

## **ECtHR - Sudita Keita v. Hungary**

A stateless person faced protracted difficulties in regularising his legal situation, and was recognised as stateless only after residing in Hungary for 15 years. During 13 of those years, the applicant had no legal status in Hungary and was entitled to neither healthcare nor employment, nor was he able to marry. The Court held that Hungary had not complied with its positive obligation to provide an effective and accessible procedure enabling the applicant to have his status in Hungary determined with due regard to his private-life interests under Article 8 ECHR.

**Case name (in original language) :** ECtHR - Sudita Keita v. Hungary

**Case status:** Decided

**Case number:** Application no. 42321/15

**Citation:** European Court of Human Rights, Sudita Keita v. Hungary (application no. 42321/15), 12 May 2020

**Date of decision:** 12/05/2020

**State:** Hungary

**Court / UN Treaty Body:** European Court of Human Rights

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

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

**Legal instruments:** 1954 Statelessness Convention, European Convention on Human Rights (ECHR)

**Key aspects:** Access to social and economic rights, Residence permit, Respect for private and family life, Statelessness determination

**Relevant Legislative Provisions:**

### **International**

Convention Relating to the Status of Stateless Person, Articles 1, 6, 12, 25, 32

### **Regional**

European Convention on Human Rights, Articles 3, 5, 8, 13 and 14

## **National**

Act no. CXXXIX of 1997 on Asylum, sections 16(1)(c) and (d)

Decree no. 13 of 1979 on International Private Law

Act no. IV of 1952 on Family Law

Government Decree no. 114/2007 (V.24.) on the Implementation of Act no. II of 2007

Act no. II of 2007 on the Admission and Right of Residence of Third-Country Nationals, section 76(1)

## **Facts**

The applicant was born in 1985 and was of Somali and Nigerian descent. He arrived in Hungary in 2002 without valid travel documents and applied for recognition as a refugee. While the application was being assessed, the applicant was entitled to basic healthcare and employment rights. The application was rejected in November 2002.

In April 2003 an expulsion order was issued to the applicant, but its enforcement was suspended until September 2004 pending fulfilment of certain preconditions. The applicant applied for and was refused a residence permit. During the period when the applicant was subject to an expulsion order and had no regularised status, he was not entitled to healthcare or employment. He could not exercise the right to marry, because he did not possess the necessary documentation.

Due to the ongoing war, the applicant could not be returned to Somalia. The Nigerian embassy in Budapest refused to recognise him as a citizen in 2006, creating the possibility that the applicant could be eligible for recognition as stateless. Hungarian law requires the immigration authority to inform individuals about the statelessness determination procedure if there is a possibility they could be declared stateless but the applicant was not informed about it. However, Hungary admitted the applicant as an exile (*befogadott*) at some point in 2006. On 19 July 2006, the applicant was issued with a humanitarian residence permit which was valid until 19 July 2008. During this period he was entitled to basic healthcare and employment and, presumably, was not prevented from getting married.

In 2008 the applicant's status was reviewed and the Immigration Authority decided that he could not be accepted as a refugee or protected person, and that no prohibition on refoulement existed regarding Nigeria. The applicant unsuccessfully challenged the decision. As a result he lost his entitlement to healthcare and employment, and no longer possessed the necessary documentation to get married.

In 2009 the authorities issued a deportation order for the applicant to be removed to Nigeria. The applicant appealed without success but the order was ultimately not enforced. During 2009 the applicant began living with his Hungarian girlfriend. In 2010 he completed a heavy-machinery operator course with a view to obtaining a work permit.

In September 2010, the applicant submitted an application to be granted stateless status after being informed by a lawyer that he could do so. The request was refused in November 2010. The applicant appealed and was granted stateless status by the Budapest High Court in February 2012. In October 2012 the Budapest Court of Appeal reversed this decision and refused the applicant stateless status. This decision was upheld by *Kúria* (Hungary's Supreme Court) on the ground that Hungarian law requires a person to be lawfully staying in the country in order to be granted stateless status.

