

Ukraine - Kyiv District Administrative Court, judgment no. 320/494/19

The plaintiff lost the passport of citizen of Ukraine, which was issued in the currently uncontrolled territory of Ukraine. The court ordered the State Migration Service to issue a passport to the plaintiff, since the SMS did not prove the reasonableness and lawfulness of the decision to refuse to issue a passport as a citizen of Ukraine.

Case name (in original language) : про визнання неправомірними дій та зобов'язання вчинити певні дії.

Case status: Decided

Case number: 320/494/19

Date of decision: 04/04/2019

State: Ukraine

Court / UN Treaty Body: Kyiv District Administrative Court (Київський окружний адміністративний суд)

Language(s) the decision is available in: Ukrainian

Applicant's country of birth: Ukraine

Applicant's country of residence: Ukraine

Key aspects: Burden of proof, Passport restoration

Relevant Legislative Provisions:

p. 2 Art. 77 of Code of Administrative procedure

p. 5 Art. 100 of Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 № 302

p. 5 of Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 № 302

p. 46 of Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 № 302

p. 49 of Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 № 302

p. 51 of Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 № 302 (!)

Facts

The plaintiff lost the passport of the citizen of Ukraine, which was issued in the currently uncontrolled territory of Ukraine. While in prison, the plaintiff submitted the application to restore a passport. The State Migration Service (SMS) refused to issue new passport on the grounds of the insufficiency of documents. However, the colony on behalf of the plaintiff submitted all available documents.

The court ordered the SMS to issue a passport to the plaintiff, since the SMS did not prove the reasonableness and lawfulness of the decision of refusal to issue a passport of the citizen of Ukraine.

Legal arguments by the applicant

All necessary documents were submitted to the SMS, inter alia:

- Birth certificate (country of birth – USSR)
- Court verdict, including information on the belonging to the Ukrainian citizenship;
- copy of the detainee's questionnaire, including information on the belonging to the Ukrainian citizenship;
- registration card of residence (in Ukraine)
- documents confirming belonging to the Ukrainian citizenship of plaintiff's parents.

The action of the colony on behalf of plaintiff fully correspond the existing procedure of reissuing of a passport, according to the Resolution of CMU No.302.

Legal arguments by the opposing party

Data on issuing a passport of the citizen of Ukraine to the plaintiff are not available in the Unified Information and Analytical Automated System of the SMS.

Decision & Reasoning

Pursuant to paragraph 51 of Order No. 302, the identification of a person, who applies for a passport following the submission of an application on the loss of a passport and of concerning whom there is no information in the public registers and databases, is carried out against the data available in the existing state unified registers, other information databases, which are owned by the state or enterprises, institutions and organisations. The submission of requests for verification of personal information is carried out in accordance with paragraph 41 of this Procedure.

The content of the letter of the SMS regarding the lack of data on the issuance of a passport, in essence, is the decision of refusal the registration and issuance of a passport to the plaintiff.

In accordance with p.2 Art. 77 of the Code of Administrative Procedure, defendant should prove the lawfulness of his decision, action or inaction.

Meanwhile, the defendant (SMS) has not provided evidence to support the reasonableness and lawfulness of the decision of refusal to register and issue a passport of the citizen of Ukraine to the plaintiff instead of the lost one.

According to the evidence enclosed to the case file, the plaintiff is a citizen of Ukraine, and the case file confirmed the loss of the plaintiff's passport of the citizen of Ukraine. In addition, there are documents confirming that the plaintiff was born in Ukraine from parents who are Ukrainian citizens.

Taking into account the circumstances established by the court regarding the applicant's belonging the citizenship of Ukraine and the absence of any doubts for the identification of the plaintiff's identity, the court concluded that SMS is obliged to issue a passport of the citizenship of Ukraine.

Outcome

Violation