



# STATELESSNESS

## Case Law Database

### [Russia - High Court of the Crimean Republic, no. 33a-8181/2019](#)

The case concerns an applicant who was a Ukrainian citizen and a resident of Crimean Peninsular at the time of Crimean annexation to Russia. He was originally issued with a Russian passport in 2014, which was subsequently confiscated as a government initiated verification procedure established he did not comply with the relevant residency requirements to be considered a Russian citizen. The Court, on appeal, sided with the applicant, confirming his right to Russian citizenship despite not complying with all the formal requirements.

In its reasoning the Court relied heavily on the importance to take all the relevant and factual evidence when establishing the legal fact of residence, and basing it on a broad range of evidence about the person's personal and professional life, as well as intentions, not the merely the strict formalistic rules of residence registration, especially in light of consequences of denial of access to citizenship for the applicant, and the circumstances of state succession. The Court refers extensively to international legal instruments, even those Russia hasn't ratified, such as the European Convention on Nationality and its anti-statelessness safeguards, the CoE Convention on the Avoidance of Statelessness in Relation to State Succession, as well as art. 15 UDHR, and other international legal instruments.

**Case name (in original language) :** Решение по делу №33a-8181/2019 от 30 июля 2019 г.

**Case status:** Decided

**Case number:** 33a-8181/2019

**Date of decision:** 30/07/2019

**State:** Russian Federation

**Court / UN Treaty Body:** High Court of Crimean Republic (Верховный Суд Республики Крым)

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

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

**Applicant's country of residence:** Russian Federation

**Legal instruments:** 1997 European Convention on Nationality, Other international law, Universal Declaration of Human Rights (UDHR)

**Key aspects:** Determination/confirmation of nationality, Passport restoration, Standard of proof, State succession

### **Facts**

The applicant, Cheloosov Sergey Anatoliyevych (Челоусов Сергей Анатольевич), was born on the 2nd of April 1960 in Crimea, where he grew up, attended school, and lived his entire adult life.

On the 1st of April 2014 the applicant was issued with a Russian passport on the basis of residing in Crimea, in accordance with chapter 1, article 4 of the Federal Constitutional Law of 21 March 2014 No.6-FK3 (№6-ФКЗ) "On acceptance into the Russian Federation of the Crimean Republic and formation of new constituencies of Crimean Republic and the City of Federal Importance Sevastopol within the Russian Federation".

It was not disputed that the applicant has been formally registered at an address in Crimea between 30 April 2004 and 17 August 2010. However, a court decision of the Kyev regional court of the city of Simferopol of 27 July 2010 terminated the applicant's right to reside at the relevant address. This decision was taken in absence of the applicant, and the applicant claims not to have been informed of it.

A verification decision of 16 January 2017 of a Division on Issues of Migration, concluded that the applicant did not have a permanent residence registration in Crimea on the 18th of March 2014, and therefore cannot be considered as a Russian citizen in accordance with article 5 of the Treaty between the Russian Federation and the Crimean Republic. The applicant's passport has been declared to have been issued in violation of the protocol, invalid, and subject to confiscation.

The court of first instance rejected the applicant's complain and confirmed the validity of the administrative decision to confiscate his passport.

### **Legal arguments by the applicant**

The applicant submitted that the decision of the court of first instance is unlawful and unfounded, taken without due regard to applicable legislation. In particular, the Court of first instance did not consider that the applicant was born in Crimea, has

always resided and is still residing in Crimea, has been lawfully documented with a passport of Russian Federation, and the verification procedure was conducted in a formalistic manner - without an investigation of legally relevant facts. The applicant's legal counsel further submitted that even though the applicant was removed from the records of residents by a Court decision of 27 July 2010, he was not aware of this circumstance - as the Court decision was taken in his absence. The applicant currently resides in the same place where he was residing on the 18th of March 2014, in particular in a house on the territory of a gardening corporation in the Simferopol region.

