



[Ukraine - Supreme Administrative Court, judgment no. 800/187/17](#)

Applicant's Ukrainian nationality was withdrawn on the basis of voluntary acquisition of Canadian nationality. The applicant argued, among others, that he was not a Canadian national at the time of withdrawal of his Ukrainian nationality, and that he became stateless as a result of the withdrawal. Court dismissed his arguments as he did not provide sufficient evidence as to the circumstances of loss of his Canadian nationality.

Case name (in original language) : № 800/187/17

Case status: Decided

Case number: № 800/187/17

Date of decision: 02/10/2017

State: Ukraine

Court / UN Treaty Body: Supreme Administrative Court

Language(s) the decision is available in: Ukrainian

Applicant's country of birth: Ukraine

Applicant's country of residence: Unknown

Legal instruments: 1961 Statelessness Convention, 1997 European Convention on Nationality

Key aspects: Burden of proof, Deprivation of nationality, Standard of proof

Relevant Legislative Provisions:

Article 7 of the European Convention on Nationality

Article 8 of the 1961 Convention on the Reduction of Statelessness

Article 6 of the Law on Ukrainian Nationality

Article 25 of the Constitution of Ukraine

Article 2 of the Law №2235-III.

Facts

The applicant was a national of Ukraine, who, in the context of unrelated criminal proceedings, testified that he has voluntarily acquired Canadian nationality, without renouncing the Ukrainian nationality he already had. In the course of the proceedings, a copy of his Canadian passport was made. As voluntary acquisition of a foreign nationality is a ground for withdrawal of Ukrainian citizenship, the applicant's Ukrainian citizenship was withdrawn in 2017.

Legal arguments by the applicant

The applicant argued, among others, that his testimony in criminal proceedings is not sufficient proof of him having voluntarily acquired Canadian nationality, and that the government should ensure that he is in fact a Canadian national before withdrawing his Ukrainian nationality. He relied on his Constitutional right to not be deprived of his nationality and the principle of avoidance of statelessness.

Legal arguments by the opposing party

The government argued that the applicant's testimony in the criminal proceedings about having voluntarily acquired a Canadian nationality, as well as a copy of his Canadian passport, are sufficient ground for withdrawing his Ukrainian citizenship. The fact that the applicant is a Canadian national ensures moreover that the applicant does not become stateless as a result of the withdrawal. If the applicant claims to have lost his Canadian nationality at the time of the contested decision, it is up to the applicant to provide convincing proof.

Decision & Reasoning

"The Court considers the argument of the applicant that his [Canadian] passport was annulled neither well-founded nor worthy of consideration, since the mere physical damage to the passport does not indicate that the passport was annulled in accordance with the procedure of the state that issued the passport, in this case Canada."

"Moreover, the annulment of the passport does not equal to the loss of nationality, the latter being defined through a prescribed process (such as submitting an application to a competent authority, providing a number of documents and forms, and receiving a decision which also serves as evidence of loss)."

"It is important to note that sub paragraph g of paragraph 87 of the Rules does not contain an exhaustive list of documents, as well as their form, content, or the context of issue, with which one can evidence that a person will not become stateless as a consequence of losing Ukrainian nationality."

"Passport of the applicant which evidenced his Canadian nationality, and in particular a copy of it which was made from the original that was handed over to the authorities by the applicant, can serve as such evidence".

"While the general rule [...] is that the burden of proof for the legality of a decision rests with the competent authority, it is also important to consider the principle of administrative law that each party should prove the circumstances and facts on which their demands and objections are based [...] The applicant was given the opportunity to make a reasoned objection against the evidence provided by the authorities, and was invited to present his evidence to the Court, in particular regarding the absence of his Canadian nationality at the time of the adopted decision on the loss of his Ukrainian nationality. However, the applicant provided no such evidence".

"At the same time it is necessary to note that facts and circumstances of the applicant's loss of Canadian nationality, as claimed by the applicant, are known to the applicant alone, as the person with regard to whom such facts existed or exist, and to whom such circumstances applied or still apply".

The applicant moreover did not claim to have acquired the Canadian nationality automatically.

"There are no reasons to consider the disputed decision illegal".

"It is also important to note that Ukrainian legislation is fairly liberal with regard to restoration of a lost nationality. Thus, in accordance with point 4 of the first part of Article 6 of the Law on Ukrainian Nationality, Ukrainian citizenship can be acquired as a result of restoration of citizenship, the procedure for which is established by Article 10, and the applicant is welcome to make use of this".

The Court also dismissed arguments that challenged procedural accuracies of the contested decision - in particular challenging that the evidence from criminal proceedings can be used for a decision to withdraw nationality.

"The applicant claimed that his right enshrined in Article 25 of the Constitution of Ukraine was violated - as a citizen of Ukraine he cannot be deprived of his Ukrainian citizenship. Moreover, in his case the principle of avoidance of statelessness has been violated, as well as the principle of not depriving Ukrainian nationals of their nationality, codified in points 2 and 3 of the first part of Article 2 of the Law №2235-III."

"Considering the aforementioned circumstances and evidence in this case, the Court concludes that legal guarantees established by Article 25 of the Constitution of Ukraine and point 3 of the first part of Article 2 of the Law №2235-III were not violated with regard to the applicant, as he was not deprived of his Ukrainian nationality, and did not become stateless as a result of the contested administrative decision (№ 119). The applicant lost his nationality as a result of voluntary acquisition of a nationality of another state, and the loss of the latter at the time the contested decision was taken (29.04.2017) was not established by the Court. This indicates lack of violation of Article 7 of the European Convention on Nationality, as well as of Article 8 of the 1961 Convention on the Reduction of Statelessness, both of which have been ratified by the Ukrainian Parliament."

Decision documents

[Supreme Administrative Court, judgment no. 800/187/17](#)

Outcome

The Court upheld the administrative decision withdrawing the applicant's Ukrainian nationality.