

Application of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms to migrant cases

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Law enforcement officer shall respect and protect human rights of persons guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms. The mentioned rights and freedoms are guaranteed not only to citizens of the contracting parties of mentioned Convention, but also to all persons subject to the jurisdiction of the contracting party, i.e. also to migrants. The article discusses the rights of migrants to respect for private and family life guaranteed by Art. 8 Convention for the Protection of Human Rights and Fundamental Freedoms. The mentioned law is discussed in the article not only in general terms, but also describes and analyzes individual aspects of the mentioned law. Since the content and scope of the mentioned rights is determined primarily by the jurisprudence of the European Court of Human Rights, the author also discusses specific jurisprudence and their applicability to migrant cases in the article. Author discusses not only the right to private and family life and how to preserve them, but also presents the possibilities of interfering with these rights. The possibility of interfering with the right to private and family life is a complex issue and it is not possible to fully deal with it in the practical work of a law enforcement officer. In the end, the author presents the possibility of how law enforcement officer could intervene in the right to private and family life of the migrant.

Key words: law enforcement officer, right to private and family life, Convention for the Protection of Human Rights and Fundamental Freedoms, proportionality test, migrant.

I. Introduction

The right to respect for private and family life is regulated by Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention"). Art. 8 Par. 1 of Convention regulates: "*Everyone has the right to respect for his private and family life, his home and his correspondence.*". The Convention does not define the terms mentioned in it, their definition and scope is one of the subjects of individual case decisions by the European Court of Human Rights (hereinafter referred to as the "ECHR").² The interpretation of individual terms is given by the ECHR in the decisions of specific cases and subsequently applies this interpretation in similar cases. In this way the constant jurisprudence is created and provides an interpretation of individual concepts. The concept of respecting private and family life has two aspects. The first aspect is private life, the second is family life. We will analyze both mentioned aspects based on case law that discusses the mentioned terms and defines their scope. In our article, we do not deal with all aspects of the law according to Art. 8 of the Convention, we deal only with those aspects that have a direct or indirect relation to migration. We therefore do not deal with such aspects of the mentioned

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² For the impact of the ECHR on the countries of Central and Eastern Europe, see Iulia Motoc and Ineta Ziemele Ineta, *The impact of the ECHR on democratic change in Central and Eastern Europe: judicial perspectives* (Cambridge: Cambridge University Press, 2016).

rights as the protection of personal data or the protection of the home.³ It should be noted that we present only selected cases, while individual aspects of the right to private and family life are much more extensive and cannot be exhausted in one article. At the end of our article, we will give a recommendation on how a law enforcement officer can intervene in the right to respect for private and family life.

II. Right to respect for private life

The right to respect for private life, or the right to privacy, is a right that Art. 8 Par. 1 of the Convention does not define. It is a right that is not only regulated at the international and European level, but also at the national level. We will not deal with its national connotation, as it is not the subject of our article, but we will focus only on its adjustment at the level of the Council of Europe, or adjustment in ECHR jurisprudence. In connection with the decisions of the ECHR, it should be noted that the concept of respect does not only include the passive side, i.e. non-interference with the law, but also includes the active side, which consists in the positive obligations of the state to adjust such conditions so that there is no interference with the right to respect for private and family life. The concept of private life is often used by the ECHR in the case of situations that cannot be classified under the right to family life. One of the categories of such relationships e.g. quasi-familial relationships. It's about relationships between

- foster parents and their children
- unmarried couples.⁴

The most of other types of relationships belong to the family relationship and thus are included under the right to family life, which we will discuss later.

A Case of *Niemietz v. Germany*

The term "private life" and its scope are regulated in several cases. One of the most important is the case of *Niemietz v. Germany*. The first question that the ECHR dealt with was the objection of the German government that Art.8 of the Convention does not provide protection against the search of a law office due to the difference between a private residence and professional and business premises. In the decision, the ECHR also commented on the scope of the concept of private life

*The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of "private life". However, it would be too restrictive to limit the notion to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.*⁵

From the mentioned statement, it is possible to conclude that the concept of "private life" cannot be exhaustively defined and, in particular, it is not possible to exhaustively determine its scope.⁶ The scope of the term "private life" depends on the specific circumstances of the individual

³ For other aspects of the rights guaranteed by Art. 8 of the Convention, see Jim Murdoch and Ralph Roche. *The European Convention on Human Rights and policing, A handbook for police officers and other law enforcement officials* (Strasbourg: Council of Europe, 2013), 67 - 75.

