THIRD SECTION

**CASE OF ROZHKANI v. RUSSIA**

*(Application no. 14918/14)*

JUDGMENT

STRASBOURG

9 July 2019

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

In the case of Rozhkani 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 Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1.  The case originated in an application (no. 14918/14) 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 a stateless person, Mr Roman Rozhkani (“the applicant”), on 6 February 2014.

2.  The applicant was represented by Mr L. Lewandowski, a lawyer practising in Dragacz. 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 5 September 2016 the Government were given notice of the application. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1976 in Tbilisi, Georgia. His mother, N.N., is a Russian national and lives in the settlement of Leontyevskoye in the Krasnodar Region, Russia.

5.  In 2009 the Georgian authorities confirmed that the applicant was not a Georgian national. On 7 February 2011 they provided him with a stateless person’s identity card.

6.  In November 2010 the applicant moved from Georgia to Russia with his wife Z.Kh. and their two children, who were minors, to live with his mother, who had a disability. In June 2011 the applicant was officially registered as residing at his mother’s address.

7.  On 1 April 2011 the Department of the Federal Migration Service of the Krasnodar Region (*Управлении Федеральной миграционной службы по Краснодарскому краю* (*ФМС*), hereinafter “the FMS department”) granted the applicant a temporary (three-year) residence permit.

8.  On 24 January 2012 the FMS department granted the applicant’s wife and his two minor children, all of whom were Georgian nationals, a three‑year temporary residence permit valid until January 2015.

9.  On an unspecified date in 2012 the applicant applied for a long-term (five-year) residence permit. On 27 December 2012 the FMS department issued decision no. 157489, refusing to provide the applicant with the residence permit. The decision referred to section 9(1)(1) of the Foreign Nationals Act and stated that the applicant posed a threat to national security. The text of the decision also mentioned that as of 28 August 2012 there was no record of immigration violations in Russia in respect of him.

10.  On 28 January 2013, by decision no. 47144, the FMS department revoked the applicant’s temporary residence permit issued on 1 April 2011.

11.  The applicant challenged both decisions before the Belorechenskiy District Court of the Krasnodar Region (hereinafter “the District Court”). On 28 February 2013 the court found in the applicant’s favour and declared both decisions unlawful. In particular, the court stated:

“... the court has established, during the examination of the reasons for the refusal to issue the residence permit, that on 5 December 2012 the Department of the Federal Migration Service of the Krasnodar Region received a letter from the Department of the Federal Security Service of the Krasnodar Region concerning the lack of approval with regard to issuing a residence permit to the stateless person, Mr R. Rozhkani, in accordance with section 9(1)(1) of the Foreign Nationals Act. On the basis of that [lack of approval], the Department of the Federal Migration Service of the Krasnodar Region refused to issue a residence permit to Mr R. Rozhkani ... In connection with the refusal to issue the residence permit, on 28 January 2013 the Department of the Federal Migration Service of the Krasnodar Region revoked his temporary residence permit ...

As follows from the above, the information received in the letter of 5 December 2012 from the Department of the Federal Security Service of the Krasnodar Region served as the basis for the refusal to grant the residence permit and the revocation of the temporary residence permit. [However], the conclusion of the Department of the Federal Migration Service of the Krasnodar Region does not contain such information, whereas according to appendix 4 of Administrative Regulation no. 41, the operative part of such a conclusion should contain a well-reasoned foundation for a positive or negative decision concerning the issuance of a residence permit...

... no evidence has been provided to the court by the Department of the Federal Migration Service of the Krasnodar Region to demonstrate the reasons for taking the impugned decisions.

In such circumstances, in the absence of information and substantiating evidence, the court cannot agree with the decisions issued by the Department of the Federal Migration Service of the Krasnodar Region on 27 December 2012 concerning the refusal to grant the applicant a residence permit and on 28 January 2013 concerning the revocation of his temporary residence permit, ...

As the impugned decisions are not substantiated and do not comply with the requirements of the Administrative Regulations and the Foreign Nationals Act, the court finds it necessary to oblige the Department of the Federal Migration Service of the Krasnodar Region to remedy those deficiencies ...”

12.  The FMS department appealed against the above decision to the Krasnodar Regional Court (hereinafter “the Regional Court”).

