



## Poland - Supreme Administrative Court, case II OSK 1020/11

The applicant arrived to Poland from Ukraine shortly after the dissolution of the USSR. His application for facilitated naturalisation as a stateless person was rejected in 2010 as his statelessness was not evident. The state authorities presented evidence of applicant's Ukrainian citizenship which included a letter from Ukrainian consulate in Poland. The Court ruled that self-declaring as stateless does not have legal significance in the context of access to facilitated naturalisation, and held it against the applicant that he did not effectively challenge the state authorities' evidence of his Ukrainian nationality.

**Case status:** Decided

**Case number:** II OSK 1020/11

**Citation:** <http://orzeczenia.nsa.gov.pl/doc/680560D84F>

**Date of decision:** 09/05/2012

**State:** Poland

**Court / UN Treaty Body:** Supreme Administrative Court

**Language(s) the decision is available in:** Polish

**Applicant's country of birth:** Ukraine

**Applicant's country of residence:** Poland

**Legal instruments:** European Convention on Human Rights (ECHR)

**Key aspects:** Acquisition of nationality, Burden of proof, Determination/confirmation of nationality, State succession

### **Facts**

The applicant came to Poland in 1996, as a minor together with his mother, on the basis of a passport in the former USSR format, but issued by the Ministry of Internal Affairs of Ukraine on July 1994 - after the dissolution of the USSR and the proclamation of Ukrainian independence. The passport indicated that the applicant is a Ukrainian citizen, and his mother, when legalising their stay in Poland in 1996,

also indicated their citizenship as Ukrainian.

The applicant applied for Polish citizenship under a simplified procedure for stateless persons, but the naturalisation request was rejected in 2010 as the authorities believed he was still a Ukrainian citizen and therefore did not qualify for a simplified procedure. He did fulfil other requirements for naturalisation, such as sufficient number of years of legal residence in Poland.

## **Decision & Reasoning**

The Court reasoned as follows:

“The decision to recognise the applicant as a Polish citizen is a constitutive and discretionary decision, dependent on the fulfilment of at least two conditions listed in the relevant legal provision. It is a special and easier way of acquiring citizenship reserved for individuals with undefined citizenship or without any citizenship.”

“Therefore, establishing whether the applicant meets the statutory requirements for recognition as a Polish citizen under Art. 9 of the Citizenship Act was the primary task of the authorities considering the application. [...] The Court [of lower instance] rightly emphasised that in order to establish whether the requirement of being a stateless person had been met the subjective declaration by the person concerned that he or she is stateless was not legally relevant.”

The applicant did not effectively challenge any of the evidence presented by the authorities to evidence that he used to be, and still is, a Ukrainian citizen, which including a letter from the Ukrainian consular representation in Poland recognising the applicant as one of Ukrainian citizens. Therefore the Court concluded that it was justified for the authorities to assume that the applicant is a Ukrainian citizen.

On the issue of applicant's ties with the Polish society, the Court stated:

“The circumstances concerning the applicant's ties with the Polish society, raised by the applicant in the justification of this appeal, could be taken into account (due to the discretionary nature of the decision), but only after the applicant has met the statutory requirements set out in Art. 9 paragraph 1 of the Citizenship Act.”

## **Decision documents**

[NSA\\_9May2012.pdf](#)

## **Outcome**

The Court upheld the decision of state authorities to deny the applicant facilitated naturalisation as a stateless person.