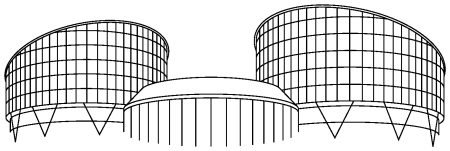

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SARKÖZI AND MAHRAN v. AUSTRIA

(Application no. 27945/10)

JUDGMENT

STRASBOURG

2 April 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sarközi and Mahran v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Khanlar Hajiyev, *President,*
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 10 March 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27945/10) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms Jana Sarközi ("the first applicant"), and her son, an Austrian national, Mr Mohamed Mahran ("the second applicant"), on 20 May 2010.

2. The applicants were represented by Mr H. Pochieser, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

3. The applicants alleged that the eight-year exclusion order against the first applicant and her subsequent expulsion to Slovakia constituted a violation of their right to private and family life under Article 8 of the Convention.

4. On 18 January 2012 the application was communicated to the respondent Government, and the Government of Slovakia was informed of the application (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court).

5. On 10 May 2012 the Government of Slovakia informed the Court that they would not exercise their right to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The personal circumstances of the applicants

6. The first applicant was born in 1966 and currently lives in Mosonmagyaróvár, Hungary. She came to Austria in 1990 holding a visa and settled in Vienna. She was later issued temporary residence permits, until she was granted a permanent residence permit on 30 September 1997.

7. The first applicant subsequently met an Austrian citizen and married him. From that union, the second applicant was born in 2002 in Vienna. The couple later divorced, but continued to hold joint custody of their son.

8. Other family members of the first applicant living in Austria are her daughter from a first marriage, her daughter's husband and child, her brother and her parents.

9. The second applicant has Austrian citizenship and lives in Vienna with his father. Other family members of his living in Austria are his grandparents, his uncle, his half-sister and her family.

B. The first applicant's criminal convictions

10. The first applicant's criminal record shows seven convictions.

11. On 12 October 1993 the Hernals District Court (*Bezirksgericht*) convicted the first applicant of deliberately causing bodily harm and sentenced her to pay a fine of 5.400,00 Austrian Schillings ("ATS").

12. On 6 September 1994 the Vienna Regional Criminal Court (*Straflandesgericht*, "the Criminal Court") convicted the first applicant of attempted aggravated fraud and sentenced her to five months' imprisonment, suspended with a probationary period of three years.

13. On 7 July 1995 the Donaustadt District Court convicted the first applicant of causing damage to private property and sentenced her to pay a fine of 40 daily rates (*Tagessätze*), in sum ATS 3.600,00.

14. On 7 May 2002 the Criminal Court convicted the first applicant of causing damage to private property, bodily harm and assault on a police officer and sentenced her to three months' imprisonment, again suspended with a probationary period of three years.

15. On 24 April 2003 the Criminal Court convicted the first applicant and her former husband (the second applicant's father) of partly attempted, partly completed fraud and sentenced them to two months' imprisonment, suspended on probation.

16. On 28 July 2006 the Criminal Court convicted the first applicant of aggravated fraud and sentenced her to six months' imprisonment. The probationary period for her previous conviction was extended to five years.

17. On 29 May 2008 the first applicant was convicted of partly attempted, partly completed aggravated fraud on a commercial basis and sentenced to three years' imprisonment.

18. The first applicant started serving her sentence on 28 September 2007 and was released on 30 December 2010. During that time, the second applicant lived with his father.

C. The proceedings concerning the exclusion order against the first applicant

19. In a letter dated 29 September 1994 the Aliens Police (*Fremdenpolizei*) warned the first applicant that, if convicted once more, an exclusion order could be issued against her (*Aufenthaltsverbot*).

20. On 25 September 2008, following her latest conviction and three-year prison sentence, the Vienna Federal Police Authority (*Bundespolizeidirektion*) issued an unlimited exclusion order against the first applicant, pursuant to sections 63 § 1 and 86 § 1 of the Aliens Police Act (*Fremdenpolizeigesetz*). It stated that after the first applicant's conviction in 2006, the Aliens Police had refrained from issuing an exclusion order against her, because she had already been living in Austria for over 17 years and held a permanent residence permit. The authorities stated that at that point they did not consider that she posed a serious threat to public order and security within the meaning of section 86 § 1 of the Aliens Police Act. However, her most recent conviction did justify the assumption that her further stay in Austria endangered public order and safety. The exclusion order was necessary to protect the economic well-being of Austria and to prevent criminal activities, hence it was in accordance with Article 8 § 2 of the Convention. It further held that even though the exclusion order constituted an interference with her private and family life, because her children and her parents lived in Austria, the public interest in her expulsion outweighed her interest in remaining in the country.