13.  On 23 April 2013 the Regional Court overruled the decision of the District Court and found that the decisions of 27 December 2012 and 28 January 2013 had been lawful. Without referring to any specific information against the applicant obtained by the Department of the Federal Security Service of the Krasnodar Region (*Федеральная служба безопасности по Краснодарскому краю* (*ФСБ*), hereinafter “the FSB department”), the Regional Court stated, amongst other things:

“... the residence permit was annulled after the local FMS department received incoming letter no. 1260 of 5 December 2012 from the Department of the Federal Security Service of the Krasnodar Region. Such documents, which contain confidential information, could only be obtained following a reasoned request and written permission from the appropriate State official. Thus, [the letter] could not be disclosed to the applicant.

Therefore, the Department of the Federal Migration Service of the Krasnodar Region acted within its mandate and in compliance with domestic law ...”

14.  The applicant appealed in cassation against the above decision to the Civil Chamber of the Regional Court, stating, amongst other things, that the impugned decisions of the FMS department had been taken based on undisclosed information, and that they made him liable to deportation, which would lead to the disruption of his family life with his wife, children and disabled mother.

15.  On 9 July 2013 the Civil Chamber of the Regional Court refused to examine the applicant’s cassation appeal, finding no violations of substantive or procedural law which had influenced the outcome of the proceedings, and upheld the decision of 23 April 2013. The court stated as follows:

“... When allowing the applicant’s appeal [on 28 February 2013], the District Court stated that the FMS of the Krasnodar Region had not provided the court with evidence serving as the basis for its decisions [to revoke the applicant’s residence permit and to refuse him a long-term residence permit] ...

... The documents in the case file show that ... the FMS of the Krasnodar Region received letter no. 1260 dated 5 December 2012 from the Department of the Federal Security Service of the Krasnodar Region concerning its disapproval as regards issuing a residence permit for Mr Rozhkani ... In connection with this, on 27 December 2012 the FMS refused to issue the residence permit ...

... Letter no. 1260 of 5 December 2012 from the Department of the Federal Security Service, which served as the basis for the refusal, is marked ‘confidential’... The transfer of documents containing confidential information to other State bodies could be done only following a justified request and written approval from the relevant official... Therefore, the document which served as the basis for the impugned decisions could not be disclosed to the applicant.

In such circumstances, taking the impugned decisions was within the competence of the FMS of the Krasnodar Region, the relevant procedure was complied with, and the content of the impugned decisions was in accordance with the law.

As for the applicant’s points of appeal, they aim for a different interpretation of the law and do not disclose circumstances which have not already been examined or which would disprove the conclusions in the court’s decision [of 23 April 2013], and therefore cannot serve as a basis for overruling that decision ...”

16.  On 13 September 2013 the Supreme Court of Russia refused to transfer the applicant’s cassation appeal to its chamber for administrative cases.

17.  On 25 October 2013 the FMS department issued a decision on the applicant’s deportation. On an unspecified date between the end of October and the middle of November 2013 the applicant was deported to Poland.

18.  The applicant currently lives in Toruń. It appears that on an unspecified date between 2014 and 2016 his wife and children joined him there. According to the applicant, in December 2016 the local authorities granted him and his family refugee status.

19.  In reply to the Court’s request for the information and documents that had served as the basis for the applicant’s exclusion from Russia, the Government provided copies of the courts’ decisions in the applicant’s case and a copy of the transcript of the hearing on 23 April 2013 before the Regional Court. In addition, the Government submitted copies of the FMS department’s decisions of 27 December 2012 and 28 January 2013. Referring to section 18 of Federal Law no. 144- ФЗ on State Secrets of 21 July 1993, the Government refused to provide the Court with a copy of letter no. 1260 of 5 December 2012 from the FSB department (also referred to as letter no. 1/2/6-753 of 28 November 2012 in the documents submitted) which contained information serving as the basis for the applicant’s exclusion.

II.  RELEVANT DOMESTIC LAW

20.  For the relevant domestic law and practice, see *Liu v. Russia* *(no. 2)*, no. 29157/09, §§ 45-52, 26 July 2011, and *Abramyan and Others v. Russia* (dec.), nos. 38951/13 and 59611/13, §§ 76-96, 12 May 2015.

