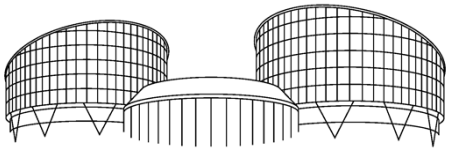

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GABLISHVILI v. RUSSIA

(Application no. 39428/12)

JUDGMENT

STRASBOURG

26 June 2014

FINAL

26/09/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gablishvili v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 June 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 39428/12) 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") by a Georgian national, Mr Aleksandre Gablishvili, and a Russian national, Ms Irina Sergeyevna Gablishvili, ("the applicants"), on 31 May 2012.

2. The applicants were represented by Mr E. Mezak, a lawyer practising in Syktyvkar. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that an expulsion order against the first applicant would, if enforced, breach their right to respect for family life and discriminate against him on account of his state of health.

4. On 8 October 2012 the application was communicated to the Government.

5. The Georgian Government were informed of their right to intervene in the proceedings in accordance with Article 36 § 1. They chose not to avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are husband and wife. They were born in 1981 and 1987 respectively and live in Syktyvkar in the Komi Republic of Russia.

A. The applicants' family situation

7. The first applicant, a Georgian national, arrived in Russia in 1999. On 4 May 2001 he received a first residence permit, which was subsequently extended at regular intervals.

8. The first applicant's parents have lived in Syktyvkar since the early 2000s. His father and mother acquired Russian nationality in 2005 and 2008 respectively.

9. On 26 August 2011 the first applicant married the second applicant, a Russian national.

10. On 28 June 2012 the second applicant gave birth to a son.

B. Administrative expulsion of the first applicant

11. On 14 November 2011 an operative officer of the Federal Service for Drug Control in the Komi Republic discovered that the first applicant had injected himself with desomorphine, a derivative of morphine known under the street name "krokodil". An administrative case was instituted under Article 6.9 of the Code of Administrative Offences ("Use of narcotic substances without a medical prescription") and the matter was referred to the Town Court.

12. On the following day the Syktyvkar Town Court found the first applicant guilty as charged and, pursuant to paragraph 2 of Article 6.9 concerning foreign nationals, fined him 4,000 Russian roubles (RUB) and ordered his administrative expulsion from Russia (the "expulsion order").

13. Counsel for the first applicant appealed. He submitted that the penalty of expulsion was extremely severe given that the first applicant had lived in Russia for almost ten years, his wife, who was pregnant with their first child, was a Russian national and a majority of his relatives lived in Russia. In the lawyer's opinion, the first applicant's expulsion would destroy his family life.

14. On 1 December 2011 the Supreme Court of the Komi Republic rejected the appeal, upholding the first applicant's conviction. On the alleged disruption of the first applicant's family life, the Supreme Court pronounced as follows:

> "The representative's argument to the effect that, in the light of Mr Gablishvili's family situation, the Town Court had wrongly ordered his administrative expulsion from the Russian Federation cannot be taken into account as paragraph 2 of Article 6.9 of the Code of Administrative Offences provides for mandatory expulsion of the offender and is not an alternative to the main penalty which may take the form of either detention or a fine."

15. On 24 April 2012 the first applicant paid the fine.

C. Revocation of the first applicant's residence permit

16. On 29 March 2008 the first applicant was issued with a five-year residence permit that was valid until 8 May 2013.

17. On 6 June 2011 the Komi Regional Centre for AIDS Prevention and Treatment notified the Komi division of the Federal Migration Service that the first applicant had been diagnosed with HIV.

18. On 10 June 2011 the Migration Service revoked the first applicant's residence permit in accordance with section 9(1)(13) of the Foreign Nationals Act, which provided for the revocation of the residence permits of HIV-positive foreign nationals. The first applicant was informed of that decision on 9 November 2011 and ordered to leave Russia within fifteen days.

19. Counsel for the first applicant challenged the decision before a court, claiming that it amounted to a disproportionate interference with the first applicant's family life and also put the first applicant's life at risk.

20. On 28 February 2012 the Syktyvkar Town Court set aside the decision of 10 June 2011, observing that the first applicant had strong family ties in Russia and could receive medical treatment there with the assistance and under the supervision of his family. However, the Town Court declared itself incompetent to order the reinstatement of the residence permit.

