



## Belgium - Brussels Court of Appeal, judgment 2014/7124

The judgment relies on earlier Constitutional Court judgments that have established that stateless persons who lost their nationality involuntarily and demonstrated that they do not have the right to permanent legal residence elsewhere should get residence rights in Belgium on an equal footing with refugees, and that the necessary national legislation is lacking to give effect to such rights. The applicant has a criminal record and was denied residence rights on that basis, but the Court ruled that criminal convictions are irrelevant for his residence rights, and ordered authorities to regularise his residence until new legislation comes to force that regulates the stateless persons' right to residence.

**Case status:** Decided

**Case number:** 2014/7124

**Citation:** <https://www.agii.be/hof-van-beroep-van-brussel-17-09-2014>

**Date of decision:** 17/09/2014

**State:** Belgium

**Court / UN Treaty Body:** Brussels Court of Appeal

**Language(s) the decision is available in:** Dutch, English

**Applicant's country of birth:** Soviet Union {former}

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

**Legal instruments:** 1954 Statelessness Convention, 1961 Statelessness Convention, European Convention on Human Rights (ECHR)

**Key aspects:** Access to social and economic rights, Burden of proof, Country of return, Discrimination, Protection, Residence permit, Standard of proof, State succession, Stateless status and documentation, Statelessness and asylum, Statelessness determination

**Relevant Legislative Provisions:**

Article 1 of the 1954 Convention relating to the Status of Stateless Persons

Articles 1, 4, 20 and 21 of the Charter of Fundamental Rights of the European Union

Article 3 of the European Convention on Human Rights

Articles 10 and 11 of the Constitution of Belgium

Aliens Act

## **Facts**

The appellant is of Armenian origin, born in Baku, Azerbaijan, on 23 December 1977. He came through Ukraine to Belgium and applied for asylum in Belgium on 20 April 2000. His asylum application was rejected on appeal in 2006. On 26 June 2007 the appellant was recognised as stateless. The applicant submitted an application for regularization on the basis of article 9bis of the Aliens Act, which was originally rejected in 2010, but he was given a temporary residence permit valid from 9 November 2011 as his irremovability was proven. Since his stay in Belgium, the appellant has also stayed in prison for criminal offences. The government subsequently contested his right of residence, among others on the basis of his criminal convictions, as well as on lack of evidence of his irremovability to either Ukraine, Armenia or Azerbaijan.

## **Legal arguments by the applicant**

The applicant argued that the Belgian state violated its obligations by not properly regulating the status of irremovable stateless persons, and that this entitles the applicant to a compensation "in kind" in the form of a residence permit. He argues that his "orbit-situation" violates directly applicable provisions of international law on this matter, including the Statelessness Conventions and the ECHR. The appellant submits that he lost his nationality involuntarily, and that the Constitutional Court ruled that he is discriminated against as a stateless person in comparison to a refugee, as he is an "orbit-situation" and cannot obtain a legal and durable right of residence elsewhere.

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

The authorities argued that even though there may be a legal ground for issuing the applicant a residence permit, he "lacks subjective rights" to benefit from such provisions, among others on the basis of his criminal convictions. There is no automatic right of residence upon establishing statelessness in Belgium.

The residence permit for stateless persons may be requested, and is issued upon the discretion of authorities. The authorities moreover argued that the applicant did not prove he is not able to receive residence rights in Ukraine, Armenia or Azerbaijan.

## **Decision & Reasoning**

The Court ruled that:

"19. By judgment of 26 June 2007 by the Tribunal of First Instance of Antwerp, the applicant was recognised as stateless in accordance with article 1.1 of the 1954 Convention relating to the Status of Stateless Persons. This decision was taken on the basis of a favourable opinion by the office of the public prosecutor, after it had been established that there was sufficient evidence that the appellant was not considered as a citizen of the republics of Azerbaijan, Ukraine or Armenia. It is therefore definitively established that the applicant is stateless."

