



[Ukraine - Supreme Administrative Court, judgment no. 813/1774/18](#)

The applicant's Ukrainian nationality was withdrawn rendering him stateless, and subsequently a travel ban of 3 years was imposed on him due to a procedural violation of the border crossing rules. The applicant argued that the travel ban is disproportionate, that he enjoys lawful residence in Ukraine, has very close ties with Ukraine, and that the ban interferes with his right to challenge the deprivation of nationality which rendered him stateless in person in court.

Case status: Decided

Case number: №813/1774/18

Citation: <https://reyestr.court.gov.ua/Review/83104656>

Date of decision: 17/07/2019

State: Ukraine

Court / UN Treaty Body: Supreme Administrative Court

Language(s) the decision is available in: Ukrainian

Applicant's country of birth: Unknown

Applicant's country of residence: Unknown

Legal instruments: 1961 Statelessness Convention, 1997 European Convention on Nationality, European Convention on Human Rights (ECHR)

Key aspects: Burden of proof, Deportation and removal, Deprivation of nationality, Determination/confirmation of nationality, Residence permit, Respect for private and family life

Facts

The applicant lived in Ukraine for over 12 years, obtained higher education at a Ukrainian university, and has served in the Ukrainian army. He was head of the local administration in the city of Odessa in 2015-2016. He is active politically and heads one of the opposition political parties, He participated in peaceful protests against the current government.

The authorities imposed a travel ban of three years on the applicant on 13 November 2018, based on an entry into the border records on the border between Ukraine and Poland of 10 September 2017, which indicated that the applicant, together with a group of other people, has violated the procedure for crossing that border.

Legal arguments by the applicant

The applicant argued that neither the authorities nor the first instance court took into account his close connection to Ukraine and his permanent residence in Ukraine, and that any interferences with his personal life should be in accordance with the ECHR. A travel ban on entering Ukraine imposed on a person who is lawfully residing in Ukraine cannot be considered as “lawful” in the context of ECHR. The decision lacks a legitimate aim, which has not been assessed by the first instance judge. Neither was the proportionality and necessity of the measure assessed. The entry ban denies him the right of access to justice, guaranteed by Article 6 ECHR, as it makes it impossible for the applicant to attend in person proceedings as to his application for a protection status. He has moreover appealed the decision of the President that deprived him earlier of his nationality, rendering him stateless, and if his appeal succeeds his status as a Ukrainian national would be restored, and the entry ban would thereby contradict Ukrainian Constitution (Article 25). The first instance court has moreover failed to take into account Article 8(4) of the 1961 Convention. The applicant also invokes Article 7 ECN.

Legal arguments by the opposing party

The authorities argued that the travel ban does not violate the applicant’s right to a fair trial, as his participation in the legal proceedings that involve him can be ensured through legal representation. They emphasised that the applicant lacks any documents to prove his lawful residence status in Ukraine. The applicant’s arguments relating to proportionality and necessity of the measure are unfounded. His close links with Ukraine cannot serve as a justification for violating rules on the crossing of borders. There is no obvious risk of violating applicant’s rights through the travel ban, as he married a woman who is not a Ukrainian national, and lives outside of Ukraine. The outcome of his appeal against a Presidential Decree depriving him of his nationality cannot be predicted, therefore the violation of rights related to such potential outcome are hypothetical, and not based on facts.

Decision & Reasoning

The Court first noted that the applicant did not appear at the Court hearing, despite having been duly informed about the hearing.

The Court reasoned as follows:

“44. The Court notes that in the present case the legality of the termination of nationality of [the applicant] is not disputed.”

“45. Consequently, what is being disputed is the lawfulness of the entry ban into Ukraine in connection with the [applicant’s] violation of the [border crossing procedures] at the checkpoint along a state border of Ukraine.”

“48. The [border crossing procedures] are crucial, and do not give the applicant discretion to deviate depending on the social and other ties he may have with Ukraine.”

“50. In addition, the ban on entry into Ukraine in connection with a violation by a foreigner or a stateless person of border crossing procedures of Ukraine is in accordance with the legitimate aim of maintaining public order, and in line with Article 2(3) of Protocol No. 4 to the Convention on Human Rights and Fundamental Freedoms.”

“52. Regarding the applicant's allegation that the ban on entry into the country of residence of a person lawfully residing in Ukraine could not be considered “lawful” within the meaning of the case law of the European Court of Human Rights, the Court notes that the unlawfulness of the decision of the District Court of Lviv of 22.09.2017 about applicant's violation of crossing border procedures, and the argument regarding the incompatibility with the case law of the European Court of Human Rights has not been supported by any relevant justifications, or references to relevant case law.”

“53. Arguments regarding compliance with the provisions of Article 8(4) of the Convention on the Reduction of Statelessness, which provide for the right of a person to a fair trial in case of deprivation of nationality, can be assessed directly in the context of the appeal against the lawfulness of termination of Ukrainian nationality [by the applicant].”

“54. In addition, the provisions of the Convention on the Reduction of Statelessness do not prohibit limitations on the right to enter the territory of a State in the event of

a pending appeal against the deprivation of nationality of that State.”

“55. [...] a decision to ban entry into Ukraine may apply only to foreigners and stateless persons, and in case [the applicant] acquires (restores) his status of a national of Ukraine, he will have the right to enter the territory of Ukraine. The reference to Article 25 of the Constitution of Ukraine is also unfounded, as the rights guaranteed by it to nationals of Ukraine have no relation to issues concerning the ban on entry into Ukraine imposed on foreigners and stateless persons.”

“56. The Court notes that the applicant could have predicted that he would be banned from entering Ukraine as the result of violation of the border crossing procedures, and that his reference to close social ties with Ukraine could not serve as a ground for exemption [from responsibility for violation of those procedures].”

“57. The Court disagrees with the applicant's arguments concerning non-compliance with the principle of proportionality.”

Decision documents

[Supreme Administrative Court, judgment no. 813/1774/18](#)

Outcome

The Court ruled against the applicant, confirming the lawfulness of the travel ban.