

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

THIRD SECTION

CASE OF SHARIPOV v. RUSSIA

(Application no. 61658/19)

JUDGMENT

STRASBOURG

7 June 2022

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



In the case of Sharipov 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. 61658/19) 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 25 November 2019 by a national of Tajikistan, Mr Karomat Bakoyevich Sharipov, who was born in 1963 and lived in Kotelniki ("the applicant"), and who was represented by lawyers of the non-governmental organisation Centre de la protection internationale, based in Strasbourg;

the decision to give notice of the complaint concerning the invalidation of the applicant's Russian passport to the Russian Government ("the Government"), initially represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov;

the parties' observations;

the decision to dismiss the Government's objection to examination of the application by a Committee;

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, a former Soviet national, was serving in a military unit of the United Armed Forces of the Commonwealth of Independent States based in Tajikistan when the 1991 Russian Citizenship Act came into force. He was assigned to the Russian Military Forces the following year and he then moved to Russia. He continued his service on Russian territory until his early retirement in 1999. As soon as he left the army, his military ID was exchanged for a Russian passport. The applicant used that passport until 2008, when he had to renew it under a standard procedure for Russian nationals on turning forty-five years of age. The applicant had two Russian travel passports, the most recent having been issued in 2012.

2. On 25 June 2017 the Russian Federal Security Service requested the Russian Ministry of the Interior to check whether the applicant had Russian nationality. At the time he lived with his wife and four children in Moscow and was known for his activity in support of Tajik migrants.

3. On 29 September 2017 the Russian Ministry of the Interior concluded that the applicant had not acquired Russian nationality, because he had not

been living in Russia at the time when the Russian Citizenship Act had entered into force. As a result of that decision, his Russian passport was seized and destroyed, the applicant lost his entitlement to retirement benefits and his registration at the address of his residence was annulled.

4. On 11 October 2017 the applicant challenged the invalidation and seizure of his passport before the Lyubertsy Town Court of the Moscow Region, which dismissed his challenge on 30 November 2017. That decision was upheld by the Appeal Chamber of the Moscow Regional Court on 21 March 2018, by the Cassation Appeal Judge of the Moscow Regional Court on 12 March 2019 and by the Supreme Court of Russia on 31 March 2019. The courts focused their analysis on the formal lawfulness of the impugned actions.

5. In the meantime, on 30 November 2017, the Lyubertsy Town Court of the Moscow Region found the applicant guilty of breaching residence regulations for foreigners, fined him 5,000 Russian roubles and ordered his removal from Russia. On the same day the applicant was placed in a temporary detention centre for foreigners, where he was detained until the Moscow Regional Court upheld the removal order on 12 December 2017. On the latter date the applicant was removed to Tajikistan. According to him, he was banned from re-entering Russia

6. On 27 December 2021 the Government informed the Court that the applicant lodged an application (no. 3636/2019) with the United Nations Human Rights Committee ("HRC") on 10 June 2019. According to the applicant, the subject matter of his complaint was his removal to Tajikistan, which allegedly violated his right to private and family life guaranteed by Article 17 of the International Covenant on Civil and Political Rights. According to the Government, the complaint concerned seizure of his Russian passport. The application is currently pending before the HRC.

7. In the proceedings before the Court the applicant alleged that the seizure and invalidation of his Russian passport had breached Article 8 of the Convention.

8. On 30 September 2020 the applicant's son, Mr Shakhobiddin Karomatovich Sharipov, born in 1992, informed the Court of the death of his father on 9 May 2020. He also expressed a wish to pursue the proceedings in his father's stead.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

9. The Government objected to Mr Sh. Sharipov's *locus standi*, asserting that the right at stake was non-transferable. The Court would point out that, in a number of cases where an applicant died during the proceedings, it has taken account of the wish expressed by heirs or close relatives to continue

them (see, in relation to Article 8 of the Convention, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 71-73, 17 October 2019, and the cases cited therein). In the present case, the Court finds that the applicant's son may have a sufficient interest in the continued examination of the application and thus recognises his capacity to act in his stead.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