The applicant relaunched the procedure for recognition as stateless in December 2012. After initial refusal in June 2013, the court of first instance asked the Constitutional Court to declare unconstitutional the requirement for 'lawful stay'. On 23 February 2015, the Constitutional Court removed the lawful stay requirement with effect from 30 September 2015 with reference to Hungary's obligations under international law, in particular the 1954 Convention Relating to the Status of Stateless Persons.

The applicant was granted stateless status in October 2015 by the Budapest Administrative and Labour Court, a decision which was upheld by the Budapest High Court in October 2017. Following the High Court's decision, the applicant regained entitlement to basic healthcare and employment and there were no longer any obstacles to his marriage.

### **Legal arguments by the applicant**

The applicant alleged that the Hungarian authorities had failed to regularise his situation satisfactorily, resulting in violations of Articles 3, 5, 8 13 and 14 of the

ECHR. However, the Court decided that the case fell to be considered under Article 8 alone.

The applicant submitted that the authorities' fifteen-year-long reluctance to recognise him as stateless or otherwise regularise his status was an unacceptable, discriminatory and irreconcilable with human dignity.

He argued that he had not been able to access healthcare properly, had been deprived of any means of providing for himself, and had not been able to marry his girlfriend. Despite having been stateless from the outset, the Hungarian rules had prevented him from regularising his situation for a protracted period of time.

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

The Hungarian Government submitted that the applicant's situation had ultimately been resolved by the removal of the 'lawful stay' requirement following the Constitutional Court's ruling.

The Government argued that the difficulties faced by the applicant were not of a degree that would represent a disproportionate violation of Article 8 of the Convention. Further, Article 8 could not be interpreted as requiring a Contracting State to grant stateless status to an individual.

Finally, the Government submitted that the authorities had applied the relevant law correctly and that the applicant had not been prevented from marrying by his lack of legal entitlement to remain in the country.

### **Decision & Reasoning**

The court applied the general principles established in *Hoti v Croatia* (application no. 63311/14). The court cited in particular paragraphs 119-123 of that case (§31).

The Court began by establishing that "the principal question to be examined...is whether, having regard to the circumstances as a whole, the Hungarian authorities, pursuant to Article 8, provided an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Hungary determined with due regard to his private-life interests." (§32)

The Court noted that “there can be no doubt that [the applicant] has enjoyed private life in Hungary” since he had pursued a relationship and vocational training course while living in the country (§33). However, it also observed that there were long periods of time during which the applicant had no access to healthcare and employment: “In these circumstances, the Court accepts that the uncertainty of the applicant’s legal status had adverse repercussions on his private life.” (§34)

Regarding statelessness, the court commented that it was an “important element” in the case (§35) and that it did not “subscribe to the Government’s arguments revolving around the consideration that Article 8 of the Convention cannot be interpreted as requiring the State to granted stateless status to a person” (§36). Nevertheless, the court did not see it as necessary to examine whether the applicant should have been granted stateless status specifically, since that was not the nature of his complaint (§36). Rather, the relevant question was “whether he had an effective possibility of regularising his status, allowing him to lead a normal private life in Hungary” (§36) (*Hoti* cited).

Until the ‘lawful stay’ requirement was removed, it had been practically impossible for the applicant to be recognised as stateless. This meant that “contrary to the principles flowing from the 1954 UN Convention relating to the Status of Stateless Persons....the applicant, a stateless individual, was required to fulfil requirements which...he was unable to fulfil” (§39) (*Hoti* cited). Finally, the Court noted that it took until October 2017 for the applicant to finally be granted stateless status (§40).

Considering these elements in combination, the Court stated that Hungary had not “complied with its positive obligation to provide an effective and accessible procedure... enabling the applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8” (*Hoti* cited, *Abuhmaid v. Ukraine* compared) (§41).

## **Decision documents**

[CASE OF SUDITA KEITA v. HUNGARY.pdf](#)

## **Outcome**

The Court found that there had been a violation of Article 8 ECHR, which protects the right to respect for private and family life, on the ground that Hungary had not met its positive obligation to provide a procedure enabling the applicant to have the issue of his status resolved with due regard to his private life interests.

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

<https://www.statelessness.eu/updates/blog/sudita-keita-v-hungary-anothe...>;

**Caselaw cited**

*Hoti v. Croatia*, no. 63311/14

*Abuhmaid v. Ukraine*, no. [31183/13](#)