

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

THIRD SECTION

CASE OF SARGSYAN v. RUSSIA

(Application no. 48453/16)

JUDGMENT

STRASBOURG

8 December 2020

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



In the case of Sargsyan v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 48453/16) 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 an Armenian national, Mr Artur Meruzhanovich Sargsyan ("the applicant"), on 3 August 2016;

the decision to give notice to the Russian Government ("the Government") of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The present case concerns the applicant's removal from Russia with a subsequent ban on re-entry for five years, for a violation of immigration regulations.

THE FACTS

2. The applicant was born in 1977 and lives in Pereyaslovskaya. The applicant was represented by Mr A. Korzhov, a lawyer practising in Krasnodar.

3. The Russian Government ("the Government") were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

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

I. BACKGROUND INFORMATION

5. According to the applicant, in 2007 he arrived in Russia and in 2008 he started cohabiting with Ms A.P. in the Krasnodar Region. It is unclear on what basis he resided in the country. From the documents submitted, it appears that he regularly left and re-entered Russia. According to the Government, the applicant arrived in Russia in 2011 and on 17 February

2012 he registered his temporary stay in Russia with the immigration authorities in a settlement in the Krasnodar Region.

6. In November 2008 Ms A.P. had a daughter, M.P. According to the applicant, the child was his, even though another person, Mr A.P., was indicated as the father on the birth certificate. The applicant stated that he fully participated in the upbringing of his daughter. According to the Government, given that a different person was indicated as the father on the birth certificate, the applicant was not the father of M.P. and there was no proof to the contrary.

7. According to the applicant, on an unspecified date in January 2014 he officially registered his stay in Russia in Pereyaslovskaya, in the Brukhovetskiy district of the Krasnodar Region. The applicant's stay in the country was registered and duly authorised by the Brukhovetskiy district department of the Federal Migration Service ("the FMS"). The documents submitted show that the immigration authorities were fully aware of the applicant's continued presence in Russia. They officially registered his stay in Pereyaslovskaya as lasting from 14 March to 9 June 2014, from 9 June to 27 August 2014, from 27 August to 21 November 2014, and from 21 November to 9 December 2014 – a consecutive period of 255 days, that is, eight months and twenty-six days.

8. On 15 January 2014 the applicant officially started working as an electrician for the Blago-Stroy company. The duration of his employment contract was until 26 December 2014.

9. On 24 October 2014 the applicant officially registered his marriage to Ms A.P.

10. On 9 December 2014 the applicant, his wife and her parents went to the FMS to apply for a temporary residence permit for the applicant. According to the applicant, he went to the FMS with a number of documents, including a copy of his marriage certificate and a copy of his employment contract. However, the FMS officials Mr S. and Ms P. refused to take those documents and called the police, who detained the applicant for a violation of Article 18.8 § 1 of the Russian Code of Administrative Offences ("the CAO"), that is, overstaying the time-limit for residence in Russia of ninety days within a period of 180 days. A record of his administrative detention was drawn up and he was then taken to the Brukhovetskiy District Court (see paragraph 12 below). According to the Government's submissions, the applicant indicated in the detention record that he had a wife in Russia, whom he had married in October 2014, but he did not state either that he was employed in Russia or that he had any children living in that country.

11. On 27 December 2014 the applicant was subjected to removal from Russia and was banned from re-entry for five years.

II. ADMINISTRATIVE PROCEEDINGS AGAINST THE APPLICANT AND HIS APPEALS AGAINST THE REMOVAL ORDER

A. The first set of proceedings

12. On 9 December 2014 the applicant was taken to the Brukhovetskiy District Court, which found him guilty of a violation of Article 18.8 § 1 of the CAO for overstaying the ninety-day time-limit for residence in Russia. The court fined him 2,000 Russian roubles (approximately 40 euros) and ordered his administrative removal for residing in the country without proper authorisation. The text of the decision did not contain any references to or information about the applicant's family situation. The decision ordered the applicant's detention pending removal in a special detention centre for foreigners and stateless persons in Sochi, in the Krasnodar Region. After his removal from Russia, the applicant would be banned from re-entering the country for five years.

13. The applicant appealed against the removal decision to the Krasnodar Regional Court ("the Regional Court"). With his application for the appeal he enclosed, among other documents, a certificate of employment in the Blago-Stroy company showing that he had been employed there between 15 January and 26 December 2014.

14. On 25 December 2014 the Regional Court dismissed the appeal and upheld the decision to remove the applicant. In its ruling, the court confirmed that the applicant's residence in Russia from 14 March to 9 December 2014 had been officially registered by the FMS; however, it did not comment on the authorities' tolerance for the applicant's stay in the country in violation of the authorised period of up to ninety out of 180 days. The court did not examine the applicant's complaint concerning the adverse effect of the removal on his family life.

