



[ECtHR - Alpeyeva and Dzhalagoniya v. Russia](#)

Two applications (joined before the Court) concerned the removal of and the refusal to exchange passports, leaving the applicants stateless and without identity documentation, after the relevant Russian authorities found their Russian citizenship to be granted erroneously. The Court held the withdrawal of identity documents, which affected the exercise of their rights and freedoms in their daily lives, was a violation of Article 8 of the Convention.

Case name (in original language) : Alpeyeva and Dzhalagoniya v. Russia, Applications nos. 7549/09 and 33330/11

Case status: Decided

Case number: 7549/09 and 33330/11

Citation: European Court of Human Rights Alpeyeva and Dzhalagoniya v. Russia, Applications nos. 7549/09 and 33330/11

Date of decision: 12/06/2018

State: Russian Federation

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Russian Federation

Applicant's country of residence: Russian Federation

Legal instruments: European Convention on Human Rights (ECHR), European Union law, Other international law

Key aspects: Acquisition of nationality, Deprivation of nationality, Determination/confirmation of nationality, Respect for private and family life, Stateless status and documentation

Relevant Legislative Provisions:

s.12(1), s.13(1) of The 1991 Russian Citizenship Act

The 1992 Decree on Temporary Identity Documents

s.1, s.7 and s.10 of The 1997 Regulation on Passports

s.5, s.10, s.30(a), s.41.2(1), s.41.2 (4) (a) (b) and (c) of The 2002 Russian Citizenship

Act

s.51, s.52 of The 2002 Regulation on the Examination of Issues Related to
Citizenship of the Russian Federation

s.1 of The 2004 Regulation on the FMS

Article 19.15 § 1 The 2001 Code of Administrative Offences

The Ombudsman's Special Report 2007

The Ombudsman's Annual Report 2009

The Ombudsman's Annual Report 2011

The Ombudsman's Annual Report 2012

1997 European Convention on Nationality

Articles 6, 8, 13 and 41 of the Convention for the Protection of Human Rights and
Fundamental Freedoms

Rule 42 § 1 of the Rules of Court

Facts

A. Application no. 7549/09

The first applicant was a Soviet national of Kyrgyzstan, who applied for Russian citizenship in 1994, granted to her by way of a stamp in her Soviet passport. Moving to Russia after this, in 2001 she obtained a Russian 'internal passport', a citizen's identity document. On application for an 'international' passport in 2006, her application was denied, and her original passport was seized. In doing so, the Federal Migration Service (FMS) referred to a report from 26 January 2006, stating that the issuance of her Russian citizenship and passport was made in error. This was confirmed in a report issued by the FMS (report no.37). The report stated she had never properly acquired Russian citizenship and therefore the Russian passport had been issued to her unlawfully.

The applicant appealed against these finds. As a result, the Volzhskiy Town Court granted the applicant in 2007 and held that the authorities' check had been unlawful. The FMS did not set aside their decision or issue the applicant with a new passport.

The applicant brought fresh proceedings, in which the Volzhskiy Town Court, although finding the FMS actions to be procedurally incorrect, dismissed her complaint. On 3 July 2008, the Volgograd Regional Court upheld the decision of the lower court on appeal.

The applicant brought further proceedings against the FMS concerning their inaction in issuing her with new identity documentation. On 25 March 2009, the Volzhskiy Town Court dismissed the complaint, upheld by the Volgograd Regional Court on appeal on 7 August 2009.

In 2009, the applicant reapplied for Russian citizenship, which she was granted under a simplified procedure on the basis of an FMS decision in March 2009. On 27 March 2010, she was issued with a Russian passport.

B. Application no. 33330/11

The second applicant lived in Russia and had a Soviet Union passport in his possession, issued in 1981 by the Chkhorozkuskiy Department of the Interior of the Republic of Georgia. In 1998, he was provided with an insert for his passport, specifying he was a Russian citizen and in 2002 he was issued a Russian passport. The applicant then moved from the Rostov Region to Kostroma where he applied to the FMS to register his place of residence. The FMS of Kostroma doubted the legality of the applicant's Russian passport and requested confirmation from the FMS of Rostov, to which they concluded '[it is proposed]... to consider that [the second applicant's passport] was issued in breach of the established rules...' as they could not confirm the lawfulness of the passport insert.

The applicant, in accordance with the law at the age of 45, applied to the FMS to exchange his passport. His request was refused, on the basis of a failure to prove a permanent place of residence in Russia in 1992 and the lack of proof of a registered place of residence in Russia since 2002. Despite the applicant's explanation of being registered in Rostov between 1989-2002, the FMS held that the archives contained no information in regard to the second applicant. Additionally, there was no evidence that had been living in Russia in 1992, which was a necessary precondition. To that effect, the Kostroma Region issued a decision in 2010 that he was not a Russian citizen.