21. The first applicant appealed. During the oral hearing at the Vienna Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) on 28 January 2009, she provided a letter from a general practitioner, which stated that the separation from the second applicant due to her imprisonment had caused her son severe mental stress, and that it was important for his development to grow up with his mother. She stated that her son visited her frequently in prison, and that they tried their best to keep up their relationship. Furthermore, she pointed out that she also had other close family ties to Austria, with her daughter, her brother and her parents living

there. She regretted her criminal convictions and requested that the exclusion order be lifted.

22. On 6 April 2009 the Vienna Independent Administrative Panel dismissed the appeal. It took into consideration the nature and seriousness of the offences the first applicant had committed and the resulting personality profile, reiterating that she had started her criminal activities shortly after her arrival in Austria. Her latest criminal conviction was based on numerous offences against private property, serving her as a source of income. She had therefore demonstrated that she did not respect the property of others, and that she constituted a danger to the public because of her fraudulent activities, which she had committed over a long period of time. Previous convictions for bodily harm and assault on a police officer showed that she did not shy away from attacks on life and limb either. Because she was serving her sentence at the time of the decision, it could not be assumed that the danger emanating from her person had diminished, which was why the unlimited exclusion order was justified.

23. Concerning her private and family life, the Independent Administrative Panel held that the first applicant was well integrated in Austria, and that many of her family members lived there, in particular her then seven-year-old son. The exclusion order therefore constituted an interference with her rights under Article 8 of the Convention. However, due to her criminal record and the serious nature of her offences, the public interest in her expulsion outweighed her personal interest in respect of her private and family life. Furthermore, because of the short distance between Bratislava and Vienna of around one hour by train, it would be possible for her family members to visit her frequently. The first applicant came to Austria when she was 24 years old, speaks the Slovak language and could easily reintegrate in her country of origin. Because of the seriousness of her crimes, and because the presence of her family members in Austria could not deter her from repeatedly committing offences, the exclusion order was proportionate to the aim pursued. Because it was not possible to assess when the first applicant would cease to represent a danger, there was no reason to limit the exclusion order. The Independent Administrative Panel added that the first applicant could apply for the lifting of the exclusion order after an appropriate interval, and in any event three years after its enforcement, if the circumstances for its issue had changed significantly.

24. The applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*) relying, *inter alia,* on Article 8 of the Convention.

25. On 16 June 2009 the Constitutional Court refused to deal with the complaint and referred it to the Administrative Court (*Verwaltungsgerichtshof*).

26. On 9 November 2009 the Administrative Court rejected her complaint due to the lack of any important legal question to be answered. It

stated that the Independent Administrative Panel had not deviated from the previous jurisprudence of the Administrative Court.

D. The proceedings concerning the lifting of the exclusion order against the first applicant

27. On 15 July 2010 the first applicant lodged an application for the exclusion order to be lifted pursuant to section 65 of the Aliens Police Act.

28. On 12 January 2011 the Vienna Federal Police Authority dismissed the application.

29. On 12 September 2011 the Independent Administrative Panel partly granted the first applicant's appeal and reduced the duration of the exclusion order to eight years, because the relevant legal provisions had changed in the meantime. Pursuant to section 67 (formerly section 86) of the Aliens Police Act as in force at the relevant time, an exclusion order against a citizen of the European Economic Area (EEA) may not exceed ten years in duration. Pursuant to paragraph 4 of that provision, the exclusion order would therefore cease to be in force on 29 September 2016, irrespective of whether the first applicant actually left the country.

30. The first applicant appealed against this decision. On unspecified dates, the Constitutional Court and the Administrative Court rejected her complaints.

E. Evidence concerning the applicants' mental health

31. The Vienna Youth and Family Office, in a statement dated 18 June 2012, noted that the separation of the applicants due to the first applicant's imprisonment had already had a traumatizing effect on the second applicant and had strained the relationship between mother and son. Another separation would likely re-traumatize the second applicant and severely jeopardize his psychosocial development, which is why it would be in the best interest of the child to grant his mother a residence permit.

