



Spain - Supreme Court (Contentious-Administrative Chamber), appeal no. 4734/2011

The applicant is a Saharawi man who was born in the former Spanish Sahara and who, in 1979, fled to the Saharawi refugee camps in Tindouf (Algeria), where he lived until 2005, when he arrived in Spain after being issued a passport by the Algerian authorities. In Spain, he applied for statelessness status. The Ministry of Interior rejected his application based on his Algerian passport, but this decision was overturned, on appeal, by the High Court, which found that Algerian passports are just travel documents.

Case name (in original language) : Sentencia del Tribunal Supremo, Sala de lo Contencioso, recurso nº 4734/2011

Case status: Decided

Case number: ECLI: ES:TS:2014:1330

Date of decision: 04/04/2014

State: Spain

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

Language(s) the decision is available in: Spanish

Applicant's country of residence: Algeria

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

Relevant Legislative Provisions:

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 (Status Determination Procedure Regulation).

Standard of proof: article 34.1 -Aliens Act- and article 1.1 -Statelessness

Determination Procedure Regulation-

Burden of proof: article 8 -Statelessness Determination Procedure Regulation-

Legal arguments by the applicant

The applicant argued (appeal to the High Court) that (Legal Reasoning no. 3):

(1) according to the Spanish SDP Regulation and the 1954 Convention, he met the criteria to be recognized as stateless, since he did not have a nationality and had never had the chance to access any citizenship;

(2) he was registered by the United Nations Mission for the Referendum in Western Sahara (known as MINURSO) in the census of 10 November 1994 in Aousserd, a small town in Western Sahara disputed between Morocco and the Saharawi Arab Democratic Republic;

(3) he held an identity document and a marriage certificate issued by the Saharawi Arab Democratic Republic;

(4) Algeria issued a passport which served the purpose of a travel document, but it does not confer or recognize, neither explicitly nor implicitly, Algerian nationality.

Legal arguments by the opposing party

The Government's arguments used to reject the application are summarized in the decision's Legal reasoning no. 2:

(1) the applicant enjoyed essential aspects of international protection in the Saharawi refugee camp in Algeria, namely non-refoulement, material assistance, and documentation, such as passports, which provide identification and allow their holders to travel abroad and return to Algeria;

(2) the applicant did not apply for statelessness status in Algeria, even though he had the opportunity to do so, since Algeria is part of the 1954 Convention;

(3) the applicant applied for statelessness status in Spain in 2008, 3 years after his arrival, which means that he did not do so within the first month upon arrival established in the SDP Regulation.

The Government (through its State Attorney), appealing the High Court's decision

which overturned the Ministry of Interior's decision (see arguments above in this box), argued, (in the Legal Reasoning no. 4 and 5) that:

(1) although it is not contested that the applicant lacked Algerian nationality, the High Court admitted that he held an Algerian passport which allowed him to travel, so that document cannot be evidence of his statelessness;

(2) the High Court accepted as evidence the mere manifestation of lack of nationality made by the applicant, without further confirmatory proof. Although the SDP Regulation does not force applicants to present full proof, this does not mean that a declaration is in itself sufficient to support such a claim: more evidence is required to prove that point. [Note: here, it seems as if the Government is implying that there needs to be objective evidence to support the applicant's claim (subjective evidence) of lack of nationality, so that only when both concur can statelessness be determined.]

Decision & Reasoning

"[The applicant] is not an Algerian national, despite the fact that he was issued a passport on humanitarian grounds by the Algerian authorities" (Legal Reasoning no. 4).

"The applicant (...) has produced all information and documentation that allow to identify his birth place, parentage, as well as that of his ancestors, and current documentation which clearly matches his statements made in the application form, and an account regarding his lack of Algerian nationality that has been confirmed by information offered by Algerian and Spanish authorities (among which there is an Algerian passport with a visa issued in the Spanish Consulate from Algiers)" (Legal Reasoning no. 5).

"Therefore, it is not about mere statements made by the applicant, but about unequivocal, confirmed and comprehensive background information included in the administrative file (the information and documentation provided by the applicant comprise its first 29 pages), which reveal that the applicant meets the requirements for acquiring the statelessness statute" (Legal Reasoning no. 5).

Decision documents

[Supreme Court \(Contentious-Administrative Chamber\), appeal no. 4734/2011](#)

Outcome

No violation (the Court upheld the inferior court's decision to overturn the Government's rejection of statelessness status)

Caselaw cited

Sentencia del Tribunal Supremo, de 20 de noviembre de 2007 (appeal no. 10530/2007) [used in the case]

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.