

Constitutional Court: Expelling HIV-Positive Foreigners With Russian Families Is Unlawful

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The deportation of HIV-positive foreign nationals who have families in Russia is unlawful, the Constitutional Court ruled on Monday.

Currently, Russian federal law provides that foreigners who are residing legally in Russia can be deported or denied re-entry upon leaving the country on the exclusive basis of an HIV infection.

The court ruled that the law — which does not presently require authorities to take into account fundamental rights related to the family or various other humanitarian guarantees — is directly at odds with the Russian Constitution's guarantee to protect those rights.

The decision to review the law came about following three complaints lodged by applicants it

had directly impacted. The applicants, comprised of foreign nationals, stateless persons and family members of those who had been infected with HIV and were accordingly sent packing from Russian territory, contended that the decisions disregarded their Constitutional rights.

Article 23 of the Russian Constitution stipulates: "Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of honor and good name," while Article 38 states: "Maternity and childhood, and the family shall be protected by the State." The court considered various other constitutional guarantees as well.

One of the applicants' cases involved a Ukrainian woman who filed a complaint with the European Court of Human Rights after being denied entry into Russia following a trip to her home country in October 2014. The woman, whose husband and son were at the time living in the southern Russian city of Sochi, was prevented from returning to Russia on the grounds that she was HIV-positive.

In the past, such decisions have been justified based on the notion that HIV-positive individuals pose a threat to the health and well-being of the Russian population.

Addressing this line of reasoning, the court pointed out that HIV is sexually transmitted and cannot be spread through air, food, or water. Thus, individuals carrying the virus should not be considered threats to public health, and simply having HIV does not constitute adequate grounds for deportation, the court reasoned.

The Constitutional Court requested that the Federal Legislature enact changes bringing the law into line with the Constitution, and has called for a review of the three individual applicants' cases.

Vadim Pokrovsky, head of Russia's federal AIDS centre, said in comments to TASS in October that 850,000 cases of HIV were currently registered in Russia. That number was growing, he said, and noted that many others were likely living with undiagnosed or unregistered HIV.

"Since the disease is quite insular, we estimate that there are 1.3 million now living with HIV" in Russia, he said, adding that about 100,000 HIV-positive people in the country were foreigners.

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