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La CEDU su revoca del permesso di soggiorno come sanzione nei confronti di attivista per i diritti umani
(CEDU, sez. III, sent. 7 marzo 2023, ric. n. 54003/20)

La Corte Edu si pronuncia sul caso riguardante la revoca di un permesso di soggiorno rilasciato ad una attivista per i diritti umani, cittadina statunitense, con presunto coinvolgimento del Federal Security Service (FSB). I Giudici di Strasburgo hanno ritenuto che vi fossero gravi difetti nella procedura che aveva portato alla revoca, disposta per motivi di sicurezza nazionale non meglio specificati, il cui reale scopo era, tuttavia, evidentemente, quello di punire la ricorrente e suo marito per le loro attività a favore dei diritti umani ed impedirne la prosecuzione. La misura si inseriva, peraltro, in un contesto generale di aumento delle severe restrizioni nei confronti di ONG e difensori dei diritti umani e altri attori della società civile in Russia, con un "effetto raggelante" sulle loro attività.
Di qui il riconoscimento dell'avvenuta violazione del diritto al rispetto della vita privata e familiare (art.8), nonché del limite all'applicazione delle restrizioni ai diritti (art.18). La Corte ha, inoltre, ritenuto che il governo russo non avesse rispettato il proprio obbligo di fare tutto il necessario per assicurare un adeguato esame di un caso giudiziario (art.38).

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA

(Application no. 54003/20)

JUDGMENT
STRASBOURG
7 March 202

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX and Others v. Russia,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis, *judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application no. 54003/20 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 four applicants ("the applicants" – see the appendix for their personal details), on 10 December 2020;

the decision to give notice of the application to the Russian Government ("the Government");

the decision to give priority to the application (Rule 41 of the Rules of Court) and the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court which was subsequently lifted;

the parties' observations;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see, for a similar situation and an explanation of the background, *Kutayev v. Russia*, no. 17912/15, §§ 4-8, 24 January 2023);

the Court's Resolution of 22 March 2022 which determined that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred [before]16 September 2022" (see paragraph 2 of the Resolution, and *Kutayev*, cited above, §§ 75-80);

Having deliberated in private on 7 February 2023,

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

INTRODUCTION

1. The main issues in the present case are whether (i) the revocation of the first applicant's residence permit in Russia interfered with her and her relatives' right to respect for their private and family life, and (ii) the limitations on the first applicant's rights imposed in the removal proceedings were applied for purposes other than those permitted under the Convention.

THE FACTS

2. The applicants' names, years of birth and other personal details are set out in the appendix hereto. The applicants were represented by Ms E. Davidyan, Ms D. Trenina and Mr K. Zharinov, lawyers practising in Moscow.

3. The Government were represented Mr M. Galperin, former representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

I. THE APPLICANTS' SITUATION

5. The applicants are members of the same family. The first applicant is a citizen of the United States of America ("the USA") who lived and worked in Russia from 2009 to 2021. Since 2013 she has been married to the second applicant, who is a Russian citizen. They have two minor children (the third and fourth applicants) who are dual Russian-US nationals and who, until April 2021, attended kindergarten in Moscow. Between 2009 and April 2021 the applicants lived in Moscow in a flat jointly owned by the first and second applicants. The family visited the USA once a year on holiday. All the applicants have a close relationship with the second applicant's mother (who is financially dependent on him) and his brother, who both live in Russia.

II. THE FIRST AND SECOND APPLICANTS' PROFESSIONAL PROFILES

6. In 2009 the first applicant moved to Russia to work for the Russian office of the Stichting Justice Initiative ("the SJI"), a non-governmental organisation ("NGO") based in the Netherlands with a mission of providing legal protection to victims of human rights violations.

7. In 2012, the first applicant became the director of Legal Assistance – Astreya ("Astreya"), a partner NGO of SJI in Russia. According to the first and second applicants, in 2009-2020 Astreya represented approximately 1,700 Russian citizens in over 400 cases before the Court; judgments with findings of violations have already been delivered in over 270 of those cases.

8. The first applicant stated that "she moved to Russia in 2009 specifically to perform human rights work, finding her calling in ensuring legal representation for victims of serious human rights violations in Russia, including the right to life, freedom from torture and protection from domestic and other forms of gender-based violence".

9. The second applicant is a practising lawyer who represents applicants principally at the stage of implementation of the Court's judgments. He also coordinates international advocacy work related to the implementation of the Court's judgments and has made over twenty submissions to the Committee of Ministers of the Council of Europe since 2010. In September 2020, at the request of the European Implementation Network, the first and second applicants participated in two briefings to delegates of the Committee of Ministers of the Council of Europe concerning Russia's implementation of the *Khanamirova v. Russia* and *Volodina v. Russia* groups of cases, concerning child abductions, domestic violence and discrimination against women in Russia.

III. THE FIRST APPLICANT'S RESIDENCE IN RUSSIA 2009-2021

10. Between 2009 and 2014 the first applicant lived in Russia on the basis of employment-based visas. In 2014 the authorities granted her a three-year residence permit.

