



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

Communicated on 5 November 2014

FIRST SECTION

Application no. 46280/14
Vasyl SHVALIA against Russia
lodged on 16 June 2014

STATEMENT OF FACTS

The applicant, Mr Vasyl Shvalia, is a Ukrainian national, who was born in 1983 and lives in St Petersburg. He is represented before the Court by Mr I. Sharapov, a lawyer practising in Moscow.

A. The circumstances of the case

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

Since 2003 the applicant has been living in St Petersburg with his girlfriend N., a Russian national. On 17 June 2010 they got married and the applicant obtained a temporary residence permit valid through 2 November 2013.

In April 2013, while collecting documents for filing an application for a permanent residence permit, the applicant underwent testing for HIV in the St Petersburg Centre for AIDS Prevention and Treatment and discovered his HIV-positive status. The Centre reported his diagnosis to the Federal Consumer Protection Authority.

On 22 July 2013 the 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. The applicant was required to leave Russia before 21 August 2013. He challenged the decision in court.

In their written comments on the applicant's claim, the Consumer Protection Authority submitted in particular that "[his] marriage with a Russian national is not a ground for quashing the contested decision because, taking into account the balance of interests of a foreign national and his family, on the one hand, and the majority of population of the Russian Federation, on the other hand, the Consumer Protection Authority ... is entitled to protect the majority of the State population".

On 14 January 2014 the Kirovskiy District Court of St Petersburg dismissed the applicant's claim. It found that the applicant's presence in Russia posed "a threat to his wife who works with children and to other persons".

On 24 March 2014 the St Petersburg City Court upheld that decision on appeal. It held that the Consumer Protection Authority was not required to apply the Convention standards, including the requirements of Articles 8 and 14, because the questionnaire which the applicant had filled in at the St Petersburg Centre for AIDS Prevention and Treatment did not mention that he was employed or that he had close relatives in Russia. The City Court also endorsed the Authority's argument that it was entitled to protect the majority of the State population.

On 26 May 2014 a judge of the City Court refused the applicant 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, and *Gablishvili v. Russia*, no. 39428/12, §§ 33-36, 26 June 2014.

COMPLAINTS

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

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.

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 his 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) 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)?

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

(f) 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 his right to respect for his private and family life under Article 8, on account of the pronouncement of his presence in Russia undesirable?