THIRD SECTION

**CASE OF SINGLA v. RUSSIA**

*(Application no. 9183/16)*

JUDGMENT

STRASBOURG

19 May 2020

*This judgment is final but it may be subject to editorial revision.*

In the case of Singla v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Olga Chernishova, *Deputy* *Section Registrar,*

Having deliberated in private on 28 April 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1.  The case originated in an application (no. 9183/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Indian national, Mr Dzhitender Kumar Singla (“the applicant”), on 15 February 2016.

2.  The applicant was represented by Mr O. Anishchik, a lawyer practising in Vsevolozhsk. The Russian Government (“ the Government” ) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  On 4 October 2016 the Government were given notice of the complaint under Article 8 concerning a violation of the applicant’s right to respect for family life due to his exclusion from Russia following a criminal conviction, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

A.  Criminal proceedings against the applicant and his ensuing exclusion

1.  Criminal proceedings against the applicant

4.  The applicant was born in 1972 in India. He arrived in Russia in 1991 on a student visa to study at a university in Moscow. From the documents submitted it transpires that upon completion of his studies he continued to reside in Russia on a regularly extended work visa.

5.  In 1995 the applicant met a Russian national, Ms N. A., who was born in 1977, and with whom he has been living since 1996. In 2006 and 2009 they had two daughters, Ms P.D.S. and Ms P.A.S. respectively. The applicant’s partner, Ms N. A., and their children have no connections with India. The daughters, being minors, go to school in Moscow and maintain a close relationship with their grandparents, Ms N. A.’s parents, who also live in that city.

6.  On 28 March 2012 the applicant was arrested and on 13 November 2013 he was sentenced to five and half years’ imprisonment under Article 165 of the Russian Criminal Code for defrauding the Moscow City authorities by fraudulently using State rental properties between 2006 and 2011. The applicant served his sentence in the Republic of Mordovia, Russia. Ms N. A. and daughters kept in contact with him through telephone calls and correspondence and by making regular visits. The applicant’s release was expected in September 2017.

7.  The documents submitted indicate that on an unspecified date in the summer of 2015 the applicant applied for release on parole. On 10 August 2015 the Zubovo-Polyanskiy District Court in Mordovia refused to grant his application as premature.

8.  On an unspecified date in 2016 the applicant lodged another application for release, which was granted. On 27 June 2016 the applicant was released on parole.

2.  The applicant’s exclusion from Russia and his appeals against the exclusion order

9.  On 14 January 2015 the Russian Ministry of Justice issued decision no. 339-RN on the undesirability of the applicant’s presence (residence) in Russia until 27 September 2020 (“the exclusion order”), the date when his criminal record would be expunged. In accordance with the order, the applicant was to be deported from Russia shortly after his release from prison should he fail to leave of his own accord.

10.  On 2 April 2015 the applicant appealed to the Zamoskvoretskiy District Court in Moscow (“the District Court”) against the exclusion order, complaining, *inter alia*, of a violation of his right to a family life. He pointed out that his family life was in Russia, that his daughters were minors, that neither they nor their mother had any ties with India, and that he had had no record of administrative or criminal offences prior to his imprisonment in 2013.

11.  On 1 June 2015 the District Court upheld the exclusion order by stating, *inter alia*, that the applicant’s right to respect for his family life would not be violated, as “the impugned decision [had been] taken considering the degree of threat presented by [his] crime against the public”.

12.  The applicant appealed to the Moscow City Court against the District Court’s decision, stating, *inter alia*, that the first-instance court had failed to properly examine his allegations concerning a violation of his right to respect for his family life. In particular, the District Court had disregarded the fact that the execution of the exclusion order would make it impossible for him to maintain a family life with his family, and that there had been no proof that the threat he allegedly posed to the public outweighed his right to respect for family life. In that connection, the applicant pointed out that the first‑instance court had stated in its decision that the crime he had been convicted of had been “especially grave”, whereas under Russian law it was classified as “moderately grave”. Lastly, the applicant stated that the execution of the exclusion order would make it impossible for him to officially register his marriage with Ms N.A.

13.  On 8 September 2015 the Moscow City Court upheld the decision of the District Court. The decision stated, *inter alia*, the following:

“... the court notes that the applicant has relatives in the Russian Federation, that he intends to register his marriage with a Russian national, [and] that he [currently] studies at a higher education institution and is involved in organisations providing social assistance to invalids. [However], these facts do not lead to unconditional recognition that the exclusion order violates his right to respect for his personal and family life ... as the relevant decision was taken in view of the threat presented by the applicant’s crime against the public ...”