11. On 16 February 2017 a five-year residence permit (valid until 16 February 2022) was issued to the first applicant by the migration service of the Moscow Department of the Interior (*Министерство внутренних дел по городу Москве*, or *МВД*, hereinafter "the MVD").

12. On 7 September 2020 the first applicant applied for Russian citizenship.

13. On 20 October 2020 the Department of the Federal Security Service of the Russian Federation for Moscow and Moscow Region (*Управление Федеральной Службы Безопасности Российской Федерации по Москве и Московской области*, hereinafter "the FSB") wrote to the MVD informing them that the first applicant's application for citizenship had not been approved by the FSB, in accordance with the Law on Russian Citizenship, as she posed a threat to national security. The FSB also recommended that the MVD revoke her residence permit, under section 9(1)(1) of the Federal Law on the Legal Status of Foreigners in the Russian Federation (hereinafter "the Foreigners Act"), which provided that a residence permit issued to a foreign national should be revoked if he or she advocated a radical change in the constitutional order of the Russian Federation or his or her actions otherwise posed a threat to the security of the Russian Federation or its citizens. The FSB report contained no other details or information.

14. On 16 November 2020 the MVD revoked the first applicant's residence permit on the ground that she posed a threat to national security. No reference was made in that decision to the report of the FSB.

15. On 24 November 2020 the MVD rejected her application for citizenship on the same ground.

16. On 2 December 2020 the first applicant was notified of both decisions and informed that she had to leave the country within 15 days, failing which she would be subject to deportation.

17. On 14 April 2021 the applicants' lawyer, Mr Zharinov, informed the Court that "given the overall pressure and ... uncertainty about [their] family's future in Russia and the threats received", on 2 April 2021 they had left Russia but had remained in contact with him.

IV. APPEALS AGAINST THE REVOCATION OF THE FIRST APPLICANT'S RESIDENCE PERMIT

18. On 5 December 2020 the first applicant brought a complaint against the decision revoking her residence permit before a domestic court.

19. She also requested the domestic court to apply provisional protective measures and suspend her removal until the resolution of her case on the merits.

20. On 14 December 2020 the Koptevskiy District Court of Moscow ("the District Court") ruled that there were no legal grounds to apply provisional measures of protection in respect of the first applicant as there was no imminent risk of a violation of her rights and that she had in fact requested the court to quash the MVD decision of 16 November 2020 pending examination of her case on the merits.

21. On 29 December 2020 the police charged the first applicant with breaching migration regulations, an administrative offence punishable by the imposition of an administrative fine and/or administrative removal. On the same date the materials of the first applicant's administrative case file were submitted to the District Court, which found substantive

shortcomings in the administrative offence report drawn up by the police and returned the file to the police for correction.

22. On 21 January 2021, during the preliminary hearing of her case, the first applicant was informed, for the first time, about the report of the FSB of 20 October 2020 (see paragraph 13 above). No further information was provided to her concerning the factual grounds for the FSB report as they were designated as classified information. The first applicant's request to name the FSB as co-respondent was not granted; instead, the District Court designated the FSB as an interested party and then refused her request to have the FSB disclose relevant documents.

23. On 9 February 2021 the District Court examined the first applicant's complaint against the MVD's decision revoking her residence permit and issued a judgment. According to the record of the hearing, when the first applicant asked the representative of the FSB, Mr. A., whether her professional activity in Russia was considered a threat to national security, he replied that he could not provide any comments because the information about the exact acts ascribed to the first applicant was classified and constituted a State secret. The first applicant requested that the court transfer the case for examination to the Moscow City Court ("the City Court") as it involved a State secret (see paragraph 48 below) and to name the FSB as co-respondent, but those requests were rejected by the District Court. A separate challenge by the applicant claiming that the District Court had no jurisdiction to examine cases concerning State secrets was dismissed by the City Court (see paragraph 29 below).

24. The District Court also refused to examine on the merits the first applicant's request that the FSB be ordered to submit the information that had served as a basis for the impugned decision, indicating that no complaint had been brought against the actions of the FSB in the course of the proceedings.

25. In its judgment, the District Court established that the MVD had issued its decision revoking the first applicant's residence permit based on the FSB report of 20 October 2020 and that that measure was therefore proportionate; it also found that it had been issued by the competent State body and that the applicable procedure had been complied with. The court further observed that the absence from the case file of the factual information that had served as the basis for the MVD's decision did not render that decision unlawful and that, even though the first applicant disagreed with the content of the FSB report of 20 October 2020, she had not challenged it in those or any other proceedings. The District Court refused to examine the factual grounds for the MVD's decision, stating that the FSB had exclusive competence to assess whether foreign citizens represented a threat to national security, defence interests, public order or public health, and that in accordance with the Supreme Court's Plenary Ruling no. 36 of 27 September 2016 ("Ruling no. 36") the courts did not have the power to evaluate whether the relevant authorities had or had not acted reasonably when issuing administrative decisions.

26. The District Court recognised that even though the impugned measure amounted to an interference with the first applicant's family life as protected by the Constitution, that factor was outweighed by the public interest in protecting other "socially meaningful values provided for in the Constitution".

