Luxembourg - Administrative Court, judgment no. 18260 C

The applicant was born in South Africa, and subsequently lived in Zimbabwe and Spain before arriving to Luxembourg, where he applied for the recognition of his statelessness status. The request was initially refused by the authorities since the applicant was not residing legally in Luxembourg at the time he submitted the application, but the courts ruled in applicant's favour, finding that the applicants residence status in Luxembourg is irrelevant for establishing whether he is stateless.

Case name (in original language) : 18260 C
Case status: Decided
Case number: 18260 C
Citation: https://ja.public.lu/15001-20000/18260C.pdf
Date of decision: 11/11/2004
State: Luxembourg
Court / UN Treaty Body: Administrative Court of Luxembourg
Language(s) the decision is available in: French
Applicant's country of birth: South Africa
Applicant's country of residence: Luxembourg
Legal instruments: 1954 Statelessness Convention, European Convention on Human Rights (ECHR)
Key aspects: Burden of proof, Exclusion grounds, Residence permit, Standard of proof, Stateless status and documentation, Statelessness determination
Facts

NB. This summary refers to the person who requested to be recognised as stateless as “the applicant”, but the original text of the judgment refers to the stateless person as “the respondent”(*l’intimé*), since the judgment is an appeal by the authorities of an earlier instance judgment that ruled in favour of the stateless

person.

The applicant was born in South Africa, and subsequently lived in Zimbabwe. He left Zimbabwe in 1982, where he reports to have been a victim of threats and harassment from the state authorities. He then lived in Spain for 16 years. Afterwards he travelled to Asia, where tried to earn money and, in his own words, “escape financial and emotional misery”, whereupon he was unable to re-enter Spain. His residence permit in Spain expired in 2000. He managed to enter Luxembourg, and applied for the recognition of his status as a stateless person on 12 October 2000, which was refused in 2003, primarily on the basis that the applicant entered the country illegally, and was residing in Luxembourg unlawfully at the time of submitting the application.

First instance court ruled in favour of the applicant, stating that legal residence cannot be required for the determination of the statelessness status.

Legal arguments by the applicant

The applicant argued that access to statelessness determination cannot be dependent on establishing that he is unable to apply for this status in any other signatory state of the 1954 Convention. He moreover argues that he cannot be required to have a lawful residence permit in Luxembourg in order to access statelessness status determination, and that only his physical presence in Luxembourg could be legally required. The applicant invokes Article 3 ECHR, claiming that failure to recognise his statelessness after 4 years of investigations constitutes a degrading treatment. Moreover, the unusually long procedure violates Articles 6 and 13 ECHR.

Legal arguments by the opposing party

The authorities argued that the applicant, having been a resident of Spain, could have applied for a travel document there, allowing him to enter one of the signatory states of the 1954 Convention in a lawful manner, and then apply for the statelessness status. The applicant has instead, in the authorities words, “travelled the world”, and only then came to Luxembourg in an unlawful manner, and applied for the recognition of his statelessness status more than 5 weeks after his Spanish residence permit expired, which meant he was staying in Luxembourg unlawfully at that time. Even though the applicant claims that at the time he entered Luxembourg his Spanish residence permit was still valid, there is no proof of that.

The authorities also argued against the reasoning of the first instance court, which found that the applicant would not have been able to request a statelessness status in Spain, given that Spain has not ratified the 1954 Convention at the relevant time. The authorities argued that the applicant should not be able to derive rights from an unlawful residence situation which is the result of his own actions or negligence, as he has not made use of the possibility to arrive lawfully into a State that have ratified the 1954 Convention, and then validly request the recognition of his statelessness. In this context, the authorities refer to Article 26 and 27 [EDIT: this may be a mistake in the original text of the judgment and/or in the authorities' plea, as article 27 does not require lawful residence, and later in the judgment Articles 26 and 28 are discussed] of the 1954 Convention, both of which would require the applicant for a statelessness status to reside legally in the territory of the state where he claims his rights.

The authorities submitted that the circumstances under which the applicant left Zimbabwe are irrelevant for the present dispute. They also emphasised that there was no reason for the applicant to leave Spain. His choice to do so resulted in his unlawful residence, which he is solely responsible for.

Decision & Reasoning

The Court reasoned as follows:

“Apart from Article 1 of the New York Convention, there are no other provisions contained in the Convention which are of a nature to define what is to be understood under the term “stateless person”, and the Convention does not, moreover, contain any provisions enumerating criteria to be fulfilled by the applicant for the recognition of his statelessness status other that those mentioned in paragraph 1 of the aforementioned Article 1.”

“It is therefore up to the competent authorities of a State which has received a request for a statelessness status recognition to verify whether the person who submitted the request can be considered as a national of a third state.”

“These verifications must be carried out on the basis of the account presented by the applicant for a statelessness status. It is essential in this context to verify the coherence and the credibility of the account in question, as well as the compatibility of the results of the verifications with the account of the individual. Contacting, at random, a multitude, if not all, states in the world in order to trace potential

elements of connections between the applicant and one of these states, or even in order to obtain negative proof that none of these states consider the applicant as a national, is out of the question. It was certainly not the intention of the drafters of the New York Convention to require that the applicant for a statelessness status provides proof of not being a national of states with which he has never had any close connections, so that the relevant proof can only be required from him with regard to the states of origin or of previous permanent residence."

