



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

## FIRST SECTION

Application no. 31466/06  
David Davidovich DEMETRASHVILI  
against Russia  
lodged on 10 July 2006

### STATEMENT OF FACTS

The applicant, Mr David Davidovich Demetrashvili, is a Georgian national, who was born in 1972 and lives in Georgia.

#### **A. The circumstances of the case**

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

The applicant arrived in Russia on an unspecified date and settled there together with his family. In July 2002 the applicant was given a residence permit.

The applicant was (and apparently remains) married to Ms I., a Russian national. They are parents to two children born in March 2000 and March 2001.

##### *1. Administrative offence proceedings*

On 14 December 2004 the Russian authorities imposed a fine on the applicant because he had not obtained residence registration within three days of his arrival, in breach of the Foreign Nationals Act.

On 17 January 2005 the authorities imposed another fine on the applicant on the same grounds.

The applicant sought judicial review of the above decisions.

By a judgment of 24 November 2005 a court annulled the decisions of 14 December 2004 and 17 January 2005, noting that the applicant had a residence permit, which remained until 2007.

##### *2. Removal order under section 25.10 of the Entry Procedure Act*

In December 2004 the applicant sought renewal of his residence permit (see also sub-section 3 below).

In the meantime, on 25 January 2005 the Federal Security Service considered that the applicant's presence in Russia was no longer acceptable and ordered his removal from the country (see "Relevant domestic law" below). Apparently, the removal order also indicated that the applicant's residence permit should be annulled (by the Visa Office of the regional department of the Interior), with reference to section 9 of the Foreign Nationals Act and section 25.10 of the Entry Procedure Act; and that he should leave Russia within fifteen days or, in the case of non-compliance, be subject to deportation. It appears that the removal order implied, in view of the requirements of the Entry Procedure Act and the Foreign Nationals Act, that the applicant would not be able to return to Russia before January 2010.

The applicant learnt about the removal order on 15 August 2005 from the decision not to renew his residence permit (see sub-section 3 below). It is unclear whether, at the time, he was not given a copy of the removal order.

The applicant left Russia on 25 September 2005. Apparently, he did not return to Russia since that time.

In the meantime, on an unknown date in late 2005, the applicant's representative brought proceedings under Chapter 25 of the Code of Civil Procedure before the Tsentralniy District Court of Tyumen, challenging the FSB's removal order.

Judge M. of the District Court held a preliminary hearing on 19 January 2006 in the presence of the applicant's representative. According to the applicant, in reply to a request from the FSB, the district judge declined jurisdiction in favour of the regional court. The applicant's representative left the courthouse. However, it turned out that on that day the district judge issued a judgment, confirming the FSB's order.

It follows from the text of the judgment that the court examined an "extract" from the FSB decision, which had given rise to the removal order. As could be seen from this "extract", investigative measures had been carried out in respect of an unspecified person, who was treated as "a member of one of the criminal gangs operating in the town of Tyumen". The investigative measures provided "truthful" information that the applicant could be implicated in cases of car thefts. So, the applicant's presence in Russian disclosed a "real danger to the public order/safety", which is a ground for removal under section 25.10 of the Entry Procedure Act.

The applicant appealed. On 22 March 2006 the Regional Court upheld the judgment of 19 January 2006. At the appeal hearing, the applicant's representative was afforded an opportunity to see a copy of the "extract" mentioned above.

### *3. Non-renewal of the residence permit*

As already mentioned, in December 2004 the applicant sought renewal of his residence permit (apparently, in relation to the renewal of his national passport).

On 15 August 2005 the Visa Office of the regional department of the Interior refused to renew the applicant's residence permit with reference to the removal order issued by the Federal Security Service. On an unspecified date, the applicant became aware of the decision of 15 August 2005.

The applicant sought judicial review of the decision taken by the visa office.

In December 2005 judge M. of the District Court examined the applicant's challenge against the refusal to renew his residence permit. In its judgment of 8 December 2005, the District Court noted that the applicant's residence permit was still valid. At the same time, the court stated that the Federal Security Service considered that the applicant's presence in Russia was no longer acceptable and thus the refusal to renew a residence permit was lawful.

On 30 January 2006 the Tyumen Regional Court upheld the judgment of 8 December 2005.

#### *4. Further proceedings against the Visa Office*

In separate proceedings, the applicant also challenged the visa office's putting a stamp in his passport. This stamp notified that the applicant was not eligible to entry into Russia until January 2010. On 17 February 2006 the court dismissed the applicant's claims. On 10 April 2006 the Regional Court upheld the judgment of 17 February 2006.

