



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

Communicated on 10 September 2014

FIRST SECTION

Application no. 7994/14
Anna Yuryevna USTINOVA against Russia
lodged on 27 December 2013

STATEMENT OF FACTS

The applicant, Ms Anna Yuryevna Ustinova, is a Ukrainian national, who was born in 1984 and lives in Novogradovka in the Donetsk Region, Ukraine.

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

The applicant has been living in Russia since the early 2000s. In 2008, she met A.U., a Russian national, and they started living together in Sochi in the Krasnodar Region. In 2009, the applicant's daughter from a previous marriage moved in with them and attended a primary school in Sochi. On 16 March 2012 the applicant and A.U. got married and on 23 August 2012 their son I. was born. Their son is a Russian national.

On 31 March 2013 the applicant was returning home by train after a visit to Ukraine, together with her two children. The border control did not allow her into Russia, citing a decision by the Consumer Protection Authority which declared her presence in Russia undesirable (the "exclusion order") on 9 June 2012.

In April 2013, further to the applicant's husband's request, the Consumer Protection Authority sent him a copy of the exclusion order. It did not refer to any facts or state any reasons for her exclusion. As it subsequently transpired, the basis for the exclusion was that during her pregnancy in 2012 she had tested positive for HIV and that the hospital reported the results of her HIV test to the Consumer Protection Authority.

The applicant, represented by her husband, challenged the exclusion order before the Russian courts. She submitted in particular that the Consumer Protection Authority had disregarded her family connections in Russia and her state of health.

On 24 May 2013 the Tsentralnyi District Court of Sochi rejected her claim in a summary fashion, without addressing her arguments in any detail. On 23 July 2013 the Krasnodar Regional Court upheld the District Court's

judgment, also in a summary fashion. On 30 September 2013 the Regional Court refused her leave to appeal to the cassation instance.

COMPLAINTS

The applicant complains under Article 8 of the Convention that the Russian authorities caused her separation from her family.

The applicant complains under Article 14, read in conjunction with Article 8 of the Convention, that that she was a victim of discrimination on account of her health status.

QUESTIONS TO THE PARTIES

1. As regards the procedure for making the decision pronouncing the applicant's presence in Russia undesirable (the "exclusion order") and its subsequent review by courts, was it compatible with the requirements of Article 8 of the Convention? In particular,

(a) Was the applicant given an opportunity to be heard and to put forward factual and legal arguments against her exclusion from Russia?

(b) Did the decision give specific reasons or mention concrete facts which may have rendered the applicant's presence in Russia undesirable?

(c) Did the Consumer Protection Authority take into account the relevant facts, such as the applicant's family and social attachments in Russia *before* issuing the decision?

(d) Was the exclusion order properly notified to her?

(e) Did the Russian courts examine the matter with due regard to the criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII)?

(f) Was the permanent nature of the exclusion order taken into account by the domestic authorities?

(g) In sum, was the decision-making process leading to the measures interfering with the applicant's right to family life fair and did it afford due respect to the interests safeguarded by Article 8 of the Convention?

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 her right to respect for her private and family life under Article 8, on account of the pronouncement of her presence in Russia as being undesirable?