The applicant appealed to the Sverdlovskiy District Court of Kostroma against the refusal to change his passport. The Court upheld the decision of the FMS, stating that pursuant to the 2002 Regulation on the Examination of Issues Related to Citizenship of the Russian Federation, the applicant had been issued a Russian passport in breach of the law and was not entitled to Russian citizenship and

therefore justified the refusal to exchange his passport.

The applicant appealed the decision. The Kostroma Regional Court upheld the decision in 2010, as the legal validity of his Russian citizenship issued by way of certificate by the Department of the Interior of the Leninskiy District of Rostov-on-Don could not be confirmed and his residence as of 1992 had not been confirmed.

The applicant applied for Russian citizenship again in 2013, which he was granted, and on 30 April 2013, the applicant received a Russian passport.

Legal arguments by the applicant

Given their common factual and legal background, and pursuant to Rule 42 § 1 of the Rules of Court, the applications were joined before the Court.

The applicants complained that the seizure of a passport from the first applicant and the refusal of exchanging passports for the second applicant, interfered with their right to family life and breached their rights granted under Article 8 of the Convention. They noted their inability, to find employment, receive medical assistance, pensions, or social benefits without legal identity documents.

The first applicant submitted the possible issuance of a new passport was of no relevance to the interference suffered and her new passport, issued under the revised regulations, raised the same risk of being seized as the one prior and without a valid identity document, she ran the risk of being apprehended by the police.

In addition, she noted that the interference had not been 'in accordance with the law', which the Contracting State had recognised by adopting amendments to the 2002 Russian Citizenship Act on 12 November 2012.

The second applicant submitted this same argument - that the possible issuance of a Russian passport was granted after the amendments made to the 2002 Russian Citizenship Act, due to a large number of complaints and the acknowledgment of those, by the Ombudsman.

The second applicant also maintained that, despite his passport not being seized, the lack of a valid passport had interfered with his ability to buy train or plane ticket or obtain a loan from the bank, and therefore constituted an interference with his ability to exercise his rights and freedoms under Article 8.

Legal arguments by the opposing party

The Government firstly submitted that the applicants had abused their right to individual petition, having failed to inform the Courts of their subsequent Russian citizenship granted to them, breaching Rule 47 § 7 (formerly Rule 47 § 6) of the Rules of Court to inform the Court of changes relevant to the application.

On the first applicant's submissions, the Government conceded that the seizure of her passport had constituted an interference with her rights under Article 8, however, the procedure of doing so had been based on well-founded facts that the first applicant had not properly acquired Russian citizenship. The Government submitted on this finding, the seizure was, therefore, necessary in a democratic society.

Regarding the second applicant's submissions, the Government argued there had been no interference with the applicant's Article 8 rights of the Convention. They distinguished the case from that of *Smirnova v. Russia* (nos. 46133/99 and 48183/99, ECHR 2003-IX), as his passport had not been seized and therefore, he retained an identity document and failed to show how the refusal to exchange his passport had affected his rights and freedoms.

The Government further argued that the circumstances of the present application were substantially different from the case of *Smirnova* (cited above), as in this case, the applicant had been a Russian citizen, whereas in the present case the applicant had never acquired Russian citizenship and his passport was issued in breach of the applicable rules. Furthermore, the applicant in *Smirnova* (cited above) had referred to particular circumstances to demonstrate the issues that the lack of passport had caused in her life, whereas in the current applicant's allegations were of a general and hypothetical nature.

Decision & Reasoning

In its decision, the Court relied on the case law of *Ramadan v. Malta*, no. 76136/12, § 85, ECHR 2016, which held that the revocation of citizenship already obtained may interfere with the individual's right to a family and private life. In determining if this is the case, the Court looked at both the consequences of revocation and also the arbitrariness of the revocation.

On the latter point, the Court assessed whether the revocation was in accordance with the law, whether it was accompanied by the necessary procedural safeguards and whether the authorities acted diligently and swiftly (K2 v. the United Kingdom (dec.), no. 42387/13, 7 February 2017)).

Consequences for the applicants

The Court held in the first instance that the decisions to the effect that the applicants had never acquired Russian citizenship deprived them of any legal status, effectively rendering them stateless and importantly without legal identity documents. Relying on Smirnova (cited above), the Court reiterated the necessity of Russian citizens to prove their identity often in their everyday life.

The Court further ensured that for the purposes of Article 8, the effects of the refusal to exchange the second applicant's passport in the present case were similar to those of the seizure of the passport in the case of Smirnova (cited above).

The Court, therefore, found that the applicants had not properly acquired Russian citizenship, which left them with no valid identity documents, had constituted an interference with the applicants' private lives.

