



# STATELESSNESS

## Case Law Database

### [Spain - Supreme Court, decision 2660/2020](#) [\(appeal no. 3661/2019\)](#)

The initiation of the procedure for the recognition of statelessness status does not require the applicant to be in the national territory, it is sufficient for the applicant to be at a border point.

**Case name (in original language) :** Sentencia del Tribunal Supremo 1091/2020 (recurso nº 3661/2019)

**Case status:** Decided

**Case number:** 2660/2020 (appeal no. 3661/2019)

**Citation:** Supreme Court, decision 2660/2020 (appeal no. 3661/2019), 23 July 2020

**Date of decision:** 23/07/2020

**State:** Spain

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

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

**Applicant's country of residence:** Spain

**Legal instruments:** 1954 Statelessness Convention

**Key aspects:** Protection, Stateless status and documentation, Statelessness determination

**Relevant Legislative Provisions:**

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).

Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria

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, with no recognised nationality. The applicant made a claim for international protection at a cross border point. The UNHCR reports recognised that the applicant was not entitled to international protection. The UNHCR suggested that the applicant's stateless status should automatically be assessed by the Ministry of Interior. The Ministry of Interior rejected the UNHCR's petition based on the fact that the applicant was based at a border point and was not within the national territory. The decision was overturned by the National Audience which ruled that the fact that the applicant is at a border point is irrelevant. The procedure for the recognition of the statelessness status must be automatically initiated by the Ministry of Interior, even if the applicant is not at the national territory. The Supreme Court upheld the National Audiences' decision.

## **Legal arguments by the applicant**

The applicant argued that (Legal Reasoning no. 1):

1. The applicant's place of residence is El Aiun camp, in Tindouf Province, Algeria, where he is not recognised as a national;
2. UNHCR reports recommend the referral of the applicant to the statelessness procedure, included in the article 2.2 of the Royal Decree 865/2001.

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

The Government's arguments used to reject the application are summarised in the decision's Legal reasoning no. 3:

1. The procedure for the recognition of stateless status cannot be initiated if the applicant is at a border point. The applicant must be within the Spanish territory. Nor the article 34 LOEX nor the Royal Decree 865/2001 establish such possibility. In the cases where it is possible to initiate the procedure at a border point, like the international protection procedure, this possibility is expressly recognised in the law.

## **Decision & Reasoning**

1. The fact that the possibility of initiating the procedure while the party is at a border post is not expressly recognised in the laws does not mean that this option is prohibited. The provisions that define the statelessness status (art. 34 LOEX and art. 1 of the RD 865/2001) do not specify that the applicant must be within the Spanish territory. Likewise, the terms on which the law regulates the ex-officio initiation of the procedure lead us to conclude the opposite. That is, that it is possible to initiate ex-officio the procedure for the recognition of statelessness status even if the party is at a border point.
1. An interpretation that would prevent the initiation of this procedure if the applicant is at a border point would not take into account the uniqueness of the particularly precarious situation of stateless persons, fundamentally, in relation to the difficulties in retaining their documentation during the displacement. This will restrict the procedure to those who were able to enter the Spanish territory or to cases of sudden statelessness. This restriction would be contrary to the statement contained in the preamble of the Convention on the Status of Stateless Persons about the "deep interest [of the United Nations] in stateless persons and they have made an effort to ensure the broadest possible exercise of fundamental rights and freedoms" and to the preamble of RD 865/2001 itself, which refers to stateless persons as "people to whom the International Community has paid its attention because it understands that it is desirable to regularise and improve their condition."

### **Decision documents**

[STS 2660 2020 0.pdf](#)

### **Outcome**

No violation. The Supreme Court upheld the inferior court's decision to overturn the Government's decision, refusing the automatic procedure assessing the applicant's stateless status.

### **Caselaw cited**

Sentencia del Tribunal Constitucional 53/2002, de 27 de febrero de 2002