

[Home](#) > Slovenia - Constitutional Court of the Republic of Slovenia, 16 June 2016, Judgment U-I-68/16, Up-213/15

Slovenia - Constitutional Court of the Republic of Slovenia, 16 June 2016, Judgment U-I-68/16, Up-213/15

Country of Decision:

Slovenia

Country of Applicant:

Kosovo

Serbia

Date of Decision:

16-06-2016

Citation:

U-I-68/16, Up-213/15

Court Name:

Constitutional Court of the Republic of Slovenia

Keywords:

Family member

Family reunification

Family unity (right to)

Relevant Legislative Provisions:

International Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [2]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [3] > [Recital \(22\)](#) [4]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [3] > [Article 12](#) [5]

Headnote:

Regarding the protection of the right to family life in asylum procedures, same-sex partnerships are in a comparable situation with heterosexual relationships. A distinction between the applicants for international protection based on sexual orientation is not in compliance with the Constitution. Article 16b(1) of IPA, which does not consider persons of a same-sex living in

established partnership as family members, is inconsistent with the right to non-discriminatory treatment in the exercise of the right to family life.

Facts:

The Asylum authority rejected asylum applications of a homosexual couple (one from Serbia and one from Kosovo) who lived in cohabitation. The Administrative court rejected the appeal regarding only one applicant. The rejected applicant appealed claiming that both applicants should be treated as family members and in order to respect the right to family life the authority should have examined together the fear of persecution of both applicants in both countries and whether the applicants could be returned together to any of their countries of origin. The Supreme Court took the view that on the basis of Article 16b(1) of the International Protection Act (IPA), same-sex partners living in a de facto cohabitation cannot be treated as family members. Consequently, it dismissed the appeal allegations regarding the erroneous assessment of the conditions for international protection of family members. The Constitutional Court has begun a process to review the constitutionality of Article 16b(1) of IPA.

Decision & Reasoning:

The Constitutional Court has ruled that in the present case the issue is discriminatory treatment in regulating the situation of family members of applicants for international protection. It found that Article 16b(1) of the IPA in determining persons who may be considered as family members treats differently homosexual and heterosexual relationships. It stated that the competent authorities in the asylum procedure are adopting decisions that may affect the family life of applicants, therefore the differential treatment in the contested provision relates to the exercise of the right to family life.

The ECtHR has adopted the position that same-sex couples living in a stable real partnership fall within the concept of private and family life under Article 8 of ECHR. The Constitutional Court in its decision no. U-I-212/10 took the view that in today's society there is no more disagreement about the fact that same-sex couples, as couples of different sexes, create loving and lasting partnerships. This also means that persons living in a same-sex partnership create a community that is essentially similar to a primary family or has the same function as the primary family, which means genuine family ties between family members, physical care, protection, emotional support and financial dependence.

The Constitutional Court ruled that regarding the protection of the right to family life in asylum procedures, the same-sex partnerships are in a comparable situation with heterosexual relationships. The distinction between the applicants for international protection is based on sexual orientation. The Constitutional court could not find any reason based on which such distinction would be in compliance with the Constitution. It concluded, that the Article 16b(1) of IPA is inconsistent with the right to non-discriminatory treatment in the exercise of the right to family life.

Outcome:

Since the constitutional complaint contested the judgment of the Supreme Court which was based on the IPA that is inconsistent with the Constitution, the Constitutional Court quashed the judgment and remitted the case to the Supreme Court for reconsideration.

Observations/Comments:

The IPA, as currently in force, defines family members as spouse, registered partner or partner

with whom the applicant lives in a long lasting partnership.

Attachment(s):



[u-i-68-16.up-213-15.pdf](#)[6]

Other sources cited:

M. Končina Peternel in: L. Žurj, Komentar Ustave Republike Slovenije, Dopolnitev-A, Fakulteta za državne in evropske študije, Ljubljana 2011, p. 894

Article 23(1) ICCPR

Article 10(1) ICESCR

National / Other Legislative Provisions:

[Slovenia - Constitution Art 8](#) [7]

[Slovenia - Constitution Art 14](#) [8]

[Slovenia - Constitution Art 15\(5\)](#) [9]

[Slovenia - Constitution Art 22](#) [10]

[Slovenia - Constitution Art 35](#) [11]

[Slovenia - Constitution Art 53\(3\)](#) [12]

[Slovenia - Constitution Art 153\(2\)](#) [13]

[Slovenia - International protection Act \(ZMZ\) Article 16\(b\)\(1\)](#) [14]

[Slovenia - Family Code Article 12\(1\)](#) [15]

[Slovenia - Family Code Article 3](#) [16]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] https://www.asylumlawdatabase.eu/node/195#toc_46

[3] <https://www.asylumlawdatabase.eu/node/4039>

[4] https://www.asylumlawdatabase.eu/node/4039#toc_33

[5] https://www.asylumlawdatabase.eu/node/4039#toc_162

[6] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/u-i-68-16.up-213-15.pdf>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-8>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-14>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-155>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-22>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-35>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-533>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-constitution-art-1532>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-16b1>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-family-code-article-121>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-family-code-article-3>