



STATELESSNESS

Case Law Database

[Luxembourg - Administrative Court, judgment no. 36813C](#)

The applicant is a Palestinian from Syria, who holds a refugee status in Hungary. He also applied for a recognition as a stateless person in Luxembourg. The Court found that the 1954 Statelessness Convention was conceived as complementary to the Refugee Convention. Since the applicant as a refugee in Hungary received at least as good a protection as a Palestinian in an UNRWA protected territory, the latter category being explicitly excluded from the protection scope of the 1954 Convention, the applicant did not qualify for the recognition of a statelessness status in Luxembourg.

Case name (in original language) : 36813C

Case status: Decided

Case number: 36813C

Citation: <https://ja.public.lu/35001-40000/36813C.pdf>

Date of decision: 19/11/2015

State: Luxembourg

Court / UN Treaty Body: Administrative Court of Luxembourg

Language(s) the decision is available in: French

Applicant's country of birth: Syria

Applicant's country of residence: Luxembourg

Legal instruments: 1954 Statelessness Convention, European Union law

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

Facts

Applicant born in Syria. He applied for international protection in Luxembourg in 2014. A police report has found, however, that he has previously applied for international protection in Hungary in 2008, and was granted a refugee status in Hungary in 2009. He also received a travel document from Hungarian authorities in

2013. Luxembourg authorities rejected the applicant's request for asylum on the grounds that Hungary is his first country of asylum, and Hungary respects the refoulement principle and other relevant international norms. The applicant subsequently requested to be recognised as a stateless person, to which the authorities failed to reply within 3 months, which constituted an implicit refusal of the request. The applicant challenged this in court.

Legal arguments by the applicant

The applicant argued that he is stateless, which is evidenced by his temporary Syrian residence permit for Palestinian refugees, as well as his UNRWA registration card. This excludes the possibility of him having Syrian nationality, and since Palestine does not exist as a state, he cannot be considered as a national of Palestine.

He furthermore argued that he does not fall under the exclusion grounds as a person currently benefiting from protection or assistance from a UN body, since he is not longer located in territory under UNRWA mandate.

He emphasised that even though he has been granted a refugee status in Hungary in 2008, this does not deprive him of his legitimate interest to also be recognised as a stateless person, since the two statuses are different, and moreover statelessness status will remain with him, while his refugee status could be withdrawn.

The applicant moreover argued that the authorities violated their obligation to cooperate by not responding to his request for more than 3 months. The authorities are now requesting him to provide specific proof that he does not have Syrian nationality, which they should have done before. It would therefore not be fair if the court held it against the applicant that he did not obtain further specific clarifications from the Syrian and Palestinian authorities. He moreover submits that he did approach the Syrian embassy twice, but did not receive a response.

Legal arguments by the opposing party

The authorities request the Court to confirm the judgment of the lower instance court.

Decision & Reasoning

The Court reasoned as follows:

"[...] It is necessary to first examine the impact of obtaining a refugee status by the applicant in Hungary [...]. In this context, a reference should be made to the Preamble to the New York Convention, according to which: "(...) Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention, Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement, (...)". Thus, the New York Convention was adopted as complementary to the Geneva Convention for the benefit of stateless persons to whom the latter Convention does not apply in order to regulate and improve the conditions of such stateless persons."

"In the present case it is, however, clear that [the applicant] already benefits from the protective provisions of the Geneva Convention through the Hungarian State which recognised him as a political refugee in a decision of 30 April 2009. Therefore, he enjoys protection or assistance from a state at least equivalent to that which he previously enjoyed as a Palestinian in UNRWA while in Syria before the start of the war – protection which was provided to him by a United Nations agency other than the UNHCR within the meaning of Article 1(2) of the New York Convention, and which specifically excludes the applicability of the New York Convention to Palestinians living in the UN protected territories. Since [the applicant] in this case was benefiting from the political refugee status in Hungary at the time of submitting the request for recognition as a stateless person in Luxembourg, the Court held that the Minister was right to refuse to grant him the statelessness status. Therefore the judgment under review is to be confirmed [...]".

Decision documents

[Luxembourg_19Nov2015.pdf](#)

Outcome

The Court confirmed the lower instance court's finding and denied the applicant access to statelessness status in Luxembourg.