

Belgium - Gent Court of Appeal, judgment no. 2008/AR/1232

The applicant arrived in Belgium in 2000 from Kazakhstan. He claimed to have lost his Kazakh nationality on the basis of a Kazakh law providing for such loss in case of permanent residence abroad for over 3 years without registration at the consulate. The Court studied the relevant Kazakh legislation as well as the implementing Presidential Decree, and found that such loss is not automatic, but requires a decision of a competent authority instead, and therefore the applicant's statelessness was not sufficiently substantiated.

Case name (in original language) : 2008/AR/1232

Case status: Decided

Case number: 2008/AR/1232

Citation: <https://www.agii.be/sites/default/files/dbrechtspraak/Gent%205-02-09.pdf>

Date of decision: 05/02/2009

State: Belgium

Court / UN Treaty Body: Gent Court of Appeal

Language(s) the decision is available in: Dutch

Applicant's country of birth: Soviet Union {former}

Applicant's country of residence: Belgium

Legal instruments: 1954 Statelessness Convention

Key aspects: Burden of proof, Deprivation of nationality, Determination/confirmation of nationality, Standard of proof, Statelessness determination

Facts

The applicant was born in Alma Ata (USSR, now Kazakhstan) in 1967. He arrived in Belgium in year 2000, and held the Kazakh nationality at the time. He later requested to be recognised as stateless.

Legal arguments by the applicant

The applicant argued that he lost his Kazakh nationality by virtue of article 21.4 of the Kazakh nationality law, as he has been permanently residing outside Kazakhstan for more than 3 years, and has not registered with diplomatic representations of Kazakhstan. He claims to not have had any kind of contact with the authorities of Kazakhstan since he left the country. In his opinion, the lack of response to his letter's on the part of Kazakh authorities indicates that the authorities are preventing him from being able to submit positive evidence of loss of his Kazakh nationality.

Legal arguments by the opposing party

The authorities argued that the applicant isn't stateless, as upon his arrival in Belgium he declared to have Kazakh nationality, and appeared to be in possession of a Kazakh identity card. He did not show that he lost the Kazakh nationality, and he did not prove that the Kazakh embassy is not replying to his letters.

Decision & Reasoning

The Court considered the relevant Kazakh nationality law provisions, and concluded that insufficient evidence has been provided to substantiate that the applicant lost his Kazakh nationality:

"According to article 24.1 of the Nationality Law of Kazakhstan: 'The nationality of Kazakhstan is lost if a Kazakh national, who has established his permanent residence outside of the borders of Kazakhstan, did not register with a diplomatic representation within 3 years, without a valid reason.' At the same time, article 7 of the same law determines that mere residence abroad of a Kazakh national does not automatically lead to the loss of nationality. The core principle is that, on the basis of the Constitution (article 10), a Kazakh national cannot be deprived of their nationality."

"Consequently, residence abroad of more than three years, without getting registered, does not automatically lead to the loss of nationality."

"The Presidential Decree of the Republic of Kazakhstan Nr. 3120 of 27 September 1996 clarifies the above-cited article 21 of the Nationality Law. According to Article 30 of this decree, the consulates of Kazakhstan register loss of nationality. The head of the Consulate independently assesses whether the individual concerned did

not register on time for good reasons, and if that is not the case, the head of the consulate can decide to withdraw nationality."

"Article 31 of the Decree determines that the registration of loss of nationality can only take place after the person concerned has been informed of the reasons and the basis for loss."

"Considering that the applicant submitted neither a confirmation from the consulate that he is no longer registered as a Kazakh national, nor a notification from the consulate which, on the basis of article 31 of the Decree, informs him of the reasons and basis for the loss of nationality, the applicant fails to comply with his burden of proof. He cannot be awarded the status of a stateless person, considering that it is not disputed that he used to be a Kazakh national, and it has not been shown that he has lost this nationality."

Decision documents

[Gent_5Feb2009.pdf](#)

Outcome

The Court confirmed the decision to not recognise the applicant as stateless.