21. On 31 May 2012 the Supreme Court of the Komi Republic heard an appeal against the Town Court's judgment. It endorsed its reasons for setting aside the decision of 10 June 2011 and noted that the following logical step would be to reinstate the first applicant's residence permit. It ordered the Migration Service to proceed accordingly.

22. On 28 June 2012 the Federal Migration Service complied with the judgment and reinstated the first applicant's residence permit.

23. On the following day the Migration Service issued a new decision to revoke the permit, referring to the Town Court's judgment of 15 November 2011 and section 9(1)(3) of the Foreign Nationals Act, which provided for the revocation of residence permits of foreign nationals who were liable to be expelled.

D. Decision to declare the first applicant's presence in Russia undesirable

24. On 20 January 2012 the Federal Service for Drug Control issued a decision on the undesirability of the first applicant's presence in Russia (the "exclusion order") which read in its entirety as follows:

> "1. On the basis of the materials received from the Komi division of the Federal Service for Drug Control, and in accordance with section 25.10 of the Entry and Exit Procedures Act, to declare undesirable the presence in Russia of the Georgian national Mr Gablishvili ...
>
> 2. To notify the decision to the officers and employees of the drug control authorities ..."

25. Counsel for the first applicant challenged the exclusion order in court, claiming that it would disrupt the first applicant's family life.

26. On 20 July 2012 the Syktyvkar Town Court found for the first applicant as follows:

> "The grounds for issuing the said decision were the following: use of drugs by the claimant, an offence of which he had been found guilty under Article 6.9 § 2 of the Code of Administrative Offences by the Town Court's judgment of 15 November 2011 and fined RUB 4,000, and for which his administrative expulsion had been ordered; the discontinuation of the criminal proceedings on 29 November 2003 on non-exonerating grounds in connection with his active repentance; and his repeated convictions in administrative proceedings for breaches of public order.
>
> However, in the court's view, these elements are not sufficient to reach the conclusion that Mr Gablishvili, who has lived in Russia for a long time and who has stable family connections and can undergo treatment under his family's supervision, represents a real threat to national security, public order and health.
>
> In these circumstances, taking into account the provisions of the Russian Constitution ... according to which the rights and freedoms of man and citizen are directly operative and determine the essence, meaning and implementation of laws ... and may be restricted only to the extent necessary for the protection of the foundations of the constitutional system, morality, health, the rights and lawful interests of other people, national defence and security, the court considers that the said decision is unlawful and must be quashed."

27. On an appeal by the Federal Service for Drug Control, the Supreme Court of the Komi Republic quashed, on 11 October 2012, the Town Court's judgment and rejected the first applicant's challenge to the exclusion order, finding as follows:

> "It was established by the Town Court and not disputed by the claimant that Mr Gablishvili was a drug user, that he had previously breached the criminal law and that he had been repeatedly charged with administrative offences in the period from 2003 to 2011.
>
> Those elements, taken cumulatively, indicate that, while living in the Russian Federation, Mr Gablishvili does not respect the applicable laws and lives an immoral lifestyle which – undoubtedly – is an imminent threat to public order and to the health and morals of Russian citizens.

> The [Supreme Court] considers that his stable family connections in Russia may not be a bar to deciding on the undesirability of his presence in Russia because the law provides that such a decision may be taken against a specific individual not as a punitive measure but as a means of upholding public order and if it pursues, as stated above, the aim of safeguarding the health and morals of the Russian population."

28. In their submissions to the Court, the Government specified that the first applicant's previous administrative convictions, referred to in the Supreme Court's decision, had been in respect of the following offences:

(a) non-medical use of heroin on 29 January 2009;

(b) minor disorderly acts on 25 January and 18 June 2000, 28 October 2003, 19 April 2004 and 30 January 2011;

(c) drunkenness in a public place on 26 February 2000;

(d) failure to have his residence registered on 25 November 2004; and

(e) "non-compliance with existing procedure" on 20 May 2010.