10. Having regard to the documents submitted by the parties, the Court finds that the applicant's complaint before the HRC concerns his removal to Tajikistan for breach of the residence regulations, and not the seizure of his passport for it being invalid. The subject-matters of the proceedings before the Court and before the HRC are therefore different. Accordingly, there is no risk of a plurality of international proceedings relating to the same issue. It follows that the application at hand is not substantially the same as the petition pending before the HRC, and that being so, it falls outside the scope of Article 35 § 2 (b) of the Convention and cannot be rejected pursuant to that provision (see *Smirnova v. Russia* (dec.) nos. 46133/99 and 48183/99, 3 October 2002; see, by contrast, *Vojnovic v. Croatia* (dec.), no. 4819/10, §§ 26-32, 26 June 2012).

11. Given the different subject matters of the proceeding before the Court and before the HRC, the Court cannot conclude that the applicant's petitioning to the HRC constituted important new development for the case at hand. Accordingly, the applicant did not abuse his right of individual petition by not informing of his application to the HRC (see *J.B. v. Poland*, no. 57675/10, § 44, 3 November 2015; see, by contrast, *Gevorgyan and Others v. Armenia* (dec.), no. 66535/10, §§ 31-39, 14 January 2020).

12. The Court finds that the 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.

13. Turning to the merits of the case, the Court observes that the applicable principles have been summarised in *Alpeyeva and Dzhalagoniya v. Russia* (nos. 7549/09 and 33330/11, §§ 107-09, 12 June 2018), and *Usmanov v. Russia* (no. 43936/18, §§ 52-56, 22 December 2020). In particular, the Court held that nationality is an element of a person's identity under Article 8 of the Convention. Denial or revocation of citizenship might raise an issue under that Article if it is "arbitrary" and in view of its consequences for the applicant's private life.

14. In the absence of any arguments to the contrary and in view of the considerable consequences of the impugned measures for the applicant, the Court finds that the seizure and invalidation of his Russian passport amounted to an interference with his rights guaranteed by Article 8 of the Convention.

15. The applicant's allegation that the servicemen of the UAFCIS were subject to special regulations and therefore were granted Russian nationality

regardless of the location of their military units raises doubts as to the lawfulness of the interference. The Court will not, however, rule on that issue, because the measures complained of were in any event arbitrary. The domestic authorities burdened the applicant with severe consequences related to the correction of old and repeated irregularities that had occurred not through any fault of his own, but as a result of an alleged mishandling of the procedure for granting Russian nationality on their part. The situation was not remedied by the domestic courts, which failed to assess the applicant's private and family situation and the effects which the seizure and invalidation of the passport could entail. Their approach was excessively formalistic and fell short of the standards embodied in Article 8 of the Convention (compare with *Usmanov*, cited above, §§ 68-71).

16. The Government's argument that the applicant had left Russia in 2017 and that he had not applied for a Russian residence permit afterwards appears irrelevant for the analysis of the impugned measure, in particular since the applicant was banned from re-entering Russia.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. Mr Sh. Sharipov claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,500 in respect of costs and expenses incurred before the Court. He asked for the latter amount to be paid into the bank accounts indicated by his lawyers.

19. The Government submitted that the claims were excessive. They also pointed out that the costs and expenses claimed had not been incurred and that Mr Sh. Sharipov had failed to submit his birth certificate.

20. In their observations on the admissibility and merits of the case, the Government did not question whether Mr Sh. Sharipov was the applicant's son. Their relationship is confirmed by documents submitted by the applicant himself, which the Government did not rebut. The Court awards him EUR 7,500 in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses, plus any tax that may be chargeable on those amounts.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that Mr Sh. Sharipov has standing to pursue the application lodged with the Court by his late father;

2. *Declares* the application admissible;

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

4. *Holds*

(a) that the respondent State is to pay Mr Sh. Sharipov, 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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to Mr Sh. Sharipov, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of his 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	María Elósegui
Deputy Registrar	President