



Switzerland - Federal Administrative Court, judgment no. F-2594/2017

The applicant is a Syrian Kurd, who fled to Austria in 2011. Just after he left, Syria passed a Decree that would have allowed the applicant to acquire Syrian nationality. The applicant was thus deemed to have been able to acquire Syrian nationality, even if he hasn't done that, and therefore was not entitled to a stateless status.

Case status: Decided

Case number: F-2594/2017

Date of decision: 21/03/2019

State: Switzerland

Court / UN Treaty Body: Federal Administrative Court of Switzerland

Language(s) the decision is available in: German

Applicant's country of birth: Syria

Applicant's country of residence: Switzerland

Legal instruments: 1954 Statelessness Convention

Key aspects: Acquisition of nationality, Burden of proof, Determination/confirmation of nationality, Standard of proof, Stateless status and documentation, Statelessness and asylum, Statelessness determination

Relevant Legislative Provisions:

Art. 1 para. 1 of the 1954 Statelessness Convention

Facts

The applicant is a Syrian Kurd from al-Mezerib (al-Hasakah province), born in 1987, who left Syria in April 2011 and applied for asylum in Switzerland in May 2011. During several interviews he stated that he was Ajnabi, registered foreigner in Syria, and as such did not have Syrian nationality.

On 20 September 2013 the authorities rejected the applicant's asylum application and ordered him to leave Switzerland. The deportation was postponed as it was deemed unacceptable, and a temporary residence permit was granted to the applicant. In the meantime the applicant appealed his asylum case.

On 14 September 2014 the applicant also asked the State Secretariat for Migration to declare him stateless in accordance with the 1954 Convention. This procedure was postponed pending the definitive resolution of the asylum procedure. On 21 January 2016 the asylum procedure was concluded and the asylum status was definitively denied to the applicant.

On 5 April 2017 the authorities rejected the applicant's request to recognise him as stateless, on the basis that it has become possible since 2011, following a Syrian Presidential Decree, for Ajanib registered in the al-Hasaka district to acquire Syrian nationality, and that therefore the applicant had access to that nationality. The applicant appealed this decision, which was the subject of the current judgment.

Legal arguments by the applicant

The applicant explained that he fled Syria shortly after the Presidential Decree of 2011 was passed, and he was therefore unable to acquire nationality through this route, as the implementation of the Decree took several months. He argues that if he would have acquired the Syrian nationality, his Ajnabi documents would have been confiscated and destroyed. However, he was still in possession of his Ajnabi ID card, and his Syrian driver's license according to which he is Ajnabi, which indicates that he never acquired the Syrian nationality.

The applicant submitted that his cousin has recently had his statelessness recognised, and therefore the applicant's case can be swiftly decided in a similar manner.

Legal arguments by the opposing party

The authorities submitted that the applicant indicated in several forms that his nationality is Syrian, and that therefore it can be assumed he is Syrian. There are moreover no indications that stateless Kurds had to surrender their previous Ajnabi IDs or driver's licenses in order to obtain Syrian nationality on the basis of the Presidential Decree of 2011. The documents issued to him as an Ajnabi prior to

2011, therefore, do not prove his statelessness.

As a secondary argument, the authorities submitted that the question of whether the applicant is Syrian does not need to be definitively answered in order to establish that he is not entitled to a statelessness status. Even if he did not manage to naturalise in Syrian, since his asylum claim was rejected because he was unable to substantiate any reasons for his seeking refuge away from Syria, it is reasonable to expect him to continue to remain in Syria and to apply for his nationality there. He therefore had no objectively justified reasons not to acquire Syrian nationality. The reference to the positive statelessness decision with regard to his cousin cannot change this circumstance.

Decision & Reasoning

The Court reasoned as follows:

“Art. 1 para. 1 of the Statelessness Convention stipulates that within the meaning of the Convention a person is stateless if no state considers him/her to be one of its nationals under the operation of its law. According to this definition, statelessness means lack of legal membership in a state (so-called "de iure" - stateless persons). In contrast, the Convention does not apply to persons who still formally have a nationality, but whose state no longer grants them protection (so-called "de facto" stateless persons [...]).”

