



Germany - High Regional Court Schleswig-Holsteinisches, judgment 4 A 34/07

The applicants are ethnic Armenians born in Azerbaijan. The case addresses extensively the situation of ethnic Armenians from Azerbaijan who left Azerbaijan before the fall of the USSR, and lived in Russia in the 90s. Their potential Armenian, Azerbaijani and Russian nationalities are considered. The Court also discusses the legal residence requirement for a travel document in accordance with the 1954 Convention, and finds that such a permit does not need to be of a permanent nature. Applicants are found stateless by the Court and entitled to a stateless persons travel document.

Case name (in original language) : 4 A 34/07

Case status: Decided

Case number: 4 A 34/07

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Date of decision: 13/06/2007

State: Germany

Court / UN Treaty Body: Schleswig-Holsteinisches High Regional Court

Language(s) the decision is available in: German

Applicant's country of birth: Azerbaijan

Applicant's country of residence: Germany

Legal instruments: 1954 Statelessness Convention

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

Relevant Legislative Provisions:

Articles 1 and 28 of the 1954 Convention relating to the Status of Stateless Persons

Facts

The first applicant was born in Azerbaijan, to an Armenian mother and an Azeri father. His mother died in 1990 in the context of persecution of the Armenian ethnic minority in Azerbaijan, and the applicant fled to Russia the same year. There he met the second applicant, who is also an ethnic Armenian from Azerbaijan who fled persecution in 1988, and they formed a family since 1995. The second applicant has a daughter, born in 1988, who is the third applicant in this case. In 1999 the three applicants left Russian Federation and travelled to Germany, where they applied for asylum, but their claim was rejected. They have been threatened with deportation to Russia. Their nationality status has not been determined in the asylum procedure. In 2003 the applicants received a "toleration" residence status. In 2005 they have been extensively in contact with Armenian, Azerbaijani and Russian consular representatives, with mediation from German authorities, in order to request travel or identity documents and fulfil their pending obligation to leave Germany. The Armenian consular representatives came to the conclusion that the applicants may be Armenian nationals, and requested further investigation to take place in Armenia.

On 9 May 2005 the applicants applied for a residence permit, as well as a travel document for stateless persons. On 3 November 2005 the German authorities issued them a residence permit in accordance with Section 25 (5) sentence 2 of the Immigration Act, on the basis that the applicants have had the "tolerated stay" [duldung] status for over 18 months, were not at fault for their continued inability to leave Germany, they cooperated sufficiently well, and there was no evidence that they were deceiving the authorities. Their residence permits were for the duration of 1 year, and have been renewed several times. They are designed to automatically expire if the obstacle to exit Germany disappears, in particular if they receive a foreign passport. The German authorities, however, refused to issue the applicants travel documents for stateless persons, on the basis that statelessness could not be established beyond doubt, and further investigations by the immigration authorities was required. The applicants complained about not being issued a travel document for stateless persons.

In 2006 the Armenian Embassy in Berlin informed the authorities that the first applicant "checked out negatively" and will not be issued any documents by Armenian authorities, but that applicants 2 and 3 "checked out positively" and can therefore be issued with Armenian travel documents. The second applicant withdrew her claim for a statelessness document in 2007, but applicants 1 and 3

appealed to the Court to declare their right for travel documents for stateless persons from the German authorities.

Legal arguments by the applicant

The applicant requested to be issued with a travel document for stateless persons. They argued that during their asylum procedure it was found that they do not have a nationality, and that according to the case law of the Administrative Court and the Higher Administrative Court Armenians who left the Azerbaijani SSR before 1990 do not have Azerbaijani nationality, and are not expected to acquire or have any other nationality.

Legal arguments by the opposing party

The authorities argued firstly that the temporary residence permit the applicants have in Germany does not constitute a legal residence within the meaning of the Statelessness Convention. Moreover, they argued that the applicants' statelessness has not been established. Results of investigations with Azerbaijan, the Russian Federation and Armenia are pending. Finally, the authorities argued that in the context of lack of identity documents, the identity of the applicants has not been established either. In response to the applicants' argument concerning the finding of their statelessness during the asylum procedure the authorities argued that such findings are not binding on other immigration procedures.

Decision & Reasoning

The Court reasoned as follows:

"The applicants must be regarded as stateless at the time of this Court hearing"

"According to the definition of a stateless person of Article 1, paragraph 1 of the 1954 Convention, a person is stateless if no state considers him or her to be a national based on its law (so-called "de jure" stateless persons). It is up to the applicants to prove this negative fact. They need to manifest their statelessness, and if necessary, prove it [...]. The status of statelessness does not depend on the way in which it arises [...]. Statelessness has been sufficiently proven if there is no reasonable doubt that the states with which the persons concerned could potentially have a nationality bond do not consider them as nationals. No excessive requirements may be placed on such evidence; in particular, the claim cannot be

denied simply by stating that the nationality has not been clarified [...]. The applicant's potential inability to provide evidence must also be taken into account in the content if there is inconclusive or contradictory evidence, despite the applicant complying with the cooperation requirement accordance with Section 82 AufenthG the lack of any nationality cannot be clearly documented. In such context it must be assumed that the applicants are stateless unless the evidence to the contrary appear."

