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

THIRD SECTION

DECISION

Application no. 5618/10
Mukhammet Alı SERDAR
against Russia

The European Court of Human Rights (Third Section), sitting on 5 January as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 December 2009,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Mukhammet Ali Serdar, is a Turkish national, who was born in 1970 and lives in Sochi. He is represented before the Court by Mr V.N. Yeremenko, a lawyer practising in Krasnodar.

The Russian Government ("the Government") are represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

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

In 1994 the applicant arrived in Russia and settled in Sochi, in Krasnodar region, where he owned a shop. In June 2004 the applicant married a Russian national, Ms E.B. In September 2004 they had a son. Between 1994 and 2009 the applicant lived in Russia on the basis of visas and temporary residence permits.

On 19 June 2009 (in the documents submitted the date is also referred to as 23 June 2009) the FMS refused to grant the applicant a five-year residence permit. No reasons for the refusal were provided in the letter by

which the applicant was informed that he was to leave Russia within fifteen days or he would be deported.

The applicant appealed that decision in two levels of jurisdiction stressing that he had been living in Russia for fifteen years, that his wife and son were Russian citizens and that the impugned decision would have a negative impact on his family life. He also stated that the information concerning the alleged threat he posed to Russian national security was unsubstantiated and arbitrary. The information which served as the basis for the FMS decision had not been furnished to the courts by the FSB and was not included into the case file.

On 29 October 2009 the Krasnodar Regional Court upheld that decision without examination of the complaint concerning the violation of the applicant's right to respect for family life.

Furthermore, on 4 September 2009 the Federal Security Service issued a decision on the undesirability of the applicant's presence in Russia ("the exclusion order") referring to his alleged unlawful activities threatening the country's national security. The applicant appealed against the order to domestic courts stating that it was arbitrary and had adverse effect on his family life.

On 24 November 2009 the Regional Court upheld the exclusion order without the examination of the applicant's complaint concerning its adverse effect on his family life.

The applicant's subsequent appeals by way of supervisory review were to no avail.

The applicant complains under Article 8 of the Convention that the revocation of his residence permit and the exclusion order against him violated his right to respect for family life. He argues that he does not present any security risk and the authorities' findings to the contrary were unsubstantiated. His procedural rights were violated because the decision to revoke his residence permit and the exclusion order were taken on the basis of classified materials.

On 2 March 2016 the applicant's complaint was communicated to the Government, who submitted their observations on the admissibility and merits. On 30 June 2016 the observations were forwarded to the applicant's representative by registered post; he was invited to submit his observations. No reply was received to the Registry's letter.

By letter dated 19 September 2016 also sent by registered post, the applicant's representative was notified that the period allowed for submission of his observations had expired on 1 September 2016 and that no extension of time had been requested. The applicant's representative's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to

pursue the application. The applicant's representative received this letter on 5 October 2016. However, no response has been received.

THE LAW

The Court recalls Article 37 of the Convention which, in the relevant part, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 26 January 2017.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President