III. RELEVANT COUNCIL OF EUROPE MATERIAL

21.  For the relevant Council of Europe material, see *Gablishvili v. Russia*, no. 39428/12, § 37, 26 June 2014.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22.  The applicant complained under Article 8 of the Convention that the revocation of his residence permit on undisclosed grounds had violated his right to respect for his family life.

“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

23.  The Government submitted that the application was inadmissible under the six-month rule because the applicant had lodged his complaint on 6 February 2014, more than six months after the appeal decision of 23 April 2013 by the Regional Court. The applicant’s additional appeals via the two‑tier cassation procedure should not be taken into account for the purposes of exhaustion, as the effectiveness of that procedure, introduced in January 2012, had been recognised by the Court only in May 2015 in *Abramyan and Others*, cited above, §§ 76-96.

24.  The applicant submitted that he had complied with the rule, and referred to the Supreme Court’s decision of 13 September 2013 by which his appeal had been rejected at final instance.

25.  The Court observes that the application was lodged more than six months after the appeal decision of 23 April 2013, but within six months of the Supreme Court’s decision of 13 September 2013 rejecting the applicant’s cassation appeal. The applicant lodged that appeal in accordance with the system of appeals in civil proceedings introduced in January 2012. Given that the applicant complied with the existing appeal requirements by lodging a cassation appeal within the newly reformed system, a system which was subsequently found to be effective, the Court finds that it was not unreasonable for him to attempt that remedy (see, *mutatis mutandis*, *Myalichev v. Russia* [Committee], no. 9237/14, § 13, 8 November 2016). The Court therefore finds that the application was not belated and rejects the Government’s objection.

26.  The Court considers that the application 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

27.  The Government contested that the applicant’s exclusion from Russia had violated his right to respect for his family life. They submitted that the interference with that right had complied with Article 8 of the Convention. Referring to *A. and Others v. the United Kingdom* [GC], no. 3455/05, ECHR 2009, the Government submitted in broad terms that the decisions to refuse the applicant a long-term residence permit and revoke his residence permit had been dictated by the need to protect national security, and that the relevant procedure had been complied with. According to the Government, the applicant had failed to request or submit evidence during the examination of his appeal by the Regional Court on 23 April 2013.

28.  The Government further stated in general terms that the applicant had twice been sanctioned for failure to comply with the Russian immigration regulations, once in 2003 and then in 2005. At the same time, they stressed that he had resided in Russia for only a short period of about two years, and that he had lived with his mother in the period between his official registration at her address in June 2011 and the annulment of his residence permit in January 2013. Referring to the cases of *Senchishak v. Finland*, no. 5049/12, 18 November 2014, *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002‑II (extracts) and *Sapondzhyan v. Russia* (dec.), no. 32986/08, 21 March 2017, the Government argued that owing to the applicant’s short period of residence with his mother and her lack of dependency on him, she was not a part of his core family. Furthermore, the applicant had been neither a long-term nor settled migrant in Russia. His wife and children were not Russian nationals, had no close ties with the country, and therefore could leave Russia and join him, something which they had eventually done. Referring to the case of *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004, the Government argued that the applicant and his wife and children could return to Georgia and that they would not face insurmountable cultural and social difficulties adjusting to life there, given that the applicant’s family members were Georgians and the applicant had resided there before.

29.  The applicant maintained his complaint and alleged that the revocation of his residence permit had adversely affected his right to respect for family life, as it had made him liable to deportation, which had subsequently been carried out. He further submitted that the accusations against him had been based on secret documents to which he had had no access, and therefore he had been denied the opportunity to refute them. The domestic courts had not conducted a meaningful balancing exercise between the national security interests and his right to respect for family life. The applicant stressed that, as a stateless person, he could not move to Georgia with his wife and children, and that he had been forced to move to Poland.

The Court’s assessment

30.  A summary of the relevant general principles can be found in *Gaspar v Russia*, no. 23038/15, 12 June 2018, §§ 38-39 and 41-45.