14.  The court also noted that the first-instance court’s classification of the applicant’s crime as “especially grave” had indeed been incorrect, owing to a clerical error, and it should have been classified as “moderately grave”. However, that fact had had no bearing on the applicant’s case.

15.  On 28 October 2015 the applicant lodged a cassation appeal against the decision of the Moscow City Court. Referring to the case-law of the Court, the applicant stressed that the exclusion order had been issued without any regard for his family life in Russia, and that the domestic courts had failed to examine his arguments concerning a violation of his right under Article 8 of the Convention. In particular, he stated that the crime he had been convicted of had been of moderate gravity, that he had been living in Russia permanently and legally since 1991, that he had obtained his university degree in Moscow, that he spoke fluent Russian, and that he was the head of a company in Moscow, where he also had real estate. Furthermore, the applicant pointed out that prior to his conviction he had had no record of criminal or administrative violations, and that there had been no evidence that he would pose a threat to society when released from prison. He further stressed that all the members of his family, that is Ms N. A. and his daughters, were Russian citizens, that he had had an ongoing family life since 1995, and that Ms N. A. and his two daughters maintained regular contact with him in prison by visiting him, making regular telephone calls and frequently exchanging letters. Lastly, the applicant pointed out that his family members were unable to relocate to India, as Ms N. A. had a permanent job in Russia, both daughters went to school there, and none of them spoke the main language needed to reside in India. The applicant argued that the courts of first and second instance had not taken all of the above factors into account when upholding the exclusion order, and had based their conclusions only on the fact that he had a criminal record.

16.  On 16 November 2015 the Moscow City Court considered the cassation appeal and dismissed it by refusing to examine it further on the merits. The court stated, *inter alia*, that the exclusion order had been issued in full compliance with the domestic legislation, and that the applicant’s arguments concerning an alleged violation of his right to respect for his family life were unsubstantiated.

17.  On 20 February 2016 the Russia Supreme Court rejected a further cassation appeal by the applicant.

3.  The applicant’s release and his deportation from Russia

18.  On the date of the applicant’s release on parole, that is on 27 June 2016, the Mordovia FMS issued a deportation order against the applicant with reference to the exclusion order of 14 January 2015.

19.  On 29 June 2016 the applicant wanted to leave Russia for India of his own accord, but he was prevented from leaving the country by the Moscow City Bailiff Service.

20.  On 5 October 2016, following a complaint by the applicant, the Leninskiy District Court in Saransk, Mordovia, declared the deportation order against him unlawful. It stated that, owing to his release on parole, he was to remain in Russia until the end of his sentence in order to be supervised by a parole officer.

21.  On 17 January 2017 the Administrative Chamber of the Mordovia Supreme Court overruled the decision of 5 October 2016 and stated that the deportation order was lawful.

22.  According to the applicant’s representative, on 25 September 2017 the applicant was deported from Russia by way of controlled departure procedure.

II.  RELEVANT DOMESTIC LAW

23.  For the relevant domestic law and practice and the Council of Europe material, see *Gablishvili v. Russia* (no. 39428/12, §§ 31-37, 26 June 2014).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24.  The applicant complained under Article 8 of the Convention that his exclusion from Russia following his criminal conviction violated his right to respect for family life. The relevant provision reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A.  Admissibility

25.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

(a)  The Government

26.  The Government stated that the interference with the applicant’s right to respect for family life was lawful, necessary and proportionate. In particular, they stated that the exclusion was based on domestic laws, as he had been convicted of a criminal offence and it was justified by a pressing social need. Referring to *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006‑XII, the Government submitted that in order to protect public interests, the State had the right to apply that measure in respect of long‑term migrants such as the applicant. The Government submitted that “the domestic courts [had] analysed all the circumstances of the case: the applicant’s family ties, [the] nature and severity of the crimes committed by him, as well as the threat posed by him to the protected public order of the Russian Federation”, as well as whether to take into account the applicant’s release on parole.

