STATELESSNESS
Case Law Database

Netherlands - Council of State (Raad van State), ECLI:NL:RVS:2016:2912

The applicant is the mother of a stateless child born in the Netherlands, who applied for confirmation of Dutch nationality for her son. The application was rejected as the municipality neither considered it established that the child is stateless, nor that he has fulfilled the legal residence requirement. The applicant claimed that denial of confirmation of nationality for her son constitutes violations of article 8 ECHR, article 7 CRC and article 24 ICCPR, but those arguments failed in Court. The Court mentions the plans of the Dutch government to introduce a statelessness determination procedure.

Case name (in original language) : ECLI:NL:RVS:2016:2912
Case status: Decided
Case number: ECLI:NL:RVS:2016:2912
Citation:
https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2016:2912
Date of decision: 02/11/2016
State: Netherlands
Court / UN Treaty Body: Council of State of the Netherlands (Raad van State)
Language(s) the decision is available in: Dutch
Applicant's country of birth: Netherlands
Applicant's country of residence: Netherlands
Legal instruments: Convention on the Rights of the Child (CRC), European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR)
Key aspects: Acquisition of nationality and naturalisation, Childhood statelessness, Determination/confirmation of nationality, Respect for private and family life, Burden/standard of proof, Statelessness determination
Relevant Legislative Provisions:

Article 7 of the CRC

Article 24(3) of the ICCPR

Article 8 of the ECHR

Article 61b of the Dutch Royal Law on Nationality

Facts

On 15 September 2015 the local authority refused to confirm the acquisition of Dutch nationality by the son of the applicant, who applied for her son to be recognised as Dutch on the basis that he is stateless and has been born in the Netherlands.

Legal arguments by the applicant

The applicant argued that since there is no determination procedure for statelessness in the Netherlands, the fact that her son is not registered as stateless in the municipal records cannot be held against him. The lack of such a procedure, which prevents the acquisition of Dutch nationality by stateless children born in the Netherlands, is violation of Article 8 ECHR, Article 7 CRC and Article 24(3) of the ICCPR.

Legal arguments by the opposing party

The local authority argued that it has not been established that the son of the applicant is in fact stateless, and neither has it been established that he has been residing legally in the Netherlands for an uninterrupted period of at least three years.

Decision & Reasoning

The Court reasoned as follows:

"There is no obligation for the local authority, in the event of uncertainty about the nationality of the person concerned, to investigate whether the person concerned is stateless and subsequently to determine the statelessness. As the [lower instance] court has rightly considered, this obligation does not follow from Article 7 of the CRC or Article 24(3) of the ICCPR, regardless of whether thet can be considered as binding and directly enforceable, simply because they do not contain any rules on the determination of statelessness."

"With regard to the appeal of the applicant to Article 8 of the ECHR, it can be deduced from the judgment of the European Court of Human Rights of 11 October 2011, Genovese v Malta, ECLI: CE: ECHR: 2011: 1011JUD005312409, that if arbitrariness arises in the rejection of a naturalization request, article 8 of the ECHR may come into play under special circumstances (see the judgment of this Court of 26 September 2012, ECLI: NL: RVS: 2012: BX8272). The applicant has not claimed that the rejection of the application is arbitrary."

"3.4. As this has earlier found in its judgment of 21 May 2014, it has been established that there is currently no specific procedure to determine the statelessness. It goes beyond the competence of the judge to provide this now. Incidentally, as the attorney of the applicant also noted at the hearing that the Minister of Security and Justice published a draft regulation for a statelessness determination procedure, for consultation on the Internet, on 28 September 2016 (www.internetconsultatie.nl/ statelessness)."

"3.5. In view of the above, the [lower instance] court rightly considered that the local authority was correct in taking the position that the applicant's son does not meet the conditions of Article 61b of the Dutch Royal Law on Nationality, and has rightly rejected the application."

Decision documents

RvS_22Nov2016.pdf

Outcome

The Court upheld the decision of the local authority to deny the applicant's request for confirmation of nationality, leaving the applicant a stateless child.

Caselaw cited

European Court of Human Rights of 11 October 2011, Genovese v Malta, ECLI: CE: ECHR: 2011: 1011JUD005312409