



[Spain - Supreme Court \(Contentious-Administrative Chamber\), decision no. 1091/2020 \(appeal no. 3661/2019\)](#)

The Supreme Court held that the initiation of the administrative procedure to recognise statelessness does not require the applicant to be in Spain. It is sufficient that he/she is at the border post.

Case name (in original language) : TS (Sala de lo Contencioso-Administrativo, Sección 5ª), Sentencia núm.1091/2020

Case number: ECLI:ES:TS:2020:2660

Date of decision: 23/07/2020

State: Spain

Court / UN Treaty Body: Spanish Supreme Court

Language(s) the decision is available in: Spanish

Applicant's country of residence: Algeria

Legal instruments: 1954 Statelessness Convention

Key aspects: Procedural safeguards, Statelessness and asylum, Statelessness determination

Facts

The applicant is a student who lived in Cuba and comes from the refugee camp in Tindouf, Algeria. The applicant requested international protection at the border. UNHCR did not support granting protection. The applicant requested the re-examination of his application and alleged possible statelessness. UNHCR acknowledged that there was prima facie evidence of statelessness. However, the Spanish Administration denied the request for re-examination and did not analyse the claim of possible statelessness.

Legal arguments by the applicant

The applicant argued that statelessness rules are to be interpreted broadly. If there is no specific limitation or requirement, they should be interpreted in a manner favourable to human rights. Spanish law defining the conditions for being recognised as statelessness does not require to be in the national territory. The law regulating the statelessness determination procedure does not expressly require this condition either. The application can be presented at the police station and the border posts. The asylum and refugee offices are obliged to initiate the statelessness procedure ex officio if they have sufficient evidence. The 1954 Convention relating to the Status of Stateless Persons does not regulate this aspect. However, the UNHCR Handbook for the Protection of Stateless Persons states that "everyone in the territory of a State should have access to statelessness determination procedures".

Legal arguments by the opposing party

The Spanish Administration argued that Spanish law on statelessness does not expressly include as a possibility the applicant's right to apply at the border. Unlike other procedures such as international protection or asylum. Spanish statelessness law recognises the possibility to provisionally "remain" in the national territory during the processing of the procedure. "Remaining" indicates that the applicant is already in the territory. The applicant asked for statelessness under a provision designed for international protection or asylum, not statelessness.

Decision & Reasoning

The court held that the proceeding to grant asylum or international protection differs from that of statelessness. Statelessness proceeding can be initiate ex officio. There is no specific mention to the place where the applicant must be. Mentions to domicile regarding notification are not meant to bar applications at the border. The court further found that this interpretation is aligned with the possibility of asking for interim residence permits when facing humanitarian reasons. Denying this type of applications would be contrary to the spirit of the 1954 Convention and the "profound interest" that the UN has vis-à-vis statelessness.

Decision documents

[STS 2660 2020 2.pdf](#)

Outcome

The Supreme Court found that stateless people were allowed to ask for protection at the border. They do not need to be in the Spain territory to begin the procedure.