15. On 27 December 2014, the applicant was subjected to administrative removal from Russia (see paragraph 11 above).

16. The applicant's lawyer lodged a cassation appeal against the removal with the Regional Court. On 30 January 2015 the Regional Court upheld the removal order. The court did not examine the applicant's complaint under Article 8 of the Convention concerning the effect of the removal on his family life.

17. The applicant's lawyer appealed against the above-mentioned decision to the Administrative Cases Chamber of the Supreme Court of the Russian Federation ("the Supreme Court").

18. On 23 June 2015 the Supreme Court examined the appeal, overruled the removal order, and remitted the case to the Regional Court for fresh examination. The Supreme Court stated, in particular, that the applicant had officially been employed in Russia between 15 January and 26 December 2014. In accordance with Article 97 § 5 of the Treaty on the Eurasian

Economic Union, the period of the stay of a foreign national was defined by the length of his or her employment contract. On 10 October 2014 Armenia had signed the Treaty on the Eurasian Economic Union. In accordance with Article 1.7 § 2 of the CAO, any regulations mitigating or terminating administrative punishment had retrospective effect. Therefore, given that the applicant had been officially employed and that the lower courts had disregarded that fact, and given the retrospective effect of the relevant regulations, the applicant's case should be examined afresh. The Supreme Court did not examine the applicant's complaint concerning the adverse effect of the removal on his family life.

B. The second set of proceedings

19. On 22 July 2015 the Regional Court examined the applicant's case anew and upheld the initial removal order. In particular, the court in its decision stated that the applicant had not provided documents confirming his employment in Russia. As for his complaint concerning the adverse effect of the removal on his family life, the court stated:

> "... the material in the case file does not contain information [showing] that A. Sargsyan lives with his wife and adopted daughter and plays a part in her upbringing and financial support, or any other information that shows presence of a family and close family ties ...
>
> While the record of the administrative violation [of 9 December 2014] was being drawn up, and then during the examination of his case by the first-instance and appellate courts, A. Sargsyan did not claim that he was officially employed. According to record no. 629112 of the administrative violation [of 9 December 2014] and Mr Sargsyan's explanation, he was neither employed nor had any children."

20. On 20 October 2015 the applicant appealed against the above-mentioned decision to the Supreme Court. In his appeal he stated that, prior to the examination of his case on 22 July 2015, he had furnished the Regional Court with the necessary duly certified documents confirming his employment, immigration status and family life. In particular, he stressed that the Regional Court had ignored a copy of his marriage certificate, as well as a document showing that he had a daughter, and the certificate of employment in the Blago-Stroy company showing that he had been employed there between 1 March and 30 December 2014. The applicant stressed that on 9 December 2014 he had gone to the FMS voluntarily, as he had wanted to apply for a residence permit. At that point, he had been detained, taken to court, and his removal had been ordered without any regard for his family life in Russia.

21. On 15 February 2016 the Supreme Court dismissed the appeal and upheld the removal order. The Supreme Court stated, in particular, that in the absence of any other corroborating documents, the applicant's certificate of employment for the period between 1 March and 30 December 2014 was

not valid evidence, as previously he had submitted a certificate to the courts indicating different dates for his employment (see paragraph 13 above). As for the applicant's complaint concerning the adverse effect of the removal on his family life, the court stated that the record drawn up at the time of his detention on 9 December 2014 did not contain any information about his having children (see paragraph 10 above), and that he had failed to provide evidence proving that he "actually resided with his wife and child, that they ran a household together, and that he exercised parental responsibilities".

RELEVANT LEGAL FRAMEWORK

22. For a summary of the relevant domestic regulations, see *Guliyev and Sheina v. Russia*, no. 29790/14, §§ 25-34, 17 April 2018.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that his administrative removal and the subsequent ban on re-entry had been a disproportionate sanction for a minor administrative offence and that the domestic courts had failed to balance the private and public interests at stake. Article 8 of the Convention reads as follows:

> "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."

A. Admissibility

24. The Government did not comment on the admissibility of the complaint.

25. The applicant reiterated his submission.

26. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The applicant submitted that the domestic courts had failed to properly examine the adverse effect of his removal from Russia on his family life with his wife and child. In particular, he stated that prior to 9 December 2014 the authorities had been fully aware of his residence in Russia as the FMS had authorised his stay in the country by registering his address in Pereyaslovskaya on various occasions during the time period from 14 March to 9 December 2014, for a consecutive period of 255 days. Given that the authorities had shown that they were aware of the applicant's presence in Russia, along with the fact that his stay in Russia had been justified by his family life with his Russian wife and child and his employment, the decision on his administrative removal was a disproportionate and unnecessary measure.

