



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

Communicated on 5 March 2014

FIRST SECTION

Application no. 68921/13
Orkhan Bakhtiyar Ogly NAMAZOV and Olga Nikolayevna
ALEKSEYEVA
against Russia
lodged on 1 November 2013

STATEMENT OF FACTS

The applicants, Mr Orkhan Bakhtiyar Ogly Namazov and Ms Olga Nikolayevna Alekseyeva, are respectively Azerbaijani and Russian nationals, who were born in 1985 and 1979, respectively, and live in Glazov, the Republic of Udmurtiya.

A. The circumstances of the case

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

On an unspecified date, the first applicant, minor at that time, moved to Russia together with his parents. His parents rapidly acquired the Russian citizenship. However, they omitted to include the first applicant in their application. In 2005 the first applicant graduated from a school in Russia.

At his majority, he applied for the Russian passport which was refused to him for unspecified reasons. In 2011 the first applicant went to Azerbaijan and received Azerbaijani nationality. He alleges that this was done upon the request of the representatives of the Federal Migration Service. On unspecified date, he came back to Russia.

On 11 February 2012 he married the second applicant. Upon expiration of the period of his authorised stay in Russia, he left for Azerbaijan. On 28 November 2012 he returned to Russia. He allegedly lost his migration card and failed to register his stay in Russia with the migration authorities.

On 30 September 2013 the first applicant was arrested because he was living on the Russian territory without registration. An administrative report was drawn up.

On the same day, the Glazovskiy District Court of the Udmurtiya Republic found the applicant guilty of an administrative offence punishable

under Article 18.8 § 1 of the Code of Administrative Offences (“violation of the residence regime for foreign nationals”). The district court fined the first applicant and ordered his expulsion from Russia. The first applicant was invited to leave the Russian territory at his own expense under the control of the competent authorities.

The first applicant appealed against the first-instance court decision requesting the administrative expulsion to be annulled on account of his family ties with Russia and in particular the fact that his mother, a Russian national, had cancer.

On 14 October 2013 a judge of the Supreme Court of the Udmurtiya Republic rejected his appeal. There is no indication in the judgment that the applicants’ family situation had been addressed.

The first applicant’s expulsion is pending to date. His name has been added to the list of persons searched by the police.

The first applicant submits that prior to his arrest and the decision to expel him, he was working at a garage and provided financial support to the family.

B. Relevant domestic law and practice

1. Domestic legal provisions concerning the foreign nationals

Article 18.8 of the Administrative Offences Code of the Russian Federation provides that a foreign national who infringes the residence regulations of the Russian Federation, including by living on the territory of the Russian Federation without a valid residence permit or by non-compliance with the established procedure for residence registration, can be sanctioned by an administrative fine of 500 to 1,000 Russian roubles (RUB) and, possibly, by administrative removal from the Russian Federation. Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires such a report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation shall be made by a judge of a court of general jurisdiction. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

The Federal Law on the Procedure for Entering and Leaving the Russian Federation (no. 114-FZ of 15 August 1996, as amended on 10 January 2003) provides in Section 25.10 that a foreign national who does not have documents proving the lawfulness of his stay in Russia, or who does not leave the territory of Russia after the expiration of his permitted stay, remains in Russia unlawfully and is liable to bear responsibility in accordance with the relevant legislation.

2. Practice of the domestic courts

The practice of the Supreme Court of the Russian Federation prior to 2007 is summarized in the *Alim v. Russia* case, no. 39417/07, § 32, 27 September 2011.

On 19 December 2013 the Plenary of the Supreme Court of the Russian Federation adopted a decision (no. 40) amending its decision of 24 March 2005 (no. 5) on certain issues arising out of the application of the Code of Administrative Offences. The Supreme Court drew the domestic courts' attention to the fact that the expulsion of a person whose family members were living in Russia could violate the right to respect of family life enshrined in Article 8 of the Convention. Consequently, when deciding on the removal of a foreign national or a stateless person, the domestic court should take into account whether this measure was truly necessary and whether it was proportionate to the aims pursued by the administrative punishment in order to strike a fair balance between public and private interests.

COMPLAINTS

1. The applicants complain under Article 8 of the Convention that the first applicant's expulsion would adversely affect their family life. The first applicant also complains that the domestic courts when deciding on his expulsion did not take into account his family situation and in particular the fact that his mother was seriously ill.
2. The applicants also complain under Article 6 § 1 of the Convention that the proceedings concerning the first applicant's expulsion were unfair.

QUESTIONS TO THE PARTIES

1. Did the decision to expel the first applicant constitute an interference with the applicants' right to respect for their family life and the first applicant's private life within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see *Slivenko v. Latvia* [GC], no. 48321/99, ECHR 2003-X; *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII, and *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008)?

2. Did the domestic courts, when deciding on the first applicant's expulsion, duly assess his family situation in compliance with the domestic law and the relevant principles under Article 8 of the Convention (see *Alim v. Russia*, no. 39417/07, § 95, 27 September 2011)?