27. On 16 April 2021 the City Court examined an appeal which had been lodged with it by the first applicant and found the judgment of 9 February 2021 to be lawful and reasonable. It stated, in

particular, that (i) the first applicant had not separately challenged the FSB report; (ii) the administrative proceedings did not concern the lawfulness of the FSB report; and (iii) the MVD did not have the power to review decisions made by the FSB.

28. The City Court held that the interference with the first applicant's right to respect for her private and family life was justified as it was being implemented in accordance with the law and was necessary in a democratic society for reasons listed in Article 8 § 2 of the Convention. No exceptional circumstances had been established showing that the interference with the first applicant's rights was unnecessary or unjustified.

29. In a separate ruling issued on 16 April 2021, the City Court also rejected the first applicant's challenge to the District Court's jurisdiction (see paragraph 23 above). It found that it had not been established that the first applicant's case concerned any State secrets.

30. Subsequent to a further appeal by the first applicant, on 25 August 2021 the Second Court of Cassation of General Jurisdiction in Moscow largely repeated the reasoning of the Moscow City Court and denied the appeal.

31. The first applicant again appealed, and on 2 February 2022 the Supreme Court of Russia held that the MVD's decision had been taken lawfully by a competent State body and that her argument about an unjustified interference with her family life was unsubstantiated.

V. ALLEGED CONTACTS BETWEEN THE FSB AND THE FIRST APPLICANT

32. According to the first applicant, when in December 2016 she had sought to obtain a five-year residence permit in Russia she had been invited for an interview at the main office of the Federal Migration Service in Moscow. She had been interviewed by a certain D., who had allegedly introduced himself as a representative of the FSB. The first applicant stated that D. had questioned her extensively about her work and told her that they would have to meet several more times to discuss additional questions. After their first meeting he had called her several times asking for a further meeting. The first applicant had requested D. to send his questions by email.

33. The first applicant submitted what appears to be an email exchange between D. and herself in February-March 2017 which includes, *inter alia*, a request from D. to provide him with a list of NGOs that "manifest animosity in respect of Russia and do not actually defend the rights of citizens". D. also requested the first applicant "to explain the working principle of [the NGOs] that provide legal aid, using her organisation as an example [and indicating the] full chain [or structure], including the names of individuals and their contact information, and any applications lodged with the European [institutions]."

34. The first applicant stated in her reply that she could not provide D. with a list of NGOs or persons "that manifest animosity in respect of Russia" because she did not know any. She knew the NGO's representatives who were "Russian citizens who love[d] their country and sincerely believe[d] that they [could] make it better by carrying out legal aid activities". She further replied that she had never encountered any "insurgent" activities under the pretence of "rendering legal protection" and that "persons who worked in the sector of legal aid considered criticising the authorities to be their work and that society needed that." She further described the structure of

her organisation and noted that it was financed by an NGO based in the Netherlands and that it had also received financial support directly from the Dutch Embassy in Russia for a project concerning gender-based violence in the North Caucasus and the Pskov and Ulyanovsk Regions. She further stated that they had also received funding from the Russian Office of the United Nations High Commissioner for Refugees for rendering legal advice to residents of Ingushetia and Chechnya. She pointed out that the mission of her organisation was the protection of fundamental human rights (right to life, prohibition of torture) and the provision of legal aid to victims of domestic and sexual violence, including in the North Caucasus. The first applicant also noted that Astreya's other activities included training courses for lawyers.

35. The first applicant further submitted that in February 2018, at D.'s insistence, she had met with D. and a colleague of his. They had allegedly told her "not to be afraid because her residence permit had been granted even though she had avoided everything", which the first applicant understood as being a reference to her avoiding contact with D. They allegedly offered the first applicant the chance, for significant financial compensation, to head a new Russian organisation that would monitor human rights violations in Russia and other countries. They further requested her to provide them with information on Astreya's clients, on the financial aspects of its work, and on colleagues from other organisations. They also allegedly offered to render assistance with the "promotion" of any upcoming projects of the organisation. The first applicant firmly rejected all offers and requests that had been made by D. and his colleague during that meeting.

VI. ALLEGED INTERFERENCE IN THE WORK OF THE NGO

36. According to the first applicant, State bodies had interfered with the work of Astreya and its partner organisations. Her submissions can be summarised as follows.

37. In July 2019 the initial founder of Astreya had reported that a law-enforcement officer had visited her home looking for her, left his contact information and introduced himself as a representative of the "human rights-protection agency[,] the FSB".

38. On 14 August 2019, the offices of Astreya in Moscow had been searched by members of the Special Rapid Deployment Force (*Специальный отряд быстрого реагирования* or *СОБР* (SOBR)), masked and armed with automatic weapons, the FSB and the MVD. The first applicant submitted a signed statement from Astreya's staff assistant who had been present during the raid and who confirmed that the telephones of the employees had been confiscated during the search and that their identity documents had been photographed.

39. On 15 August 2019 the North Caucasus Department of the Ministry of the Interior had issued a search order for the office of Justice Initiative, a partner organisation of Astreya based in Nazran, Ingushetia, in connection with the alleged "organisation of protests". The first applicant submitted a copy of that order, stating that the raid had taken place and documents had been confiscated during the search.

