



Russia - Bezenchuk Regional Court of Samara Oblast, judgment №5-160/2019

The applicant was charged with an administrative offence for not having proof of permission to be on the Russian territory. The Court ruled that the applicant's identity has not been established with a sufficient degree of certainty to charge him with an administrative violation. If the applicant lacks identity documents, the authorities need to follow prescribed procedures for establishing identity before such person can be charged with an administrative offence.

Case status: Decided

Case number: №5-160/2019

Date of decision: 03/10/2019

State: Russian Federation

Court / UN Treaty Body: Bezenchuk Regional Court of Samara Oblast

Language(s) the decision is available in: Russian

Applicant's country of residence: Russian Federation

Key aspects: Deportation and removal, Establishing identity

Facts

The applicant was charged with an administrative offence for not having proof of permission to be on the Russian territory.

Decision & Reasoning

The Court reasoned as follows:

"If a foreigner or a stateless person violates the rules of entry or stay of the Russian Federation in accordance with article 18.8 of the КоАП РФ, this leads to an administrative fine - either with administrative expulsion or without one".

"Identification of the person who has committed unlawful acts (in inaction), for

which there is administrative penalty, needs to be conducted, and is related to the circumstances of the administrative violation that need to be clarified."

"Documents that prove identity of a foreign national in Russian Federation are a foreign passport, or another document accepted by the federal law, or recognised in accordance with international agreement of Russian Federation as a document that proves identity of a foreign national".

"The identity of a foreign national or a stateless person with an unlawful presence of the territory of Russian Federation who does not have a valid identity document can be confirmed through a decision on establishing identity of a foreign national or a stateless person, issued by a local executive authority with a mandate on migration issues. Such a conclusion is reached in a format, approved by a Presidential Decree of 8 November 2013 N 473 'On approval of forms for application on establishing identity of a foreigner or a stateless person, notifications on the reception for consideration of applications on establishing identity of a foreigner or a stateless person, protocol on interviewing witnesses on establishing identity of a foreigner or a stateless person, protocol on identifying a foreigner or a stateless person, protocol on identifying a foreigner or a stateless person on the basis of a photograph, conclusions on identification of a foreigner or a stateless person', and contains information as to the full name of a foreigner or a stateless person, his place of residence (place of factual dwelling), short biographical and other information, and a photograph."

"Administrative punishment in the form of an administrative expulsion from Russian Federation cannot be executed with regard to a foreign national or a stateless person, whose identity has not been established. Consequently, the protocol on the administrative violation, in accordance with article 18.8 КоАП РФ, committed by the foreigner or the stateless person, needs to contain information which allows his identification, including his full name (spelled with Russian letters in transcription), date and place of birth, gender, nationality. In addition, a copy of the document proving his identity needs to be attached to the protocol on the administrative violation, which should be formatted in accordance with the requirements of legal norms (for example, conclusions on establishing the identity of a foreign national or a stateless person)."

Decision documents

[Bezenchuk 3Oct2019.pdf](#)

Outcome

The court concluded that the administrative responsibility for unlawful presence cannot be imposed on someone whose identity has not been established in accordance with prescribed procedures.