27.  Referring to *Joseph Grant v. the United Kingdom*, no. 10606/07, 8 January 2009 (where the applicant had dozens of criminal convictions, including for robbery and drug-related offences), the Government stressed that the applicant had also been convicted of multiple (eighteen) episodes of fraud amounting to “causing particularly large material damage to the Moscow administration’s property”. Furthermore, according to the applicant’s personal file from the penal colony where he had served his sentence, during the examination of his application for parole in 2015, the applicant had been described in negative terms (see paragraph 7 above).

28.  The Government further stated that despite the length of the applicant’s stay in Russia and his alleged intention to officially register his marriage with Ms N. A., he had failed to do so, even though the domestic legislation provided for the registration of a marriage in a penal colony. During the entire time he had been serving his sentence, the applicant had never applied to the colony’s administration with such a request. Therefore, the applicant and Ms N. A. could not be considered spouses, and the applicant had never intended to officially marry her.

29.  With reference to *Caruso v. Switzerland* (dec.), no. 54448/00, ECHR 2000 (where the applicant had several convictions for drug-related offences), the Government stated that having a child did not serve as an unconditional basis for quashing a decision on deportation in respect of a person who was to be expelled. Furthermore, while serving his sentence, on 28 December 2015 the applicant had sent a letter to his relatives in India, which showed that he had relatives there. Referring to *Samsonnikov v. Estonia*, no. 52178/10, 3 July 2012, the Government submitted that the applicant would not face insurmountable difficulties after being expelled to India. Lastly, the applicant had never applied for Russian nationality, which showed a lack of ties with the host country, and since March 2012 he had not duly registered himself with the immigration authorities.

(b)  The applicant

30.  The applicant submitted that even though the interference with his right to respect for family life was lawful and pursued a legitimate aim, it was neither proportionate nor necessary. He stated that the decision on his exclusion had been taken without any regard for him having minor children in Russia and a job and property there, and that the alleged danger to the public which he posed related only to the fact that the crime he had been convicted of had been classified as “moderately grave”. The applicant stressed that the domestic courts had not examined whether his exclusion had been duly justified and had failed to carry out a balancing exercise in relation to the interests at stake. The courts had limited themselves to examining whether the formal grounds had been complied with, by checking matters such as his criminal conviction and whether the proper procedure for issuing the exclusion order had been followed.

31.  The applicant stated that the Government’s reference to *Joseph Grant*, cited above, was inappropriate, as the applicant in that case had committed multiple crimes, including violent ones, within a timeframe of twenty-one years, had been warned about deportation years before that sanction had been applied against him, and had never resided with his children.

32.  According to the case of *Üner*,referred to above, when deciding on the applicant’s exclusion, the domestic authorities should have taken into account a number of criteria. The authorities had failed to take into account that the applicant was a long-term migrant who had resided in Russia since 1991. As for his behaviour since his conviction, the Government had referred to his application for parole being refused in 2015. However, they had not referred to the fact that the very same court had granted a similar application in June 2016, ordering his release more than a year and three months before the end of his custodial sentence.

33.  Furthermore, the domestic authorities had completely disregarded the fact that the applicant’s partner, Ms N. A., and their minor daughters were Russian nationals who had lived in Russia all their lives and would face insurmountable difficulties if they were to move to India. The Government’s reference to the applicant’s only letter sent to his relatives in India did not demonstrate that he had close ties with that country. Given the above-mentioned factors, as well as other differences between the applicant’s situation and that of the applicant in the case of *Samsonnikov*, referred to above, the Government’s reference wasinappropriate. As for the Government’s contention that the applicant’s alleged failure to apply for Russian nationality showed his lack of close ties with Russia, this contention had not been raised before and examined by the domestic courts. The applicant’s alleged failure to duly register with the immigration authorities had not been the subject of the courts’ examination either, and in any case it was the responsibility of those authorities to ensure such compliance with the relevant regulations, given that he had been under arrest.

2.  The Court’s assessment

34.  It is not in dispute between the parties that there was an interference with the applicant’s right to respect for his family life within the meaning of Article 8, that the expulsion order issued in respect of the applicant was “in accordance with the law”, and that it pursued the legitimate aim of preventing disorder and crime.