40. In September 2019 a journalist with connections in the North Caucasus had warned the second applicant that the FSB in Chechnya were showing "interest" in the first applicant and her work and that they "would try to either destroy the organisation or infiltrate an agent."

41. On 10 February 2020 the Nalchik Town Court in Kabardino-Balkaria had issued a search order for the office of Legal Assistance to Women, a partner organisation of Astreya based in Khasavyurt, Dagestan. The first applicant submitted a copy of the search order of 10 February 2020 and a copy of the search record of 13 February 2020, according to which two computer processors had been seized from that NGO's office.

42. In February 2020 the homes of staff and contractors of a partner organisation of the SJI and Astreya based in Makhachkala, Dagestan, had been raided. The organisation's employees had not provided any supporting statements because they had feared for their safety.

43. In September 2020 the first applicant had been informed by Astreya's partners in Dagestan that the FSB had forbidden all municipal structures and all universities from cooperating with Astreya, which had been carrying out educational activities in Dagestan since 2017.

44. The Government denied that any of the above-mentioned events had occurred. In particular, they denied that the offices of the above-mentioned organisations had been raided or searched. They did not submit copies of replies from the MVD or FSB to queries in that connection, or copies of the search orders mentioned by the applicants.

VII. STATEMENTS OF THE EUROPEAN UNION IN RESPECT OF THE FIRST APPLICANT'S SITUATION

45. On 4 December 2020 the European External Action Service (the Foreign and Security Policy Service of the European Union) released a statement urging the Russian authorities to revoke their decision in respect of the first applicant's residence permit. On 8 December 2020, during the 1391st Meeting of the Committee of Ministers of the Council of Europe, the European Union Delegation made a special statement characterising the revocation of her residence permit as a manifestation "of the pressures on independent civil society and human rights defenders in Russia" and calling "upon the Russian authorities to review their decision and to allow [the first applicant] to continue carrying out in full extent her work in the field of human rights in Russia".

VIII. THE FIRST APPLICANT'S COMPLAINT TO THE FEDERAL COMMUNICATIONS AGENCY

46. The first applicant alleged that after the revocation of her residence permit, several State-supported websites and media channels had begun to publish malicious and untrue statements about the work of Astreya and SJI. She submitted, in particular, copies of the following:

(i) A publication of 4 December 2020 on the website of the Federal News Agency (*Федеральное агентство новостей*) which stated, *inter alia*:

"On Astreya's website one can see an imitation of the fight against domestic violence, torture and discrimination. However, 'legal aid' is only a cover for the organisations run by Kogan. For example, the Justice Initiative brought an application to the European Court of Human Rights on behalf of the terrorists who carried out an attack in Nalchik in 2005. [Some] journalists remark 'Great, isn't it? Emergency legal aid to the terrorists!' Astreya and [the Justice Initiative] worked to strip Russia of its legal sovereignty. Legal action was brought

against 'the Russian [S]tate' ... Aleksey Navalny gets compensation for every complaint to the ECHR ..."

(ii) A publication of 4 December 2020 on the website of the Russian News Agency (*Русское агентство новостей*) that stated:

"Kogan, get out: Russia doesn't need citizens like you.

... Let's say 'human rights in an armed conflict' sounds great. In practice, however, [the ECHR] is examining a complaint brought by the Justice Initiative against Russia on behalf of twenty terrorists who had carried out attack in Nalchik in 2005 ... Furthermore, organisations run by Kogan had won, by 2016, 172 cases against Russia in [the ECHR] on behalf of more than 2,000 applicants from the North Caucasus and more than 250 from the South [Caucasus], that is to say, not even Russian citizens ... Her activities are of course political and mean to influence State decision-making ..."

(iii) A publication of 3 December 2020 on the website of the News Front Information Agency that stated:

"Why was Kogan's residence permit revoked? The answer is simple: her activities aimed to overthrow the lawful power in the country ... Astreya was supported by [a number of foreign ministries and organisations] ... The Legal Initiative, which was declared a foreign agent in 2019, was among the Russian partner organisations of Kogan together with a number of less outstanding 'grant-eating' organisations ..."

(iv) Comments of other people on the above publication of the News Front Information Agency that contained derogatory remarks about the first applicant and threats directed at her.

