



[ECtHR - Tatishvili v. Russia](#)

The Georgian born applicant held former USSR citizenship until 2000, when she became stateless. Subsequently, she applied for residence registration in Moscow but was dismissed at first instance and on following appeals, due to failing to confirm her Georgian citizenship or apply for Russian citizenship. The Court ruled that there had been a violation of Article 2 § 1 of Protocol No. 4 and Article 6 § 1 of the Convention.

Case name (in original language) : Tatishvili v. Russia [2007] Application no. 1509/02

Case status: Decided

Case number: 1509/02

Citation: European Court of Human Rights, Tatishvili v. Russia (Application no. 1509/02), 22 February 2007

Date of decision: 22/02/2007

State: Russian Federation

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

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

Applicant's country of residence: Russian Federation

Legal instruments: European Convention on Human Rights (ECHR), European Union law

Key aspects: Access to social and economic rights, Determination/confirmation of nationality, Passport restoration, Residence permit, Stateless status and documentation

Relevant Legislative Provisions:

European Convention on Human Rights Article 2 protocol No.4, Article 6 §1, Article 41, Article 44 §2

Council of Europe Resolution 1277 (2002)

Article 8, xii USSR Law on the Legal Status of Foreign Citizens in the USSR 1981

Section 5 and 32 Rules on the Stay of Foreign Citizens in the USSR 1991

Section 1 Russian law on the Legal Status of Foreign Citizens 2002

Bishkek Agreement 2000

Facts

The applicant was born in Georgia and held former USSR citizenship until 2000 when she became stateless. Consequently, she applied for residence registration in Moscow. Her residence registration was refused as she “failed to provide the complete set of documents”. In 2001 the applicant challenged the refusal claiming that there was no legal basis for restricting her right to obtain residence registration, in case of the correct document submission.

The decision was appealed, on the ground that the District Court had incorrectly referred to the applicant's Georgian citizenship and a visa requirement for her entry into the Russian Federation, given that the applicant had never held Georgian citizenship. Finally, in August 2001, the Moscow City Court reiterated the District Court's findings and dismissed the claim, as she had failed to prove her Russian citizenship or an intention to obtain it.

The case originated in an application against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms in December 2001. The applicant complained about the arbitrary denial of residence registration at her chosen address and a claim of unfair judicial proceedings.

Legal arguments by the applicant

The applicant criticised the Government's refusal of her residence status as mutually exclusive and inconsistent. She held that she continued to hold former USSR citizenship and had never acquired Georgian citizenship. Consequently, it was not required for her to obtain an entry visa as a Georgian citizen. In any event, she had not crossed the Russian border in 2000 or later. The Government's reliance on the 1981 USSR Law on the Legal Status of Foreign Citizens in the USSR and by the 1991 Rules on the Stay of Foreign Citizens in the USSR, section 1 of that law states did not apply to USSR citizens and therefore did not apply to the applicant. Until a

new Russian law on the Legal Status of Foreign Citizens was adopted in 2002, Russia had no legislation imposing an obligation on citizens of the former USSR to obtain residence permits as a condition for their lawful residence in Russia. Thus, there had been a breach of her rights under Article 2 Protocol 4, as the denial of residency registration affected her right to liberty of movement, despite her lawful presence in the Russian Federation.

Legal arguments by the opposing party

The Government denied that there had been an interference with the applicant's right to liberty and movement because her presence in the Russian Federation had not been lawful. They relied on the fact that the applicant, who had arrived from Georgia, had failed to take any steps to determine her citizenship and to make her residence in Russia lawful, such as confirming her Georgian citizenship or applying for Russian citizenship.

The Government stated that the applicant's situation had been governed by the 1981 USSR Law on the Legal Status of Foreign Citizens in the USSR and by the 1991 Rules on the Stay of Foreign Citizens in the USSR. According to sections 5 and 32 of the 1981 USSR law, the applicant, as a stateless person, should have obtained a residence permit from the department of the interior. As the Government perceived the applicant as a Georgian Citizen, it concurrently held that, after the introduction of entry visa requirements for Georgian Citizens on 5 December 2000, the applicant could only lawfully be a Russian resident on the 25 December 2000, if she had crossed the border with a valid Russian visa in her national passport.

Decision & Reasoning

Russia erred in law in determining that the applicant needed an entry visa as a Georgian citizen, as the Court observed that the applicant relied on her former USSR citizenship.

The Court found that the registration of the applicant's residence in Georgia dating back to the early 1990s had no automatic bearing on her citizenship determination under either Russian or Georgian laws. It dismissed the Government's allegation that the applicant held Georgian citizenship, as the denunciation of the Bishkek Agreement on visa-free exchanges, should not affect the lawfulness of her residence on Russian territory.

Moreover, it contested the Government's argument that the appellant was stateless at the material time and had consequently been required to hold a residence permit in accordance with the 1981 USSR Law on Foreign Citizens. Noting that before 31 December 2000 individuals who had not obtained the citizenship of one of the newly independent States, held the special legal status of a "citizen of the former USSR" in Russia. It was only after that date they were to be considered stateless. At the material time, early December 2000, the requirement to have a residence permit established under the 1981 USSR law, did not apply to her because as she was neither a foreign citizen nor a stateless person.

The Court found that the Government's claim that the applicant's presence in Russia was unlawful was concluded without a legal and/or factual basis. The Court accepted that the applicant, as a "citizen of the former USSR" at the material time, was lawfully present in Russia under Article 2 § 1 of Protocol No. 4.

Further, the Court ruled under Article 41, that compensations had to be made to the applicant, due to her loss of earnings and administrative fines for the absence of registration of residency.

Decision documents

[Tatishvili%20v.%20Russia%2C%20Application%20no.%20150902.pdf](#)

Outcome

The Court judged in favour of the appellant and held that there had been a violation of Article 2, of Protocol No. 4, and Article 6 § 1 of the Convention.

Caselaw cited

Denizci and Others v. Cyprus [2001], 25316-25321/94 and 27207/95

Bolat v. Russia [2006], 14139/03

Timishev v. Russia [2005], 55762/00 and 55974/00

Tsonev v. Bulgaria [2006], 45963/99

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