



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 19 December 2013

FIRST SECTION

Application no. 33330/11
Datuna Vladimirovich DZHALAGONIYA
against Russia
lodged on 27 April 2011

STATEMENT OF FACTS

The applicant, Mr Datuna Vladimirovich Dzhalagoniya, is a Russian national, who was born in 1965 and lives in Kostroma. He is represented before the Court by Mr A. Vinogradov, a lawyer practising in Kostroma.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant has been living in Russia since 1987, initially under a Soviet Union passport.

Between 1987 and 2005 the applicant lived in the Rostov Region.

In 1998, in accordance with the procedure then in force, the applicant was issued with an additional certificate for his passport (“вкладыш”) specifying that he was a citizen of the Russian Federation.

On 19 February 2002 police department no. 1 of Taganrog, the Rostov Region, issued the applicant with a Russian Federation passport.

In 2005 the applicant moved to Kostroma.

In June 2010, when the applicant turned forty-five, in accordance with the applicable procedure he applied to the Federal Migration Service (FMS) for renewal of his passport.

Thereupon the applicant received a verbal refusal to issue him with a new passport. According to the official, the applicant had failed to prove that he had had a permanent place of residence in Russia on 6 February 1992, and his place of residence had only been registered in Russia since February 2002.

On 30 June 2010 the Rostov Region FMS issued a certificate to the effect that, according to an enquiry, police department no. 1 of Taganrog had

issued the applicant with a Russian passport in breach of the applicable regulations.

On 7 September 2010 the Kostroma Region FMS adopted a decision to the effect that, according to an enquiry, the applicant was not a Russian citizen.

The applicant appealed against the refusal to renew his passport to the Sverdlovskiy District Court of Kostroma.

On 21 October 2010 that court upheld the decision of the FMS. It noted that as a result of a check conducted pursuant to Articles 51 and 52 of the 2002 Regulation on Examination of Issues Related to Citizenship of the Russian Federation, the FMS had found that the applicant had been issued the Russian passport in breach of the applicable rules and was not entitled to Russian citizenship. In particular, it had not been confirmed that he had been living in Russia on 6 February 1992. This justified the refusal to renew his passport. The court also noted that the reports of the checks conducted by the FMS were neither appealed against nor set aside in accordance with the established procedure, and that they were not subject to the court's examination in the present proceedings.

The court further dismissed the applicant's argument that the fact that he had used the previously issued Russian passport for eight years constituted a valid reason for the renewal of the passport. The court likewise dismissed the applicant's argument that he had not violated any laws or regulations in 2002, when he had been issued with the Russian passport. The court found that his passport was invalid regardless.

The applicant appealed.

On 6 December 2010 the Kostroma Regional Court upheld the decision. The appeal court noted, in particular, that the certificate issued by the Rostov Region FMS on 30 June 2010 showed that the Russian passport had been issued to the applicant on the basis of a certificate of 23 December 1998 issued by the Leninskiy District Department of the Interior of Rostov-on-Don stating that he was a Russian citizen in accordance with Article 13 § 1 of the 1991 Law on Citizenship of the Russian Federation. However, the legal validity of that certificate had not been confirmed. It further noted that according to the results of the enquiries carried out in the places indicated by the applicant as his places of residence in Russia between 1989 and 2002, no confirmation of the applicant's registration and residence as of 6 February 1992 was received with respect to any of the addresses indicated.

The appeal court also noted that the applicant's argument to the effect that he had not been informed about the report issued following the check conducted by the FMS and that therefore he could not have appealed against it did not affect the court's conclusions.

B. Relevant domestic law and practice

1. Legislation

a. 1991 Russian Citizenship Act

Under section 12 § 1 of Law no. 1948-1 on Citizenship of the Russian Federation of 28 November 1991, in force between 6 February 1992 and

1 July 2002 (the 1991 Russian Citizenship Act), Russian citizenship could be acquired by:

- a) recognition thereof;
- b) birth;
- c) registration of citizenship;
- d) grant of citizenship;
- e) restoration of citizenship;
- f) choice of citizenship where a territory changed its nationality and on other grounds provided for by international treaties the Russian Federation is party to.

