



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

THIRD SECTION

CASE OF IBROGIMOV v. RUSSIA

(Application no. 32248/12)

JUDGMENT

STRASBOURG

15 May 2018

This judgment is final but it may be subject to editorial revision.

In the case of Ibrogimov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 17 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 32248/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a national of Uzbekistan, Mr Firuzzhon Bakhronovich Ibrogimov (“the applicant”), on 30 May 2012.

2. The applicant was represented by Ms L. Ovchinnikova, a lawyer practising in Vladivostok. The Russian Government (“the Government”) were represented by initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 19 October 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1992 and lives in Bukhara, Uzbekistan.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant was born in Uzbekistan. In 2003 his father, mother, brother and sister moved to Vladivostok in Russia and subsequently acquired Russian nationality, while he continued to live with his grandfather in Bukhara, visiting them in the summer months. After his grandfather had died and the applicant had finished the secondary school, in June 2011 he joined his family in Russia.

7. The applicant took a mandatory blood test with a view to obtaining a health certificate to support his application for a temporary residence permit. He was found to be HIV-positive.

8. On 23 September 2011 the Consumer Protection Authority declared the applicant's presence in Russian undesirable (the "exclusion order") on the ground that he was HIV-positive.

9. By judgment of 19 December 2011, the Sovetskiy District Court in Vladivostok rejected the applicant's challenge to the exclusion order, finding that it was issued in full compliance with Russian law.

10. On 13 February 2012 the Primorskiy Regional Court upheld the judgment on appeal.

11. On 22 February 2012 the applicant left Russia to comply with the exclusion order.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. For a summary of relevant Russian law and practice, see *Novruk and Others v. Russia*, nos. 31039/11 and 4 others, §§ 49-62, 15 March 2016.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 8

13. The applicant complained that that the difference in the treatment to which he was subjected on account of his health status amounted to discrimination within the meaning of Article 14 of the Convention, read in conjunction with Article 8. Those provisions read as follows:

Article 8

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

14. The Government submitted that the applicant did not apply for a re-opening of the proceedings on account of new circumstances following the legislative changes in 2015 which had facilitated applications for residence permits for HIV-positive non-nationals with close relatives in Russia.

15. The Court reiterates that the issue of whether domestic remedies have been exhausted is normally determined by reference to the date on which the application was lodged with it (see *Novruk and Others*, cited above, § 75, with further references). The applicant had exhausted the domestic remedies before lodging his application with the Court. By the time the legislative change was introduced, he had been unable to continue living in Russia with his family for more than three years (compare *Ustinova v. Russia*, no. 7994/14, § 36, 8 November 2016). The Government's objection must therefore be dismissed.

16. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. The Government submitted that there had been no violation of either Article 8 or Article 14 of the Convention.

18. The Court reiterates that Article 8 does not guarantee the right of an alien to enter or to settle in a particular country, but the threshold for the application of Article 14 is different. It does not require that there should be a breach of any specific right guaranteed by the Convention, it being necessary, but also sufficient, for the facts of the case to fall "within the ambit" of one or more of the Articles of the Convention or its Protocols (see *Novruk and Others*, cited above, §§ 83-84). The Court reiterates that the link between adult children and their parents – of the kind the applicant had with his parents in the present case – falls under the head of "private life" within the meaning of Article 8 of the Convention and, accordingly, the facts of the case fall "within the ambit" of that provision (*ibid.*, §§ 88-89). A distinction made on account of an individual's health status, including such conditions as HIV infection, is covered – either as a disability or a form thereof – by the term "other status" in the text of Article 14 of the Convention (*ibid.*, § 91). Article 14 of the Convention taken in conjunction with Article 8 is therefore applicable in the present case.

19. The Court further notes that the applicant was treated differently from other aliens wishing to remain in Russia solely on account of his HIV-positive status (*ibid.*, §§ 95-97) and that the burden is on the

Government to provide an objective and reasonable justification for that difference in treatment (*ibid.*, § 98). The Court has held that people living with HIV are a vulnerable group and that the State should be afforded only a narrow margin of appreciation in choosing measures that single out this group for differential treatment on account of their health status (see *I.B. v. Greece*, no. 552/10, § 81, ECHR 2013, and *Novruk and Others*, cited above, § 100).

20. The Court has found that the expulsion of HIV-positive individuals did not reflect an established European consensus and had no support in other member States, Russia being the only member State of the Council of Europe and one of sixteen States world-wide that enforced deportation of HIV-positive non-nationals (*ibid.*, § 101). The Court also noted the unanimous agreement of internationally recognised experts and organisations active in the field of public health that entry, stay and residence restrictions on people living with HIV could not be objectively justified by reference to public-health concerns: HIV is not transmitted through casual contact or by airborne particles, but rather through specific behaviours. The limited ways in which HIV can be transmitted does not put prevention exclusively within the control of the HIV-positive non-nationals, but rather enables HIV-negative persons to take steps to protect themselves against the infection through safer sexual relations and safer injections. Excluding HIV-positive non-nationals from entry or residence in order to prevent HIV transmission is based on the assumption that they will engage in specific unsafe behaviours, and that the national will also fail to protect himself or herself. This assumption amounts to an unwarranted generalisation with no basis in fact and fails to take into account the specific situation of the individual concerned (*ibid.*, §§ 102-05).

21. As in previous similar cases, the Government did not produce any evidence of any unsafe behaviour on the part of the applicant (*ibid.*, § 106). The exclusion order against him had not been preceded by an individualised judicial assessment of all the relevant facts but rather on a predetermined classification of the entire group of vulnerable individuals as a threat to public health which is incompatible with the protection against discrimination enshrined in Article 14 of the Convention (*ibid.*, § 108).

22. Finally, the Court reiterates that the decisions declaring the applicant's presence in Russia undesirable set no time-limit on his exclusion from the Russian territory, it was issued in 2011 and has remained effective to date. As it was issued in connection with his infection with HIV, which is by today's medical standards a lifetime condition, it had the effect of a permanent ban on his re-entry to Russia. The Court reiterates that the imposition of a residence prohibition of unlimited duration is an overly rigorous measure which it has found to be disproportionate to the aim pursued in many previous cases (*ibid.*, § 110, with further references).

23. In sum, the Court reiterates that, in the light of the overwhelming European and international consensus geared towards abolishing the outstanding restrictions on entry, stay and residence of HIV-positive non-nationals who constitute a particularly vulnerable group, the respondent Government failed in their duty to put forward compelling reasons or any objective justification for their differential treatment for health reasons (*ibid.*, § 111).

24. The applicant has therefore been a victim of discrimination on account of his health, in violation of Article 14 of the Convention taken in conjunction with Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

26. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government submitted that Article 41 should be applied in accordance with the Court’s established case-law.

28. The Court awards the applicant the amount claimed, plus any tax that may be chargeable.

29. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 14 of the Convention, read together with Article 8;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Alena Poláčková
President