



Ibrogimov v. Russia

Application No. 32248/12

Country: Russia

Region: Europe

Year: 2018

Court: The European Court of Human Rights

Health Topics: HIV/AIDS

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

Facts

The applicant, born in Uzbekistan. His family (except him) acquired Russian nationality but he continued to live with his grandfather in Uzbekistan. After his grandfather died, he moved to Russia in 2011. He was found to be HIV-positive and the authority denied his applicant for temporary residency. His challenges to the orders were dismissed and he was asked to leave Russia.

Decision and Reasoning

The court held there had been a violation of Article 14 (freedom from discrimination) read with Article 8 (right to private and family life).

The court relied on *Novruk and Others v. Russia*, (nos. 31039/11) and stated that the applicant was treated differently from other applicants for temporary residency and there was no justification for such differentiation. It further stated that the Government could not provide any proof of threat to public health or unsafe behavior on behalf of the applicant. Finally, the court said an unlimited exclusion was an overtly rigorous measure and disproportionate to the aim of such orders.

Decision Excerpts

“The Court has found that the expulsion of HIV-positive individuals did not reflect an established European consensus and had no support in other member States, Russia being the only member State of the Council of Europe and one of sixteen States world-wide that enforced deportation of HIV-positive non-nationals (*ibid.*, § 101). The Court also noted the unanimous agreement of internationally recognised experts and organisations active in the field of public health that entry, stay and residence restrictions on people living with HIV could not be objectively justified by reference to public-health concerns: HIV is not transmitted through casual contact or by airborne particles, but rather through specific behaviours. The limited ways in which HIV can be transmitted does not put prevention exclusively within the control of the HIV-positive non-nationals, 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 with no basis in fact and fails to take into account the specific situation of the individual concerned (*ibid.*, §§ 102-05).” (Para 20)

“Finally, the Court reiterates that the decisions declaring the applicant’s presence in Russia undesirable set no time-limit on his exclusion from the Russian territory, it was issued in 2011 and has remained effective to date. As it was issued in connection with his infection with HIV, which is by today’s medical standards a lifetime condition, it had the effect of a permanent ban on his re-entry to Russia. 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 (*ibid.*, § 110, with further references).” (Para 22)