28. The Government contested the applicant's arguments and stated that there had been no violation of his right to respect for family life. They stated in general terms that the applicant's removal had represented an interference with his right to respect for family life, which had pursued the legitimate aim of the protection of public order. The sanction against the applicant had been justified and proportionate as his failure to comply with the immigration regulations had necessitated his removal from the country. The domestic courts had established that the applicant's stay in Russia in 2014 had not been justified by his employment, that it had not been duly regularised and it had exceeded the legal limit of ninety days out of a period of 180 days (see paragraph 21 above). The Government further submitted that when imposing and upholding the removal order, the domestic courts had taken into account the fact that the paternity of the applicant in respect of M.P. had been "questionable" as he was not the person indicated as the father on her birth certificate.

2. The Court's assessment

29. For a summary of the applicable general principles see *Guliyev and Sheina v. Russia*, no. 29790/14, §§ 46-52, 17 April 2018.

30. Turning to the facts of the present case, the Court notes that the Government disputed that the applicant had a daughter, M.P., and that he had been employed at a local company in 2014. At the same time, they did not dispute that at the time of the issuance of the removal order the applicant had been married to a Russian national, Ms A.P., or that their marriage was genuine.

31. The Court further notes that the domestic immigration authorities were fully aware of the applicant's presence in Russia between 14 March and 9 December 2014 as they had on various occasions registered his place

of residence in the Krasnodar Region. Moreover, the Government's submissions indicated that in February 2012 the applicant was already registered as residing in that region (see paragraph 5 above). In such circumstances, the applicant's allegations of having had legitimate reasons for his stay in Russia during the period in question in 2014 must have been based on factors which were not duly examined by the domestic courts (see paragraphs 18 and 21 above).

32. Furthermore, the documents submitted clearly show that at the time of the issuance of the removal order and the examination of the applicant's appeals against it, the domestic courts were aware of the applicant's marriage to a Russian national and his allegations of family life in Russia. However, they failed to properly examine the necessity and the proportionality of his removal from the country in view of its impact on his family life. Consequently, they failed to take into account the considerations and principles established by the Court, and to apply standards which were in conformity with Article 8 of the Convention (see, for example, *Guliyev and Sheina,* cited above, § 58).

33. In view of the above, the Court finds that the proceedings in which the decision on the applicant's administrative removal was taken and upheld on appeal fell short of Convention requirements, and did not address all the elements that the domestic authorities should have taken into account in assessing whether the measure was "necessary in a democratic society" and proportionate to the legitimate aim pursued.

34. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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."

A. Damage

36. The applicant claimed 9,565 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage. In support of his claim for pecuniary damage covering the period while he could not work due to the administrative measures taken against him, the applicant enclosed a statement from the Blago-Stroy company dated 30 December 2014, certifying that between 1 March and 30 December 2014 he had been employed there as an electrician with a monthly salary varying between

1,550 and 15,620 roubles per month (between EUR 23 and EUR 230 per month).

37. The Government submitted that the claim in respect of pecuniary damage was excessive, unsubstantiated and irrelevant to the proceedings before the Court. As for the non-pecuniary damage claim, the Government submitted that was unreasonable and excessive, and that in any event no compensation was due since the applicant's rights had not been violated.

38. Having regard to the parties' submissions and the documents substantiating the claim for pecuniary damage, the Court awards the applicant EUR 500 in respect of the claim for pecuniary damage. It awards the applicant EUR 9,750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

39. The applicant also claimed EUR 6,078 for the costs and expenses incurred before the domestic courts and those incurred before the Court.

40. The Government submitted that the applicant had failed to substantiate his claim by enclosing documents showing that the expenses had actually been incurred. They pointed out that, given that the applicant's payment for his representation before the Court was conditional upon the Court giving a judgment in his favour, the actual fees had not been incurred.

41. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *X and Others v. Austria* [GC], no. 19010/07, § 163, 19 February 2013). In the present case, the Court notes that that the applicant submitted an agreement with his representative dated 5 December 2017 concerning the representative's fees in the event that the Court delivered a judgment in the applicant's favour. Such an agreement is comparable to a contingency fee agreement and, if legally enforceable, may show that the sums claimed are actually payable by the applicant. However, agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred, but also to whether they have been reasonably incurred (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI, and *Stergiopoulos v. Greece*, no. 29049/12, § 63, 7 December 2017).

42. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,300 to the applicant's representative Mr A. Korzhov, plus any tax that may be chargeable to the applicant. The amount is to be paid directly into the representative's bank account, as indicated by the applicant.

C. Default interest

43. 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 8 of the Convention;

3. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the representative's bank account;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 8 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President