29. After the Town Court's judgment dated 15 November 2011, the first applicant was found guilty of the following administrative offences:

(a) breach of public order, public drunkenness and refusal to obey a police officer, all committed on 8 March 2012;

(b) two cases of public drunkenness and a breach of public order on 27 and 28 May 2012;

(c) breach of public order on 30 January 2013, for which the first applicant was sentenced to five-days' detention; and

(d) two driving offences on 31 March and 7 May 2013.

30. According to the Government, the first applicant's current whereabouts are not known; he does not live at home. Nor is there any information showing that either the expulsion or the exclusion order has been executed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences

31. The Code of Administrative Offences provides as follows:

Article 6.9. Use of narcotic or psychotropic substances without a medical prescription

> "1. The use of narcotic or psychotropic substances without a medical prescription ... shall be punishable by a fine of between 4,000 and 5,000 roubles or up to fifteen days' detention.
>
> 2. The same actions if committed by a foreign national or a stateless person ... shall be punishable by a fine of between 4,000 and 5,000 roubles and administrative expulsion from the Russian Federation or up to fifteen days' detention and administrative expulsion from the Russian Federation ..."

B. Foreign Nationals Act (no. 115-FZ of 25 July 2002)

32. Section 9 of the Act contains a list of grounds for refusing a residence permit or revoking a previously issued residence permit. In particular, an application for a residence permit will be refused if the foreigner was subject to administrative expulsion (paragraph 1 (3)) or if he or she is a drug addict or unable to produce a certificate showing that he or she is not infected with HIV (paragraph 1 (13)). In addition, a residence permit will be revoked if a decision was made to pronounce the foreigner's presence in Russia undesirable (paragraph 2).

C. Entry and Exit Procedures Act (no. 114-FZ of 15 August 1996)

33. A competent authority may issue a decision that a foreign national's presence on Russian territory is undesirable (the "exclusion order"). Such a decision may be issued if a foreign national is unlawfully residing on Russian territory or if his or her residence is lawful but creates a real threat to, in particular, public order or health. If such a decision has been taken, the foreign national has to leave Russia or will otherwise be deported. That decision also forms the legal basis for subsequent refusal of re-entry into Russia (section 25.10).

34. The list of authorities competent to take such a decision was approved by Government Resolution no. 199 of 7 April 2003. It included, among others, the Ministry of the Interior, the Federal Service for Drug Control, the Federal Migration Service and the Russian Consumer Protection Authority.

35. If there has been a decision to order the administrative expulsion of a foreign national, he or she will be refused re-entry to Russia for a period of five years from the date of expulsion (section 27(7)(2)).

36. If a competent authority has issued a decision that the foreigner's presence on Russian territory is undesirable, that foreigner will be refused entry into Russia (sections 25.10 and 27(7)(7)).

III. RELEVANT COUNCIL OF EUROPE MATERIAL

37. The Committee of Ministers' Recommendation Rec(2000)15 concerning security of residence of long-term migrants, adopted on 13 September 2000, provides in particular as follows:

> "1. As regards the acquisition of a secure residence status for long-term immigrants
>
> *a*. Each member state should recognise as a 'long-term immigrant' an alien who:
>
> i. has resided lawfully and habitually for a period of at least five years and for a maximum of ten years on its territory otherwise than exclusively as a student throughout that period; or

ii. has been authorised to reside on its territory permanently or for a period of at least five years ...

4. As regards the protection against expulsion

a. Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:

- the personal behaviour of the immigrant;

- the duration of residence;

- the consequences for both the immigrant and his or her family;

- existing links of the immigrant and his or her country of origin.

b. In application of the principle of proportionality as stated in Paragraph 4.a, member states should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member states may provide that a long-term immigrant should not be expelled:

- after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension ...

5. As regards administrative and judicial guarantees

...

b. Before deciding on the expulsion of a long-term immigrant, the competent authority should consider alternative measures (for example, by replacing the permanent residence permit with a non-permanent one) ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicants complained that the enforcement of the expulsion order against the first applicant would violate their right to respect for family life as provided for in Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Submissions by the parties