Under section 13 § 1 all citizens of the USSR permanently residing in Russia on the date of entry into force of the Act (that is, 6 February 1992) were recognised as citizens of the Russian Federation unless, within a year after that date, they stated that they did not wish to have Russian citizenship.

b. 2002 Russian Citizenship Act

Under section 5 of Law no. 62-FZ on Citizenship of the Russian Federation of 31 May 1995, in force since 1 July 2002 (the 2002 Russian Citizenship Act), Russian citizens are:

- « a) persons who had Russian citizenship on the date of entry into force of this Act;
- b) persons who have acquired Russian citizenship in accordance with this Act. »

Under section 10 a passport constitutes a document that confirms citizenship.

Under section 30 (a) federal executive agency exercising control and supervision in the field of migration is competent to determine whether persons living in the Russian Federation have Russian citizenship.

c. 2002 Regulation on Examination of Issues Related to Citizenship of the Russian Federation

Under Article 51 of the Regulation on Examination of Issues Related to Citizenship of the Russian Federation, adopted by Presidential Decree no. 1325 of 14 November 2002, if a person does not have a document confirming citizenship (due to loss, theft, damage, etc.), as well as if there are doubts concerning the authenticity or validity of such a document or if there are circumstances leading to doubt as to whether the person has Russian citizenship, the competent agency conducts a check as to whether the documents were issued lawfully. The check is conducted upon an application by an individual or upon the initiative of the competent agency or another State authority

Under Article 52, upon receipt of the necessary information the competent agency draws up a reasoned report on the results of the check, stating the circumstances which prove that the person either has or does not have Russian citizenship. Either the applicant or the agency who initiated the check must be informed of the results of the check. The person who is proved to have Russian citizenship is then issued with the relevant document.

d. 2004 Regulation on the FMS

Article 1 of the Regulation on the Federal Migration Service adopted by Presidential Decree no. 928 of 19 July 2004 (the 2004 Regulation on the FMS), in force until 15 January 2013, provided that the FMS exercised control and supervision in the field of migration.

e. 1997 Regulation on Passports

Article 1 of the Regulation on Passports of Citizens of the Russian Federation adopted by Government Decree no. 828 of 8 July 1997 (the 1997 Passport Regulation) provides that a passport is the main document that proves the identity of a citizen of the Russian Federation.

Under Article 10, it is for the territorial agencies of the FMS to issue and renew passports.

2. Judicial practice

In decision no. GKPI 06-337 of 6 June 2006 the Supreme Court stated that “a passport confirms citizenship of the Russian Federation, which does not arise out of this document but on the grounds and according to the procedure provided for by the federal law and other [applicable] laws and regulations”.

In decision no. KAS 06-300 of 17 August 2006 the Appeals Division of the Supreme Court stated that a “passport constitutes a document confirming citizenship of the Russian Federation only if it is issued by a competent State agency in the official form in accordance with the [applicable] procedure. A passport that does not meet these requirements may neither be considered a [valid] document nor confirm the [holder’s] citizenship of the Russian Federation”. It also noted that “the rules on seizure of unduly issued passports that do not constitute a document confirming citizenship of the Russian Federation do not affect the rights and freedoms of citizens guaranteed by the Constitution and laws of the Russian Federation”.

3. The Ombudsman’s Special Report

On 6 December 2007 the Ombudsman issued a 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, which was published in the *Rossiyskaya Gazeta* on 26 January 2008. In the report he criticized the administrative practice of taking away Russian passports from former citizens of the Soviet Union born outside Russia, who had received Russian passports and applied for their renewal. Their old passports were seized and the issue of new ones was denied on the ground that the previous passports had been issued to them “by error” through no fault of their own. Thousands of people were concerned by this practice, and in most cases there were no judicial decisions. Many regional ombudsmen also issued special reports on the practice of seizing passports.