⁴ Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights*, (Strasbourg: Council of Europe, 2012), 13.

⁵ *Niemietz v. Germany*, no. 13710/88, § 29, ECHR 1992.

⁶ Similarly see *Costello – Roberts v. the United Kingdom*, no. 13134/87, § 36, ECHR 1993.

case. Therefore, it is not possible to precisely determine the scope of the mentioned term, but it is possible to establish its scope in a specific case. The term "private life" does not include only strictly private life, i.e. the non-professional area of life, as the term is commonly understood. In the judgment in question, the ECHR took the view that the scope of private life can also have a wider scope than only strictly non-professional parts of life, especially in the case of liberal professions. The ECHR expressed its opinion in the said judgment

*There appears, furthermore, to be no reason of principle why this understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world. This view is supported by the fact that, as was rightly pointed out by the Commission, it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not. Thus, especially in the case of a person exercising a liberal profession, his work in that context may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given moment of time.*⁷

The above interpretation of the ECHR is significant because it is not always possible to restrictively apply the term "private life" only to non-professional life, but in certain cases also to the professional part of life. Another area of private life on which the ECHR commented in the case law in question is the concept of residence. The concept of residence is understood by the ECHR more broadly than just a person's place of residence. In certain cases, it is possible to include the premises in which a person practices his profession, i.e. business premises, in the term dwelling. In the decision in question, the ECHR commented

*As regards the word "home", appearing in the English text of Article 8 (art. 8), the Court observes that in certain Contracting States, notably Germany (see paragraph 18 above), it has been accepted as extending to business premises. Such an interpretation is, moreover, fully consonant with the French text, since the word "domicile" has a broader connotation than the word "home" and may extend, for example, to a professional person's office. In this context also, it may not always be possible to draw precise distinctions, since activities which are related to a profession or business may well be conducted from a person's private residence and activities which are not so related may well be carried on in an office or commercial premises. A narrow interpretation of the words "home" and "domicile" could therefore give rise to the same risk of inequality of treatment as a narrow interpretation of the notion of "private life" (see paragraph 29 above).*⁸

Under the term "private life", according to the aforementioned judgment, we can include a broader right to establish and develop relationships with other people. It is therefore necessary to interpret the mentioned term extensively, not only as it is commonly understood. Another aspect is that in certain cases it is possible to include professional activities under the mentioned concept, especially in the case of liberal professions. It follows from the above that the term "private life" can also include various relationships such as friendships, work contacts, while other aspects of life can also be included here, especially with regard to the residence status of a foreigner.

⁷ Niemietz v. Germany, no. 13710/88, § 29, ECHR 1992.

⁸ Ibid, § 30.

B Case of Brüggemann and Scheuten v. Germany

Another decision that dealt with the interpretation of the term "private life" is the case of Brüggemann and Scheuten v. Germany. In the mentioned case, the matter was dealt with by the European Commission for Human Rights. However, unlike Niemietz v. Germany, the decision of the Commission in question did not concern an extensive interpretation of private life, but rather its breadth and limitation. In the mentioned case, the applicants stated that there was a violation of Art. 8 Par. 1 of the Convention on the Prohibition of Artificial Termination of Pregnancy. The Commission commented in the report

*However, there are limits to the personal sphere. While a large proportion of the law existing in a given State has some immediate or remote effect on the individual's possibility of developing his personality by doing what he wants to do, not all of these can be considered to constitute an interference with private life in the sense of Art. 8 of the Convention. In fact, as the earlier jurisprudence of the Commission has already shown, the claim to respect for private life is automatically reduced to the extent that the individual himself brings his private life into contact with public life or into close connection with other protected interests.*⁹

It follows from the mentioned statement of the European Commission for Human Rights that the restriction of private life depends on the degree of its connection with public life. If a person makes his private life public, i.e. a certain area of his private life becomes a life spent in society, that part of his life ceases to be subject to the term "private life". Of course, the above depends on the specific case, it is not possible to establish general criteria for cases, if it is a matter of public life and if it is still a matter of private life. In relation to a foreigner, it mainly concerns his relations with other people, friends and the activities he carries out. The context of the mentioned relationships and activities is used when assessing the extent of a certain part of life, i.e. whether it is a "private life" or a public life.