32. A medical report by psychologist E.G. dated 23 November 2012 attested that the second applicant was suffering from post-traumatic stress disorder, emotional disorder and separation anxiety as a result of the separation from his mother when she had to serve her time in prison. He was in need of constant psychological care and had voiced suicidal thoughts after he had learned that his mother would be expelled. Another separation from his mother would traumatise him again and have long-term effects on his mental state.

33. The neurologist N.F., in a report dated 16 November 2012, diagnosed the first applicant as suffering from a pre-suicidal syndrome and stress reaction and stated that any additional stress was to be avoided. Her psychologist E.G., in a statement of 23 November 2012, attested that she

suffered from depression, anxiety and claustrophobia. She had also voiced suicidal thoughts.

F. Further developments

34. A subsequent application by the first applicant for the exclusion order to be lifted, dated 12 August 2012, was unsuccessful.

35. On 4 December 2012 the first applicant was expelled to Slovakia. The second applicant has lived with his father in Vienna since then. Both parents continue to share custody.

II. RELEVANT DOMESTIC LAW

A. The 2005 Aliens Police Act

Section 63

36. Section 63, as in force at the relevant time, stipulated that in cases pursuant to section 60 § 2 (1), (5) and (12)-(14), an exclusion order or return prohibition might be issued for an unlimited amount of time; in any other cases the period of validity was restricted to a maximum of ten years.

Section 65

37. Section 65, as in force at the relevant time, stated that an exclusion order was to be lifted upon application or *ex officio*, if the reasons which led to its issue had ceased to exist.

Section 67

38. Section 67 § 1, as in force at the relevant time, foresaw that an exclusion order against a citizen of the European Economic Area could be issued if that person's conduct constituted a danger for public order and security. Such personal conduct had to amount to a factual, imminent and substantial danger that would have an impact on core interests of Austrian society. That provision further stated that criminal convictions alone could not by implication result in such an exclusion order. Justifications must not be isolated from the particulars of the case or rely on considerations of general prevention. Exclusion orders against citizens of the EEA, Switzerland, or privileged third-country nationals who had had their main residence continuously on the territory for a minimum of ten years prior to the realisation of the relevant facts, might be issued if it could be assumed that the alien's stay on the territory would sustainably and significantly endanger the public order or safety of the State of Austria. The same applied to minors, unless the exclusion order was necessary for the well-being of the child as stipulated in the UN Convention on the Rights of the Child.

39. Section 67 §§ 2 and 3 (1) stated that an exclusion order could only be issued for a maximum duration of ten years, unless the citizen of the EEA or Switzerland or the privileged third-country national had been sentenced to a prison term of more than five years.

B. Instruments of the Council of Europe

40. Recommendation Rec(2000)15 of the Committee of Ministers of the Council of Europe to member States concerning the security of residence of long-term migrants states, *inter alia*:

> "4. As regards the protection against expulsion
>
> a. Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:
>
> – the personal behaviour of the immigrant;
>
> – the duration of residence;
>
> – the consequences for both the immigrant and his or her family;
>
> – existing links of the immigrant and his or her family to his or her country of origin.
>
> b. In application of the principle of proportionality as stated in paragraph 4.a, member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled:
>
> – after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension;
>
> – after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years of imprisonment without suspension.
>
> After twenty years of residence, a long-term immigrant should no longer be expellable.
>
> c. Long-term immigrants born on the territory of the member state or admitted to the member state before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen.
>
> Long-term immigrants who are minors may in principle not be expelled.
>
> d. In any case, each member state should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

41. In its Recommendation 1504 (2001) the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers invite the Governments of member States, *inter alia*:

"11. ...

(ii) ...

(g) to take the necessary steps to ensure that in the case of long-term migrants the sanction of expulsion is applied only to particularly serious offences affecting State security of which they have been found guilty;

..."

42. Under the heading "IV. Effective protection against expulsion of family members", the Committee of Ministers recommended to Governments in its Recommendation Rec(2002)4 that where the withdrawal of or refusal to renew a residence permit or the expulsion of a family member is being considered:

"... Member States should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and well-being of children."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicants complained that the exclusion order against the first applicant gave rise to a violation of Article 8 of the Convention. The applicants further complained that their separation as a result of the exclusion order caused both of them irreparable mental harm and therefore constituted inhuman and degrading treatment pursuant to Article 3 of the Convention. The Court considers that the complaint concerning the effects of the expulsion on the applicants' mental health also falls under Article 8 (see *Bensaid v. the United Kingdom*, no. 44599/98, §§ 46-47, ECHR 2001-I, with further references), and will consequently examine it under that head. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

