



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

Communicated on 19 May 2014

FIRST SECTION

Application no. 13817/14  
V.V.  
against Russia  
lodged on 10 February 2014

**STATEMENT OF FACTS**

The applicant, Mr V.V., is a national of Kazakhstan, who was born in 1983 and lives in Yekaterinburg. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4).

**A. The circumstances of the case**

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

The applicant came to Russia in 2006 to study at a medical college. He lives with his same-sex partner.

On 11 March 2012 the applicant lodged an application for a residence permit with the Sverdlovsk division of the Federal Migration Service. He gave an undertaking to produce a certificate showing his HIV-negative status, within thirty days.

On 16 April 2012 the Sverdlovsk Regional Centre for AIDS Prevention and Treatment confirmed, on the basis of two blood tests, that the applicant was HIV-positive.

By letter of 24 April 2012, the deputy head of the Sverdlovsk division of the Consumer Protection Authority forwarded the materials concerning the applicant's diagnosis to the head of the Federal Consumer Protection Authority with a view to pronouncing the applicant's presence in Russia undesirable.

On 28 April 2012 the Federal Migration Service rejected his application for residence permit by reference to section 7 § 1 (13) of the Foreign Nationals Act, which restricted the issue of residence permits to foreign nationals who could not show their HIV-negative status.

The applicant challenged the refusal before a court.

On 26 July 2012 the Verkh-Issetkiy District Court of Yekaterinburg upheld the refusal, finding in particular that the applicant's infection amounted to an "actual threat to the health of the Russian population" and that the applicant's living together with a same-sex partner was not equivalent to having a family.

On 21 November 2012 the Sverdlovsk Regional Court heard the applicant's appeal against the District Court's decision and found that the Migration Service's refusal had been unlawful. Referring to the Court's judgment in the *Kiyutin v. Russia* case (no. 2700/10, ECHR 2011) and to the binding nature of the Court's judgments in respect of Russia, the Regional Court held as follows:

"[The European Court's] interpretation of the provisions of Article 14 of the European Convention on Human Rights is mandatory and the [Migration Service] did not put forward any persuasive evidence showing that the applicant's presence in Russia created a threat to the health of the Russian population ... The fact that the applicant is infected with HIV cannot, on its own, be a sufficient ground for a restriction on his rights (taking into account the internationally guaranteed prohibition on discrimination on account of one's health).

The Migration Service did not cite any other grounds in its decision refusing the application [for residence permit].

Taking the above-stated into account, the [Regional Court] finds that it has been proven that the impugned decision violated the claimant's rights, that the [Migration Service's] decision was incompatible with the norms of international law and the case-law of the European Court of Human Rights which is the ground for declaring that decision unlawful ..."

The Regional Court ordered that the Migration Service carry out a new assessment of the application for residence permit. On 11 April 2013 a judge of the Regional Court refused both the applicant and the Migration Service leave to appeal to the cassation instance.

In the meantime, on 15 March 2013 the head of the Federal Consumer Protection Authority approved the decision by which the applicant's presence in Russia was declared undesirable in accordance with section 25.10 of the Entry and Exit Procedures Act on account of his HIV-positive status.

On 26 April 2013 the applicant travelled from Russia to Kazakhstan. On his way back two days later, he was refused entry into Russia by reference to that decision.

The applicant retained a representative who challenged the decision before a court.

On 30 May 2013 the Verkh-Issetkiy District Court allowed the claim in part, finding that the impugned decision had been unlawful because it did not refer to any grounds other than the applicant's HIV-positive status.

By judgment of 13 August 2003, the Sverdlovsk Regional Court reversed the District Court's decision and dismissed the claim, relying on the following grounds:

"It appears from the impugned decision by the Consumer Protection Authority dated 15 March 2013 that the decision pronouncing [V.]'s presence in Russia undesirable was taken on account of his infection with a dangerous communicable disease – HIV – and his avoidance of treatment ...

It follows from the medical documents in the case file that [V.] was diagnosed with stage 3 HIV infection in October 2007 ...

An epidemiological investigation of this case of HIV infection, which was performed on 22 January 2013 in respect of [V.], did not establish the probable origin and time of infection but determined the most probable way of transmission; [V.] confirmed that he had had many sex partners in the previous five years but refused to give their details which prevented the medical institution from monitoring them ...

In these circumstances, the decision pronouncing [V.]’s presence in Russia undesirable was issued not only in connection with a dangerous communicable disease but also because the foreign national who is prone to unsafe sexual behaviour avoided anti-epidemiological measures.

It has been established that the claimant is single, that his close relatives are not Russian nationals and live in Kazakhstan, that he does not have a family relationship with Russian nationals.

It also follows from the case file that the claimant’s registered place of residence within the Russian Federation was a student dormitory and that he has not rented or owned a flat.

Besides, there is no evidence in the case file showing that the claimant disposes of financial resources that would allow him to pay for treatment, given that the applicable Russian laws do not make provision for making available free treatment for HIV infection to foreign nationals ...

In sum, the impugned decision dated 15 March 2013 ... was issued in accordance with the legal procedure and with regard to the facts of the case, it is necessary and proportionate to the objectives of the protection of the Russian Federation citizens from a dangerous infectious disease and it does not violate the claimant’s right to respect for his family life, his right to the protection of health, the prohibition on discrimination and the right to personal dignity ...”

On 19 February 2014 the Sverdlovsk Regional Court refused leave to appeal to the cassation instance.

## **B. Relevant domestic law and practice**

For a summary of relevant domestic law and practice, see *Kiyutin v. Russia*, no. 2700/10, §§ 16-27, ECHR 2011.

For additional legal provisions, relevant to the present case, see *Novruk and Others v. Russia*, nos. 31039/11, 48511/11, 76810/12 and 14618/13.

## **COMPLAINT**

The applicant complains under Article 14, read in conjunction with Article 8 of the Convention, that that he was a victim of discrimination on account of his health status in the determination of his application for a residence permit.

### **QUESTIONS TO THE PARTIES**

1. Did the applicant have, at the material time, a stable relationship in Russia falling within the notion of “family life” for the purposes of Article 8 of the Convention (see *Schalk and Kopf v. Austria*, no. 30141/04, § 94, ECHR 2010)? If not, did he have, at the material time, any other relationships or activities in Russia capable of falling within the notion of “private life” (see, for example, *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, §§ 42-50, ECHR 2004-VIII, and, as a classic authority, *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B)?

2. Having regard to the principles established in the Court’s judgment concerning the refusal of a residence permit to an applicant on account of his health status (see *Kiyutin v. Russia*, no. 2700/10, §§ 53-74, ECHR 2011), was there a violation of the applicant’s right to be protected against discrimination under Article 14 of the Convention, read in conjunction with his right to respect for his private and family life under Article 8, on account of the pronouncement of his presence in Russia undesirable?