47. On 7 December 2020, the first applicant lodged requests with the Investigative Directorate of the FSB and the Federal Communications Agency (*Роскомнадзор*, hereinafter "Roskomnadzor") through their websites asking them to check whether some of the users' comments posted under the online publication of the News Front Information Agency were extremist in nature. She provided a link to the publication and a print-out of the comments in question. On 24 December 2020 Roskomnadzor replied that it could not check the material in question because the first applicant had not provided a link to it.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

48. The Code of Administrative Procedure ("CAP") contains a number of applicable procedural rules: regional courts examine in the first instance administrative cases concerning State secrets (Article 20 § 1); an administrative respondent is the entity against which a claim is brought in connection with an administrative or other public dispute (Article 38); joinder of several administrative respondents is possible under certain conditions (Article 41); interested parties have the rights and obligations of a party to the proceedings, with certain limited exceptions (Article 47 § 3); and a court may request evidence at the request of the parties or on its own initiative, upon which a copy of the court's ruling requesting evidence is transmitted to the parties and to a natural or legal person that has possession of that evidence (Article 63). As also provided therein, courts must examine the lawfulness of a challenged decision (Article 226 § 8); their scope of review is not

confined to the claimant's arguments; they must assess, in particular, whether the rights and freedoms of the claimant were breached, whether domestic authorities acted *ultra vires*, and whether the correct grounds and procedure were used for adopting the decision (Article 226 §§ 9 and 10); the burden of proof as to the lawfulness of the contested decision, act or omission lies with the authority or official concerned; the complainant, however, has to prove that his or her rights and freedoms have been breached by the contested decision, act or omission and that he or she has complied with the time-limit for lodging the complaint (Article 226 § 11).

THE LAW

I. PRELIMINARY ISSUES

49. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

II. THE GOVERNMENT'S COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

50. Before embarking on an examination of the admissibility and merits of the applicants' complaints, the Court needs to address the issue of the Government's compliance with their procedural obligation under Article 38 of the Convention to submit evidence that the Court has requested from them. Article 38 reads as follows:

"The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

51. When giving notice of the application, the Court asked the Government whether the offices of Astreya and its partner organisations had been searched by the Russian law enforcement authorities as described by the first applicant and if so, on what legal grounds. The Government were also asked to submit copies of any relevant documents. They replied that, according to the information provided by the relevant State bodies, the offices of the said organisations had not been raided or searched. They did not submit copies of any documents (see paragraph 44 above).

52. The applicants argued that the failure to submit any documents requested by the Court would give rise to a violation of Article 38 of the Convention.

53. The Court observes that while the Government did not submit copies of the replies of the relevant State bodies in respect of the information requests concerning the alleged searches or raids of offices of Astreya and its partner organisations, they also did not dispute the authenticity of the search orders and the record of search submitted by the applicants (see paragraphs 39 and 41 above), nor did they challenge the testimony submitted by the employee of Astreya's office in Moscow (see paragraph 38 above). No plausible alternative explanation was provided by the

Government in respect of the documents furnished to the Court by the first and the second applicants.

54. Therefore, having regard to the evidence submitted by the first and the second applicants, as well as the Government's unexplained failure to submit any convincing relevant information, the Court considers that there has been a lack of cooperation on the Government's part which unnecessarily burdened the Court's task of clarifying important issues in the present case. Accordingly, the Court considers that the respondent State has failed to comply with its obligations under Article 38 of the Convention on account of its unjustified refusal to submit the requested material, and the Court will draw appropriate inferences from the Government's failure to produce the documents.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicants complained that the revocation of the first applicant's residence permit had violated their right to respect for private and family life, as provided for in Article 8 of the Convention, which 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."

56. The Government contested the applicants' arguments and submitted that the decision to revoke the first applicant's residence permitted was adopted by a competent State body in accordance with the domestic law. They further submitted that the first applicant had an opportunity to effectively challenge that decision in the domestic courts.

57. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

58. The Court reiterates that the removal of a person from a country where close family members are living may amount to an infringement of the right to respect for family life, as guaranteed by Article 8 § 1 of the Convention (see *Gaspar v. Russia*, no. 23038/15, § 39, 12 June 2018, with further references). Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that provision as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned. The first of these requirements does not merely require that the impugned measure should have a basis in domestic law, but also refers to the quality of the law in question involving, amongst other things, a measure of legal protection against arbitrary interference or abuse by public authorities. Furthermore, as regards "legitimate aim" requirement the Court has indicated that it is prepared to accept that the revocation of a residence permit may pursue the legitimate aim of protecting national security (ibid., §§ 38-43, with further references). It however emphasized that where national security was 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. 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 (ibid, § 45, with further references).

59. Turning to the case at hand, the Court notes that the family life of the applicants and professional activities of the first and second applicants were significantly disrupted as a result of revocation of the first applicant's residence permit (see paragraphs 5-9, 16-17 above) and the Court therefore considers that that measure taken by the Russian authorities constituted an interference with the applicants' right to respect for their family life and with the first and the second applicants' right to respect for their private life in so far as it concerned their professional activities. As regards "in accordance with the law" and "legitimate aim" requirements, the Court in the present case may dispense with ruling on both because, irrespective of the lawfulness of the measures taken against the first applicant and the legitimacy of aim declared by the authorities, they fell short of being necessary in a democratic society, for the reasons set out below (see *Gaspar*, cited above, § 41; *Liu v. Russia (no. 2)*, no. 29157/09, § 79, 26 July 2011; and *Gablishvili v. Russia*, no. 39428/12, § 45, 26 June 2014). In particular, the Court considers that, regard being had to the circumstances of the case, the proceedings against the first applicant were not surrounded by sufficient procedural safeguards.

