



Switzerland - Federal Administrative Court, judgment no. C-1873/2013

The complainant, a Syrian Kurd with provisional refugee status in Switzerland, applied for recognition as stateless. Her application was rejected on the grounds that a) she was entitled to Syrian nationality and b) she was already protected by the Refugee Convention. On appeal, the court held that the complainant was entitled to apply for recognition as stateless notwithstanding her status as a refugee and that, since the complainant would have to travel to Syria to claim nationality there, she had adequate reasons for not claiming the nationality to which she had an entitlement and could be recognised as stateless.

Case status: Decided

Case number: C-1873/2013

Date of decision: 09/05/2014

State: Switzerland

Court / UN Treaty Body: Federal Administrative 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: Acquisition of nationality, Determination/confirmation of nationality , Statelessness and asylum, Statelessness determination

Relevant Legislative Provisions:

International

- Refugee Convention, Art. 1
- 1954 Convention, Art. 1

Switzerland

- Federal Constitution of the Swiss Confederation, Art. 29(2)

- Ausländergesetz, Art. 31

Syria

- Presidential Decree No.49 7 April 2011

Facts

The complainant was a Syrian Kurd born in 1967. In 2007 she travelled with her husband and five children to Switzerland to seek asylum. The family's first application for asylum was rejected in 2007. The complainant's husband applied again for asylum in 2010 and was recognised as a refugee in 2012. The complainant was granted provisional refugee status derived from her husband's status.

The complainant had been assumed by the court to be stateless and in November 2010 she sought official recognition as a stateless person. Her application was refused on the grounds that the recent Syrian Presidential Decree No. 49 from 7 April 2011 allowed Syrian Kurds previously classified as 'Ajanib' (foreign), to which group the complainant belonged, to obtain Syrian nationality.

On 9 March 2012 and on 21 February 2013, the complainant's representative confirmed that the complainant maintained her claim to recognition as stateless. The court of first instance rejected the claim arguing that recognising the complainant as stateless was not justified by the facts of the case when looked at in conjunction with the definition of statelessness set out in the 1954 Convention Relating to the Status of Stateless Persons. The court stated that Syrian Presidential Decree No 49 of 7 April 2011 had rendered the complainant's case untenable as she now had access to Syrian nationality.

On 8 April 2013 the complainant appealed to the Federal Administrative Court arguing that the court of first instance had violated her right to be heard and requesting that the case be returned to the court of first instance for reappraisal.

Legal arguments by the applicant

The complainant argued that the court of first instance had violated her right to be heard because it had neither explicitly mentioned, nor properly considered the content of her submission from February 2013.

The complainant submitted that the court of first instance was mistaken in its application of Art 1 of the 1954 Convention Relating to the Status of Stateless

Persons. She argued that she did not possess Syrian nationality and was therefore de jure stateless. The new law in Syria relating to 'Anjanib' persons created an opportunity for the complainant to apply for Syrian nationality, but in order to do so she would have to present herself in person to the authorities in her hometown. Her brother had attempted to obtain for her a Syrian identity card but was unsuccessful. She argued that she could not be required to return to Syria to acquire nationality as this would be a violation of the principle of non-refoulement, given her status as a refugee in Switzerland.

Legal arguments by the opposing party

Firstly, the court of first instance argued that the 1954 Convention did not apply to the complainant because she already enjoyed protection as a recognised refugee. The purpose of the 1954 Convention was to put stateless persons on an equal footing with refugees and not to create an alternative route to a residence permit. The complainant responded that this may apply to refugees with full status, but did not apply to her as the holder of a provisional status.

Secondly, the court submitted that the complainant was not stateless within the meaning of the 1954 Convention.

Decision & Reasoning

3.2 - 3.3 The right to be heard included adequate examination of facts and evidence but only those which were relevant to the decision. Because the court of first instance had based its decision on its view that the complainant did not fall within the Convention on the Status of Stateless Persons because she was already protected by virtue of the Refugee Convention, it was reasonable to set aside the question of whether or not she met the other requirements to be recognised as stateless. The question of whether the 1954 Convention applied in the instant case was a question of substantive law. There was therefore no violation of the right to be heard.

4.3 A person may only be treated as stateless if they did not themselves bring about their lack of a nationality. Persons who willingly give up their claim to a nationality are not entitled to the protection flowing from recognition as stateless. This prevents the Convention losing its protective character and reducing statelessness to a "matter of personal preference". The Convention is not intended to allow individuals to "obtain a privileged legal position", but rather to assist those

who would otherwise be put in a position of hardship.

7.3 However, referring to paragraphs 3 and 4 of the Preamble to the 1954 Convention, the Court commented that the text of the Convention could not be read as limiting the definition of 'stateless' to a particular group of stateless persons. This interpretation was supported by Art 1(2) of the Convention which lists those persons to which it does not apply, but does not suggest that the 1954 Convention and the Refugee Convention should not apply to the same person.