C Case of Botta v. Italy

Similar to the previous judgment, the ECHR addressed the scope, or limiting the scope of the right to private life in other cases as well. In the case of Botta v. Italy, the ECHR stated

*In the instant case, however, the right asserted by Mr Botta, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life.*¹⁰

Even if it is only a very strict expression of the ECHR, it is possible to establish the limitation of the scope of the right to private life by the following aspects on the basis of the said judgment

- the distance of the place where the law is applied from the habitual residence
- a wide range of interpersonal relationships
- indefinite scope of interpersonal relations.

D Case of Friend and Others v. the United Kingdom

The issue of the scope of interpersonal relationships with regard to private life was also addressed by the ECHR in its decision Friend and Others v. the United Kingdom. In the case in question, the ECHR has expressed its opinion

⁹ Brüggemann and Scheuten v. Germany (Report of the Commission), no. 6959/75, § 56, ECHR 1977.

¹⁰ Botta v. Italy, no. 153/1996/772/973, § 35, ECHR 1998.

(...) the Court has consistently held that the notion of private life is a broad concept (...) It encompasses, for example, the right to establish and develop relationships with other human beings and the right to identity and personal development (...) A broad construction of Article 8 does not mean, however, that it protects every activity a person might seek to engage in with other human beings in order to establish and develop such relationships. It will not, for example, protect interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the action or inaction of a State and a person's private life".¹¹

From the aforementioned decision of the ECHR, similar to the previous cases, it follows that interpersonal relationships must be sufficiently close and certain to be considered a person's private life.

III. Right to respect for family life

Since in our article we are dealing with the right to respect for private and family life in relation to foreigners, we are not dealing with other aspects, such as the possibility of adoption or the freedom to determine gender. The right to family life is another right, the protection of which is ensured by Art. 8 of the Convention. It is a law that has several sub-aspects.¹²

A Right to respect the family life

The concept of "family life" is defined by the ECHR judgment as follows

*The Court recalls that the notion of "family life" in Article 8 (art. 8) is not confined solely to families based on marriage and may encompass other de facto relationships (see the *Marckx v. Belgium* judgment of 13 June 1979, Series A no. 31, p. 14, para. 31; the *Keegan v. Ireland* judgment of 26 May 1994, Series A no. 290, p. 17, para. 44; and the *Kroon and Others v. the Netherlands* judgment of 27 October 1994, Series A no. 297-C, pp. 55-56, para. 30). When deciding whether a relationship can be said to amount to "family life", a number of factors may be relevant, including whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means (see, for example, the above-mentioned *Kroon and Others* judgment, loc. cit.)."¹³*

It follows from the judgment in question that the content of the term "family life" is created by the following aspects:

- de facto relationships, which do not have to be based on marriage
- whether the spouses live together
- the length of the spouses' relationship
- proof of mutual commitment through joint children or in another way.

The fulfillment of the mentioned aspects and their assessment is a criterion for a certain relationship to be considered "family life". The mentioned aspects need to be assessed individually as well as in their mutual connection. It is only after their assessment that it is

¹¹ *Friend and Others v. the United Kingdom*, no. 16072/06 and 27809/08, § 41, ECHR 2009.

¹² For other aspects of the right to private life, see Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Strasbourg: Council of Europe, 2012), 13 - 27. Ursula Kilkelly, *The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights* (Strasbourg: Council of Europe, 2003), 11 - 15.

