



Switzerland - Federal Supreme Court, judgment no. 2C_271/2018

Applicants are two Syrian Kurds who entered Switzerland on Syrian passports and claimed asylum, but the asylum application was rejected. They subsequently claimed recognition as stateless persons, but that request failed too.

Case status: Decided

Case number: 2C_271/2018

Date of decision: 23/03/2018

State: Switzerland

Court / UN Treaty Body: Federal Supreme Court of Switzerland

Language(s) the decision is available in: German

Applicant's country of birth: Syria

Applicant's country of residence: Switzerland

Legal instruments: 1954 Statelessness Convention

Key aspects: Burden of proof, Refugee status determination, Standard of proof, Statelessness and asylum, Statelessness determination

Facts

The applicants are two brothers, Kurds from Syria, born in 1987 and 1977. They left Damascus in March 2008 and entered Switzerland with Syrian passports in April 2008, where they applied for asylum. In March 2009 their applications were denied, and a deportation order issued against them. In August 2011 they received a temporary permission to stay due to their deportation having been declared unacceptable.

In May 2013, the applicants requested to be recognised as stateless, but this was also rejected in February 2014. Several subsequent asylum applications and statelessness determination requests were made by the applicants, the appeal of which was merged in this judgment.

Decision & Reasoning

With regard to the statelessness determination request, the Court reasoned as follows:

“2.2. The applicants want to be recognized as stateless persons, for which the Convention of 28 September 1954 on the Status of Stateless Persons (Statelessness Convention [SR 0.142.40]) is authoritative. The Federal Administrative Court explained in E. 5.1 in general, and in E. 6 specifically with regard to Syria, which requirements must be met for the recognition of statelessness. E. 5.2 deals with the distribution of the burden of proof and the related aspects of the authority's duty to investigate, and the parties' duty to cooperate. These considerations are in line with the case law of the Federal Supreme Court [...] and are not questioned by the applicants. It is only being disputed whether the applicants have proven or at least made sufficiently credible that they belong to the Maktumin group, or at least to the Ajanib, which could enable their recognition as stateless persons. It is a matter of establishing a fact. The Federal Administrative Court comprehensively examined whether the claim of this fact can hold. It takes into account the development of the claims of the applicants (E. 9.1 and 9.2), which have changed in the course of the proceedings, and described and evaluated it, among other things, in light of a report by the Swiss Embassy in Damascus of May 26, 2008 (E. 9.1.2). Regarding the dispute about the living conditions of the complainants in Syria (E. 9.3), [the lower instance court] discussed the scope of official documents (E. 9.4), dealt with the advantages of being recognized as stateless persons (E. 9.5), and explained why the fact that the applicants had Syrian passports, taking into account all the circumstances, indicates that they have Syrian nationality (E. 9.6). This latter part was unsuccessfully questioned by the applicants. The applicants complain that the lower court decision is based on a speculation, and not on concrete facts; and that the duty of care has been violated. [Their arguments, however] are in no way suitable for demonstrating an inadequate or incomplete determination of facts [...].”

Decision documents

[Bundesgericht_23Mar2018.pdf](#)

Outcome

The Court upheld the lower instance court decision not to recognise the applicants as stateless.