



## [Spain - Supreme Court \(Contentious-Administrative Chamber\), appeal no. 10530/2007](#)

The case concerns a Saharawi woman who was not recognised as a stateless person by the Ministry of Interior, in a decision which was later upheld by the High Court. The Supreme Court overturned both the lower decisions.

**Case status:** Decided

**Case number:** ECLI:ES:TS:2007:8948

**Date of decision:** 20/11/2007

**State:** Spain

**Court / UN Treaty Body:** Supreme Court (Tribunal Supremo)

**Language(s) the decision is available in:** Spanish

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

**Legal instruments:** 1954 Statelessness Convention, 1961 Statelessness Convention

**Key aspects:** Acquisition of nationality, Burden of proof, Standard of proof, State succession, Statelessness determination

**Relevant Legislative Provisions:**

- Convention Relating to the Status of Stateless Persons, 1954
- Convention on the Reduction of Statelessness, 1961
- Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (Aliens Act)
- Real Decreto 865/2001, de 20 de julio, por el que se aprueba el Reglamento de reconocimiento del estatuto de apátrida (Statelessness Determination Procedure Regulation)
- Standard of proof: Article 34.1 of the Aliens Act and Article 1.1 of the Statelessness Determination Procedure Regulation
- Burden of proof: Article 8 of the Statelessness Determination Procedure Regulation

## **Facts**

The case concerns a Saharawi woman who was not recognised as a stateless person by the Ministry of Interior, in a decision which was later upheld by the High Court. The applicant was born in 1968 in the then Spanish Sahara, who lived in the Saharawi refugee camps in Tindouf (Algeria) since 1976, and who travelled to Spain for medical reasons in 2000 with an Algerian travel document.

## **Legal arguments by the applicant**

The applicant argued that:

- (1) she lacked Spanish nationality, and provided information on the decolonization process by which some Saharawi people could acquire Spanish citizenship within a year according to a law passed in 1976;
- (2) the United Nations Mission for the Referendum in Western Sahara (known as MINURSO) certified that she and her family are registered as refugees in the Tindouf refugee camps;
- (3) she left Tindouf with an Algerian passport which in no way implied the recognition of the applicant as an Algerian citizen, and that it was issued by the Algerian authorities because the applicant was travelling to a country (Spain) which does not recognise the Saharawi Arab Democratic Republic as a sovereign state;
- (4) there is no UN resolution in place which implies that Moroccan authorities recognise Saharawi people as its citizens, as Western Sahara is a territory undergoing a decolonization process; it is classified as a Non-Self-Governing Territory by the UN, not being, for that reason, a territory from Morocco.

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

The Government's arguments are summarised in the decision's Legal reasoning no. 2, which coincide with those of the High Court's:

The High Court stated that a stateless person is someone who cannot be a citizen of any country according to their legislation, and that the person who applies for the stateless statute must prove that they meet that requirement. The Court observed that the applicant was in possession of an Algerian passport and that the Algerian authorities refused to renew it upon its expiry date, but that fact did not mean that Algeria did not recognise her as one of its citizens; rather, it meant that the

applicant failed to prove that she exhausted all remedies available in the Algerian legal system to challenge the authorities' refusal. Therefore, she could not prove her lack of nationality.

## **Decision & Reasoning**

The Supreme Court overturned both decisions from the lower courts. It found that the standard of proof could not be as high as the one implied by the High Court, since it is enough that the applicant manifests its lack of nationality (Aliens Act and Statelessness Determination Procedure Regulation). Also, the burden of proof is shared, in the sense that there is an "obvious obligation of cooperation on the part of the Administration" as the law mandates that the competent body shall, ex officio, collect any evidence it deems necessary (Statelessness Determination Procedure Regulation).

The Court stated that "[n]ationality is the legal bond between a person and a state, according to its law, which comprises political, social, economic rights, and responsibilities on their part, within a framework of mutual acceptance and voluntariness" (Legal reasoning no. 8). With that in mind, the Court noted that Saharawi people were allowed to apply for Spanish nationality only for a short period following the Spanish decolonisation process, therefore they no longer have that possibility. Morocco became the successor state, and Saharawi people could acquire Moroccan citizenship. However, they did not and do not want to do so. The Court stated that having the opportunity to access a nationality does not imply that the person is not stateless anymore if they do not want to apply for it. The Court notes that Algeria only issues travel documents on humanitarian grounds which are never meant to imply that the authorities recognise Saharawi refugees as Algerian nationals.

## **Decision documents**

[Supreme Court \(Contentious-Administrative Chamber\), appeal no. 10530/2007](#)

## **Outcome**

The appeal was upheld and the decision under appeal that refused to recognise the applicant as stateless was annulled. The Supreme Court granted stateless status to the applicant.

**Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

Blog entry: CANIVELL FRADUA, J., La concesión del Estatuto Administrativo de Apatridia. En torno a la Sentencia del Tribunal Supremo de 20 de noviembre de 2007, Observatorio Aragonés para el Sahara Occidental:

<https://observatorioaragonessahara.org/la-concesion-del-estatuto-admini...>

### **Caselaw cited**

- Sentencia del Tribunal Supremo, de 18 de julio de 2008 (appeal no. 555/2005)
- Sentencia del Tribunal Supremo, de 19 de diciembre de 2008 (appeal no. 7337/2005)
- Sentencia del Tribunal Supremo, de 30 de octubre de 2009 (appeal no. 2805/2006)
- Sentencia del Tribunal Supremo, de 20 de junio de 2011 (appeal no. 5767/2007)
- Sentencia del Tribunal Supremo, de 22 de junio de 2011 (appeal no. 4979/2009), among others.