



# STATELESSNESS

## Case Law Database

### [France - Council of State, 9 November 2007, n° 261305](#)

The removal of the parent of a stateless child who is not entitled to a residence permit can only be ordered for reasons of national security or public order. Otherwise, the removal of the parent would deprive the child of the rights and guarantees attached to the status of stateless person if the child accompanies his or her parents outside French territory in application of the removal order issued against the parents, or would disproportionately infringe on the right to family life of the parents, in breach of Article 8 of the European Convention on Human Rights, if the child remains in France separated from his or her parents.

**Case name (in original language) :** Conseil d'État, Section du contentieux, 9 Novembre 2007, n°261305

**Case status:** Decided

**Case number:** 261305

**Citation:** France, Conseil d'État, (Judgment No. 261305), 9 November 2007

**Date of decision:** 09/11/2007

**State:** France

**Court / UN Treaty Body:** Conseil d'État

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

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

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

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

**Key aspects:** Childhood statelessness, Deportation and removal, Respect for private and family life

**Relevant Legislative Provisions:**

International Law

- Convention relating to the Status of Stateless Persons, New York, 28 September 1954 - Articles 31 and 32

#### Council of Europe

- European Convention on Human Rights (ECHR) - Article 8

#### National Law

- Code of entry and stay of foreigners and asylum law (le code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA) - article L. 313-11;
- Ordinance n° 45-2658 of 2 November 1945, as amended, relating to the conditions of entry and residence of foreigners in France - article 12 bis;
- Law n° 52-893 of 25 July 1952, as amended, relating to the right of asylum;
- Order n° 58-1321 of 23 December 1958 authorising the ratification of the convention relating to the status of stateless persons;
- Law n° 91-1647 of 10 July 1991 on legal aid;
- French Code of Administrative Justice.

#### **Facts**

The applicant, of Moroccan nationality, sought the annulment of the removal order issued against her in 2003, three months before the French Office for the Protection of Refugees and Stateless Persons (OFPRA) recognised the statelessness status of her minor daughter, who had been refused, on the one hand, registration in the Moroccan civil status registers, by a decision of the Moroccan consular authorities, and, on the other hand, the issuance of a certificate of French nationality, by a court decision.

#### **Decision & Reasoning**

The Council of State first recalls that individuals who have obtained the status of stateless person by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) may avail themselves of the provisions of Article 31 of the 1954 Convention relating to the Status of Stateless Persons, under which a stateless person may not be removed, except on grounds of national security or public order. A stateless person is therefore entitled, pursuant to article L. 313-11, paragraph 10, of the Code of entry and stay of foreigners and asylum law (CESEDA), to a temporary residence permit bearing the words "private and family life". This protection is

extended under certain conditions to his or her minor children, unless his or her presence constitutes a threat to public order.

The Council of State then reasons as follows:

*"Considering that, in view of the obligations to protect stateless persons imposed by the above-mentioned Convention, of the objective of integration which it defines, and of the specific right of residence granted to stateless persons, they may legally be subject to a removal order only on grounds of national security or public order; that, subject to the same reasons, such a measure cannot be taken against the parents of a minor child recognised as stateless who lives with them, since it would have the effect of either depriving the child of the benefit of the rights and guarantees attached to the status of stateless person, if he or she accompanies his or her parents in execution of the removal order or to disproportionately infringe the right to respect for the family life of the parents, in breach of the provisions of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, if the child remains in France separated from his parents.*

*Considering that, given the effects of the protection conferred by the status of stateless person, [the applicant] was entitled to avail herself, on the date of the contested order, of the statelessness status of her daughter, [...] who lives with her; that, consequently, for the reasons set out above, the Prefect of Police could not legally issue an order to escort her to the border".*

Thus, the Council of State rules that, although it was rendered after the refusal of a residence permit and the prefectural removal order issued against the applicant, OFPRA's decision recognising the statelessness status of the applicant's daughter can be invoked to request the cancellation of the removal measure. As a result, the decision to recognise the status of stateless person can be used as a basis to challenge the lawfulness of an administrative decision taken prior to this decision.

In addition, the Council of State makes a constructive interpretation of the combined provisions of Article 8 of the European Convention on Human Rights, which enshrines the right to family life, and Articles 31 and 32 of the 1954 Convention. In this instance, the person who has been granted the status of stateless person is not the individual who is the subject of a removal order, but her minor child. The Court therefore gives full effect to the provisions of Article 31 of the 1954 Convention, by ensuring that a stateless person, even a minor, is not removed from French territory

for reasons other than of national security or public order. Therefore, the stateless minor cannot be forced to follow his parents outside French territory in application of the removal order issued against the parents.

Moreover, the removal order applied to the mother would have the consequence of depriving the stateless child of the presence of one of his parents, and would thus disproportionately affect the right to family life according the Court. As a result, the solution adopted prevents the parent of a stateless minor from being expelled, subject to an analysis of the circumstances of the case.

### **Decision documents**

[Council of State, 9 November 2007, n° 261305](#)

### **Outcome**

The judgment of the magistrate delegated by the president of the Administrative Court of Paris is annulled.

The order of the Prefect of Police ordering the expulsion of the applicant is annulled.

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

The solution in this case is consistent with the provisions of article 3-1 of Convention on the Rights of the Child, which was not invoked in this case. The Council of State previously drew from this article the requirement not to deprive a child of the possibility of living with both his or her parents, whether on French territory or abroad, as a result of a removal order (France, Conseil d'État, (Judgment No. 236148), 12 June 2003).