¹³ *X, Y and Z v. the United Kingdom*, no. 21830/93, § 36, ECHR 1997.

possible to take an opinion on the existence of "family life". Since the assessment of which relationships can be subsumed under the concept of "family life", the ECHR assesses individually in each individual case. Therefore, it is not possible to determine all the relationships that this term includes. Nevertheless, it is possible to deduce the most common types of relationships included under the term "family life" from the individual cases considered by the ECHR. It is mainly about the relationship

- between children and their grandparents
- between siblings, regardless of their age
- between an uncle or aunt and his/her nephew or niece
- between parents and children born into second relationships, or those children born as a result of an extra-marital or adulterous affair, particularly where the paternity of the children has been recognised and the parties enjoy close personal ties
- between adoptive/foster parents and children.¹⁴

B Ending "family life"

From the point of view of assessing the existence of "family life", not only its origin, but also its demise is important. If there are reasons for the termination of "family life", it is no longer possible to speak of "family life", and thus such a relationship cannot be protected by Article 8 of the Convention. However, the dissolution can occur only after the family bonds have been formed. Certain circumstances can lead to the termination of such relationships after the establishment of family relationships. However, the relevant circumstances cannot be determined in general terms. These are exceptional circumstances and it is necessary to assess them very sensitively in order not to take the view that "family life" has ceased to exist, while "family life" continues. These are mainly cases of the termination of "family life" by the original family after adoption and also its termination after the expulsion of the foreigner. It is necessary to state that the following situations need to be assessed separately, whether "family life" actually ended in them. Thus, the situations we present may not in themselves be the reason for the demise of "family life". It is

- divorce
- interruption of common life
- expulsion of a foreigner
- entrusting the child to personal care
- adoption.¹⁵

IV. Interference with the right to respect for private and family life

The right to respect for private and family life is a right that is not absolute and can be interfered with in certain circumstances. Interference with the right to respect for private and family life is regulated by Art. 8 Par. 2 of the Convention: "*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.*" From this provision, it is possible to derive certain limits of interference with the mentioned right. These are the following points of view

¹⁴ Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Strasbourg: Council of Europe, 2012), 28.

¹⁵ Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Strasbourg: Council of Europe, 2012), 30.

- legality
- legitimacy
- proportionality.

A Legality

From the wording of Art. 8 Par. 2 The convention implies that the right to "private and family life" can only be interfered with in accordance with the law. The mentioned term "law" needs to be interpreted extensively, so it is not strictly just a law as a type of legal regulation, but also various other types of legal regulations, while it can also be regulations of professional self-governments¹⁶ or even a judicial precedent¹⁷. When assessing whether it is a "law", the legal force and binding nature of the relevant document is important, not its designation. At the same time, the ECHR established three criteria for assessing whether an intervention is "in accordance with the law". It is

- the presence of a national law,
- the clearness and precision of its wording and
- the aim it pursues¹⁸

From the aforementioned analysis, it follows that before interfering with private and family life, the question should be asked: "Is the interference with the right to respect for private and family life in accordance with the law?". Based on the facts mentioned above, in most cases we can answer positively, that is, that the intervention is in accordance with the law and meets the condition of "legality" of the intervention in the right to respect for private and family life.

B Legitimacy

Another condition for interference with the right to respect for private and family life is legitimacy. Legitimacy is a condition that stipulates that an intervention in private must meet one of the conditions, which is regulated by Art. 8 Par. 2 of the Convention, namely: "(...)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." In the said provision, three areas of interest are regulated, namely interest of the state, public and individuals. We will discuss the mentioned areas of legitimacy in more detail, with regard to migration.

(i) State interest

The interest of the state is an important area of interest on the basis of which it is possible to intervene in the right to respect for private and family life. It includes reasons for protecting national security, public safety, preventing riots or crime. The ECHR jurisprudence does not define the content of the term "national security".¹⁹ The European Commission for Human Rights stated in its decision that "*The Commission considers however that the principles referred to above do not necessarily require a comprehensive definition of the notion of "the interests of national security". Many laws, which by their subject-matter require to be flexible, are inevitably couched in terms which are to a greater or lesser extent vague and whose interpretation and application are questions of practice.*"²⁰ All the stated reasons for the protection of the interest of states are regulated by individual national legal systems.

¹⁶ See *Barthold v. Germany*, no. 8734/79, ECHR 1985.

¹⁷ See *Kruslin v. France*, no. 11801/85, ECHR 1990.

¹⁸ Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Strasbourg: Council of Europe, 2012), 37.

¹⁹ See *National security and European case-law* (Strasbourg: Council of Europe, 2013).

²⁰ *Esbester v. the United Kingdom* (Decision of the Commission), no. 18601/91, p.9, ECHR 1993.