60. The Court observes that the contents of the FSB report, which served as the basis for the revocation of the first applicant's residence permit, have not been made known to the first applicant or revealed to the Court by the Government. Furthermore, the first applicant was notified of the FSB report only during the preliminary hearing of her case (see paragraphs 14 and 22 above), which prevented her from having sufficient time to duly prepare for the examination of her case by the District Court, for example, by seeking further information from the FSB before the hearing and collecting evidence to refute their allegations (see, for similar reasoning, *Lupsa v. Romania*, no. 10337/04, § 59, ECHR 2006-VII). Moreover, the domestic judgments neither contained any indication of the reasons why the first applicant was considered a danger to national security nor provided even a generalised description of the acts ascribed to her (compare *Amie and Others v. Bulgaria*, no. 58149/08, §§ 12-13 and 98, 12 February 2013). The District Court refused to seek further information from the FSB (see paragraphs 24 and 48 (Article 63 of CAP)) and failed to establish at least a general description of the acts ascribed to the first applicant, if necessary with some procedural arrangements, such as for example, a hearing in camera. As a result, she was not even given an outline of the allegations against her, making it impossible for her either to challenge the factual allegations submitted against her or to reply to them in adversarial proceedings. The domestic courts thus subjected the MVD's decision to a purely formal examination, with the result that the first applicant was not able to have her case genuinely heard (see, for similar reasoning, *C.G. and Others v. Bulgaria*, no. 1365/07, § 74, 24 April 2008, and contrast *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 150-54, 19 September 2017). Lastly, the domestic courts failed, contrary to Article 8 of the Convention, to apply the general

principles established by the Court and to strike a balance between national security interests and the applicants' right to respect for their family and private life (see *Liu*, cited above, § 81).

61. Given the above, the Court concludes that the proceedings related to the revocation of the first applicant's residence permit were tainted with gross procedural defects that undermined their fairness and went beyond the permissible procedural limitations in cases of expulsion on national security grounds (see, *mutatis mutandis, Muhammad and Muhammad v. Romania* [GC], no. 80982/12, §§ 129-33, 15 October 2020).

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

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

63. The first and the second applicants complained that the true intention of the domestic authorities in revoking the first applicant's residence permit was to prevent her and the second applicant from pursuing their work in the field of human rights in Russia. They relied on Article 18, in conjunction with Article 8 of the Convention, which reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

64. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The first and second applicants submitted that the Government had not challenged their assertion that on the specified dates, representatives of the FSB had been in contact with the first applicant concerning her human rights activities and a possible collaboration between them. They further pointed out that the Government had not provided copies of the official replies from the regional branches of the MVD and FSB in which they allegedly denied carrying out the above-mentioned raids and searches. They further submitted copies of documents which, in their opinion, were in the Government's possession but had intentionally not been provided to the Court (see paragraphs 39 and 41 above). They also submitted a signed statement from an Astreya employee describing the raid that had allegedly taken place in Moscow in August 2019 (see paragraph 38 above) and articles published by at least four news outlets, including *Novaya Gazeta*, that covered the raids and searches. The first and second applicants also submitted copies of news extracts from State-supported media outlets reporting on the revocation of the first applicant's residence permit and describing the work of the first applicant and Astreya as (according to the first and second applicants) "threatening, hostile and harmful to Russia" (see paragraph 46 above). The first and second applicants submitted that the Russian authorities viewed the work of Astreya and its partner organisations as being political and instigating political dissent, and as a threat to the current regime. Lastly, they referred to the statements made by the representatives of the European Union and

human rights organisations that characterised the revocation of the first applicant's residence permit as a manifestation of pressure on independent civil society and human rights activists in Russia (see paragraph 45 above).

66. The Government submitted that the first and second applicants' allegations were unsubstantiated, speculative and appeared to be "an attempt to connect the revocation of the first applicant's residence permit with their professional activities and with the refusal of the first applicant to cooperate with the State security services". They further submitted that, according to the information provided by the regional branches of the MVD and FSB, no searches or raids had been conducted in the NGO offices referred to by the first and the second applicants.

2. The Court's assessment

67. According to the Court's case-law, Article 18 of the Convention has no independent existence; it can only be applied in conjunction with other Articles of the Convention, and a violation can only arise where the right or freedom concerned is subject to restrictions permitted under the Convention, such as, for example, under the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11, which permit restrictions to the respective rights and freedoms (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 287-90, 28 November 2017). Furthermore, the mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (ibid., § 291).

68. A restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose (ibid., § 305). Which purpose is predominant in a given case depends on the totality of the circumstances of a case. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (ibid., § 307). Furthermore, the question of whether the ulterior purpose, as compared to the Convention-compliant one, was predominant, ought to be assessed according to the ordinary standard of proof, rather than according to the stricter standard that it has applied under Article 18 in a number of previous cases, and there is no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 165, 15 November 2018; *Merabishvili*, cited above, § 316; and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 420-21, 22 December 2020). The Court can take into account certain circumstantial evidence, which in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts. Reports or statements by international observers, non-governmental organisations or the

media, or the decisions of other national or international courts are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court (see *Merabishvili*, cited above, § 317).