44. The Government contested that argument.

A. Admissibility

Exhaustion of domestic remedies

45. The Government submitted that the first applicant had failed to exhaust domestic remedies, as she had not appealed against the Independent Administrative Panel's decision of 12 September 2011. This decision had rendered the unlimited exclusion order, which was the subject of the initial application by the applicant, obsolete by replacing it with a limited exclusion order of eight years. Hence, in their view the present application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

46. The applicants submitted in reply that they had in fact lodged complaints with both the Constitutional Court and the Administrative Court against the Independent Administrative Panel's decision of 12 September 2011. However, these complaints were rejected by both courts, and the applicants subsequently submitted a new application to the Court on 17 April 2012.

47. In the light of the materials in its possession, the Court is satisfied that the first applicant has exhausted domestic remedies in respect of the proceedings concerning the lifting of the exclusion order against her (see paragraphs 24-26 above). The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants' arguments

(i) The first applicant's arguments

48. The first applicant conceded that the criminal offences committed by her had caused significant damage. However, because of her close family ties in Austria, her personal interests in remaining in the country outweighed the public interest in her expulsion. The time she had spent in prison had made her think about her actions, which is why she considers herself to be fully rehabilitated. She had also found employment for the time after her release. After her release from prison, she had not committed any further criminal offences, which demonstrated that she no longer represented a threat or danger.

49. The first applicant submitted that a particularly close bond existed between her and her son. The years that she had had to spend in prison had constituted a painful experience as she was separated from him, which is why she was now fully aware of her responsibility towards him. She argued

that it was a difficult process to re-establish their relationship after her release. She had suffered particularly from the separation from her son.

50. Concerning her personal circumstances, the first applicant stated that her whole family, social and economic life revolved around Austria, after twenty-two years of permanent residence there. She was therefore to be considered a "settled migrant". In Slovakia, however, she no longer had any friends or family. She spoke the language but would be at a disadvantage in the job market because of her health problems. Because of insufficient insurance contribution periods in Slovakia, she would have no right to social services. In the light of the absence of any family and social contacts, she would face financial hardship. In conclusion, the Austrian authorities' assessment under Article 8 of the Convention was insufficient and therefore violated her rights under Article 8 of the Convention.

(ii) The second applicant's arguments

51. The second applicant conceded that he had not been a party to the proceedings concerning the exclusion order against the first applicant. However, the exclusion order against his mother inevitably interfered with his rights under Article 8 of the Convention. Before his mother was expelled to Slovakia, he had found himself in a situation of uncertainty, not knowing whether he would have to move to live with his mother in Slovakia, or stay in Austria with his father and the rest of his family. However, because of a second marriage in Egypt his father travelled frequently and was not always there for him. Even while his mother was imprisoned, his father had not spent much time with him but had left him with his grandparents or neighbours.

52. The second applicant submitted that if he remained in Austria, his mother would not be able to visit him because of the exclusion order, and he was too young to travel alone between Vienna and Bratislava. It was not a viable choice for him to move to Slovakia either, because he barely spoke the Slovak language and would therefore not be able to continue school in the same grade. He would like to stay in Vienna, where he goes to school and where his entire family lives. Also, he could not be expected to leave Austria, as such a step would lead to a difficult legal situation concerning custody.

53. The second applicant stated that he had constant difficulties at school and exhibited behavioural problems, which were also caused by the hardship resulting from the first applicant's misconduct and which had forced child protection services to intervene.

54. The second applicant maintained that his mother's expulsion was contrary to his best interests as a child, and that the Austrian authorities had not sufficiently taken this factor into account when taking their decisions.

(b) The Government's arguments

55. The Government argued that the Independent Administrative Panel had carefully examined and balanced all relevant factors and had rightfully come to the conclusion that the public interest in maintaining public order and security prevailed over the first applicant's private interests.

56. Insofar as the first applicant referred to her parents and adult daughter as family members in Austria, the Government pointed out that according to the Court's jurisprudence (*A.W. Khan v. the United Kingdom*, no. 47486/06, 12 January 2010), relationships between adult children and their parents normally did not fall within the notion of family life of Article 8 of the Convention, unless there were special elements of mutual dependence. The first applicant, however, did not mention such elements in her application to the Court. Insofar as she stated that her parents were in need of nursing care, she herself is to blame for not having been able to assist them because she was in prison.