"20. The judgment of the Council for Immigration Disputes of 11 January 2011 states that the applicant does not only claim he is stateless, but also that he is irremovable, and to support the latter submits certifications from diplomatic missions stating that no passport or *laisser passer* can be issued to him. This evidence was meant to prove that he found himself in a pressing humanitarian situation."

"21. It cannot be accepted that when an applicant submits certificates from three diplomatic missions of countries with which he previously had a link through residence (Azerbaijan, Armenia and Ukraine) from which it is clear that they could not issue a passport or *laisser passer* to him, he should undertake additional steps to prove that he is irremovable. The administration itself gives no indication of actions the applicant could still undertake to obtain a durable right of residence as a stateless person in another country. In particular, it is difficult to understand why another country than the three countries mentioned, with which the person concerned has no connection, would grant right of residence if [the Belgian authorities] deny it to him. Consequently, it must be held that the applicant is indeed irremovable, and that in this regard he cannot be blamed for negligent inaction."

"22. Concerning the legal situation in which the applicant finds himself as an "irremovable stateless person", the Constitutional Court held repeatedly (17

December 2009 and 11 January 2012) that recognised stateless persons and recognised refugees find themselves in largely comparable situations, not only taking into account the international legal provisions applicable to their situation (the 1954 Statelessness Convention versus the 1951 Refugee Convention), but also the fact that, by granting the status of, respectively, stateless person or refugee, certain duties are imposed on the government with respect to the persons concerned."

"23. [...] it is up to the legislator to determine the conditions under which certain categories of stateless persons can obtain a residence permit in Belgium, as found by the Constitutional Court (paragraphs B.11 and B12.1 judgment 11 January 2012). The Constitutional Court thus concluded that the Aliens Act violates articles 10 and 11 of the Constitution to the extent that it does not provide that those recognised as stateless in Belgium, with regard to whom it is established that they involuntarily lost their nationality, and who prove that they cannot obtain legal and durable right of residence in another State with which they have ties, have a right of residence comparable to the one that refugees enjoy on the basis of article 49 of this Act (judgment 11 January 2012)."

"24. There can be no doubt that in the present case subjective rights of the applicant were violated. The Constitutional Court ascertained a violation of the principle of equality and non-discrimination where the irremovable stateless person is the victim. The right of the applicant to equal treatment and to not be discriminated against, that is moreover also guaranteed by articles 20 and 21 of the Charter of Fundamental Rights of the European Union, is violated. Furthermore, the consequence of the legal vacuum of the orbit-situation in which the irremovable stateless person finds himself, is that he lives in constant fear for expulsion for years, during which he is not allowed to work and cannot enjoy social benefits. Thereby, he is not given the opportunity to live a dignified life, contrary to article 3 ECHR which prohibits submitting a person to degrading or inhuman treatment. Such treatment is also contrary to articles 1 and 4 of the aforementioned Charter of Fundamental Rights of the European Union."

"26. The Constitutional Court also held that, pending the required legislative action concerning [the Aliens Act], it is up to the approached courts to put an end to the consequences of the established unconstitutionality, the latter having been identified with sufficient precision and completeness (paragraph B.11 judgment 11 January 2012). In view of all of the above considerations, the only way to put an end

to the violation of the subjective rights of the appellant that result from the established unconstitutionality of the Aliens Act, is to grant him a residence permit while waiting for the legislation that is required according to the Constitutional Court. In this context it is irrelevant that the applicant was criminally sentenced twice since his stay on Belgian territory."

### **Decision documents**

[Brussels\\_17Sep2014.pdf](#)

[Brussels\\_17Sep2014\\_ENGTranslationUNHCR.pdf](#)

### **Outcome**

The Court ordered the authorities to issue the applicant a residence permit with retroactive effect, which would be valid until the legislator has regulated the right to residence of stateless persons who lost nationality involuntarily and cannot establish legal permanent residence abroad, and a final decision on the applicant's residence rights has been taken on the basis of such new legislation.