35.  The key issue dividing the parties is whether the interference was “necessary in a democratic society”.

(a)  General considerations and relevant principles

36.  The Court set out the relevant criteria to be applied in determining whether an interference is necessary in a democratic society in, *inter alia*, *Üner*, cited above, §§ 54-55 and §§ 57-58; *Balogun v. the United Kingdom*, no. 60286/09, § 46, 10 April 2012; and *Samsonnikov*, cited above, § 86. The criteria are as follows:

“- the nature and seriousness of the offence committed by the applicant;

- the length of the applicant’s stay in the country from which he or she is to be expelled;

- the time elapsed since the offence was committed and the applicant’s conduct during that period;

- the nationalities of the various persons concerned;

- the applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple’s family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

- the solidity of social, cultural and family ties with the host country and with the country of destination.”

37.  Where children are involved, their best interests must be taken into account and national decision-making bodies have a duty to assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non‑national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 109, 3 October 2014).

38.  Lastly, the Court reiterates that the notion of the “family” is not confined solely to marriage-based relationships, and may encompass other *de facto* “family” ties where the parties are living together outside of marriage (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 112, 20 June 2002).

(b)  Application of the above considerations and principles to the present case

39.  The Court observes that the domestic authorities, including the courts, confined themselves to references concerning compliance with the procedure for issuing the exclusion order and the formal classification of the crime committed by the applicant, pointing at the threat which he allegedly posed to the public. Although they furthermore acknowledged the fact that the applicant had relatives in the Russian Federation and that he intended to register his marriage, they did not verify other relevant facts such as the length of the applicant’s stay in Russia, the seriousness of the difficulties which Ms N. A. and their daughters would encounter in India, the best interest of the children and the solidity of the applicant’s social, cultural and family ties with Russia (see paragraph 36 above). The arguments advanced by the Government in their submissions before the Court concerning the rejection of the applicant’s application for release on parole, his alleged failure to duly comply with immigration regulations, his family ties with Ms N. A. and their daughters were not examined by the domestic courts which decided on his appeals against the exclusion order (see paragraphs 12 – 17 above).

40.  Given the above, the Court finds that the domestic courts neither carefully balanced the different interests involved – including the best interests of the children – nor made a thorough analysis of the proportionality of the measure imposed on the applicant and its impact on his family life. Consequently, they failed to take into account the considerations and principles elaborated by the Court (see paragraphs 36-38 above) and to apply standards which were in conformity with Article 8 of the Convention.

41.  The proceedings in which the decision on the applicant’s exclusion was taken and upheld fell short of Convention requirements and did not touch upon all the elements that the domestic authorities should have taken into account for assessing whether the applicant’s exclusion was “necessary in a democratic society” and proportionate to the legitimate aim pursued.

42.  Accordingly, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A.  Damage

44.  The applicant did not submit a claim in respect of pecuniary damage. As for non-pecuniary damage, he requested compensation but left the amount of compensation to the Court’s discretion.

45.  The Government submitted that the claim should be dismissed as having been formulated *in abstracto*. In any event, no compensation should be granted, as there had been no violation of the applicant’s rights.

46.  Having regard to the parties’ submissions and making its assessment on an equitable basis, the Court awards the applicant 9,800 euros (EUR) in respect of non‑pecuniary damage.

B.  Costs and expenses

47.  The applicant requested that a total amount of 538,294 Russian roubles (RUB – approximately EUR 7,872) for the costs and expenses incurred before the domestic courts and for those incurred before the Court be paid to his partner Ms N. A., as she had incurred those expenses while he had been serving his custodial sentence. The amount claimed could be summarised as follows:

- RUB 75,150 (about EUR 1,100) to the applicant’s representative in the domestic proceedings, Mr A. Lipatnikov;

- RUB 25,000 (about EUR 365) to the applicant’s representative in the domestic proceedings, Ms A. Minushkina;

- RUB 202,000 (about EUR 2, 954) to the applicant’s representative in the domestic proceedings, Ms O. Kurochkina

- RUB 236,144 (about EUR 3,453) to the applicant’s representative before the Court, Mr O. Anishchik.

48.  The Government stated that the costs had not been necessary, nor had they been duly substantiated. The applicant had failed to explain the reasons why he had been represented by four lawyers, given that his case was not complex and had not necessitated the amount of work claimed. Furthermore, the documents submitted to substantiate the claim were “unreadable”.

49.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads.

C.  Default interest

50.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the application admissible;

2.  *Holds* that there has been a violation of Article 8 of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months, the following amounts,to be converted into the currency of the respondent Stateat the rate applicable at the date of settlement:

(i)  EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to Ms N. A., as indicated by the applicant;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 19 May 2029, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Olga Chernishova Alena Poláčková
 Deputy Registrar President