39. The Government acknowledged that the judicial decision of 15 November 2011 amounted to an interference with the applicants' right to respect for their family life. However, the interference was prescribed by Article 6.9 § 2 of the Code of Administrative Offences and section 25.10 of the Entry and Exit Procedures Act, and the Federal Service for Drug Control had authority to issue the decision declaring the first applicant's presence in Russia undesirable. The interference pursued the legitimate aim of the protection of public order and was necessary to prevent the first applicant and other persons from re-offending. The Government disputed that the first applicant could be considered a long-term or settled migrant because he had taken up legal residence in Russia in 2001 at the age of twenty. The applicants' marriage had been a very recent event, having taken place in August 2011. The applicants had not shown that they would not be able to continue their life in Georgia where the first applicant had spent a major part of his life, where he could receive specialist treatment and find employment as a driver. The Government further pointed out that the first applicant had been held criminally responsible and found guilty on ten counts of administrative offences before the decision of 15 November 2011 and on seven counts after that date. Having regard to the first applicant's age, the length of the period of his criminal and immoral behaviour, as well as the seriousness of the crime and administrative offences he had committed, those deeds could not be regarded as "acts of juvenile delinquency" (here the Government referred to *Balogun v. the United Kingdom*, no. 60286/09, 10 April 2012). The Government attached particular weight to the fact that the first applicant had committed drug-related offences. Lastly, they submitted that the first applicant would not be able to return to Russia for five years following his administrative expulsion and submitted that, in their view, that period was not excessively long (here they referred to *Samsonnikov v. Estonia*, no. 52178/10, 3 July 2012, in which the Court found no violation in respect of a three-year period, and *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008, in which the Court found a violation in respect of a ten-year period).

40. The applicants submitted that their family would be broken apart if the expulsion order against the first applicant were to be enforced. Pursuant to Committee of Ministers Recommendation Rec(2000)15 (cited in paragraph 37 above), the first applicant was to be considered a "long-term immigrant" in Russia whose expulsion would be justified only if he had been convicted of a criminal offence and given a custodial sentence of at least two years' imprisonment. The first applicant, however, had never been convicted of any crime and the administrative offences he had committed amounted to nothing more than misdemeanours, the maximum sentence for which was fifteen days' detention. In the first applicant's view, the Russian

authorities were, at least in part, responsible for his drug addition: an epidemic of desomorphine abuse in the Komi Republic had occurred because it could be simply synthesised from cheap codeine-based painkillers that were available over the counter from any pharmacy. The applicants emphasised that family and community support was a factor that had a positive impact on the first applicant's treatment for HIV infection. In sum, the applicants considered that the impugned interference with their right to respect for their family life was disproportionate and not "necessary in a democratic society".

B. Admissibility

41. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. Existence of interference

42. It is common ground between the parties that the first applicant's expulsion would constitute an interference with the applicants' right to respect for their private life, and the Court takes note of the parties' agreement on this issue.

43. The applicants have been married since 2011 and have had a child together, born in 2012. The second applicant and the child are Russian nationals who were born in Russia and have been living there all their lives. In addition, the first applicant's parents settled in Russia in the early 2000s and have since acquired Russian nationality. The first applicant's expulsion was ordered in administrative proceedings, a decision declaring his presence in Russia undesirable was issued with reference to the same proceedings and his residence permit was revoked. The Court considers that the measures taken by the domestic authorities against the first applicant constituted an interference with the applicants' right to respect for their family life (compare with *Liu v. Russia*, no. 42086/05, § 51, 6 December 2007, with further references).

2. Justification for the interference

44. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October

1997, § 42, Reports of Judgments and Decisions 1997‑VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the aims sought to be achieved (see, among other authorities, *Slivenko v. Latvia* [GC], no. 48321/99, § 99, ECHR 2003).

(a) Whether the interference was in accordance with the law

45. The Court notes that the expulsion order had a legal basis in paragraph 2 of Article 6.9 of the Code of Administrative Offences, which provided for the expulsion of foreign nationals who had been found guilty of using drugs without a medical prescription. Paragraph 1(3) of section 9 of the Foreign Nationals Act provided for the revocation of the residence permit of a foreigner whose expulsion had been ordered. Lastly, the exclusion order was issued on the basis of section 25.10 of the Entry and Exit Procedures Act. The latter decision was taken by the Federal Migration Service following a proposal of the Federal Service for Drug Control. In the case of *Liu*, the Court observed that, where an executive authority could take such decisions without hearing the foreign national concerned, it could indicate that the relevant legal provisions did not give an adequate degree of protection against arbitrary interference and therefore failed to meet the Convention's "quality of law" requirements (see *Liu*, cited above, § 65). However, since in the present case the reasons for the decision were eventually reviewed by the courts at two levels of jurisdiction, the Court may dispense with pursuing this inquiry because it will address any outstanding lawfulness issues below, together with its assessment of the proportionality of the interference (see *Liu v. Russia (no. 2)*, no. 29157/09, § 79, 26 July 2011).