Whether the measure was arbitrary

The Court went on to determine if the seizure of the passport and refusal to exchange the passport on the grounds they had never properly acquired Russian citizenship were arbitrary actions.

(i) Was the measure in accordance with the law?

The Court held that the FMS was competent to determine the validity of Russian citizenship and in issuing identity documents. The Court relied on the 2002 Regulation on the Examination of Issues Related to Citizenship of the Russian Federation to note that the competent agency must carry out a check on documents doubted to be valid or authentic. The Court was satisfied with the decision and, therefore, was in accordance with the law.

(ii) Procedural safeguards

The Court was satisfied with the fact that the applicants were afforded the necessary procedural safeguards, following their ability to contest the decisions of

the FMS before the domestic courts, namely the Volgograd Regional Court and the Kostroma Regional Court, despite their dissatisfaction with the outcome.

(iii) Whether the authorities acted diligently and swiftly

The Court noted that the applicants considered themselves Russian citizens, exercised the rights and duties of such citizens and were provided with documents to this effect through an internal Russian passport and an insert for the Soviet passport certifying Russian citizenship, respectively.

The Court also noted that the report published on 26 January 2006 on the check carried out by the agencies of the interior, concluded that the documents had been irregularly issued, which was not the applicants' fault. The report published on 30 June 2010 alleged negligence on the part of the competent State authorities.

The Court referred to the Ombudsman's "Special Report on the practice of seizing Russian passports from former citizens of the USSR who had moved to the Russian Federation from CIS countries", issued on 6 December 2007. The Ombudsman noted several thousand Russian passports had been seized on the grounds that they had been "erroneously issued". This was despite detecting no error on the part of the passport holders and so criticised the practice.

The Court, therefore, concluded that the applicants' identity documents confirming their Russian citizenship might have been irregularly issued. However, this was not due to the applicants' fault, but due to errors committed by State officials.

As a result of these errors, they became stateless persons and remained so until Russian citizenship was granted to them in 2010 and 2013 respectively.

The Court, therefore, took note that even though the authorities may have acted appropriately in the later years, it took from 2007, when the Ombudsman drew attention to the issue, until 2013 for the nationality problem to be resolved. This resulted to serious repercussions, affecting their private life, amounting to an arbitrary interference. For this reason, the Court held the authorities failed to act diligently.

Decision documents

[CASE%20OF%20ALPEYEVA%20AND%20DZHALAGONIYA%20v.%20RUSSIA%20%281%29.pdf](#)

Outcome

The Court held that there had been a violation of Article 8 of the Convention.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Katja Swider, Alpeyeva and Dzhalagoniya v. Russia: Mass-confiscation of passports violates ECHR Article 8, ENS blog, 2 August 2018:

<https://www.statelessness.eu/updates/blog/alpeyeva-and-dzhalagoniya-v-russia-mass-confiscation-passports-violates-echr-article-8>

Caselaw cited

Smirnova v. Russia (nos. 46133/99 and 48183/99, ECHR 2003-IX)

Akdivar and Others v. Turkey [GC], 16 September 1996, §§ 53-54 Reports of Judgments and Decisions 1996-IV

Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 97, ECHR 2012

Gross v. Switzerland [GC], no. 67810/10, §§ 27-37, ECHR 2014

Bencheref v. Sweden (dec.), no. 9602/15, § 37, 5 December 2017

Hüttner v. Germany (dec.), no. 23130/04, 9 June 2006

Kowal v. Poland (dec.), no. 2912/11, 18 September 2012

Al-Nashif v. Bulgaria, no. 50963/99, § 9, 20 June 2002

Melnik v. Ukraine, no. 72286/01, §§ 58-60, 28 March 2006

Nold v. Germany, no. 27250/02, § 87, 29 June 2006

Scordino v. Italy (no. 1) [GC], no. 36813/97, § 180, ECHR 2006-V

Niemietz v. Germany, 16 December 1992, § 29, Series A no. 251-B

Pretty v. the United Kingdom, no. 2346/02, § 61, ECHR 2002-III

Karassev v. Finland (dec.), no. 31414/96, ECHR 1999-I

Genovese v. Malta, no. 53124/09, § 30, 11 October 2011

Ramadan v. Malta, no. 76136/12, § 85, ECHR 2016

K2 v. the United Kingdom (dec.), no. 42387/13, 7 February 2017

Peltonen v. Finland, no. 19583/92, Commission decision of 20 February 1995

Karassev and family v. Finland, no. 31414/96, Commission decision of 14 April 1998

Šoć v. Croatia (dec.), no. 47863/99, 29 June 2000

Sergey Smirnov v. Russia (dec.), no. 14085/04, 6 July 2006

Lolova and Popova v. Bulgaria (dec.), no. 68053/10, § 57, 20 January 2015

Aksoy v. Turkey, 18 December 1996, § 95, Reports, 1996-VI