"In the present case, the applicant presented an account the credibility which has not been questioned by the authorities, and the Court does not have any evidence which would prompt the questioning of his relay of facts either. In addition, the applicant submitted to [the authorities] written certificates from states where he claims to have been born and has resided for an extended periods of time, which show that he does not have nationalities of those countries. Thus, the applicant has proven that his country of birth, namely South Africa, no longer recognises him as a national, as appears from a letter of the embassy of South Africa of 29 November 1994, according to which the applicant ceased to be a national on 8 June 1971. Similarly, the "Central Registry for Passports, Citizenship, national and voters registration, brands, births, deaths and marriages" of Zimbabwe certified on 4 March 1996 that the applicant has not been to Zimbabwe since October 1981 and that he has lost his Zimbabwe nationality in October 1988 due to prolonged absence of more than 7 years."

"Moreover, the Spanish Ministry of Interior stated in a letter of 12 September 2003 addressed to the Ministry of Justice of Luxembourg that [the applicant] lived in an extremely precarious situation in Spain, he was unable to obtain a refugee or a statelessness status, and that Spain only granted him an identification document and a travel document valid until 24 August 1999, as well as a residence permit valid from 4 September 1997 to 30 September 2000. The letter also states that [the applicant] can only return to Spain if he obtains "the passport of his nationality and a corresponding visa"."

"[The first instance court] correctly concluded on the basis of these documents that the [applicant] provided proof of his status as a stateless person, since he did not limit himself to merely asserting that he is not considered as a national of another state, but provided positive proof, with supporting documents, that he is no longer a national of either South Africa or Zimbabwe – the countries in which he has resided for extended periods of time before arriving in Spain, and the nationalities of which

he lost in 1971 and 1988 respectively. In addition, the applicant had tried to obtain a statelessness status in Spain in 1988, but this status could not be granted to him due to Spain's failure to have ratified the New York convention, which can be concluded from the aforementioned letter from the Spanish Ministry of Interior of 12 September 2003."

"As the administrative file presented to this Administrative Court does not contain any information likely to suggest that the [applicant] may be in possession of any other nationalities, it cannot be required of him to provide any other evidence than that which is analysed above."

"It must therefore be concluded, as has been done by the [first instance court], that the [applicant] falls within the scope of paragraph 1 of Article 1 of the New York Convention, so that his statelessness status must be recognised in Luxembourg. In this context, it is irrelevant why [the applicant] has left Spain and how he entered Luxembourg, or what were his exact whereabouts after leaving Spain, his country of prolonged legal residence, since there is no provision of international or national law which can be interpreted as requiring the applicant for a statelessness status to provide any proof that he has not been able to apply for this stats in any other state of former residence or transit. In addition, there is no provision of law applicable in Luxembourg which can be interpreted as requiring an applicant for a statelessness status to enter the territory of Luxembourg in a lawful manner as a condition for obtaining the status. [The authorities] were therefore wrong to deny [the applicant] the statelessness status on the basis of alleged illegal stay on the territory of Luxembourg. It is therefore justified to confirm [the lower instance court's] judgment in so far as it rejected this ground for refusal of the status. It is sufficient that the applicant for a statelessness status is in the territory of Luxembourg, and the competent authorities can analyse specifically his request, without having to analyse the reasons which may have led to this request being submitted in this specific country, or the reasons which may have led him not to submit the said request in one of the other states on territories of which he may have been residing before his arrival to this country. The only checks that the competent authority in Luxembourg is required to undertake are those related to the question of whether the relevant person fulfils the conditions provided for in Article 1, paragraph 1, of the New York Convention."

"It follows from all the foregoing that it is of little importance to analyse, if the context of the present dispute, whether [the applicant] has or has not entered

Luxembourg lawfully […]”

“Finally, with regard to the reference made by the contested decision to Articles 26 and 28 of the New York Convention to refuse the recognition of the statelessness status to [the applicant] on the grounds that he did not enter Luxembourg lawfully or that he was not residing here lawfully, it should be noted from reading the articles in question that these, in the same way as other articles in the Contention, are intended to determine the rights attached to the status of a stateless person, as well as the conditions and circumstances under which the said rights can be exercised. The main purpose of these articles is to regulate the conditions under which certain rights attached to the status of statelessness can be exercised in the territory of a given Contracting State. Their purpose is therefore not to regulate the conditions under which the status can be obtained, but the rights that the stateless person can exercise after the status has been granted. […] It is not necessary in the present dispute to examine this question in depth, but it should be borne in mind that neither the condition of lawful residence nor that of lawful presence in the territory of a Contracting State constitutes, according to the New York Convention, a condition on which the recognition of a status of a stateless person can be based. It also goes without saying that the recognition of the statelessness status by a Contracting State implies ipso facto that not only the stateless person in question in allowed to “be there lawfully”, but also that his residence becomes regularised on the territory of the Contracting State in question, this conclusion stemming from the provisions of the New York Convention, in particular in the absence of any provision of national law transposing the Convention into the Luxembourgish law.”

Decision documents

Luxembourg_11Nov2004.pdf

Outcome

The Court confirmed the lower instance court's decision in favour of the applicant.