



Novruk and others v. Russia

Applications nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14

Country: Russia

Region: Europe

Year: 2016

Court: The European Court of Human Rights

Health Topics: Health information, HIV/AIDS

Human Rights: Freedom from discrimination, Freedom of movement and residence, Right to family life

Facts

The first applicant-Novruk, a Moldovan national after his first marriage and divorce, married Ms. S, a Russian national. The applicant discovered that he was HIV positive. Ms. S had a daughter from previous marriage and also was a foster mother to nine orphaned children. Some of the children were HIV positive.

The applicant applied for temporary residence permit to the Primorskiy Region Federal Migration Service. The authority refused stating that the residence permit was only for people who could prove that they are not HIV positive. The District Court refused the applicant's challenge to the order. The Primorskiy Regional Court further dismissed the applicant's appeal.

The second applicant- Kravchenko, a Ukrainian national married a Russian national. She was refused a temporary residence permit as she was diagnosed as HIV-positive during her pregnancy. The District Court remitted the case back to the Migration Authorities stating that they had failed to take into account that her husband and her child were Russian nationals. The Migration Service denied her application again. On appeal, the District Court stayed the order of the Migration Service and ordered it to reconsider her application in the light of the Convention principles. The second applicant appealed as in her view the District Court should have ruled that the order of the Migration Services Authority unlawful. The Moscow City Court dismissed the appeal.

The third applicant- Khalupa had also married a Russian national and was denied temporary residency due to his HIV-positive status. The Migration Service stated that he would pose a real threat to public health. His challenges to the order of the Migration Services were unfruitful.

Several other applicants joined stating similar problems of refusal of temporary residency due to their HIV-positive status.

Decision and Reasoning

The Court allowed the joinder of applications and held that there had been a violation of Article 14 (discrimination) read with Article 8 (private and family life) of the Convention. The Court held that an unreasonable residence prohibition and that too for an unlimited period of time was disproportionate to the aim that the measure sought to achieve (protect public health). The court further held that contrary to the reasoning of the authorities, an HIV-positive person does not project a threat to public health. It stated that the authorities have based their decision on a presumption that HIV-positive persons will engage in unsafe behavior. This generalization, the Court stated amounts to unwarranted assumptions, which affect a vulnerable group. It further stated that in these cases, the applicants have been living with their families and they have not been charged or suspected of unsafe behavior of exposing other persons to the risk of HIV infection.

Decision Excerpts

“The limited ways in which HIV can be transmitted does not put prevention exclusively within the control of the HIV-positive non-national, but rather enables HIV-negative persons to take steps to protect themselves against the infection through safer sexual relations and safer injections. Excluding HIV-positive non-nationals from entry or residence in order to prevent HIV transmission is based on the assumption that they will engage in specific unsafe behaviours, and that the national will also fail to protect himself or herself. This assumption amounts to an unwarranted generalisation which has no basis in fact and fails to take into account the

specific situation of the individual concerned (see Kiyutin, cited above, ¶ 68). (Para 105)

In sum, the Court finds that, in the light of the overwhelming European and international consensus geared towards abolishing the outstanding restrictions on entry, stay and residence of HIV-positive non-nationals who constitute a particularly vulnerable group, the respondent Government have not advanced compelling reasons or any objective justification for their differential treatment for health reasons. (Para 111)

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