The Ombudsman pointed out that for several years following the disintegration of the Soviet Union in Russia there had been neither a streamlined procedure on acquisition/recognition of Russian citizenship, nor even a standard document to confirm it. In such circumstances, between

1997 and 2007 Russian passports were issued to 162.4 million people. Over 126 million passports were issued before 2004. When people born in other republics of the former Soviet Union obtained Russian passports, they simultaneously acquired the rights and obligations of Russian citizenship: they voted, paid taxes, received education, served in the army and obtained other documents, including the “international passport” required for travelling abroad. As in all cases the issue of a passport followed a check of whether the person was a Russian citizen, all holders of a Russian passport are supposed to have undergone such a check at least once. Those who subsequently applied for an “international passport” or for renewal of their Russian passport must have successfully undergone the check a number of times. Hence, there could be no fault or bad faith on the part of those persons in that they were granted Russian passports. Yet, several thousands of Russian passports were seized on the ground of being “erroneously issued”, whereas, according to the Ombudsman, breaches of the procedure for issuing passports, if any, were due to the under qualification and negligence of the staff of the competent State agencies, or even mercenary crimes committed by them.

The Ombudsman further referred to a claim submitted by the prosecutor’s office of the Saratov Region to the Fedorovskiy District Court whereby it sought to declare unlawful the local FSM branch’s practice of seizing Russian passports on the grounds of “doubts that they had been lawfully issued to persons born outside the Russian Federation”. According to the prosecutor’s office, as a Russian passport confirms Russian citizenship, it may only be seized where citizenship is revoked on the basis of a court decision establishing that the person had submitted false information or documents in order to acquire it. However, the Fedorovskiy District Court dismissed the application, having found that issues concerning citizenship were in the sole competence of the President and his competent executive agencies. The Ombudsman pointed out in this respect that the courts were not precluded from establishing facts which had served as the basis for the decision to issue a passport.

The Ombudsman further criticized decision of the Supreme Court no. KAS 06-300, in which it considered that a passport merely confirmed Russian citizenship and its seizure had no bearing on constitutional rights. He believed this approach to contradict the Court’s findings in *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 97, ECHR 2003-IX (extracts) to the effect that “in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant’s private life”.

In the Ombudsman’s view, without a passport the person cannot fully enjoy constitutional rights and freedoms, because the realization of such rights is directly linked to documents confirming his or her identity. The seizure of such a document entails the loss of employment and the possibility to either find new employment or receive a pension and the loss of medical and other types of social security and the possibility to obtain travel documents and register a marriage. It limits property rights and also

deprives the person of judicial remedies, even in order to appeal against the decision of the FMS. Therefore, a person whose Russian passport has been seized finds himself or herself in a worse situation than a foreign national or a Stateless person living in Russia on the basis of a foreign passport or a residence permit.

According to the Ombudsman's conclusions, where a Russian passport was wrongfully issued due to an error on the part of a State agency or agencies, the error should be rectified with no detriment to the passport holder. The latter should be unconditionally recognised as a Russian citizen, at least until it is established that he or she was granted Russian citizenship and a passport unlawfully through his or her own fault.

COMPLAINTS

The applicant complains under Articles 6, 8 and 13 of the Convention about the refusal to renew his Russian passport which, according to him, *de facto* deprived him of his constitutional rights. The applicant points out, in particular, that without a valid passport he can neither find employment nor receive medical assistance.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention? (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 97, ECHR 2003-IX)

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Was Article 6 § 1 of the Convention applicable to the proceedings in the present case?

If so, did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

In particular, was the applicant provided with the reports of the Rostov Region Federal Migration Service (FMS) and the Kostroma Region FMS to the effect that he was not a Russian citizen? Was it open to him to appeal to a court against the reports? Was the principle of equality of arms respected in the proceedings at hand given that the courts did not re-examine the FMS' findings set out in the reports but accepted them as conclusive evidence?

3. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention?

4. The Government are requested to provide copies of the following documents:

- reports of the Rostov Region FMS and the Kostroma Region FMS to the effect that the applicant was not a Russian citizen;
- certificate issued by the Rostov Region FMS on 30 June 2010;
- certificate issued by the Kostroma Region FMS on 7 September 2010;
- decision of the Supreme Court no. GKPI 06-337 of 6 June 2006;
- decision of the Appeal Division of the Supreme Court no. KAS 06-300 of 17 August 2006.