



STATELESSNESS

Case Law Database

[Spain - Supreme Court, decision 3754/2012](#) [\(appeal no. 3768/2010\)](#)

Saharawi refugees living in its camps have not explicitly or implicitly been recognised as Algerian nationals, by the Algerian Government. The applicant's passport issued by the Algerian Government grants the status of a travel document. Specifically, it was granted to allow the applicant to travel for medical reasons. The applicant's stateless status must be recognised.

Case name (in original language) : Sentencia del Tribunal Supremo 3754/2012 (recurso nº 3768/2010)

Case status: Decided

Case number: 3754/2012 (appeal no. 3768/2010)

Citation: Spain- Supreme Court, decision 3754/2012 (appeal no. 3768/2010)

Date of decision: 29/05/2012

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: Spain

Legal instruments: 1954 Statelessness Convention

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

Relevant Legislative Provisions:

Article 1 Convention Relating to the Status of Stateless Persons, 28 September 1954

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

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

Facts

The applicant is of Saharawi origin, born in the former Spanish Sahara. The applicant had been living in the Saharawi refugee camps. The applicant arrived in Spain in 2007 with an Algerian passport and applied to be recognised as stateless in 2008. The Ministry of Interior rejected his application based on the fact that the applicant had an Algerian passport. The National High Court overturned the decision of the Ministry of Interior, which was later on confirmed by the Supreme Court. The decision was based on the fact that the Algerian passport was only issued as a travel document and that it does not imply the recognition of applicant's nationality by the Algerian government.

Legal arguments by the applicant

The applicant argued that:

- (1) he was born in the former Spanish Sahara and lived in the refugee camps;
- (2) he held an identity document issued by the Saharawi Arab Democratic Republic;
- (3) 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's State Attorney, appealing the High Court's decision which overturned the Ministry of Interior's decision argued that:

1. statelessness status refers to people who do not have or is unwilling to obtain any documentation. The applicant possess a passport issued by the Algerian authorities;
2. the 1954 Convention excludes from its scope of application people who are considered as refugees under the 1951 Convention. As the applicant is considered a refugee, the 1954 Convention is not applicable in this case;
3. the applicant did not submit his request to be recognised as stateless person within one month of entering the national territory in violation of article 4 of

Royal Decree 865/2001.

Decision & Reasoning

1. The passport provided by Algeria was only for humanitarian reasons so that the applicant could fly to countries where the Sahrawi Arab Democratic Republic is not recognised as a State. Therefore, the provision of a passport by Algeria was not an explicit recognition of the nationality of the applicant;
2. Nor in the administrative file of the applicant's request nor in the contested judgment it has been admitted that the applicant enjoy the status of "refugee" in the technical-legal sense of the 1951 Geneva Convention;
3. Regarding the time period when the application was submitted, the denial cannot be based on the presumption of art. 4.2 SDP Regulation, once the substantive reasons for the contested resolution to deny the appellant the recognition of stateless status have been disproved.

Decision documents

[STS 3754 2012 0.pdf](#)

Outcome

No violation. The Court upheld the inferior court's decision to overturn the Government's rejection of the statelessness status.

Caselaw cited

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