



[Ukraine - Supreme Administrative Court, judgment no. K/9901/8478/20](#)

The applicant moved to Ukraine in 2005 from Transnistria, a disputed territory of Moldova, and lived in Ukraine for 14 years with his long-term partner and her children and grandchildren, before receiving a deportation order to Moldova. He disputed the deportation order on the basis of being stateless, having no connection to Moldova, and having a family and private life in Ukraine that are protected under article 8 ECHR. The first two instance courts rejected the applicant's claim, but the Supreme Court of Administrative Cassation ruled in favour of the applicant on the basis of new evidence from the Consulate of Moldova confirming he is not a national of Moldova.

Case status: Decided

Case number: № K/9901/8478/20

Date of decision: 09/11/2020

State: Ukraine

Court / UN Treaty Body: Supreme Court of Administrative Cassation

Language(s) the decision is available in: Ukrainian

Applicant's country of birth: Moldova

Applicant's country of residence: Ukraine

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Country of return, Deportation and removal, Determination/confirmation of nationality, Respect for private and family life, Stateless status and documentation, Statelessness determination

Facts

The applicant entered Ukraine legally in 2005 for employment, having previously resided in Transnistria (a disputed region in Moldova). The applicant received a deportation order on 30 October 2019, and was ordered to leave Ukraine by the 20 November 2019. He was identified as stateless, and his place of residence was identified as Moldova. He challenged the decision in court, arguing that the

Migration Service failed to establish that he was in fact a Moldovan citizen. The first two instances of judicial review rejected the applicant's arguments.

Legal arguments by the applicant

The applicant argued that the Migration Service failed to establish he is a Moldovan citizen, but merely assumed it based on their own interpretation of applicable Moldovan law. No enquiries had been made with Moldovan consular services. Deportation was planned to a country with which the applicant has neither legal nor social connections. The applicant argued that he does not have a passport of any country, and is a stateless person. Moreover, the applicant argued that the decision was disproportionate, as it did not take into account the consequences of the violation of numerous rights in light of the aims pursued by the government through his deportation. In particular, the deportation order violated the applicant's right to family life protected under article 8 of the ECHR. He had been living together with his partner, who is a Ukrainian citizen, for 24 years. He also formed a family relation with his partner's daughter and three grandchildren, who are all part of the same household, and he developed a social life during his 14 years living in Ukraine. The applicant moreover argued he had no social connections in Moldova, including on the territory of Transnistria.

Legal arguments by the opposing party

The Migration Service argued that the applicant resides in Ukraine without a valid residence permit or valid registration. According to the Migration Service, the applicant is aware that he is illegal immigrant, yet he did not report to the authorities for voluntary return. The defendant argued that issuing the deportation order was a requirement according to the applicable laws.

Decision & Reasoning

The Court reasoned as follows:

"38. Whereas the lower instance courts did not consider the fact that the applicant is not documented with a passport from any country and does not consider himself a national of Moldova - the country of his intended deportation. He arrived to Ukraine in 2005 from the territory of Moldova that is not under control of the central government which is situated on the left bank of river Dniester.

39. Moreover, account should be taken of the circumstances under which the Migration Service in Odesa region identified the applicant as a national of Moldova in the contested decision.

40. It has been confirmed that the appeals court has been receiving information that the competent authorities of Moldova do not recognise the applicant as one of their nationals (a notification from the Consulate of the Republic of Moldova in Odesa of 4 February 2020, Nr. 068). The Court had the possibility to consider the originals of these documents, in the presence of representatives of both parties, or alternatively to make an independent inquiry with the Consulate of the Republic of Moldova in Odesa.

41. However, knowing the existence of such information, the court did not make use of the opportunity to assess the evidence which was material to the correct resolution of the dispute.

42. The above gives rise to the conclusion that the court did not adhere to the principle of official establishment of the circumstances of the case in assessing the evidence collected, which leads to the impossibility of establishing the factual circumstances that are relevant to reach a correct decision in the case."

Decision documents

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Outcome

The Court returned the case to the Court of Appeals for reconsideration.