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[ECtHR - Shoygo v. Ukraine](#)

The applicant was born in the Russian Federation and his birth was not duly registered. Lacking identity documents and unable to prove his nationality, he was detained in Ukraine for the purpose of expulsion. The Court held that the authorities did not act diligently to contact the Russian embassy and obtain documentation to evidence the applicant's Russian citizenship, and failed to review the lawfulness of his detention and to provide an effective remedy, in violation of Article 5(1), (4) and (5).

Case status: Decided

Case number: Application no. 29662/13

Citation: European Court of Human Rights, Shoygo v. Ukraine (application no. 29662/13), 30 September 2021

Date of decision: 30/09/2021

State: Ukraine

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Russian Federation

Applicant's country of residence: Korea South

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Deportation and removal, Detention, Determination/confirmation of nationality, Procedural safeguards

Relevant Legislative Provisions:

- Article 5 of the ECHR
- Article 289 of Law of 3 October 2017 that restated the Code of Administrative Justice of Ukraine
- Section 13 of the Russian Federation's Citizenship Act of 1991

Facts

The applicant was born in 1985 in the Republic of Sakha (Yakutia) in the Russian Federation, in a family of reindeer farmers. His birth was not duly registered. From 1998 onwards, he allegedly travelled in Russia and Ukraine in an irregular manner, because at the time he lacked identity documents and could not prove his citizenship.

In November 2011 the applicant was arrested while trying to cross from Ukraine into Moldova, and the Odessa Circuit Administrative Court ordered his expulsion from Ukraine as well as his detention for up to twelve months pending expulsion. Further to the applicant's appeal, the Odessa Administrative Court of Appeal upheld the first-instance court's decision. In their decisions the domestic courts stated that the applicant claimed to be a Russian citizen but lacked any identity documents.

In September 2012, the Ukrainian authorities contacted the Russian Embassy to obtain documentation for the applicant as a Russian national, on the grounds that he had supposedly acquired Russian citizenship as a Soviet citizen who had permanently resided in Russia as of 6 February 1992 (as per Russian nationality laws). In December 2012 the Russian Embassy responded that, based on the information available, it was not possible to determine whether the applicant was a Russian citizen.

The applicant was released from the centre for temporary accommodation of aliens in irregular situation in November 2012, and subsequently obtained a temporary residence permit in Ukraine and documents identifying him as a Russian citizen.

Legal arguments by the applicant

The applicant complained that his detention was unlawful and contrary to Article 5(1) ECHR, because the authorities had been aware from the outset that they would be unable to expel him due to the lack of identity documents, had not acted with diligence and the detention was unnecessary.

The applicant also submitted that that he did not have an effective remedy by which to challenge the legality of his detention, in breach of Article 5(4), and no enforceable right to compensation, contrary to Article 5(5).

Legal arguments by the opposing party

The Government contested the applicant's arguments, particularly stating that there had been grounds for the applicant's expulsion, as per the domestic courts' decisions, and the authorities acted expeditiously.

Decision & Reasoning

The Court noted the challenge faced by the Ukrainian authorities in organising the expulsion of the applicant due to the lack of identity documents. However, it observed that "no explanation has been provided for why it took the authorities, who knew about the applicant's affirmations concerning his Russian nationality from the outset of his detention [...], almost eleven months to contact the Embassy of the Russian Federation to attempt to obtain a travel document for him" (para. 23). The Court concluded that the authorities had failed to act with the requisite diligence in the proceedings to deport the applicant, in violation of Article 5(1).

The Court also held that there has been a violation of Article 5(4) due to the absence, at the relevant time (i.e. prior to the reform of the Code of Administrative Justice in 2017), of a procedure in domestic law to review the lawfulness of the applicant's detention.

Finally, the Court stated that it "has, in a number of cases, found that in Ukrainian law there is no enforceable right to compensation in situations where a violation of Article 5 is found by the Court" (para. 29), reaching a similar conclusion in this case and finding a violation of Article 5(5).

Decision documents

[SHOYGO v. UKRAINE.pdf](#)

Outcome

The Court held that there has been a violation of Article 5(1), 5(4) and 5(5) of the ECHR and awarded the applicant EUR 2,000 in respect of non-pecuniary damage.

Caselaw cited

- Khamroev and Others v. Ukraine, no. 41651/10, § 85, 15 September 2016
- Abdulkhakov v. Russia, no. 14743/11, §§ 210-18, 2 October 2012
- Auad v. Bulgaria, no. 46390/10, §§ 128-35, 11 October 2011
- Amie and Others v. Bulgaria, no. 58149/08, §§ 74-79, 12 February 2013
- Aden Ahmed v. Malta, no. 55352/12, §§ 144-46, 23 July 2013

- Azimov v. Russia, no. 67474/11, §§ 151-55, 18 April 2013
- R. v. Russia, no. 11916/15, §§ 99-101, 26 January 2016
- Korban v. Ukraine, no. 26744/16, §§ 201 and 202, 4 July 2019