



[Russia - Constitutional Court, No. 14-P/2017](#)

The applicant was born in Georgia and moved to Leningrad before the breakup of the Soviet Union, where he was educated and got married. He was never able to exchange his Soviet passport for a Russian passport, was ordered to be expelled while the expulsion was not possible due to his statelessness. His attorney has repeatedly appealed the deportation ruling but in vain.

The decision changed judicial practice and provided a legal ground for the release of stateless persons from detention, even though the amendments to the legislation ordered by the Constitutional Court are still pending (as of May 2021).

Case name (in original language) : Дело о проверке конституционности положений статей 31.7 и 31.9 Кодекса Российской Федерации об административных правонарушениях в связи с жалобой лица без гражданства Н.Г. Мсхиладзе

Case status: Decided

Case number: Decision #14П6 23.05.2017

Date of decision: 23/05/2017

State: Russian Federation

Court / UN Treaty Body: Constitutional Court of the Russian Federation
(Конституционный суд Российской Федерации)

Language(s) the decision is available in: Russian

Applicant's country of birth: Georgia

Applicant's country of residence: Russian Federation

Key aspects: Detention, Residence permit, Stateless status and documentation

Relevant Legislative Provisions:

Art.31.7 and 31.9 of the Administrative Code of the Russian Federation

Facts

The applicant was born in Georgia in 1972. He moved to Leningrad before the breakup of the Soviet Union, where he was educated and got married. He has not left Russia since 1990. The applicant was never able to exchange his Soviet passport for a Russian passport, even though he tried to resolve his status multiple times. Georgia never confirmed his citizenship. The first time the applicant was in a SITDFN (specialised institution for the temporary detention of foreign nationals), he spent six months there (from 10 March 2015 to 30 August 2015): after the applicant served his sentence for a criminal offense, the Ministry of Justice issued a directive on the undesirability of his stay in the Russian Federation, and a court issued a ruling to deport him and placed him in a STIDFN until the enforcement of this ruling. The second time the applicant found himself in a SITDFN was in accordance with a ruling of Saint Petersburg's Kirov District Court: on 15 December 2015, the court found him guilty of violating the regime of stay in Russia (art. 18.8.1 of the Russian Federation Code of Administrative Offenses) and imposed a punishment in the form of a fine and expulsion, with confinement in a SITDFN until expulsion. The applicant remains in that SITDFN to this day. His attorney has repeatedly appealed the deportation ruling, but higher courts have refused to reverse the ruling and release the applicant from the SITDFN. Court bailiffs, who could not enforce the applicant's deportation, also applied to the court, but their appeal was also denied.

Legal arguments by the applicant

The applicant challenged the constitutionality of two articles of the Code of Administrative Offences in relation to the impracticability of expelling stateless persons: Article 31.7 "Termination of the Execution of a Decision to Impose an Administrative Penalty" (lack of the legislative ability to terminate administrative proceedings, since it is not possible to expel stateless persons and since this reason for terminating administrative proceedings is not included in the comprehensive list) and Article 31.9 "Limitation Period for Executing a Ruling to Impose an Administrative Penalty" (the limitation period for executing administrative expulsion is two years, but expulsion rulings do not indicate any specific period for confinement in a SITDFN – both foreign citizens and stateless persons are confined there with the vague wording of "until expulsion"). If the purpose of confinement in a SITDFN is to ensure expulsion, but this purpose is unattainable, then holding a person in custody, in prison conditions, without access to legal aid, and for an indeterminate period means violating each person's right to human dignity (Article 21 of the Russian Federation Constitution), freedom and personal inviolability

(Article 22 of the Russian Federation Constitution), and judicial protection (articles 46.1 and 46.2 of the Russian Federation Constitution) and violating the constitutional principle of the correspondence of Russian law to international law (Article 15.4 of the Russian Federation Constitution), the constitutional guarantee of human rights in accordance with international and universally recognised norms (Article 17.1 of the Russian Federation Constitution), and the constitutional principle of exemption from liability for actions that were not recognised as violations at the time of their commission (Article 54.2 of the Russian Federation Constitution).

Legal arguments by the opposing party

In their responses and oral presentations at the Constitutional Court session, representatives of all the government agencies refused to acknowledge a violation of the Russian Federation Constitution in this case, although they agreed that the applicant's rights were violated and that a number of legislative acts need to be amended.

“By establishing a list of grounds for terminating enforcement of a ruling to impose an administrative penalty (Article 31.7) and limitation periods for executing rulings to impose an administrative penalty (Article 31.9), the challenged provisions of the Code create the same (equal) conditions for all the participants in proceedings for cases on administrative violations and do not limit the right to judicial protection guaranteed in Article 46 of the Russian Federation Constitution. Thus, they cannot be viewed in and of themselves as violating the applicant's constitutional rights in the aspect indicated by him.”

Chairman of the Constitutional Law and Nation Building Committee of the Federation Council

“...in light of the insufficient legal regulation of questions of expelling stateless persons from Russian Federation territory, articles 31.7 and 31.9 of the Code of Administrative Offences do not in and of themselves contravene the Russian Federation Constitution.”

Deputy Minister of Justice

In general, the representatives from government agencies took exceptionally rigid positions on stateless persons: they noted in both their responses and oral presentations that these people are first and foremost violators of migration laws

and are located illegally in the Russian Federation. According to representatives from the State Duma, the Prosecutor General's Office, and the Ministry of Justice, changes in laws must result in the appearance of the legal ability to expel these people from Russia.

