



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

Communicated on 12 June 2014

FIRST SECTION

Application no. 30422/14
Zukhra Abdullayevna SALIKHOVA
against Russia
lodged on 2 April 2014

STATEMENT OF FACTS

1. The applicant, Ms Zukhra Abdullayevna Salikhova, is an Uzbek national, who was born in 1972 and lives in Yoshkar-Ola, Mariy El Republic.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant resides with her husband Mr K.D. and their son Mr K.N., who was born in Yoshkar-Ola on 5 August 2004. They all hold Uzbek nationality.

4. Since her entry to Russia in early 2004 the applicant does not have any documents regularizing her immigration status.

5. Since 2011 the applicant's son attends an elementary school in Yoshkar-Ola. According to the applicant he is fully integrated into Russian culture and does not speak Uzbek language.

6. On 7 March 2012 the applicant's husband was convicted of theft by the Yoshkar-Ola Town Court and sentenced to two years' imprisonment with probation period of two years.

7. On 11 June 2013 during a spot check by immigration authorities the applicant was identified as a person staying in the Russian Federation without a migration card. She was fined 1,500 Russian roubles (RUB) (approximately 35 euros (EUR)). On the same day her husband was fined by the immigration authorities RUB 2,000 (EUR 48) for providing residence to an unregistered migrant (the applicant).

8. On 23 July 2013 the applicant was fined by the municipal authorities 1,500 roubles for unlawful installation of a confectionery stand next to a hospital and unlawful sale of gingerbreads and biscuits.

9. On 20 August 2013 during a check by immigration authorities the applicant was again identified as a person staying in the Russian Federation without regularizing her immigration status.

10. On 18 September 2013 the Yoshkar-Ola Town Court found the applicant guilty of an administrative offence proscribed by Article 18.8, section 1.1 of the Administrative Offences Code (the AOC) ‘Violation by a foreign citizen or a person without citizenship of the regulations on entry to the Russian Federation or the regime of stay (residence) in the Russian Federation’. She was fined RUB 2,000 and her administrative removal was ordered. The relevant parts of the judgment read as follows:

“During the hearing Mrs Salikhova Z.A. [the applicant] acknowledged her guilt in the administrative offense, but objected to the administrative removal from Russia referring to her family’s residence in Russia – a husband and an underage child.

According to affidavits of Mrs Salikhova she resides at the mentioned address since 2004, she is an Uzbek national, has no registration in the Russian Federation, and cannot register because she had lost her Uzbek passport due to her absent-mindedness and carelessness. She had not informed either the police or immigration authorities about the loss of passport...

The court established that Mrs Salikhova resides in the Russian federation since 2004 without documents permitting her stay (residence) in the Russian Federation (there is no visa) and therefore she stays unlawfully on the territory of the Russian Federation.

[According to police records] on 11 June 2013 she was administratively sanctioned under Article 18.8 of the AOC for violation of the regime of foreign citizens stay in the Russian Federation.

The claims of Mrs Salikhova that she had informed the police in Samara Region about the loss of the passport found no proof...

The abovementioned facts prove that Mrs Salikhova had committed an administrative offence proscribed by Article 18.8, section 1.1 of the AOC.

... [C]onsidering the nature of the offence – unlawful stay on the territory of the Russian Federation, the length of the stay, the mitigating circumstance of acknowledgement of guilt, existence of an underage child, the court finds it necessary to impose on her the administrative fine of 2,000 roubles and the administrative removal from the territory of Russia.

The claims of Mrs Salikhova that she may not be removed from Russia without her family – her husband Mr K.D. and their underage son Mr K.N. – the court finds unreasonable for the following reasons:

The court established that Mr K.D. is an Uzbek national and currently serves his sentence under probation imposed by the judgment of Yoshkar-Ola Town Court on 7 March 2012.

Mr K.N. was born in Yopshkar-Ola, i.e. on the territory of Russia, but has no Russian citizenship...

Considering that both parents of Mr K.N. are Uzbek nationals and that there is no evidence of denial of Uzbek citizenship to him, the underage child of Mrs Salikhova has no Russian citizenship by birth.

Accordingly there are no obstacles to Mrs Salikhova’s removal from the Russian Federation...”

11. The applicant’s appeal against the judgment was dismissed on 3 October 2013 by the Supreme Court of Mariy El Republic. The relevant parts of the appeal judgment read as follows:

“...Mrs Salikova lodged an appeal with the Supreme Court... requesting to annul the judgment since it does not duly consider her family situation and the interests of an underage child...

According to Article 8 of the European Convention everyone has a right to respect for private and family life...

As it follows from the case-file and the statement of appeal Mrs Salikhova relied on family ties in the Russian Federation [in challenging her removal]...

Section 1.1 had been introduced in Article 18.8 of the AOC after a [recent] legislative amendment and [now] the sanction of this section presumes mandatory imposition of an administrative removal along with an administrative fine, [consequently] a court considering a case may not avoid imposition of this additional sanction.

A failure to impose this sanction may not be justified by necessity to balance public and private interests in administrative proceedings.

Taking the above into consideration and Mrs Salikhova’s conduct and personality, in particular that she had been previously sanctioned under Article 18.8 of the AOC... and that she continues to violate the legislation in force, there had been sufficient grounds to justify imposition of an additional sanction of administrative removal...

Under these circumstances removal of Mrs Salikhova... would not contradict Article 8 of the European Convention...”

12. It appears that the applicant still resides in Russia.

B. Relevant domestic law

13. Chapter 18 of the Administrative Offences Code of the Russian Federation provides the list of administrative offences related to irregular status of migrants. In the relevant part it read at the material time as follows:

Article 18.8 (the AOC) ‘Violation by a foreign citizen or a person without citizenship of the regulations on entry to the Russian Federation or the regime of stay (residence) in the Russian Federation’

“...

1.1. The violation by a foreign citizen or a person without citizenship of the regime of stay (residence) in the Russian Federation through absence of documents permitting stay (residence) in the Russian Federation, or in case of loss of these documents through failure to report the loss to proper authorities, or through evasion of leaving the Russian Federation after a set period of stay, is punishable by the administrative fine between 2,000 and 5,000 roubles and the administrative removal from the Russian Federation

...”

COMPLAINT

The applicant complains that her removal from the Russian Federation would disproportionately interfere with her rights under Article 8 of the Convention by effectively severing the ties with her family.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for her family life, within the meaning of Article 8 § 1 of the Convention?
2. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?
3. Considering the opinion of the Supreme Court of Mariy El Republic expressed in the judgment of 3 October 2013 that Article 18.8, section 1.1 of the Administrative Offences Code had not afforded the national courts a possibility to refrain from imposing an administrative removal as an additional sanction in the applicant's case, were the national courts in the face of this legal provision capable of striking a proper balance between the respect for her family life and the interests pursued by the State, as prescribed by Article 8 § 2 of the Convention.