57. The Government submitted that the duration of the first applicant's stay in Austria, namely nineteen years until the issue of the exclusion order, was considerably impaired by the fact that she had committed her first offence as early as in 1993, only three years after she had taken up residence in Austria. Her criminal activities extended over her entire stay in Austria. Particularly striking were the short intervals between the offences. The large number of criminally relevant acts, committed on a commercial basis, clearly showed the first applicant's disregard for the Austrian Penal Code. Public order and safety were not only endangered by the commission of serious offences against property, causing considerable financial damage to the Republic of Austria, but also by her repeatedly causing bodily harm.

58. Insofar as the applicants maintained that the first applicant was no longer a threat to public order and security, as she was under an obligation to care for her child, and because of her good conduct in prison, the Government held that neither her marriage nor the birth of the second applicant had prevented her from committing further criminal offences. The crime of which she had been convicted in 2003 had even been committed together with her former husband. The first applicant must also have been aware of her precarious residence status if she were to be convicted again, after she had been formally warned in that respect by the Aliens Police in their letter dated 29 September 1994.

59. The Government argued that the first applicant herself had contributed to the intensity of the reduction of her family life by having to serve her prison sentence. In any event, the applicants could maintain their family life in Slovakia, as there are at least two trains per hour between Vienna and Bratislava, the journey time being only one hour. Referring to the case *Antwi and Others v. Norway* (no. 26940/10, 14 February 2012), the Government submitted that it would be possible for the first applicant to take up residence in Slovakia, as he spoke the Slovak language a little and

had been of an adaptable age of seven years at the time of the issue of the Independent Administrative Panel's decision of 6 April 2009. Because of the short distance between the two capitals, he could even live in Slovakia with his mother and continue his education in Vienna.

60. The Government concluded that in the light of the above arguments, the interference with the applicants' family life was proportionate to the aims pursued and the exclusion order therefore did not violate their right to respect for their private and family life.

2. The Court's assessment

(a) General principles

61. In the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the "family life" aspect, which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the *core family* (*Slivenko v. Latvia*, [GC], no. 48321/99, § 94, ECHR 2003-X; see also, *mutatis mutandis*, *Marckx v. Belgium*, 13 June 1979, Series A no. 31, p. 21, § 45). In contrast, the existence of family life could not be relied on concerning adults who have not substantiated a particular dependency between them (see *Slivenko v. Latvia*, [GC], cited above, § 97). Such relationships may be protected under the notion of "private life" for the purposes of Article 8, depending on the degree of social integration of the persons concerned (see, for example, *Dalia v. France*, 19 February 1998, Reports 1998-I, pp. 88-89, §§ 42-45).

62. A State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Mehemi v. France*, 26 September 1997, § 34, Reports 1997-VI; *Dalia v. France*, 19 February 1998, § 52, Reports 1998-I; *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).

63. In *Üner v. the Netherlands* [GC] (no. 46410/99, §§ 57-58, ECHR 2006-XII), the Grand Chamber has summarised the relevant criteria to be applied in determining whether interference, in the form of expulsion, is necessary in a democratic society:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- whether there are children of the marriage, and if so, their age;
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

64. Moreover, where children are involved, their best interests must be taken into account (see *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 44, 1 December 2005; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010; *mutatis mutandis*, *Popov v. France*, nos. 39472/07 and 39474/07, §§ 139-140, 19 January 2012; and *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013). On this particular point, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see *Neulinger and Shuruk v. Switzerland*, cited above, § 135, and *X v. Latvia*, cited above, § 96). Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 109, 3 October 2014). In this context, reference is made to Article 3 of the UN Convention on the Rights of the Child, in accordance with which the best interests of the child shall be a primary consideration in all actions taken by public authorities concerning children (see *Neulinger and Shuruk v. Switzerland*, cited above, § 135, and *Nunez v. Norway*, no. 55597/09, § 84, 28 June 2011).

65. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for interference, but it goes hand in hand with European supervision. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Boultif v. Switzerland*, cited above, § 47, and *Slivenko v. Latvia*, cited above, § 113).

(b) Application of the above general principles to the present case

66. At the outset, the Court finds it clear that the relationships between the applicants constituted "family life" for the purposes of Article 8 of the Convention, which provision is therefore applicable to the instant case. In contrast, the first applicant has not substantiated any particular dependence between her and her other family members living in Austria.