(b) Whether the interference pursued a legitimate aim

46. The Court is prepared to accept that the measures taken against the first applicant pursued the legitimate aim of preventing disorder and crime. It remains to be ascertained whether the interference was proportionate to the legitimate aim pursued, in particular whether the domestic authorities struck a fair balance between the relevant interests, namely the prevention of disorder and crime, on the one hand, and the applicants' right to respect for their family life, on the other.

(c) Whether the interference was necessary in a democratic society

47. The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII):

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time that has elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- whether there are children from the marriage, and if so, their age; and
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

48. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review, in the light of the case as a whole, the decisions they have taken within their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles established in its case-law and, moreover, that they based their decisions on an acceptable assessment of the relevant facts. Indeed, it is settled case-law that the requirement under Article 8 § 2 that the interference be "necessary in a democratic society" raises a question of procedure as well as one of substance. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Liu v. Russia (no. 2)*, cited above, § 86; *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001‑I, and *Buckley v. the United Kingdom*, 25 September 1996, § 76, Reports 1996‑IV).

(i) Administrative expulsion and annulment of residence permit

49. The first applicant's expulsion was ordered by a court as a sanction for his having injected himself with a derivative of morphine. The decision to revoke his five-year residence permit was an automatic consequence of the expulsion order, rather than the outcome of a separate assessment of the facts. The Court will therefore consider those two acts together.

50. The Government argued that the offence of non-medical consumption of drugs should be considered to be as serious as other drug-related offences, such as drug dealing. The Court does not share that view. As it has pointed out in *Maslov*, while in the sphere of drug dealing the Court has shown understanding of the domestic authorities' firmness as regards those actively involved in the spread of this scourge, it has not taken the same approach as regards those convicted of drug consumption (see *Maslov*, cited above, § 80, with further references). In *Ezzouhdi*, the Court emphasised that it could not be reasonably maintained that the offences of drug use and drug consumption represented a serious threat to public order, since the penalty imposed on the applicant was relatively mild, notwithstanding the repetitive nature of the offences (see *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001, the applicant having been sentenced to two years' imprisonment). This reasoning should have applied *a fortiori* in the circumstances of the present case, where the maximum sanction for non-medical drug consumption was fifteen days' detention and where the actual penalty imposed on the first applicant was a fine of less than 100 euros.

51. When it comes to the decisions of the domestic authorities, the Court notes with concern that they did not contain any analysis of the proportionality of the expulsion measure in the light of the above principles or any assessment of its impact on the applicants' family life. The wording of paragraph 2 of Article 6.9 of the Code of Administrative Offences has left the domestic courts no discretion in this matter. It established unconditionally that any non-Russian national who was found guilty of the non-medical use of drugs was liable *ipso facto* to be served with an expulsion order. This was confirmed on appeal by the Supreme Court of the Komi Republic, which rejected the arguments relating to the first applicant's family situation by reference to the automatic nature of the expulsion measure (see paragraph 14 above). By this assertion the Supreme Court explicitly refused to balance the different interests involved and made no further analysis as to the proportionality of the measure to be applied against the first applicant. It refused to take into account the criteria elaborated by the Court and to apply standards which were in conformity with the principles embodied in Article 8 (compare with *Liu (no. 2)*, cited above, § 81).

52. The Court reiterates that the expulsion of a family member is a most extreme form of interference with the right to respect for one's family life. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention. The guarantees of the Convention require that the interference be not only lawful but also proportionate to the legitimate aim pursued, regard being had to the particular circumstances of

the case, and that no legal provision of domestic law should be interpreted and applied in a manner incompatible with the State's obligations under the Convention (see, *mutatis mutandis*, *Ćosić v. Croatia*, no. 28261/06, §§ 21-22, 15 January 2009, with further references).