7.3.4 In relation to the court of first instance's argument that the protective nature of the 1954 Convention must be maintained, it was held that this was an issue which related to the choice between obtaining a nationality and recognition under the 1954 Convention. The Court held that this should not be a question of personal preference, but that this did not affect the ability of both Conventions to apply to one individual.

8 The court noted that the law of Switzerland is silent on the question of the criteria which must be fulfilled before a person is recognised as stateless. Therefore, there is no legal basis for excluding a person recognised as a refugee from recognition as stateless. When deciding whether to consider a request for recognition as stateless, the relevant question for the Swiss Authorities is whether the individual has an interest in being recognised as stateless which is "worthy of protection" (schutzwürdig). This will usually be the case where a more advantageous legal position can be achieved through recognition ([C 3124/2011](#) and [C 5461/2008](#) cited).

9.1 - 9.5 Although Swiss law envisages the equal treatment of refugees and stateless persons in terms of residency rights, the court acknowledged that recognition as stateless would grant the complainant greater residency rights than she could currently claim. This was because her husband was recognised as a refugee 'sur place' and their right to reside in Switzerland was provisional. Those recognised provisionally as refugees did not have the same residency rights as those granted asylum, and the protection afforded to them could be withdrawn if their grounds for fleeing ceased to exist. As a result, the complainant had an interest in seeking recognition as stateless. The fact that the complainant was pursuing the case with the objective of obtaining a residence permit did not affect the legitimacy of her claim.

10.3 Since the complainant was resident in Switzerland, the court of first instance

should consider the complainant's circumstances within that country. The rights enjoyed by the complainant in Syria or the Ajanib generally were not a relevant ground for the refusal of recognition as stateless in Switzerland.

11.2-11.4 Decree No.49 of April 7th 2011 granted Syrian nationality to Ajanib persons registered in the Syrian province of Al-Hasaka. However, it was not clear what the criteria were for the granting of nationality, nor what an individual must do to profit from the decree. Nonetheless it was only possible under Swiss law to recognise as stateless Syrian-Kurdish persons from Al-Hasaka province who had compelling reasons not to take advantage of their newly granted right to Syrian nationality. 'Compelling reasons' meant objective reasons and did not include subjective reasons for not wanting to claim Syrian nationality ([C 5327/2007](#) compared). 'Compelling reasons' might include, for example, that the person had previously been persecuted by the state in question, or the practical impossibility of claiming the nationality. The relevant question is usually whether the individual has made adequate attempts to obtain a nationality, with 'adequate' being a high threshold which had not been met in any reported cases held in the online records. This restrictive approach was justified because of the overarching goal of reducing statelessness.

11.5 - 11.6 On the basis of testimony from, among others, the complainant's brother, the court accepted that the Syrian authorities required individuals to present themselves in person in order to claim Syrian nationality. In the complainant's case, returning to Syria would require her to rely on the protection of the state from which she had successfully sought protection in Switzerland, putting her outside the scope of the Refugee Convention. The consequences of such a course of action were so serious that they constituted a compelling reason for the complainant not to claim Syrian nationality. However, should the complainant cease to require the protection of the Refugee Convention and therefore lose refugee status, the question of whether she still had a compelling reason not to claim Syrian nationality and thus qualified to be recognised as stateless would have to be reassessed.

12 "In summary it can be stated that holding refugee status under Art 1 of the Refugee Convention and recognition as a refugee by Swiss authorities does not in itself preclude the application of the Statelessness Convention. This is true on the level of international law and Swiss law. Furthermore, the case gives rise to a protection-worthy interest in (additional) recognition under the Statelessness

Convention because recognised stateless persons are afforded an advantageous legal position as compared to refugees, particularly in respect of residence. Since the complainant does not fall within any of the grounds for exclusion set out in the Convention and it cannot be required of her that she go through the procedure to obtain Syrian nationality, she is to be recognised as stateless. The fact that this recognition is only possible because the complainant has refugee status can be ascribed to the prevailing legal situation and should be accepted. The fact that the complainant is not herself entitled to refugee status and that her status derives from her husband also has no impact on the merits of the case."

Decision documents

[Switzerland - Federal Administrative Court, judgment no. C-1873/2013](#)

Outcome

The court of first instance had violated federal law by rejecting the complainant's application to be recognised as stateless. The federal court ruled in favour of the complainant and held that she should be recognised as stateless.

The court of first instance was ordered to pay the complainant's legal fees.

Caselaw cited

[2C 36/2012](#)

[C 5327/2007](#)

[2P.418/1994](#) (unreported)

[2A.555/2004](#)

[C 5327/2007](#)