"It must be acknowledged that the problem being considered lies not in the fact that the Code does not indicate a specific period of detention in a specialised institution, but in the fact that the matter of the administrative expulsion of stateless persons is not regulated by Russian Federation laws. The status of stateless persons does differ from that of foreign citizens, but these differences are not defined in Federal Law No. 115- FZ "On the Legal Situation of Foreign Citizens in the Russian Federation." In our opinion, the questions connected with the stay of stateless persons in the Russian Federation, and, inter alia, administrative expulsion, must be resolved comprehensively in Federal Law No. 115- FZ, the Administrative Code, and, possibly, Federal Law No. 114-FZ "On the Procedures for Entering and Departing the Russian Federation." Additionally, as we see it, the first matter to be resolved should be the possibility of the administrative expulsion of such people in principle and, in this connection, their terms of stay in specialised institutions, if necessary."

Special Representative of the State Duma to the Russian Federation Constitutional Court

"If there is a decision on undesirability of stay, these decisions must be executed. We are talking about the security of our state. And the mechanism [for execution] must be defined." Representative of the Prosecutor General's Office, oral presentation to the Russian Federation Constitutional Court, 18 April 2017 "The problem is how to execute a decision on the undesirability of stay in the Russian Federation. It must be executed. If it cannot be executed, we have to think about how to execute it. This citizen must have a status. A temporary residence permit is the first step, but a criminal record precludes this. It's a vicious circle. But if we allow it - after all, the state is not interested in such a citizen." Representative of the Ministry of Justice, oral presentation to the Russian Federation Constitutional Court, 18 April 2017. "The failure to apply restrictive measures in the form of placement and confinement in a specialised institution for a period sufficient to execute the corresponding judicial act for persons subject to deportation from the Russian Federation allows these people to move freely around the Russian Federation, thus creating prerequisites for aggravating the crime situation and an additional threat to national security." Deputy Minister of Justice Representative of the Federal Bailiffs

Service stated that he does not see any barriers to executing the expulsion of stateless persons, thus contradicting numerous examples from judicial practice. He called the application filed by bailiffs on the impossibility of expelling stateless persons the “personal opinion” of certain members of the service. A discussion on the matter of providing documentation for stateless persons developed in the Constitutional Court. Chairman of the Federation Council noted that stateless persons are extremely vulnerable and must be assigned a special status and issued a special document (separate from a residence permit, which would make a future application for citizenship possible) that would allow them to live, work, and travel legally and to select their place of residence; however, they would be the subjects of strict monitoring by the police, including through the use of “technical equipment to control movement.” The special representative of the Russian Federation president objected to establishing a procedure for legalizing stateless persons found undesirable and offered a bizarre proposal to find a country that would accept these people. “The case file does not show that the applicant himself has ever taken any action to resolve his legal status in the Russian Federation or in Georgia. What is the Russian Federation supposed to do? Accept him as its citizen? No, he shouldn’t be held in a specialised institution. But there also can’t be a legal vacuum where he is legalised in a country where he was found to be undesirable. Russia should not allow such a legal regime. What are we supposed to do? Issue him a residence permit or a passport? I don’t think so. If he’s ready to go to Georgia, but Georgia won’t accept him, then he has to find another country that will accept him.” Special Representative of the Russian Federation President to the Constitutional Court, oral presentation to the Constitutional Court, 18 April 2017

Decision & Reasoning

“Federal legislators should amend the Code of Administrative Offences so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion in specialised institutions.”

“Legislators may stipulate in the Code of Administrative Offences that judges must establish specific timeframes for the application of this security measure (by analogy with current migration law) and enshrine the special migration status of stateless persons released from specialised institutions, which makes it possible to monitor them until the expiration of the statute of limitations of the ruling on administrative expulsion.”

“Until the amendments envisaged by the Russian Federation Constitutional Court have been made to Russian Federation laws and in the absence of the actual ability to expel them, persons placed in a specialised institution must be granted the right to apply to a court to check the legality of their further deprivation (restriction) of freedom upon the expiry of three months from the day the court decision on expulsion was adopted. Enforcement decisions in the case of the claimant shall be subject to review.”

Decision documents

[Constitutional Court, No. 14-P/2017](#)

Outcome

Violation.

The decision changed judicial practice and provided a legal ground for the release of stateless persons from detention, even though the amendments to the legislation ordered by the Constitutional Court are still pending (as of May 2021).

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

ENS Blog, [Victory in the Constitutional Court: #LockedInLimbo and the Pointless Detention of Stateless Persons in Russia](#) (June 2017)

ADC Memorial, [Victory in the Constitutional Court: The Pointless Detention of Stateless Persons Contravenes the Constitution](#) (May 2017)

ADC Memorial, [Imprisoned Stateless Persons in Russia: The Search for a Way Out of a Legal Dead End](#) (May 2017)

ADC Memorial, [“Order” or human rights, what is more important?](#) (April 2017)

ADC Memorial, [Human Rights Report of ADC Memorial Violations of the Rights of Stateless Persons and Foreign Citizens in Light of the ECHR Judgment in “Kim v. Russia”](#) (April 2016)