### **Legal arguments by the opposing party**

The Ministry requested the Court to declare the appeal unfounded. A representative of the Ministry of the Internal Affairs responsible for the Crimean Republic did not appear at the Court hearing, and have submitted a written request to hear the case in the absence of representation of the opposing party.

### **Decision & Reasoning**

The Court overrules the appealed decision of the Court of first instance, ruling in favour of the applicant.

"According to Article 3 of the Judicial Administrative Code of Russian Federation, one of the tasks of the administrative justice system is to protect rights, freedoms and lawful interests on citizens"

"This administrative complaint is about restoring violated rights of the applicant, and not about declaring specific actions (or inactions) and decisions of state agents as unlawful".

"The Federal Law of 31 May 2002 №62-Ф3 "On Citizenship of Russian Federation" (hereafter - Federal Law of 31 May 2002 №62-Ф3) contains principles and rules of Russian Federation, which regulate the conditions and procedures for acquisition and loss of Russian citizenship. Article 3 of this Law determines that the citizenship of Russian Federation is a stable legal bond between an individual and the Russian Federation, expressed in a combination of mutual rights and obligations".

"According to Article 17 of the Federal Law of 31 May 2002 №62-Ф3, in case of change of state borders of Russian Federation, in accordance with the international

agreement of Russian Federation, individuals who reside on the territory that has changed states, have a right to choose their citizenship (option) within the procedures and deadlines as established by the relevant international treaty of Russian Federation."

"According to article 5 of the Treaty between the Russian Federation and the Crimean Republic on acceptance into the Russian Federation of the Crimean Republic and formation within the Russian Federation of New Constituencies (Moscow, 18 March 2014) (hereafter - Agreement), from the day of acceptance of Crimean Republic into the Russian Federation, Ukrainian citizens and stateless persons who are permanently residing on the territory of Crimea on that day, are recognised as citizens of Russian Federation, with the exception of those individuals who within one month since the aforementioned day declare their wish to retain their and (or) their minor children's other citizenship or to remain stateless."

"The Constitution of Russian Federation declares in relation to the citizenship of Russian Federation that citizenship is acquired and lost in accordance with the federal laws; that it is uniform and equal regardless of how it was acquired, and that a citizen of Russian Federation cannot be deprived of his citizenship or his right to change citizenship (article 6, parts 1 and 3). These provisions correspond to the Universal Declaration on Human Rights, which according to article 15 (part 4) of the Constitution of Russian Federation is a part of the Russian legal system, and according to which everyone has a right to a nationality, and nobody should be arbitrarily deprived of their citizenship or of their right to change their citizenship (article 15); as well as to the provisions of the European Convention on Nationality (adopted in Strasbourg on 6th of November 1997, signed by Russian Federation), according to which citizenship questions should be governed by the principles of everyone's right to a nationality, avoidance of statelessness, and a prohibition of arbitrary deprivation of nationality (article 4)."

"UN General Assembly Resolution 55/153 of 12 December 2000 on "Nationality of individuals in the context of state succession" advocates for the presumption of citizenship - meaning that every affected individual who has habitual place of residence on the territory involved in the state succession is considered to have acquired the citizenship of the successor state from the moment of succession (article 5)."

"Applicable legal norms indicate that when establishing whether an individual is

a Russian citizen in accordance with article 4 of the Federal Constitutional Law of 21 March 2014 №6-ФКЗ, legally relevant facts include in addition to residence of the territory of Crimea before annexation to the Russian Federation, also territorial origins of the individual, his will to acquire Russian citizenship, and his factual connection to the territory in question."

"If a citizen of Ukraine presented documentation to register residence on the territory of Crimea by 18 March 2014, that constitutes sufficient evidence of the fact of permanent residence, as it substantiates that on the relevant date the individual has chose that territory as the main location to pursue his everyday activities, and through his actions established and expressed a clear intention to establish a genuine link with the territory."