69. The first and the second applicants alleged that even though the revocation of the first applicant's residence permit was carried out formally in the interests of national security, a purpose prescribed under Article 8 § 2 of the Convention (see paragraph 59 above), the real intention of the authorities was to force the first applicant to end her human rights work in Russia. In the Court's opinion, that allegation constitutes a fundamental aspect of the present case and merits detailed examination (see *Merabishvili*, cited above, § 291; *Juszczyszyn v. Poland*, no. 35599/20, § 317, 6 October 2022; *Miroslava Todorova v. Bulgaria*, no. 40072/13, § 203, 19 October 2021; and *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 68, 18 February 2021). Even if it is established that the restriction of the first applicant's right to respect for her family and private life (which also affected that of the other applicants) pursued another purpose not prescribed by Article 8 § 2, there will only be a breach of Article 18 if that other purpose was predominant (see *Selahattin Demirtaş*, cited above, § 425, and *Miroslava Todorova*, cited above, § 204). Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, § 307; *Natig Jafarov v. Azerbaijan*, no. 64581/16, § 69, 7 November 2019; and *Navalnyy*, cited above, §§ 173-74).

70. The Court notes, firstly, that the domestic authorities were well aware that the first applicant was not merely a private citizen but a well-known human rights lawyer and that the restriction in question would not only affect her personally but would also put her work in jeopardy. It notes her proven track record of representing applicants before the Court and during the implementation stage of the Court's judgments (see paragraphs 6-9 above). The organisation that the first applicant had headed between 2012 and 2021 provided legal assistance to many especially vulnerable victims of serious human rights violations (ibid.). The interference was thus capable of having a chilling effect on her colleagues or of silencing many other persons whom she represented and who claimed to be victims of human rights violations in Russia (see, for similar reasoning, *Navalnyy*, cited above, §§ 173-74, and *Kavala v. Turkey*, no. 28749/18, § 231, 10 December 2019).

71. The Court also takes into account the news reports by State-supported media outlets that highlighted the revocation of the first applicant's residence permit. They show, in no uncertain terms, a strong negative bias towards her and her activities in the field of human rights by publicly portraying her as hostile towards the Russian State (see paragraph 46 above). When the first applicant complained of online threats following such publications, Roskomnadzor, the Russian supervisory body in the sphere of communications, took no action in respect of them, for a wholly superficial reason (see paragraph 47 above). This has undoubtedly contributed to the atmosphere of pressure and hostility around the first applicant in the context of her human rights work.

72. The Court notes that the first applicant's account of the other events before and after the revocation of her residence permit (see paragraphs 32-35 above) is detailed and consistent and supported by written material, the authenticity and accuracy of which have not been questioned by the Government. The Government, notably, did not deny the first applicant's allegations about her

contacts with D. who was, presumably, a representative of the FSB, and they did not submit any comments in respect of either those contacts or the copies of correspondence between the first applicant and D. Given that no alternative explanation or denial was offered by the Government about this aspect of the first applicant's complaint, the Court attaches highly probative value to this account and finds that it also supports the allegations of the pressure that had been exerted on the first applicant in connection with her work at Astreya.

73. The Government also failed to provide any reasonable and sustainable explanation concerning the alleged law enforcement activities directed at Astreya and its partner organisations (see paragraphs 36-43 above). Nor did they submit copies of the official replies from the MVD and FSB on which they relied, and which supposedly stated that no raids or searches of Astreya its partner organisations had been carried out (see paragraph 44 above). In those circumstances and given the documents submitted by the applicant, it is apparent to the Court that at least one search did take place (in Khasavyurt on 13 February 2020 (see paragraph 41 above)) and, since the Government failed to acknowledge that search or provide legitimate reasons for it, it can be seen as a further indication of such pressure.

74. Furthermore, the Court considers that the procedural defects identified by it in the proceedings concerning the first applicant (see paragraph 60 above) are not insignificant and, when looked at together, cast serious doubt on the Government's assertion that the main reason for the revocation of the first applicant's residence permit was indeed national security interests. The unfounded refusal of the domestic court to suspend the removal of the first applicant while her case was pending, the belated notification to her of the FSB report, the examination of her case in apparent breach of the rules of jurisdiction, the absence of reasoned decisions concerning the first applicant's procedural requests and the absence of even a summary of the undisclosed allegations against her throughout the proceedings – all those factors, taken together, indicate that the first applicant faced an insurmountable obstacle in challenging the decision of the MVD, which is indicative of the authorities' intent to deprive her of the legal grounds to remain in Russia.

75. The European Union bodies at the highest level considered that the revocation of her residence permit was nothing other than a reflection of the pressure on independent civil society in Russia and the Court finds that their statements corroborate the first and the second applicants' allegations (see paragraph 45 above, and see *Baka v. Hungary* [GC], no. 20261/12, § 148, 23 June 2016).

76. Lastly, the Court does not lose sight of the overall hostile context and the political and social climate in which many NGOs, human rights defenders and other civil society actors were operating in the past years in Russia, including severe restrictions on their funding or on their projects resulting in significant "chilling effect" on their activities (see *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022; *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, no. 37477/11, §§ 8-10, 41-42, 23 November 2021; *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, § 91, 11 May 2021; and *Navalnyy*, cited above, §§ 147-52 and 172-75).

