



Ukraine - Dnipropetrovsk Administrative Court of Appeal, judgment no. 2a-2952/09/0870

The applicant refused to exchange his USSR passport for the Ukrainian one in the aftermath of dissolution of the USSR, and was subsequently denied his retirement benefits due to lack of a Ukrainian passport. He requested the Court to establish that he is a stateless person, to release him from Ukrainian nationality, and grant him legal residence rights in Ukraine. The Court concluded that the applicant is in fact a Ukrainian national, even if he refuses to apply for a passport, as the law attributes Ukrainian nationality to all former USSR nationals who lived in Ukraine at a specified time, regardless of the will, actions or inactions of affected persons.

Case status: Decided

Case number: № 2a-2952/09/0870

Date of decision: 15/06/2010

State: Ukraine

Court / UN Treaty Body: Dnipropetrovsk Administrative Court of Appeal

Language(s) the decision is available in: Ukrainian

Applicant's country of residence: Ukraine

Key aspects: Access to social and economic rights, Determination/confirmation of nationality, State succession, Statelessness determination

Relevant Legislative Provisions:

Law on Ukrainian Nationality of 18 January 2001

Facts

The applicant approached a court in 2008 with a request to grant him the status of a stateless person, relieve him of his Ukrainian nationality, and grant him a legal residence permit. He has been residing in Ukraine since 1986. After the fall of the Soviet Union and the declaration of independence by Ukraine in 1991, the applicant decided to retain his USSR passport, and did not make use of the opportunity to

exchange his USSR passport for a passport of a Ukrainian national. When reaching retirement age, the applicant applied to receive retirement benefits in 2006, but was refused on the basis that he did not have a passport of a Ukrainian national.

Decision & Reasoning

The Court reasoned as follows:

"According to Article 2 of the Law on Ukrainian Nationality of 18 January 2001, amendments incorporated, Ukrainian nationals are all nationals of the former USSR who at the time of the declaration of Ukrainian independence on 24 August 1991 was permanently residing in Ukraine, as well as all individuals who at the time of the entry into force of the Ukrainian nationality law (13 November 1991) were permanently residing in Ukraine, regardless of their race, political, religious or other convictions, gender, ethnic or social belonging, property ownership, place of residence, linguistic or other features, provided they are not nationals of other states."

"The analysis of the above leads to the conclusion that in the context of the dissolution of the USSR and creation of a new sovereign state Ukraine, the Law determined rules on acquisition of nationality by those who lived on the territory of Ukraine, which does not require any actions on the part of individuals concerned. The applicant's arguments that he did not undertake any actions to acquire Ukrainian nationality are therefore unfounded."

"The case file as well as the testimony of the applicant indicates that he has been permanently residing in Ukraine within the timeframe indicated in the Law."

"Therefore, the Court concludes that the applicant is a Ukrainian national, but he lacks the document that confirms his Ukrainian nationality as a result of his reluctance to receive such document."

"According to Article 10 of the Law on Ukrainian Nationality, stateless persons are persons who live in Ukraine and are not Ukrainian nationals, as well as do not have proof of their belonging to a nationality of a foreign state."

"According to Article 17(1) of the Law on Ukrainian Nationality, the grounds for the termination of Ukrainian nationality are, among others, exit from Ukrainian nationality, and loss of Ukrainian nationality."

"In accordance with Article 18(1) of the Law on Ukrainian Nationality, a national of Ukraine who permanently resides abroad can exit Ukrainian nationality upon his initiative. Exit from Ukrainian nationality is allowed if the person has acquired nationality of another state, or has obtained a document issued by the competent authorities of another state confirming that the Ukrainian national will receive its nationality upon the renunciation of his Ukrainian nationality."

"As established in Court proceedings, the applicant does not intend to become a national of any other country, and has not taken any actions prescribed by law in order to terminate his Ukrainian nationality, and intends to continue to live in Ukraine. Since the applicant has not taken any actions in order not to acquire his Ukrainian nationality when it was acquired, and has not filed applications about the exit from Ukrainian nationality, the Court agrees with the conclusions of the court of the lower instance as to rejecting the applicant's requests."

"In addition, in accordance with Article 19 of the Law on Ukrainian Nationality exit from Ukrainian nationality can be denied if the exit from nationality leads to statelessness".

Decision documents

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