"According to point 51 of the Regulation on considering question on Citizenship of Russian Federation, approved by a Presidential Decree of Russian Federation on 14 November 2002, №1325, if an individual lacks a document that serves as a prove of Russian Citizenship (loss, theft, damage and so on), or doubts occur as to the authenticity or legal grounds for issuing such a document, as well as in circumstances that question the presence or absence of citizenship of a given individual, a responsible authority is to conduct a verification of lawfulness of issuing the individual with the given document, and (or) verification of the relevant circumstances."

"According to point 52 of the aforementioned Decree, having received the necessary information, the relevant authority issues a substantiated conclusion as to the results of the verification, where the circumstances indicating presence or absence of Russian citizenship are indicated. The results are communicated to the individual or the relevant body which requested the verification. An individual whose Russian citizenship is confirmed is issued with an appropriate documentation."

"The basis for the contested decision, where the passport was declared invalid and issued in violation of the protocol, was a circumstance that transpired in the course of a state-initiated verification, in particular that according to archival data there has been a Court ruling on the 17th of August 2010 which removed the applicant as a resident from his place of residence registration. As can be derived from the

content of the contested decision, circumstances other than this Court ruling have not been investigated or established by the responsible authority in the course of the verification procedure"

The Court ruling could have been an obstacle for the recognition of citizenship if other relevant facts would not have been presented.

"Considering that when the applicant was issued with a passport he was recognised as a citizen of a state that annexed Crimea, and the consequence of the confiscation of the passport is factual deprivation of the citizenship status, the Court of First Instance should not have limited itself to noting the lack of legal registration of residence on the 18th of March 2014."

"The legal fact of permanent residence of an individual on the territory of Russian Federation, when it is a condition for the realisation of his constitutional rights and freedoms, including the right to acquire citizenship on the basis of a Federal Law, is not necessarily established on the basis of a registration of residence, or consistency between the registered residence and the factual residence - where the latter may not necessarily be a space that complies with legal requirements of an inhabitable space." In the given case, "considering the peculiarities of the temporal, spacial and human circumstances, the fact of permanent residence which is not supported through registration, including in cases of deviation of factual residence from the registered residence, should be established on the basis of a combination of pieces of evidence from the sphere of domestic, professional, personal, and other relations indicating that at the relevant time the individual chose the territory where he in fact lives as the main location to pursue his everyday activities, and through his actions established and expressed a clear intention to establish a genuine link with the territory."

"In addition, in accordance with article 2 of the Constitution of Russian Federation, the state authorities, including courts, are called upon to minimise the excessive formalism when approaching determination of existence of such a link between an individual and a territory."

"The Court of First Instance failed to consider that contested legal circumstances arose in the transition period, [...], and in difficult societal circumstances".

"In addition, the Court of First Instance left without consideration facts of the applicants place of birth, the school he has attended, his place of employment

before 1 April 2013, as well as his commercial activities in 2014, all of which have taken place in Crimea, and form evidence of his factual place of residence being . Moreover, his mother has been recognised as a citizen. Overall, no value has been given to the factual circumstances which in combination with the circumstances of registration of residence and the applicants initiative to obtain the passport carry legal significance for establishing whether the applicant has, at the relevant date, chosen Crimea as the main location to pursue his everyday activities, and through his actions established and expressed a clear intention to establish a genuine link with the territory. This should have been established on the basis of a broad range of evidence in the areas of domestic, professional, and personal and other relations."

"The administrative authority's reasoning in relation to the absence at the time of verification of necessary information that would allow the authority to inform the applicant of the pending verification, and potentially hearing out relevant explanations, complaints, and additional documents, have not only been unsubstantiated with evidence, but also do not form a legal basis to deny the applicant's claim."

### **Decision documents**

[33%D0%B0-8181\\_2019\\_0.pdf](#)

### **Outcome**

The disputed administrative decision to confiscate the passport of the applicant is declared unlawful, and the applicant's claim to have his citizenship recognised has been granted. The earlier decision of the Court of First Instance is overruled.