"[...] The applicants rely on asylum decisions concerning Armenians from the former Azerbaijani SSR. Such victims left their homeland before January 1, 1991 because of the persecution against Armenians, and then lived in the Russian Federation for years. As in the case of the applicants, Azerbaijani nationality is not accessible to then based on the application of the relevant nationality law. In addition, the [German] case law in these cases now also does not assume that there acquisition of Russian nationality has taken place, as according to Article 13, Paragraph 1 of the Russian Citizenship Act of November 28, 1991 does not only require permanent residence on the territory of the Russian Federation on February 6, 1992 in order to acquire Russian nationality, but also that such residence is legal. In order to be legal, an immigration permit ("Propiska") was initially required, and later some form of registration at the place of residence. In view of the available information about the practice of local Russian authorities to deny the necessary registrations at the place of residence, the OVG considers testimonies on inability to achieve the relevant legalisation for years to be credible. Finally, in such cases, considering Article 10 (1) of the Armenian Citizenship Act, Armenian nationality is not considered as a serious option, provided that the persons concerned - like the applicants - were neither born in Armenia nor have ever stayed there (permanently)."

The Court also assigned value to the fact that the applicant's testimonies were free from contradictions and their authenticity was not doubted in the course of asylum procedures.

"Despite the undisputed cooperation of the applicants, the authorities have not yet been able to obtain a statement from any of the approached embassies that would refute the assumption of statelessness. The non-acquisition or loss of Azerbaijani nationality, which is to be assumed based on the case law referenced above, was confirmed by the information from the Azerbaijani embassy denying that the applicants are their nationals, as reported by the State Office after the applicants

were presented there on 10.10.2006. Also with regard to Russian citizenship, there are currently no reasonable doubts that the Russian Federation does not consider the applicants as its nationals."

With regard to the prospect of Armenian nationality, the Court reasoned:

"Even in the case of the outcome that is expected by state authorities, the current evidence is not sufficient to refute the assumption of statelessness, in particular to positively prove the Armenian nationality of the applicants. Both applicants state that they have never lived in Armenia. Accordingly, they could not have been registered there. The initial assumption by the Armenian embassy staff that the applicants were nationals was refuted: the applicant's personal details are not known in Armenia ("negatively checked"). The expected passport replacement promise by the expert commission does not mean that the applicant is an Armenian national. [...] Such a commitment only proves that Armenia is ready to accept a deportation. It is therefore an important fact for the question of a continuing obstacle to exit Germany, but not for the question of nationality."

"Even if the applicants could meet the requirements to acquire Armenian nationality, this can only happen after submitting a relevant application, which has not been done yet. However, the applicants are not obliged to submit such an application to acquire Armenian citizenship and to eliminate their statelessness. At least within the scope of Art. 28 paragraph 1 of the 1954 Convention the question of whether the applicants have a right to acquire a nationality, and whether they can reasonably eliminate their alleged statelessness by submitting a relevant application, is not relevant for establishing their present statelessness. In this respect, there is no obligation on the part of the applicants. The non-submission of such an application cannot be held against them in the context of a claim under Art. 28 1954 Convention."

"The information presented in more than two years of proceedings is sufficient in legal and factual terms to cover the burden of proof incumbent on the applicants to consider that the lack of nationality has been well-evidenced."

"The applicants also reside legally in the federal territory."

"Contrary to the opinion of the state authorities, it is not necessary for the residence permit to be issued for an indefinite period of time, and for the residence to have become a form of a permanent settlement. A temporary residence permit may be

sufficient if it is issued in the context of a foreigner's lengthy stay in Germany which allows to remain until further notice."

"According to these principles, a lawful residence of applicants in Germany can be considered after March 21, 2006 when the applicants were granted a residence permit with a validity of 1 year, currently extended to March 19, 2008 in accordance with Section 25 (5) of the Residence Act. The fact that the sole aim of this residence permit is to avoid a chain tolerance [duldung] permits does not contradict this, as it is precisely in line with the legislative will to consolidate the residence of foreigners on a toleration permit a period of 18 months. In addition, Section 25 (5) of the Residence Act requires that the obstacle to leave Germany is not expected to disappear in the foreseeable future for such a residence permit to be issued. The residence based on this cannot therefore be described as merely temporary, in contrast to Section 25 subs. 4 AufenthG. It appears that the will of the legislature is that such a residence permit, according to Section 26 (4) of the Residence Act, can develop into a settlement permit."

"The issue of travel documents cannot be inhibited because according to the authorities the applicant's identity is uncertain. If the necessary information cannot be obtained despite the foreigner's reasonable participation, the establishment of identity may not be refused. The authorities can deal with persistent doubts by providing an identification document with a disclaimer that the personal details are based on the information provided by the applicant. [...] This has already been done on the applicants' residence permits."

"Finally, it should be noted that this decision does not prevent the state authorities to attempt obtaining passport substitute documents for the applicants and establishing an existing nationality in the context of extending the applicant's residence permits according to § 25 Abs. 5 AufenthG. If the criteria of Art. 28 paragraph 1 of 1954 Convention are no longer fulfilled by the applicants, the travel document can be withdrawn."

Decision documents

[High Regional Court Schleswig-Holsteinisches, judgment 4 A 34/07](#)

Outcome

The Court declared applicants' statelessness and confirmed their right to travel documents for stateless persons in accordance with Article 28 of 1954 Convention.