



[Netherlands - Council of State, judgment no. 201504891/1/A3](#)

Applicant was born in Macedonia and lived in the Netherlands for 38 years. His path to naturalisation was inhibited by the registration of his nationality status as "unknown" in the municipal records, which he requested to change to "stateless", arguing that he has never acquired the Macedonian nationality. The Council of State sided with the municipality that denied the request, maintaining that it has not been "irrefutably established" that the applicant is not a Macedonian national. The judgment refers to the Dutch legislative initiative on the statelessness determination, implying that it is needed, and that the municipal registry is not a statelessness determination procedure.

Case name (in original language) : 201504891/1/A3

Case status: Decided

Case number: 201504891/1/A3

Date of decision: 17/08/2016

State: Netherlands

Court / UN Treaty Body: Council of State of the Netherlands

Language(s) the decision is available in: Dutch

Applicant's country of birth: Macedonia

Applicant's country of residence: Netherlands

Key aspects: Acquisition of nationality, Burden of proof, Standard of proof, State succession, Statelessness determination

Relevant Legislative Provisions:

Article 2.15(1) of the Law on Registration of Persons (Wet Basisregistratie Personen)

Articles 6 and 29 of the Macedonian Citizenship Law

Facts

The applicant was born in 1966 in Bitola, in the former Yugoslav Republic of

Macedonia. He left Macedonia when he was 3 years old, and lives in the Netherlands since 1978. He is registered in the municipal registry as having an "unknown" nationality. He requested that the municipality changes that registration to "stateless", because that would help him naturalise in the Netherlands. The municipality rejected this request, stating that he failed to prove he was in fact stateless.

Legal arguments by the applicant

The applicant maintained that he does not have Macedonian nationality. According to him, the Dutch Law on Registration of Persons, article 2.15, allows for the registration of statelessness not only on the basis of identity documents, but also by applying relevant nationality laws. Even though the law speaks of establishing a "foreign nationality" by applying foreign nationality laws to the circumstances of the case, "foreign nationality" should be interpreted as also referring to the status of statelessness. He did not acquire Macedonian nationality as he does not fulfil the relevant requirements of the Macedonian nationality law.

Legal arguments by the opposing party

The municipality argued that even though it may not be possible to establish on the basis of Macedonian nationality law that the applicant acquired Macedonian nationality, it is equally impossible to establish that he did not acquire that nationality, or may not be able to acquire it. A declaration of the Macedonian Ministry of Internal Affairs from 28 August 2010 which states that the applicant is not registered as a citizen, is not conclusive about the applicant's nationality status. It is up to the applicant to prove that he is in fact stateless.

Decision & Reasoning

The Council of State analyses relevant Macedonian nationality legislation in the following way:

"According to Article 6, Macedonian nationality is acquired by a child who is found or born on the territory of Republic of Macedonia, and whose parents are not known, have an unknown citizenship, or are stateless.

According to Article 29, everyone who lawfully held the citizenship of Republic of Macedonia in accordance with former laws is considered as a Macedonian citizen

according to the current Macedonian Law on Nationality.

Citizens of other former Socialist Federal Republics of Yugoslavia, and citizens of the former Socialist Federal Republic of Yugoslavia who reside legally on the territory of Macedonia can obtain the citizenship of Macedonia if they apply for it within a year of this law coming into force, and if they have a stable income, have reached the age of majority, and have legally resided in Macedonia for at least 15 years."

According to the Council of State, once the registration in the Registry of Persons have taken place, in order to change the registered data "it has to be irrefutably established that the registered data is incorrect".

In the present case, it has to be "irrefutably established that the nationality of the applicant is not unknown, but that he is in fact stateless".

"According to Article 1(1f) of the Royal Law on Dutch Nationality, a stateless person is a person who is not considered as a national according to the laws of any state. Parties agree that the applicant only has a 'link' with Macedonia and the Netherlands, and therefore it is only necessary to consider whether he has a nationality of one of these states. It is established that the applicant does not have the Dutch nationality. The dispute is whether it is irrefutable that he also does not have a Macedonian nationality".

"It is correct that statelessness can be registered by applying foreign nationality laws. Therefore the Council of State considered whether Macedonian nationality law offers enough clarity that the applicant is not Macedonian national."

The Council of State finds that it cannot be irrefutably established that the applicant is not a Macedonian national.

"Because this judgment is not about a statelessness determination procedure, but merely about possible registration of the information in the Registry of Persons, this judgment cannot consider which possibilities are open to the applicant to establish whether he is or is not a Macedonian national. The Council of State is assuming that the legislator is working on a legislative basis for statelessness determination."

"As explained by the applicant, and acknowledged by the municipality, it is not easy to prove statelessness. The applicant requested the change of his registration with an explicit goal of easing his access to naturalisation in the Netherlands. In that

context the applicant could claim the legal state of "lack of evidence" [bewijsnood] of his statelessness in his naturalisation application. The issue of lack of evidence is therefore not considered in this judgment."

"Because it has not been irrefutably established that the applicant does not have Macedonian nationality, the Council of State will not consider the question whether the applicant could potentially obtain Macedonian nationality, and whether that is relevant for determining his statelessness"

Decision documents

[201504891_1_A3.pdf](#)

Outcome

Applicant's claim was denied.

Caselaw cited

Judgment of the Dutch Council of State of 10 February 2016 (ECLI:NL:RVS:2016:305).

Judgments of the Dutch Council of State of 21 May 2014 (ECLI:NL:RVS:2014:1786 and ECLI:NL:RVS:2014:1788).