53. In conclusion, the Court finds that the procedural safeguards required by Article 8 for the assessment of the proportionality of the interference were not available in the administrative proceedings. As a consequence, the expulsion sanction was applied in the automatic fashion without any possibility to have the proportionality of the expulsion measure determined by an independent tribunal. Furthermore, as noted above, the decision to revoke the first applicant's residence permit merely referred back to the expulsion order, there being no requirement on the issuing authority to carry out a separate evaluation of the applicants' family situation (compare *Kiyutin v. Russia*, no. 2700/10, § 73, ECHR 2011). Accordingly, the same considerations apply to that decision.

(ii) Decision to declare the first applicant's presence in Russia undesirable

54. After the final judgment in the administrative proceedings on the charge of drug consumption, the Federal Service for Drug Control issued the exclusion order against the first applicant, declaring his presence in Russia undesirable. The text of the decision referred to the "materials" received from the regional division of the Federal Service, without giving specific reasons or mentioning concrete facts which may have rendered the first applicant's presence in Russia undesirable. The Court observes that the decision was issued on the authority's own initiative and that the applicants were not invited to be heard. They were therefore unable to put forward legal arguments against the decision before it was made.

55. The factual grounds for the decision transpired, however, in the subsequent judicial proceedings. They comprised three elements: (i) the first applicant's conviction for non-medical use of drugs in 2011; (ii) the discontinued criminal proceedings against him in 2003; and (iii) other unspecified breaches of public order. The domestic courts did not elaborate on the latter element by providing, as a bare minimum, a list of such offences. A list was produced for the first time by the respondent Government in the proceedings before the Court (see paragraph 28 above).

56. The Court is satisfied that the balancing exercise performed by the Syktyvkar Town Court was in conformity with the criteria laid down in its case-law under Article 8 of the Convention: it weighed the gravity of the offences the first applicant had committed against the length of his stay in Russia and the strength of his family ties there. The Town Court reached the conclusion that the first applicant's presence posed no real threat to national security, public order or health, and the Court endorses that finding. Indeed, it follows from the list of offences supplied by the Government that the first applicant had never committed any violent offences and his acts had never

caused any significant damage to anyone but himself. Contrary to the Government's allegation that he was a felon, the first applicant had never been found guilty of any crime and the criminal proceedings against him were discontinued without trial in 2003, in view of his active repentance (see the Town Court's judgment in paragraph 26 above). As to the administrative proceedings, all of them concerned misdemeanours, including minor disorderly acts, public drunkenness and drug consumption, or regulatory offences, such as failure to follow administrative procedures. Each time the first applicant was given a small fine. What is also significant is that a majority of the incidents took place between 2000 and 2004, namely more than eight years before it was decided to declare the first applicant's presence undesirable. With the passage of time the relevance of those acts diminished and a stronger justification was required to invoke them as a ground for the first applicant's exclusion from Russia. On the other hand, the first applicant was married to a Russian national and had a son with her who was also a Russian national. Both of his parents had moved to Russia together with him and had since acquired Russian nationality. There was no indication that he had any close family members in Georgia. In these circumstances, the Town Court's assessment that the duration of the first applicant's stay in Russia and the strength of his family connections outweighed the cumulative effect of his history of offending, appears to have been a reasonable one.

57. By contrast with its finding in respect of the Town Court's judgment, the Court is unable to find that the proceedings before the Supreme Court of the Komi Republic afforded the applicants adequate procedural safeguards or that its judgment was based on an acceptable assessment of the relevant facts, as required by the Convention. The Supreme Court did not subject the executive's assertion that the first applicant posed a threat to public order and health to any meaningful scrutiny. Without analysing in any detail what offences the first applicant had committed and when, or what his length of stay and family ties in Russia were, the Supreme Court declared his lifestyle to have been an "immoral" one which "undoubtedly" was an "imminent threat" to the health and morals of Russian citizens (see paragraph 27 above). In the absence of any explanation in the text of the Supreme Court's judgment as to the factual circumstances on which such findings were based, the Court does not need to investigate further whether or not a value judgment on the immorality of the first applicant's lifestyle constituted, as a matter of Russian law, a sufficient and foreseeable legal ground for his exclusion from Russia. Furthermore, in so far as the test of proportionality demanded that the interference with the protected Convention rights be no greater than is necessary to achieve the legitimate aim pursued, it does not follow from the text of the judgment that the Supreme Court considered any alternative, less intrusive measures before validating the exclusion of the first applicant from Russia (see point 5 (b) of Recommendation

Rec(2000)15). Since the balancing exercise was not carried out in accordance with the Convention standards, the Court considers that the Supreme Court of the Komi Republic failed to balance properly the various interests that were at stake in the present case.

