

Spain - Supreme Court (Contentious-Administrative Chamber), appeal no. 4631/2010

The Supreme Court held that a passport issued by the Algerian authorities to a Saharawi person living at the refugee camps only serves as a travel document and does not confirm that the applicant has Algerian nationality. The applicant is stateless and must be officially recognised as such.

Case name (in original language) : Sentencia del Tribunal Supremo, Sala de lo Contencioso, recurso nº 4631/2010

Case status: Decided

Case number: ECLI: ES:TS:2011:6589

Citation: Supreme Court (Contentious-Administrative Chamber), appeal no. 4631/2010, ECLI: ES:TS:2011:6589, 14 October 2011

Date of decision: 14/10/2011

State: Spain

Court / UN Treaty Body: Supreme Court (Tribunal Supremo)

Language(s) the decision is available in: Spanish

Applicant's country of birth: Algeria

Applicant's country of residence: Algeria

Legal instruments: 1954 Statelessness Convention

Key aspects: Stateless status and documentation, Statelessness determination

Relevant Legislative Provisions:

Convention Relating to the Status of Stateless Persons, 28 September 1954 (“1954 Convention”)

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (Foreigners Act).

Real Decreto 865/2001, de 20 de julio, por el que se aprueba el Reglamento de reconocimiento del estatuto de apátrida (Statelessness Determination Procedure Regulation)

Facts

The applicant is a Saharawi born in the former Spanish Sahara who lived intermittently in the Saharawi refugee camps between 1976 and 2007. In 2006, the Algerian authorities provided the applicant with a passport for travelling purposes. In 2007 the applicant flew to Spain and applied to be recognised as stateless one year later. The Ministry of Interior rejected his application based on the fact that he was in possession of an Algerian passport. The applicant appealed the decision before the National High Court, which ruled that the passports issued by the Algerian authorities are just travel documents and do not imply the recognition of Algerian nationality by the government. The Government appealed to the Supreme Court.

Legal arguments by the applicant

The applicant argued that (Legal Reasoning no. 3):

- (1) he was born in the former Spanish Sahara and lived in the refugee camps between 1976 and 1985, and between 1998 and 2007;
- (2) he held a document issued by the United Nations Mission for the Referendum in Western Sahara (known as MINURSO) in 1998;
- (3) he held an identity document issued by the Saharawi Arab Democratic Republic;
- (4) Algeria issued a passport which served the purpose of a travel document, but it does not confer or recognise Algerian nationality.

Legal arguments by the opposing party

The Government rejected the application based on the following arguments (Legal reasoning no. 1):

- (1) The applicant enjoyed essential aspects of international protection in the Saharawi refugee camp in Algeria;
- (2) The applicant did not apply for stateless status in Algeria, even though he had the opportunity to do so, since Algeria is part of the 1954 Convention;
- (3) The applicant applied for stateless status in Spain in 2008, three months after his arrival, while the Statelessness Determination Procedure Regulation establishes a time limit of one month upon arrival. In this sense, the application should be perceived as manifestly unfounded.

The Government (through its State Attorney), appealing the High Court's decision which overturned the Ministry of Interior's decision, argued that (Legal Reasoning

no. 2):

(1) The stateless status is granted to people who do not have or are unwilling to obtain any documentation. The applicant possesses a passport issued by the Algerian authorities. The State Attorney further added that there is a significant difference between lacking a nationality and not wishing to hold the nationality which a State is willing to grant, whether this is justified or unjustified.

(2) The 1954 Convention excludes from its scope of application people who are considered as refugees under the 1951 Convention Relating to the Status of Refugees. As this is the case of the applicant, he is excluded from protection under the 1954 Convention.

Decision & Reasoning

The Supreme Court held that:

The passport provided by Algeria was only for humanitarian reasons, to allow the applicant to travel to countries where the Saharawi Arab Democratic Republic is not recognised as a State. As such, the provision of a passport by Algeria was not a recognition of the applicant's nationality;

The aim of the UN mission in Algeria (the MINURSO) is to minimise the effects of a potential war and to organise a referendum, but not to provide international protection to the Saharawi people;

Regarding the allegation that the applicant made an unfounded application, this presumption can be undermined if, based on the facts of the case, it can be concluded that the applicant meets all the requirements to be recognised as stateless; which is what happens in the present case.

Decision documents

[Supreme Court \(Contentious-Administrative Chamber\), appeal no. 4631/2010](#)

Outcome

The Court upheld the lower court's decision, overturning the Government's decision and granting the applicant stateless status.

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

<https://www.cear.es/wp-content/uploads/2013/08/SAHARAUIS.-2013.-Compila...>

http://bibliotecaculturajuridica.com/biblioteca/arxius/PDF/REDI_VOL_LXV...

Caselaw cited

Sentencia del Tribunal Supremo, de 20 de noviembre de 2007 (appeal no. 10530/2007)

Sentencia del Tribunal Supremo, de 18 de julio de 2008 (appeal no. 555/2005)

Sentencia del Tribunal Supremo, de 19 de diciembre de 2008 (appeal no. 7337/2005)

Sentencia del Tribunal Supremo, de 20 de junio de 2011 (appeal no. 5767/2007), among others