### **B. Relevant domestic law**

#### *1. Foreign Nationals Act*

On 25 July 2002 Law no. 115-FZ on Legal Status of Foreign Nationals in the Russian Federation ("the Foreign Nationals Act") introduced the requirement of residence permits for foreign nationals. The Act contained a list of circumstances in which a residence permit *must be* refused or annulled. Such circumstances included enforcement of a deportation order in respect of the foreign national (section 9 (3) of the Act), imposition of administrative liability for two and more time within a year for violating residence regulations (section 9 (7)). In 2008 section 9 was amended to include an additional circumstance for the permit annulment, namely if a decision was taken that the foreigner's presence in Russia was undesirable (see the Entry Procedure Act below).

#### *2. Entry Procedure Act*

A competent authority, such as the Ministry of Foreign Affairs or the Federal Security Service, could issue a decision that a foreign national's presence on Russian territory is undesirable. Such a decision could be issued if a foreign national was unlawfully residing on Russian territory or if his or her residence was lawful but created a real threat to the defensive capacity or security of the State, to public order/safety, etc. If such a decision had been taken, the foreign national was to leave Russia or would otherwise be deported. That decision also formed the legal basis for subsequent refusal of re-entry into Russia (section 25.10 of the Law on the Procedure for Entering and Leaving the Russian Federation, no. 114-FZ of 15 August 1996, as amended on 10 January 2003, "the Entry Procedure Act").

A foreign national who had been deported or administratively removed from Russia could not re-enter it during the five-year period following such

deportation or administrative removal (section 27 § 2 of the Entry Procedure Act).

## COMPLAINTS

The applicant complains that the decisions by the domestic authorities in respect of him (foremost, the non-renewal of the residence permit and the removal order) were unlawful and disproportionate, in breach of Article 8 of the Convention.

Referring to Article 6 of the Convention and Article 1 of Protocol No. 7, the applicant complains that the related proceedings were not fair.

## **QUESTIONS TO THE PARTIES**

1. (a) Should it be considered that the applicant should have been aware that raising a family-life complaint before the courts reviewing the removal order had no prospect of success, and that the related court proceedings should not be taken into consideration with the consequence that the complaint under Article 8 of the Convention should be dismissed as belated (see, *mutatis mutandis*, *Norkin v. Russia* (dec.), no. 21056/11, §§ 15-25, 5 February 2013)?

(b) If not, was there a violation of Article 8 of the Convention in the present case? In particular:

- Noting that the applicant's situation arguably fell outside the scope of the grounds listed in section 9 of the Foreign Nationals Act (prior to its 2008 amendment), was the annulment of his residence permit or the refusal to extend it "in accordance with the law"? In particular, was the applicant "expelled two or more times within a year", as mentioned in section 9(3) of the Act?

- Was the applicant afforded an adequate opportunity to present his case and oppose the evidence submitted against him, in particular as regards the "extract" from the FSB decision, which gave rise to the removal order? Did the applicant have sufficient knowledge of and access to the above documents?

- Did the domestic courts adequately assess the factual circumstances relating to their conclusion that the applicant posed a "real danger" to the public safety/order?

- Did the relevant legislation and judicial practice require a proper proportionality analysis (relating to family-life issues) when deciding to annul or refusing to extend a residence permit or to expel a foreign national?

Having regard to the respondent State's obligation under Article 38 of the Convention, the respondent Government are requested to submit a copy of the FSB's decision (referred to as an "extract" in the domestic proceedings) giving rise to the removal order and a copy of the removal

order; a copy of the decision of 15 August 2005 in relation to the refusal to extend the applicant's residence permit.

The respondent Government are also invited to submit examples from the domestic administrative and judicial practice relating to the proportionality analysis in removal-order proceedings under section 25.10 of the Entry Procedure Act or decisions to annul/not to renew a residence permit.

2. - Was the applicant "lawfully in the territory of the respondent State" when the adverse decisions were taken and upheld (foremost, as regards the removal order and the residence permit)? Was the applicant's removal "in pursuance of a decision reached in accordance with law", noting that the annulment of his residence permit or the refusal to extend arguably had no basis under the Foreign Nationals Act, namely its section 9 (prior to its 2008 amendment)?

- Did the decisions not to renew the residence permit and to expel the applicant comply with the procedural requirements of Article 1 § 1 (a), (b), (c) of Protocol No. 7? In particular, was the applicant given sufficient information about the factual basis for the removal order? Was he afforded a reasonable opportunity to submit reasons against his removal? Was the applicant afforded an opportunity to exercise this and other procedural rights under Article 1 § 1 (a)-(c) before leaving Russia?