



[Ukraine - Supreme Administrative Court, judgment no. K/9901/31435/19](#)

The Ukrainian nationality of the applicant and her two children was withdrawn in 2013, on the basis that the applicant committed fraud when acquiring the nationality in 2006. The allegation of fraud was based on the fact that a case file was missing from a Court which had earlier established the legal fact of the applicant's permanent residence. The applicant argued that the missing file is not her fault and cannot be construed as "fraud" on her side, and the Court agreed with her, annulling the decision that resulted in the loss of her and her children's nationality.

Case name (in original language) : №K/9901/31435/19

Case status: Decided

Case number: №K/9901/31435/19

Date of decision: 28/02/2020

State: Ukraine

Court / UN Treaty Body: Supreme Administrative Court

Language(s) the decision is available in: Ukrainian

Applicant's country of birth: Georgia

Applicant's country of residence: Ukraine

Legal instruments: European Convention on Human Rights (ECHR)

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

Facts

The applicant was born in Georgia and relocated to Ukraine. In 2006 she and her two minor children acquired Ukrainian citizenship through an application procedure, on the basis of "territorial origin" - a special simplified naturalisation-like procedure for those who were born on the territory of Ukraine (before Ukrainian independence), whose ancestors were born on the territory of Ukraine (before Ukrainian independence), or those who have permanently resided on the territory of Ukraine before 24.08.1991 (themselves or their ancestors). As part of her application file the applicant submitted a court decision establishing that she has had permanent

residence in Ukraine in years 1989-1990. The decision granting the applicant and her children Ukrainian nationality was however cancelled in 2013 on the basis of a letter from the Court that allegedly established the fact of permanent residence of the applicant in 2006, where the Court indicated that the relevant case establishing the residence of the applicants was missing from its filing system. The applicant appealed against the decision cancelling her and her children's acquisition of Ukrainian nationality.

Legal arguments by the applicant

The applicant argued that her nationality cannot be cancelled merely on the basis of a case file missing from the Court records. She claimed she did not falsify any documents, and did not commit fraud, and therefore the ground for cancellation of her nationality is not valid.

Legal arguments by the opposing party

The respondent maintained it's right to cancel the acquisition of the applicant's citizenship on the basis of her having provided incorrect information in the proceedings. The court which has determined that she has had permanent residence in Ukraine in years 1998-1990 states that it the case file where such determination of permanent residence has taken place is missing from the court's administration.

Decision & Reasoning

Court reasoned as follows:

"61. Therefore, cancellation of a decision on the acquisition of nationality necessitates sufficient proof that establishes the fact that the person consciously provided inaccurate information or false documents"

"63. [...] The basis for the acquisition of nationality was permanent residence of the applicant from April 1989 to November 1990, which was confirmed by a decision of the Regional Court of October of city Kharkiv of 7 June 2006 in a civil case №07-011-06 about the establishment of the fact of permanent residence on the territory of Ukraine"

"65. The only basis for cancelling the decision on acquisition of Ukrainian nationality by the applicants of 01.09.2006 was the information which was provided in a letter of the Regional Court of October of city Kharkiv of 31.05.2012 № K-2, that according

to the alphabetical log of civil cases of year 2006 the applicant did not ask the court to establish the fact of permanent residence on the territory of Ukraine from April 1989 till November 1990, and therefore there could not have existed a relevant decision of the Regional Court of October of city Kharkiv of 07.06.2006 №07-11-06."

"66. No evidence has been provided indicating that the respondent has conducted an investigation or confirmation of the circumstances indicated in that letter."

"69. In addition, the obligation to prove or correct mistakes or inconsistencies (if such have occurred) lies exclusively with the state authorities that have taken the relevant decision, and cannot be a ground for limiting rights and freedoms, or for unlawfully withdrawing Ukrainian nationality"

"70. Hence, since the fact of falsification of the decision of the Regional Court of October of city Kharkiv of 07.06.2006 in a civil case №07-11-06 has not been established by a competent authority, this Court agrees with the conclusions of lower instance courts that the respondent did not have a legal ground for cancelling its decision on acquisition of Ukrainian nationality by the applicants."

"71. Moreover, the Supreme Court indicates that the respondent did not adhere to the principle of proportionality, as well as to the principle of balance between adverse effects to the rights, freedoms and interests of the applicant and the aims which were pursued by the administrative decision which caused adverse effects to the applicant".

The Court considers the personal and family situation of the applicant, and concludes that the administrative decision violates applicants right under article 8 of the ECHR.

"75. The above indicates that cancellation of the decision on acquisition of Ukrainian nationality has as a consequence a total change in the lifestyle of the family of the applicant. Despite that, these circumstances were not taken into account when taking the decision of 03.12.2013."

Decision documents

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