

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

THIRD SECTION

CASE OF ELDESUKI v. RUSSIA

(Application no. 12454/19)

JUDGMENT

STRASBOURG

7 June 2022

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



In the case of Eldesuki v. Russia,

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

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 12454/19) 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") on 3 March 2019 by an Egyptian national, Mr Abdelkarim Osama Gaber Akhmed Eldesuki, born in 1991 and living in Salmiya, Kuwait ("the applicant") who was represented by Mr A.V. Glazov, a lawyer practising in Izhevsk;

the decision to give notice of the complaint concerning Article 8 of the Convention to the Russian Government ("the Government"), represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 17 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicant, who married a Russian national in 2013, has been living in Russia with her since then. In 2018 they had a son, also a Russian national. In December 2017 the applicant received a five-year residence permit and applied for Russian nationality. In March 2018 the Federal Security Service ("the FSB") recommended to the immigration authorities ("the police") to declare his presence in Russia undesirable on undisclosed national security grounds and revoke (annul) his residence permit.

2. Following the recommendation, on 11 April 2018 the police revoked the applicant's residence permit and then rejected his application for Russian nationality. The applicant appealed against those decisions to the Oktyabrskiy District Court in Izhevsk ("the District Court") alleging that the revocation of his residence permit deprived him of lawful grounds to stay in Russia, made him liable to deportation with a five-year re-entry ban and that it would disrupt his family life with his wife and minor child, both of whom were Russian nationals. He stressed that the reasons for the sanction were unknown to him.

3. On 24 May 2018, the District Court rejected the appeal without referring to any documents as the basis for the exclusion, apart from noting that the sanction had been recommended by the FSB. It neither indicated the

nature of the data on which the sanction had been based, nor any details regarding its origins or the circumstances of its collection. The court stated that the revocation of the residence permit did not imply the applicant's enforced removal from Russia, but merely obliged him to leave the country, which did not preclude him from re-entering and applying for a new permit.

4. The applicant's further appeals to the Udmurtia Supreme Court and the Supreme Court of Russia were to no avail. On 9 January 2019 the latter refused to examine his second cassation appeal.

5. The applicant and his family left Russia in 2019. According to the applicant, given that his residence permit was annulled on undisclosed national security grounds, his future applications for a new one would be to no avail.

6. The applicant complained under Article 8 of the Convention that the revocation of his residence permit had deprived him of legal basis to remain in Russia, made him liable to deportation and disrupted his family life. The judicial review of the sanction had not been attended by adequate procedural safeguards and the courts failed to balance the interests involved.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

8. A summary of relevant general principles can be found in *Gaspar v. Russia*, no. 23038/15, §§ 38-45, 12 June 2018.

9. The Court observes that the contents of the FSB's recommendation, which served as the basis for the revocation of the applicant's residence permit, have not been revealed to it. Furthermore, the domestic judgments contained neither indication of the reasons based of which the applicant was considered a danger to national security nor provided even a generalised description of the acts ascribed to him (compare with *Amie and Others v. Bulgaria*, no. 58149/08, §§ 12-13 and 98, 12 February 2013). He was not given even an outline of the national security case against him, making it impossible for him to provide exonerating evidence, such as an alibi or an alternative explanation for his actions. Furthermore, contrary to Article 8 of the Convention, the courts failed to apply the general principles established by the Court and balance between the national security interests and the applicant's right to respect for family life.

10. There has therefore been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. The applicant claimed 25,000 euros (EUR) under this head. He left the determination of the award for costs and expenses to the Court's discretion.

12. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to that amount and rejects the applicant's claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President