(ii) *Public interest*

From Art. 8 par. 2 of the Convention, it can be inferred that the interest of society includes reasons such as the protection of health, morals and ensuring the economic well-being of the country. The stated reasons are regulated by individual national legal systems. Interest of society could be in the relationship to migrants e.g., ensuring the country's economic well-being by regulating the labour market in relation to the population.²¹

(iii) *Interest of individuals*

The interest of individuals is in Art. 8 Par. 2 of the Convention modified as "protection of the rights and freedoms of others". It is a protection that must be directly related to the rights and freedoms of other persons. The stated reason is applied only to a limited extent in relation to foreigners, it is used more in cases not related to migration.

(iv) *Proportionality*

The last condition is the proportionality of the intervention. In many cases, this is the most important condition, since the previous conditions are a certain basis, after they are fulfilled, it is possible to examine the condition of proportionality. Proportionality is a legal principle. Legal principles are the rules forming the basis of the legal order, or a certain legal branch. It follows from the nature of legal principles that they have a high degree of generality and are more or less common to the law of different countries and periods. The principle of proportionality is a legal construction, at the same time it is also a methodological tool. Proportionality is typically described as a criterion determining the correct relationship between purpose and meaning. The principle of proportionality consists of four components

- the right purpose
- rational connection
- essential meaning
- the correct relationship between the benefit obtained from the implementation of the administrative purpose and the damage caused to the constitutional right.²²

The principle of proportionality is applied in practice by a legal instrument – the proportionality test. The proportionality test is standardly used by constitutional and general courts.

C Interference with the right to respect for private and family life in migration cases

In addition to the theoretical aspects of the right to respect for private and family life, the ECHR also deals with special cases concerning foreigners in its decisions. A special aspect is the expulsion of foreigners. The ECHR commented on the above-mentioned question in its judgment as follows

Furthermore, the Court observes that not all settled migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy "family life" there within the meaning of Article 8. However, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances

²¹ *Berrehab v. Nederlands*, no. 10730/84, § 26, ECHR 1988.

²² Aharon Barak, *Proportionality: constitutional rights and their limitations* (New York: Cambridge University Press. Cambridge studies in constitutional law, 2012), 131.

of the particular case whether it is appropriate for the Court to focus on the “family life” rather than the “private life” aspect (see *Üner*, cited above, § 59).²³

In its decisions, the ECHR also regulates the right of persons to respect their private and family life in special cases, i.e. foreigners, in cases

- expulsion due to the commission of a crime²⁴
- immigration policy of the state²⁵.

An important decision of the ECHR is *Boultif v. Switzerland*. In the aforementioned decision, the ECHR modified the criteria for assessing whether the measure of expulsion in a democratic society is necessary and proportionate to the pursued legitimate goal. The ECHR also commented on the mentioned criteria in the decision *Üner v. Netherlands*²⁶, while they should not only be used by the ECHR, but also by national courts.²⁷

V. Test of proportionality as result

The proportionality test is a legal means of implementing the principle of proportionality. The proportionality test is not just one, but there are several types of proportionality test and it depends not only on the legislation of international and European law, but also on national law. Therefore, it is not possible to apply the mentioned test. The application of the proportionality test is not unified at the level of general courts. For the aforementioned reason, the head of the Constitutional Court of the Slovak Republic JUDr. Ivetta Macejková, PhD. published methodology that regulates the conditions and procedure for applying the proportionality test. The methodology was prepared on the basis of a search of valid doctrinal legal opinions and stabilized jurisprudence. It is intended especially for the younger generation of judges. The proportionality test in the above form contains 3 steps, also named subtests, namely the appropriateness test, the necessity test and the proportionality test. The last of the listed subtests is essential. In its application, Alexy's weighting formula is applied, which determines the ratio between the damage caused by one right and the advantage of another right. From the point of view of the intensity of the intervention, it is possible to compare the intervention verbally and numerically, namely the level of intervention low (number 1), medium (number 2) and substantial (number 4). Subsequently, the individual aspects of interference with one right and another are calculated separately. The right that has the highest numerical value is the "winning right", i.e. prevailing.

