

Poland - Supreme Administrative Court, case II OSK 894/14

The applicant is a Polish national, whose son was born in Belarus to a mother who is a national of Belarus. The applicant was originally not mentioned as a father on the birth certificate, but established his paternity through a court order in Poland, unfortunately missing the 12-months deadline since the birth of his son to be able to claim Polish nationality for his son. The Court comments on the applicability of Article 24 ICCPR, stating that it is not applicable since the child acquired Belarusian nationality, and implying that if the child would have been stateless Article 24 ICCPR may have resulted in an interpretation of the Polish law so as to remedy the child's statelessness.

Case name (in original language) : II OSK 894/14

Case status: Decided

Case number: II OSK 894/14

Citation: <http://orzeczenia.nsa.gov.pl/doc/873CC652C2>

Date of decision: 16/12/2015

State: Poland

Court / UN Treaty Body: Supreme Administrative Court

Language(s) the decision is available in: Polish

Applicant's country of birth: Belarus

Applicant's country of residence: Unknown

Legal instruments: International Covenant on Civil and Political Rights (ICCPR)

Key aspects: Acquisition of nationality, Birth registration, Childhood statelessness, Determination/confirmation of nationality

Relevant Legislative Provisions:

Article 24 ICCPR

Facts

The applicant is a Polish national, whose son was born in February 2011 in Belarus to a mother who is a national of Belarus. The original birth certificate indicated that the father is unknown, but in April 2012 paternity of the applicant was established in court. The applicant applied for the confirmation that his son acquired Polish nationality by birth as a child of a Polish national, but the authorities refused to do so, on the basis that parenthood of a Polish national was established more than 12 months since the child's birth. Lower instance court ruled against the applicant.

Legal arguments by the applicant

The applicant claimed that it is incorrect to apply the Polish Nationality Act of 1962 to his child's situation, as the new Nationality Act of 2009 would allow for his child to be recognised as a Polish national from birth. The applicant further argued that the premise that the father was unknown at the time of the child's birth is factually incorrect – the father was known, but the fact of paternity was merely not registered legally at the date of the child's birth. The failure to recognise paternity from the start is due to the difficult relationship between the applicant and the child's mother. The applicant had no influence on the duration of the court proceedings which were his only means of establishing paternity.

Legal arguments by the opposing party

The authorities argued that the legal basis for assessing the case is the law that was in force on the date of the child's birth, February 2011, which was the Nationality Act of 1962. Nationality Act of 2009 only entered into force in August 2012. At the time of the child's birth, the father was unknown, and the mother was not a Polish national, therefore the child did not become a Polish national by birth according to Nationality Act of 1962. The authority emphasised that this decision does not close all the options for the minor to acquire Polish nationality, in particular acquisition would be possible if he submits a relevant application to the President of the Republic of Poland.

Decision & Reasoning

The Court reasoned as follows:

"[The applicant's son] could not acquire Polish nationality by birth on [...] February 2011 [...], because his mother, a Belarusian national, did not have Polish nationality,

and his father was unknown. Therefore, the key condition for the acquisition of Polish nationality by the child, i.e. the possession of Polish nationality at the time of the child's birth by the parent whose person is known and whose nationality is confirmed, has not been met. The fact that a Polish national [the applicant] established paternity through the judgment of [...] April 2012, also, contrary to the applicant's claims, could not affect the findings, as establishment of paternity occurred after the expiry of the one-year deadline prescribed in the Polish Nationality Act, which makes it impossible to give effect to the new parental situation on the nationality status of the child [...]. Contrary to the applicant's assertions, the reasons for why the deadline was not met is of no relevance to the findings. [...] any changes in the establishing the identity or nationality of one or both parents made after the deadline do not affect the determination of the child's nationality. When interpreting the above provision, it should be borne in mind that it serves to ensure the stability of establishing the child's nationality. The Polish Nationality Act regulates the acquisition of Polish nationality, and does not regulate the acquisition and loss of nationalities of other countries. This means that if the child did not acquire Polish nationality by birth at the time of birth, it usually acquired the nationality of another country, and subsequent events may cause changes in the determination of the child's nationality, which necessitates limitations on such changes as codified in the Polish Nationality Act [...]."

"In the opinion of the Supreme Administrative Court, it is also impossible to agree with the applicant that he was deprived of the factual possibility of exercising parental authority over his son as the result of actions of the administrative authorities, which violated Art. 18 of the Constitution of the Republic of Poland. Under the Polish law, the exercise of parental authority is not dependent on the child's nationality."

"Equally unfounded is the allegation of violation of Art. 9 of the Constitution of the Republic of Poland in connection with art. 24(1, 3) of the International Covenant on Civil and Political Rights caused by the refusal to confirm the Polish nationality by the [applicant's son], and thus not granting him the protection guaranteed by these provisions. First of all, Art. 24(1) of the Covenant imposes an obligation of the state to protect the rights of children, and cannot be understood as an obligation to grant them nationality unconditionally, as regulating the modes of acquisition of nationality is closely related to the sovereignty of the state. Regarding Art. 24(3) of the Covenant, which directly addresses the issue of the acquisition of a nationality by a child, i.e. that every child has the right to acquire a nationality, it should be

stated that this does not apply in the present case, as it follows from General Comment No. 17 of the United Nations Human Rights [...] that the provision refers to children born on the territory of a state, and aims to ensure that each child has a nationality from birth. The purpose of this provision is therefore to eliminate cases of statelessness among children. [The applicant's son] was born in the Republic of Belarus and obtained the nationality of that country."

Decision documents

[NSA_16Dec2015.pdf](#)

Outcome

The Court ruled against the applicant, determining that his son is not a Polish national.