77. The above factors lead the Court to the conclusion that the interference with the first applicant's right to respect for her family life pursued an ulterior purpose other than the

restrictions of that right prescribed by Article 8 § 2 of the Convention, and it was carried out, predominantly, for punishing the first and second applicants for their activities in the area of human rights and preventing them from continuing those activities in Russia (see *Kavala*, cited above, § 231). This ulterior purpose goes clearly against the values of the Convention and is of particular gravity, given the prominent role of human rights defenders in a democratic society.

78. There has accordingly been a violation of Article 18 of the Convention taken in conjunction with Article 8.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicants did not submit a claim for pecuniary damage. As for non-pecuniary damage, they submitted that as a result of the alleged violation of their rights they had suffered from anguish and distress because of the disruption caused to their regular family life and to the professional activities of the first and the second applicants, and because they had been forced to leave Russia to ensure the physical safety of their family (see paragraph 17 above). The applicants left the determination of the amount to the Court's discretion.

81. The Government submitted that the claim should be rejected.

82. 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 applicants, jointly, 9,800 euros (EUR) in respect of non-pecuniary damage, plus any tax which may be chargeable on that amount.

B. Costs and expenses

83. The applicants also claimed, in respect of legal fees for the services of their three legal counsel Ms Treninina, Mr Zharinov and Ms Davidyan, EUR 2,175, EUR 2,550 and EUR 1,800, respectively, for representing them in the domestic proceedings and before the Court. Within the time-limit fixed for the submission of the observations, they submitted an itemised fee schedule indicating the hourly rate of their counsel (EUR 100), the legal tasks carried out by each one and the number of hours spent by them on those tasks. They later submitted a legal services agreement, a copy of which was sent by the Court to the Government only for information and with reference to Rule 60 § 3 of the Rules of Court.

84. The Government argued that the applicants' claim for costs and expenses should be rejected as unsubstantiated, as no legal service agreement or supporting documents proving that those costs had been incurred had been furnished to the Court.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that they 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, its case-law and Rule 60 § 3 of Rules of the Court, the Court considers it reasonable to award the sum of EUR 6,525 covering costs under all heads, plus any tax that may be chargeable to the applicants, to be paid directly to the representatives' bank accounts, as requested by the applicants.

C. Default interest

86. 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. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;
2. *Declares* the application admissible;
3. *Holds* that the respondent Government have failed to comply with their obligations under Article 38 of the Convention;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 18 of the Convention, in conjunction with Article 8;
6. *Holds*

(a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

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

(ii) EUR 2,175 (two thousand one hundred and seventy-five euros) to Ms D. Trenina, EUR 2,550 (two thousand five hundred and fifty euros) to Mr K. Zharinov and EUR 1,800 (one thousand eight hundred euros) to Ms E. Davidyan, plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly to the representatives' bank accounts;

(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.

Done in English, and notified in writing on 7 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Pere Pastor Vilanova
Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
O.C.

CONCURRING OPINION OF JUDGE SERGHIDES

1. The first applicant is a citizen of the United States of America, a prominent human rights lawyer, who lived and worked in Russia from 2009 to 2021 and who in 2013 married the second applicant, a Russian citizen with whom they have two minor children (the third and fourth applicants). The first of the applicants' complaints is that the revocation of the first applicant's residence permit had violated their right to respect for private and family life under Article 8 of the Convention. Their second complaint is that the true intention of the domestic authorities in revoking the first applicant's residence permit was to prevent her and the second applicant from pursuing their work in the field of human rights in Russia, this being in violation of Article 18 of the Convention providing for limitation on use of restrictions on rights.

2. I voted in favour of all points of the operative provisions, and I adhere to the reasoning of the judgment apart from the distinction drawn in it, regarding the interpretation and application of Article 18 of the Convention in conjunction with Article 8, between restrictions whose purpose is legitimate and others whose purpose is illegitimate depending on which one is considered to be "predominant" (see paragraph 68 of the judgment and the case-law cited).

3. For the reasons I explained in my concurring opinion in *Merabishvili v. Georgia* ([GC], no. 72508/13, 28 November 2017), such a distinction has no legal foundation, and it is against the letter and purpose of Article 18, aiming at effectively protecting human rights from interferences whose purpose is not one of those for which the Convention allows.

4. The present judgment rightly finds that the interference with the first applicant's right to respect for her family life pursued an ulterior purpose that did not fall within those for which restrictions of that right are permitted by Article 8 § 2 of the Convention, namely, the purpose of punishing the first and second applicants for their activities in the area of human rights and preventing them from continuing those activities in Russia.

5. Given the above, I conclude that there has been a violation of Article 18 of the Convention taken in conjunction with Article 8. However, unlike the reasoning in the present judgment, I consider it immaterial whether that ulterior purpose was also the predominant purpose of the impugned interference. I would still vote for a violation even if that ulterior purpose was not the predominant one.

APPENDIX

List of applicants: omissis