



## [Spain - Court of Appeal of Gipuzkoa \(appeal no. 2209/2022\)](#)

A 7-year-old child arrived in Spain irregularly by boat in April 2018. She was born in Morocco to a Cameroonian mother while they were on a journey to Europe, and due to the circumstances the child's birth was not registered. Her mother contacted the Cameroonian and Moroccan embassies in Spain, but she never succeeded in registering her birth nor recognising her Cameroonian nor Moroccan nationality. The child was thus stateless, as declared in the first instance judgment and confirmed on appeal. The Provincial Court of Guipúzcoa held that the mother had made a genuine effort to remove all bureaucratic obstacles to have the child's Cameroonian nationality recognised. The Court held that the safeguard established in the Spanish Civil Code to prevent statelessness of children born in Spain should be applied broadly and by analogy, as this is the only interpretation in compliance with international treaties to which Spain is a party and with the principle of the best interests of the child. Therefore it found that there was a violation of the child's fundamental rights and declared that the child held Spanish nationality and agreed to order the Central Civil Registry to register the birth of the child.

**Case name (in original language) :** España - Sección 2ª de la Audiencia Provincial de Gipuzkoa, Sentencia 341/2022

**Case status:** Decided

**Case number:** Judgement 341/2022 (Appeal proceedings 2209/2022)

**Date of decision:** 11/05/2022

**State:** Spain

**Court / UN Treaty Body:** Court of Appeals of Gipuzkoa

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

**Applicant's country of birth:** Morocco

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

**Legal instruments:** Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR)

**Key aspects:** Acquisition of nationality, Birth registration, Childhood statelessness, Respect for private and family life

**Relevant Legislative Provisions:**

- Universal Declaration of Human Rights, 10 December 1948
- Convention on the Rights of the Child, 20 November 1989
- International Covenant on Civil and Political Rights, 16 December 1966
- Spanish Constitution of 1978
- Act 1/1999, of 15 January, on the Legal Protection of Minors
- Civil Code of 1889

**Facts**

A woman of Cameroonian origin arrived irregularly by boat to Spain in 2018 with her infant daughter, who was born in Morocco during the journey to Spain and lacked a birth certificate. The mother was granted a residence permit, but not the child as she lacked a passport. The mother started a series of administrative and bureaucratic procedures for her daughter to obtain nationality in the countries to which the child had some link: (i) Cameroon, i.e. her mother's country; (ii) Morocco, i.e. her country of birth; and (iii) Spain, i.e. her country of residence. Both the Cameroonian and the Moroccan authorities denied the child's nationality. The applicant further requested the Spanish authorities the presumption of the child's nationality and, in the alternative, the registration of birth after the legal deadline. Both requests were also denied.

The mother appealed the administrative decision denying the child's nationality before the Civil Courts and requested that the child be granted Spanish nationality. The Court of First Instance number 5 of San Sebastian recognised the child's Spanish nationality in its decision of 24 November 2021. Both the Spanish Ministry of Interior and the Public Prosecution appealed the judgement before the Court of Appeals of Gipuzkoa (Audiencia Provincial de Guipúzcoa).

**Legal arguments by the applicant**

The legal arguments put forward by the applicant during the first instance

proceedings (and reproduced during the appeal proceedings) were the following:

- The child's statelessness status had resulted in the violation of Article 7 of the Convention on the Rights of the Child, i.e. the child's right to a nationality.
- The child's statelessness status had resulted in the violation of several fundamental rights recognised by the Spanish Constitution, i.e. the right to nationality, the right to respect for private and family life, the right to education and the right to the development of her personality and her dignity.
- Article 17(1)(c) of the Civil Code (which states that Spanish nationality is granted to children born in Spain from parents who are stateless or the legislation of their respective countries does not grant their child a nationality) must be interpreted in line with international treaties (i.e. the Convention on the Rights of the Child and the European Convention on Human Rights), and the case law of the European Court of Human Rights, in order to prevent statelessness.
- The principle of the best interests of the child obliges Spain to recognise the child's Spanish nationality in order to prevent her from remaining in a situation in which her fundamental rights are violated.

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

The legal arguments raised by the Ministry of Interior and the Public Prosecution during both the first and second instance proceedings were the following:

- Infringement of article 17(1)(c) of the Civil Code, as the requirements for obtaining nationality were not met. In this case the child was born in Morocco and the identification of the mother is known.
- Spain is not obliged in this case, by virtue of the international treaties to which it is a party, to recognise a child born in Morocco as a Spanish national. By the mere fact of being stateless, one does not have the right to Spanish nationality of origin if the requirements laid down in national legislation are not met.
- The fundamental rights of the minor have not been infringed since the non-recognition of Spanish nationality does not imply such an infringement. According to the Spanish Constitution, foreigners enjoy in Spain the public freedoms laid down by the treaties and the law in the same terms as nationals.

### **Decision & Reasoning**

The Court finds that there was a violation of the child's fundamental rights and

declares that the child held Spanish nationality and agreed to order the Central Civil Registry to register the birth of the child. The Court founds its decision on the legal concept of the best interests of the child enshrined in international and national standards, and in particular on the provisions of Article 7 of the Convention on the Rights of the Child which states that "the child shall be registered immediately after birth and shall have the right from birth to a name, to acquire a nationality...". Therefore, the Court understands that article 17(1)(c) of the Civil Code must be interpreted extensively, since it "constitutes the only mechanism that allows compliance with the legal provisions contained in the international treaties to which Spain is a party, respecting and effectively complying with the best interests of the child established in national provisions". Furthermore, the decision expressly states that the applicant made an effort to remove the administrative and bureaucratic obstacles and to obtain Cameroonian nationality for the minor, which proved to be impossible. Finally, the Court argues that allowing the child to continue in a state of statelessness would place her in a situation of inequality with respect to other minors, with a significant reduction in her basic and fundamental rights.

### **Decision documents**

[Spain - Judgement of the Court of Appeals of Gipuzkoa of 11 May 2022](#)

### **Outcome**

The court dismissed the appeal and upheld the contested decision granting Spanish nationality to the minor.

### **Caselaw cited**

- Judgment of the Supreme Court of 20 December 2018
- Judgment of the Supreme Court of 1 February 2016
- Judgment of the Supreme Court of 18 July 2019
- Judgment of the Supreme Court of 19 April 2022