We focused on the right to respect for private and family life and the interference with that right. We will now consider how useful the theoretical elaboration of the mentioned topic can be in the case of law enforcement in connection with migration. A law enforcement officer can intervene in these rights in two ways, namely through official activity or official intervention. An officer can interfere with fundamental rights through official activity, but this interference is not immediate. During official activities, the officer has time to assess whether interference

²³ *Maslov v. Austria*, no. 1638/03, § 63, ECHR 2008.

²⁴ For example *Üner v. Netherlands*, no. 46410/99, ECHR 2006, *Boultif v. Switzerland*, no. 54273/00, ECHR 2001, *Solomon v. Netherlands*, no. 44328/98, ECHR 2000, *Mitchell v. the United Kingdom*, no. 40447/98, ECHR 1998, *Beldjoudi v. France*, no. 12083/86, ECHR 1992, *Nnyanzi v. the United Kingdom*, no. 21878/06, ECHR 2008, *Baghli v. France*, no. 34374/97, ECHR 1999, *Keles v. Germany*, no. 32231/02, ECHR 2005, *Lupsa v. Romania*, no. 10337/04, ECHR 2006, *Ljatifi v. North Macedonia*, no. 19017/16, ECHR 2018.

²⁵ For example *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, no. 9214/80, 9473/81, 9474/81, ECHR 1985, *Rodrigues da Silva and Hoogkamer v. Netherland*, no. 50435/99, ECHR 2006, *Berrehab v. Netherlands*, no. 10730/84, ECHR 1988.

²⁶ *Üner v. Netherlands*, no. 46410/99, § 57 – 58, ECHR 2006

²⁷ See Judgment of the Supreme Administrative Court of the Czech Republic (Rozsudek Nejvyššího správního soudu České republiky), no. 8 Azs 60/2014, 31. July 2014.

with fundamental rights will be appropriate. In the case of official interventions, such an option is only available in the case of official interventions with preparation. If the officer has enough time to prepare an official action, he can also assess the adequacy of the interference with fundamental rights. In the case of official interventions without preparation, such an option is excluded. For this reason, we see the application of the proportionality test primarily in decisions, especially when expelling a foreigner. We have developed a methodology for the procedure for interference with the right to private and family life by decision on deportation.

1. Does the foreigner have a family or private life? If the answer is yes, go to the next point.
2. What is the content of family and private life? After finding out the content of private and family life, go to the next point.

The basis is mainly the following facts

- the nature and seriousness of the act (which is the reason for expulsion) committed by the complainant
- length of stay of a foreigner in the territory of state
- the time that has passed since the act was committed (which is the reason for expulsion) and the foreigner's behavior during this period
- nationality of the foreigner and the persons concerned
- family situation of the foreigner, such as length of marriage (partnership) and other factors expressing the effectiveness of family life
- whether the spouse (partner) knew about the act (which is the reason for expulsion) at the time he entered the family relationship
- whether children were born in the marriage (partnership), and if so, their ages
- the severity of the problems that the spouse (partner) would likely encounter in the country to which the foreigner is to be expelled
- the best interest and welfare of the children, in particular the seriousness of the problems that the children are likely to face in the country to which the alien is to be deported
- the strength of social, cultural and family ties with the state of residence and with the country to which the foreigner is to be expelled.

3. Is the interference with the right to respect for private and family life in accordance with the law? If the answer is yes, go to the next point.

4. Is the interference with the right to respect for private and family life in the interest 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? If the answer is yes, go to the next point.

5. Does the interference with the right to respect for private and family life by expulsion enable the goal - regulation of migration? If the answer is yes, go to the next point.

6. Is there a softly interventions (e.g. fine or punishment) by which it is possible to achieve the goal - regulation of migration? Is this softly intervention able to achieve the goal - regulation of migration? If the answer to the second question is negative, go to the next point. If the answer is positive, apply a softly intervention.

7. Is it possible to maintain the right to regulate migration and the right to respect private and family life at the same time? If the answer is negative, go to the next point.

8. Application of the proportionality test.

The questions must be answered with a verbal evaluation of the intensity of the intervention (low, medium, or substantial). Then assign a numerical rating to the verbal rating (low number 1, medium number 2, substantial number 4). The right with the higher achieved numerical value is stronger and prevails over the other right.