(iii) Duration of the first applicant's exclusion from Russia

58. The Court finally observes that, as the Government submitted, the expulsion measure ordered in the administrative proceedings would have the effect of preventing the first applicant's re-entry to Russia for a period of five years (see paragraph 35 above). They did not comment, however, on the period of validity of the decision declaring his presence in Russia undesirable. As it appears, neither the text of the decision, nor the text of section 25.10 of the Entry and Exit Procedures Act set any time-limit to the first applicant's exclusion from the Russian territory. Nor is there any procedure for its periodic review or for fixing such time-limit at the request of the concerned individual (compare *Keles v. Germany*, no. 32231/02, § 65, 27 October 2005).

59. The Court reiterates that the imposition of a residence prohibition of unlimited duration is an overly rigorous measure which it has found to be disproportionate to the aim pursued in many previous cases (see, for instance, *Keles*, cited above, § 66; *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; *Yilmaz v. Germany*, no. 52853/99, §§ 48-49, 17 April 2003, and *Ezzouhdi*, cited above, § 35). Accordingly, the permanent validity of the exclusion order against the first applicant was a factor that should have been part of the domestic authorities' analysis of the possibility of applying less intrusive measures. However, the final judgment of the Supreme Court of the Komi Republic is silent on this issue.

3. Conclusion

60. The Court does not need to determine whether or not the first applicant's expulsion or exclusion was as such possible. It finds, however, that the proceedings, in which the expulsion and exclusion orders were made or upheld, fell short of the Convention requirements and did not touch upon all the elements that the domestic authorities should have taken into account for assessing whether an expulsion or exclusion measure was "necessary in a democratic society" and whether it was proportionate to the legitimate aim pursued.

61. Accordingly, in the event of the expulsion or exclusion order against the first applicant being enforced, there would be a violation of Article 8 in respect of the applicants.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

62. The first applicant complained that he had been a victim of discrimination on account of his health status, in breach of Article 14 of the Convention, because the administrative expulsion order had been directed against him as a drug user.

63. The Government denied that the first applicant had been a victim of any discriminatory treatment.

64. In view of its analysis under Article 8 of the Convention and the conclusions made under that heading, the Court considers that this complaint must be declared admissible but that, in the circumstances of the present case, it is not necessary to examine the same facts from the standpoint of Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

66. The applicants claimed jointly 15,000 euros as compensation in respect of non-pecuniary damage. They also asked the Court to require that the Russian Government issue a residence permit to the first applicant.

67. The Government submitted that the claim was excessive and unsubstantiated.

68. The Court considers that the finding of a potential violation of Article 8 of the Convention constitutes sufficient just satisfaction.

69. The Court is not empowered to require the Russian authorities to issue a residence permit to the first applicant. It stresses, however, that the Court's judgments are binding on Russia and that a finding of a violation of the Convention or its Protocols by the Court is a ground for reopening the domestic proceedings and reviewing the domestic judgments in the light of the Convention principles established by the Court. The Court considers that such a review would be the most appropriate means of preventing the potential violation of Article 8 it has identified in the judgment from materialising. Furthermore, the respondent State remains free, subject to monitoring by the Committee of Ministers, to choose any other additional general measures by which it will discharge its legal obligation under

Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see paragraph 51 above).

B. Costs and expenses

70. The applicants did not claim any costs or expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

71. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that in the event of the expulsion or exclusion order against the first applicant being enforced, there would be a violation of Article 8 of the Convention in respect of both applicants;

3. *Holds* that the first applicant's complaint under Article 14 of the Convention requires no separate examination;

4. *Holds* that the finding of a potential violation constitutes sufficient just satisfaction.

Done in English, and notified in writing on 26 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President