67. The Court further notes that the exclusion order against the first applicant constituted an interference with both applicants' right to respect for their family life under Article 8 of the Convention. This interference was based on the law and served a legitimate aim in accordance with paragraph 2 of that provision. This was undisputed by the parties. It remains therefore to be examined whether the measures taken against the first applicant were also proportionate to the aims pursued, in particular with a view to the separation from her son.

68. The first criterion to be considered is the nature and seriousness of the offences committed by the first applicant. The Court notes that her criminal record shows seven convictions, most of them for aggravated fraud, but also for bodily harm, assault and damage to private property. The most severe sanction imposed on her was a three-year prison sentence. Between her conviction in 2002 and her last conviction in 2008, there was no significant period during which she was not involved in criminal activities. In particular, the last conviction must be considered serious. The Court observes in that context that the first applicant's offences became increasingly serious over time. It appears, however, that she did not reoffend after her release from prison in December 2010.

69. The Court further considers that at the time of the commission of her last offence, the first applicant must have been aware that another criminal conviction could result in her expulsion, as she had been warned to that effect by the authorities as early as in 1994 (see paragraph 19 above). In that context, the Court notes that the exclusion order was issued in September 2008 and will cease to be in force in September 2016, irrespective of whether the first applicant actually left the country (see paragraph 29 above). Because the first applicant was not expelled until December 2012, the exclusion order factually only affects the applicants for less than four years.

70. Turning to the length of stay of the first applicant, the Court observes that she entered Austrian territory in 1990 as an adult at the age of 24 and was lawfully residing there until the issue of the exclusion order against her. Altogether, she had lived in Austria for some 22 years.

71. With regard to the first applicant's family situation, it is undisputed that she has close family and social ties in Austria, with her son as well as other family members living there, while she does not seem to have any social links left in Slovakia. However, she speaks the language and spent the formative years of her childhood and adolescence there. Also, Slovakia is a neighbouring state of Austria and a fellow Member State of the European Union, and there are frequent public transport connections between Vienna, where her family lives, and Bratislava, where she was expelled to. This proximity allows her family to visit her often and without much effort, as there are no travel restrictions or visa requirements between the two countries.

72. The Court accepts that it would have been in the best interest of the second applicant to be able to continue his life in Vienna with his mother present. In that context, the Court notes that the Austrian authorities in their assessment have made ample reference to the applicants' family situation, but came to the conclusion that because of the seriousness of the criminal offences committed by her, the public interest in the first applicant's expulsion outweighed the applicants' personal interest in continuing their family life on Austrian territory.

73. When it comes to the relationship between the applicants, the Court observes that, according their own statements, which were corroborated by the medical evidence they submitted (see paragraphs 31-33 above), a significant disruption of their family life had already occurred when the first applicant had to start serving her prison sentence in 2007. The separation of mother and child at that time appears to have caused both of them severe psychological problems. The first applicant's expulsion in 2012 without doubt caused another disruption of their family life. However, after her release from prison, the first applicant could not have reasonably expected to be granted further leave to remain in Austria and continue her family life with her son there, as the exclusion order against her had already been legally binding at that time.

74. In the light of the above considerations, having regard to the serious and repetitive nature of the criminal offences committed by the first applicant and the fact that she was warned by the authorities in 1994 already that further criminal offences could lead to her expulsion; the fact that the first applicant entered Austria as an adult and still has at least cultural ties with Slovakia; the proximity of the country to which she was expelled, which allows her family members to visit her frequently; and the fact that the exclusion order was limited in time and will expire in September 2016, hence less than four years after the first applicant's expulsion, the Court is

satisfied that the Austrian authorities have not overstepped their margin of appreciation when assessing the proportionality of the measures taken in accordance with Article 8 § 2 of the Convention.

There has accordingly been no violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. The applicants complained of a violation of Article 6 of the Convention, because neither the Constitutional Court nor the Administrative Court dealt with the first applicant's complaints on the merits. They further complained under the same provision that the Independent Administrative Panel in its decision of 6 April 2009 did not take all factors into account when making its legal assessment. They also relied on Articles 2 and 5 of the Convention, without further substantiating their complaint.

76. The Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him within the meaning of Article 6 § 1 of the Convention (see, *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Consequently, Article 6 of the Convention is not applicable to the present application and the complaint is inadmissible *ratione materiae* with the provisions of the Convention in accordance with Article 35 §§ 3 (a) and 4.

77. Concerning the complaints under Articles 2 and 5, the applicants' submissions remained unsubstantiated. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

78. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, unanimously, the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 2 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Khanlar Hajiyev
Deputy Registrar	President