“According to the case law of the Federal Supreme Court, a person can only be considered stateless if he is not at fault for his lack of nationality. This is the case if he has never had a nationality, or lost a former nationality without undertaking any actions for that purpose, or if it is not possible for him to acquire or reacquire a nationality. If a nationality is voluntarily renounced or if the person concerned fails to acquire or reacquire it without a valid reason, such behavior does not warrant any protection [...]. This prevents the status of statelessness from losing the protective character intended for it by the Convention and becoming a matter of personal preference. It cannot be the meaning and purpose of the Convention on Stateless Persons to place stateless persons in a more advantageous position than refugees, whose status is not based on the will of those affected, especially since the international community has long tried to reduce the number of stateless persons. The Convention on Stateless Persons was not created to allow individuals to obtain privileged status at will. It is only intended to help people who get into an

situation of hardship without having caused it [...]"

"The procedure for the recognition of statelessness is not regulated by special law in Swiss law, and must therefore be carried out in accordance with general administrative principles. Accordingly, the investigation principle applies, according to which the authority must determine the legally relevant facts ex officio and, if necessary, use the legally provided evidence (Art. 12 VwVG). This principle entails the parties' obligation to cooperate. The duty to cooperate comes into play in particular in proceedings which the parties initiate themselves, or in which they make independent requests [...]. It extends in particular to facts that the party knows better than the authorities, and which the authorities cannot collect at all or not with reasonable effort without the applicant's cooperation [...]"

"The question of whether the applicant actually has Syrian nationality, which, according to what has been said above, is very likely and can be assumed, can, however, be left open based on the following considerations."

"In the province of al-Hasakah in the north-east of Syria, parts of the Kurdish population saw their Syrian nationality withdrawn from them a census in 1962. According to the estimates, as reliable figures do not exist, there were around 3000,000 people in the province who did not have Syrian nationality in 2008, around half of whom were registered with the authorities as foreigners (Ajanib). This number has fallen significantly in the meantime [...]. Decree No. 49 of 7 April 2011 of the Syrian President Bashar al-Assad grants those Ajanib who - like the applicant - are registered in the Syrian province of al-Hasakah, the Syrian nationality (Art. 1) [...]. It can therefore be assumed that Ajanib from the province of al-Hasakah principle have access to Syrian nationality as a result of the decree [...]"

"On the basis of Decree No. 49, around 70,000 Ajanib had already been granted Syrian nationality by 2012 (see UNHCR, Statistical Yearbook 2011 - Annex). According to the UNHCR, there were probably around 160,000 Syrian stateless persons of Kurdish origin in 2013 (cf. UNHCR, Statistical Yearbook 2013 - Annex), with only a minority belonging to the Ajanib or the so-called Maktumin (Kurds without official status) [...]"

"People without a nationality are not to be regarded as belonging to the corresponding state within the meaning of Art. 1 Para. 1 of the Statelessness Convention due to the (theoretical or actual) possibility of acquiring a nationality

status. On the other hand, as already stated, they will be refused recognition of statelessness status if they refuse to (re-)acquire their nationality without sufficiently valid reasons.”

“Accordingly, [...] a person of Syrian-Kurdish origin from the province of al-Hasakah can be only be considered to be stateless within the meaning of Art. 1 Para. 1 of the Statelessness Convention if he or she refuses the possibility of acquiring Syrian nationality for valid reasons. Only objective reasons are recognized as valid; a purely subjective motivation not to want to take the steps to (re-)acquire the nationality, on the other hand, is usually to be viewed as an expression of personal preferences, and is not considered as a valid reason [...].”

“It is probably true that the applicant would have been unlikely to have acquire the nationality in the short period of time between the enactment of Decree No. 49 and his departure from Syria. However, since he was unable to substantiate any [refugee-related] reasons for his departure in 2011, he can be expected to have remained (temporarily) in Syria and to wait until the documents in question were received before leaving the country . He therefore did not have objectively justified reasons not to acquire Syrian nationality. In this context, the authorities rightly point out that the same principle must apply to all Ajanib who only left Syria after the adoption of Decree No. 49 of 11 April 2011 without having had reasons relevant to refugee law or to having been exposed to a threat of violation of Art. 3 ECHR.”

“In summary, it should be concluded that the complainant does not meet the requirements for recognition of statelessness.”

Decision documents

[F-2594_2017.pdf](#)

Outcome

The Court upheld the administrative decision denying the applicant recognition of his statelessness.