Table 1: Test of Proportionality

Intensity of interference with the right to regulate migration.	Aspects of the right to respect for private and family life.	Intensity of interference with the right to respect for private and family life.
What will be the intensity of the interference with the right to regulate migration, in terms of the nature and seriousness of the act committed by the foreigner?	The nature and seriousness of the act (which is the reason for) committed by the foreigner.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the nature and seriousness of the act committed by a foreigner?
What will be the intensity of interference with the right to regulate migration, in terms of the length of stay of a foreigner in the territory of the country of residence?	Length of stay of a foreigner in the territory of the country of residence.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the length of stay of a foreigner in the territory of the state of residence?
What will be the intensity of the interference with the right to regulate migration, in terms of the time that has passed since the act was committed and the foreigner's behavior during this period?	The time that has passed since the act was committed (which is the reason for expulsion) and the foreigner's behavior during this period.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the time that has passed since the act was committed and the foreigner's behavior during this period?
What will be the intensity of the interference with the right to regulate migration, in terms of the nationality of the foreigner and the persons concerned?	Nationality of the foreigner and the concerned persons.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the nationality of the foreigner and the affected persons?
What will be the intensity of interference with the right to regulate migration, in terms of the family situation of the foreigner, such as the length of marriage (partnership) and other factors expressing the effectiveness of family life?	The foreigner's family situation, such as the length of marriage (partnership) and other factors expressing the effectiveness of family life.	What will be the intensity of the interference with the right to respect for private and family life, from the point of view of the foreigner's family situation, such as the length of marriage (partnership) and other factors expressing efficiency of family life?
What will be the intensity of the interference with the right to regulate migration, from the point of view of the fact that the husband (partner) knew about the act at the time he entered the family relationship?	Whether the husband (partner) knew about the act at the time he entered the family relationship.	What will be the intensity of the interference with the right to respect for private and family life, from the point of view of the fact that the husband (partner) knew about the act at the time he entered the family relationship?
What will be the intensity of the interference with the right to regulate migration, from the point of view of the fact that children were born in the marriage (partnership), including the fact of their age?	Whether children were born in the marriage (partnership), and if so, their ages.	What will be the intensity of the interference with the right to respect for private and family life, from the point of view of the fact that children were born in the marriage (partnership), including the fact of their age?

What will be the intensity of the interference with the right to regulate migration, in terms of the severity of the problems that the spouse (partner) is likely to encounter in the country to which the foreigner is to be expelled?	The importance of the problems that the spouse (partner) is likely to face in the country to which the foreigner is to be deported.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the seriousness of the problems that the spouse (partner) would likely encounter in the country to which the foreigner is to be expelled?
What will be the intensity of the interference with the right to regulate migration, in terms of the best interests and welfare of the children, in particular the seriousness of the problems that the children are likely to face in the country to which the foreigner is to be expelled?	The best interests and welfare of the children, in particular the seriousness of the problems that the children are likely to face in the country to which the foreigner is to be expelled.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the best interests and well-being of the children, in particular the seriousness of the problems that the children are likely to face in the country to which the foreigner is to be expelled?
What will be the intensity of the interference with the right to regulate migration, in terms of the strength of social, cultural and family ties with the Slovak Republic and with the country to which the foreigner is to be expelled?	The strength of social, cultural and family ties with the Slovak Republic and with the country to which the foreigner is to be expelled.	What will be the intensity of the interference with the right to respect for private and family life, in terms of the strength of social, cultural and family ties with the Slovak Republic and with the country to which the foreigner is to be expelled?

VI. Conclusion

The right to respect the right to private and family life must be respected not only by courts, but also by law enforcement officers. In the case of migration cases, non-respect of the mentioned right can also have a significant impact on the life of a foreigner, as the ECHR also expressed in its decisions. Unlike a court, or a law attorney who represents a foreigner in court, a law enforcement officer has a disadvantage, as in many cases he does not have a legal education, nor does he have enough time to devote to interfering with the right to respect private and family life. For this reason, we proposed a certain methodology that could be used by law enforcement officers in practice. Of course, before their application, a certain retraining in the mentioned law is necessary. It takes a certain amount of time from the law enforcement officer to start using the mentioned methodology, but after repeated use it takes a maximum of 5 - 10 minutes.

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