

Russia - Fourth Cassation Court - Judgment No. 88a-10287/2020

The applicant was born in an undisclosed Soviet Union Republic and moved to Russia in 1993. He held a temporary resident permit. He was convicted of a drug-related crime and sentenced to eight years in prison. The Ministry of Justice issued a decision on the "*undesirability of his stay*" in Russia. The Ministry of Internal Affairs followed up with a decision ordering his deportation as the applicant failed to leave Russia within the prescribed deadline. After being released from prison, the applicant was placed in a migration detention centre for 48 hours; this term was repeatedly extended by the court (prior to his eventual release). Russian authorities contacted Armenian and Azerbaijani authorities, both of which refused to grant the applicant entry as he was not a citizen of their respective countries. The applicant challenged both decision of the Ministry of Justice on the undesirability of his stay in Russia and the decision of Ministry of Internal Affairs ordering his deportation. The challenge was dismissed due to lack of legal grounds to declare the disputed decisions illegal.

Case name (in original language) : Кассационное определение Четвертого кассационного суда общей юрисдикции от 19.05.2020 No. 88a-10287/2020

Case status: Decided

Case number: Judgment No. 88a-10287/2020, 2a-4858/2019

Citation: Russian Fourth Cassation Court of General Jurisdiction Judgment No. 88a-10287/2020 dated 19.05.2020

Date of decision: 19/05/2020

State: Russian Federation

Court / UN Treaty Body: Fourth Cassation Court of General Jurisdiction of the Russian Federation (Четвертый Кассационный суд общей юрисдикции Российской Федерации)

Language(s) the decision is available in: Russian

Applicant's country of birth: Soviet Union {former}

Applicant's country of residence: Russian Federation

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Country of return, Deportation and removal, Respect for private and family life

Relevant Legislative Provisions:

Art. 25.10 of the Federal Law No. 114-FZ "On the procedure for departure out of the Russian Federation and entry to the Russian Federation"

Facts

The applicant, Mr Agadzhanyan, was born in an undisclosed Soviet Union Republic. He moved to Russia in 1993 but he never obtained Russian citizenship. He had a temporary resident permit and lived in the apartment of his sister, a Russian citizen.

The applicant was convicted of a drug-related crime and sentenced to eight years in prison. Under Article 25.10 of the Federal Law No. 114-FZ, (on the procedure of departure out of the Russian Federation and entry to the Russian Federation), the Russian Ministry of Justice issued a decision on the "*undesirability*" of his stay in Russia. A regional department of the Russian Ministry of Internal Affairs then ordered his deportation since he failed to voluntarily leave Russia within the three-day deadline established by law as a consequence of the Ministry of Justice's decision. After being released from prison, the applicant was placed in a detention centre for 48 hours. This term was repeatedly extended by court orders, and he was eventually released. Russian authorities contacted Armenian and Azerbaijani authorities, both of which refused to grant the applicant entry as he was not a citizen of either country.

The applicant appealed both the decisions of the Russian Ministry of Justice and the Russian Ministry of Internal Affairs.

Legal arguments by the applicant

The applicant referred to uncertainty of his legal status and violation of his rights protected by the European Convention on Human Rights. The specific rights relied upon were not detailed in the judgment. However, it can be inferred from the reasoning that Article 8 of the ECHR (right to respect for his or her private and family life) may have been raised.

Legal arguments by the opposing party

The Ministry of Justice and the Ministry of Interior Affairs asked the court to dismiss the cassation appeal.

Decision & Reasoning

The Cassation Court ruled that there were no legal grounds to overturn the decisions of the Russian Ministry of Justice and the Russian Ministry of Internal Affairs without going into details as to why these grounds were lacking. "*Absence of legal grounds*" is a standard wording used by Russian courts in judgments dismissing cassation appeals.

The Court considered the impact of the decisions on the right to family and family life, which are protected under the Russian Constitution. The Court of Cassation followed the decision of the Constitutional Court in its ruling of 5 March 2014, No. 628-O. It held that although rights to family and family life are protected, they do not take precedence over other constitutionally significant values. The presence of a family does not give foreigners and stateless individuals an "indisputable immunity" from enforcement measures in the field of migration policy.

The fact that the applicant had relatives living in Russia was not sufficient to find the decisions to deport him to be a breach of his right to respect for family life since this was balanced against the risk of public danger and his past criminal conduct.

Russian authorities decided to deport the applicant given the degree of his danger to the public (in light of his conviction of a drug-related crime) and the principle of priority of the interests of the majority of the population. The Court determined that in such cases an interference in family life is considered justified.

The judgment also noted that the decision corresponds to the April 1996 decision of the European Court of Human Rights in *Boughanemi v France*, where the Court found that interference in family life is justified in case of conviction of a person for bodily harm, robbery, drug-related crimes.

The fact that the applicant was stateless and there was nowhere to deport him to, did not prevent the decisions of undesirability of his stay and deportation from being upheld.

In particular, the Court stated as follows:

"The Court of Appeal justifiably referred to the legal position of the Constitutional Court of the Russian Federation, expressed in the ruling of March 5, 2014 No. 628-O, according to which the family and family life, being the values protected by the Constitution of the Russian Federation and international treaties of the Russian Federation, do not have, however, an unconditional advantage in all cases over other constitutionally significant values, and the existence of a family does not provide foreign citizens with indisputable immunity from lawful and effective enforcement measures in the field of migration policy, proportionate to the danger of migration offenses (especially massive ones) and the practice of evading the liability.

At the same time, the family status of Agadzhanyan V.G. in itself, the existence of his relatives living in the territory of the Russian Federation, is not an unconditional ground to recognize the disputed decisions as violating his right to respect for personal and family life, since they were issued taking into account the degree of public danger of the criminal act of the applicant and do not contradict the legal position of the European Court of Human Rights, according to which interference in family life is justified in case of conviction of a person for bodily harm, robbery, drug-related crimes (decision dated 24.04.1996 "Boughanemi against France"), and Agadzhanyan V.G. committed in the territory of the Russian Federation a criminally punishable act against life and health. In its turn, this circumstance evidences the presence of a real threat to public order, rights and interests, the health of citizens of the Russian Federation emanating from Agadzhanyan V.G., and the adoption in this case of adequate response measures in relation to a stateless individual staying on the territory of the Russian Federation and violating the rules of stay, is within the jurisdiction of the state.

The Court of Appeal assessed the disputed decision taken by the administrative defendant as based on the priority of the interests of the majority of the population of the state, whose security cannot be made dependent on the existence of family ties in the territory of the Russian Federation of a stateless individual with an outstanding conviction, including for intentionally committing a particularly serious crime, or his unwillingness to leave the territory of the Russian Federation.

The impossibility to enforce the disputed decision referred to by the administrative plaintiff cannot serve as a basis for recognizing the decisions adopted by the authorized bodies as illegal."

Decision documents

Outcome

The claim was dismissed and the decisions on the undesirability of stay and deportation of the applicant were upheld.

Caselaw cited

European Court of Human Rights, *Boughanemi v. France*, 24.04.1996