31.  The Court observes that it is not in dispute between the parties that there was an interference in the present case, and that the gist of the applicant’s complaint concerns the lack of procedural safeguards in the proceedings concerning his exclusion, and in particular the lack of reasons from the domestic authorities to justify the sanction (see, for a similar situation, *Liu (no. 2)*, cited above; *Kamenov v. Russia*, no. 17570/15, 7 March 2017; *Zezev v Russia*, no. 47781/10, 12 June 2018; and *Gaspar*, cited above). Therefore, the Court must examine whether the domestic proceedings were attended by sufficient procedural guarantees. It reiterates in this connection that even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations on the use of classified information (see, *mutatis mutandis*, *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 151 and 161, ECHR 2017 (extracts)). The individual must be able to challenge the executive’s assertion that national security is at stake. Failing such safeguards, the police or other State authorities would be able to encroach arbitrarily on rights protected by the Convention (see *Nolan and K. v. Russia*, no. 2512/04, § 71, 12 February 2009, and *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 123-24, 20 June 2002).

32.  Turning to the case at hand, the Court observes that the Government’s submissions neither referred to any Federal Security Service documents describing or substantiating the allegations against the applicant, nor specified whether any such documents had been examined by the domestic courts. It is not clear from the case file which documents provided the domestic courts with information about the relevant acts ascribed to the applicant. Moreover, the case file indicates that no concrete evidence was examined by the courts when they upheld the security service’s decision to exclude the applicant on national security grounds (see paragraphs 11 and 15 above). In their submissions to the Court, the Government did not give an outline of the possible basis for the security services’ allegations against the applicant (see, by contrast, *Regner*,cited above, §§ 156-57; *Liu (no. 2)*, cited above, § 75; and *Amie and Others v. Bulgaria*, no. 58149/08, §§12-13 and 98, 12 February 2013), and did not provide documents supporting those allegations (see paragraph 19 above).

33.  The Court also notes that the vague information submitted by the Government concerning the administrative sanctions allegedly imposed on the applicant for violations occurring in 2003 and 2005 was not examined by the domestic courts (see paragraph 9 above), and therefore those details are immaterial for the proceedings before the Court.

34.  Irrespective of the nature of the acts attributed to the applicant and the alleged danger he posed to national security, the Court notes that the domestic courts confined the scope of their examination to ascertaining that the decisions on the applicant’s exclusion had been issued within the administrative competence of the FMS department and the FSB department, without carrying out an independent review of whether their conclusion had a reasonable basis in fact. The courts thus failed to examine a critical aspect of the case, namely whether the FSB department had been able to demonstrate the existence of specific facts serving as a basis for its assessment that the applicant presented a national security risk (see, by contrast, *Regner*,cited above, § 154). Those elements lead the Court to conclude that the national courts – except for the District Court, which did point out the FSB department’s failure to submit evidence substantiating its allegations of a security threat (see paragraph 11 above) – confined themselves to a purely formal examination of the decisions leading to the applicant’s exclusion from Russia (see, for similar reasoning, *Liu (no. 2)*, cited above, § 89, and *Kamenov v. Russia*, cited above, § 36). As a result, this rendered it impossible to duly balance the interests at stake, taking into account the general principles established by the Court’s case-law (see paragraph 30 above) and applying standards in conformity with Article 8 of the Convention.

35.  From the documents submitted to the Court it appears that the applicant was not even given an outline of the national security case against him. The allegations against him were of an undisclosed nature, making it impossible for him to challenge the security service’s assertions by providing exonerating evidence, such as an alibi or an alternative explanation for his actions (see *A. and Others*, cited above,§§ 220-24).

36.  Therefore, the Court finds that the domestic court proceedings concerning the examination of the applicant’s appeals against the decisions refusing to grant him a permanent residence permit and revoking his temporary residence permit, and their effects on his family life, were not attended by sufficient procedural guarantees.

37.  There has therefore been a violation of Article 8 of the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

38.  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

39.  The applicant claimed 30,000 euros (EUR) in respect of damages, without specifying whether the claim concerned pecuniary or non-pecuniary damage. He did not claim costs or expenses.

40.  The Government submitted that the claim was not specific and that it was “excessive, unlawful and unsubstantiated”.

41.  Regard being had to the documents in its possession and its findings in the present case, and making its assessment on an equitable basis, the Court finds it reasonable to award the applicant EUR 3,250 in respect of non-pecuniary damage, plus any tax which may be chargeable on this amount.

B.  Default interest

42.  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 complaint under Article 8 of the Convention 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 EUR 3,250 (three thousand two hundred and fifty euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax which may be chargeable on this amount.

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Alena Poláčková
 Deputy Registrar President