

## **Belgium - Constitutional Court, judgment no. 1/2012**

The refusal to grant family allowance to a recognised stateless person because of the lack of a residence permit amounts to discrimination between stateless persons and refugees. Such difference of treatment arises from a legislative gap that had been identified in an earlier judgement and not filled yet by the legislator.

**Case name (in original language) :** Arrêt no. 1/2012

**Case status:** Decided

**Case number:** 1/2012

**Citation:** Belgium, Constitutional Court, 11 January 2012, No. 1/2012, available at <http://www.const-court.be/public/f/2012/2012-001f.pdf> (in French) and <http://www.const-court.be/public/n/2012/2012-001n.pdf> (in Dutch).

**Date of decision:** 11/01/2012

**State:** Belgium

**Court / UN Treaty Body:** Constitutional Court

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

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

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

**Legal instruments:** 1954 Statelessness Convention

**Key aspects:** Access to social and economic rights, Discrimination, Residence permit

**Relevant Legislative Provisions:**

Articles 7.1, 23 and 24 of the 1954 Convention.

Articles 10 and 11 of the Belgian Constitution (Principle of equal treatment and non-discrimination)

Article 49 of the Law of 15 December 1980 (Aliens Law)

**Decision & Reasoning**

The Constitutional Court held that the difference in treatment in regard to their right of residence between recognised refugees and recognised stateless persons who involuntarily lost their nationality and cannot obtain a legal and durable right of residence in another state, constitutes discrimination since different treatment is applied to persons who find themselves in comparable situations.

The Constitutional Court concluded that a stateless person who has been recognised as such because he has involuntarily lost his nationality, and shows that he cannot obtain a legal and durable right of residence in another state with which he has ties, is discriminated against in the enjoyment of his fundamental rights. This discrimination, stated the Constitutional Court, stems from the absence of any legislative provision granting persons recognised as stateless in Belgium a right of residence comparable to the one enjoyed by refugees.

According to Constitutional Court, it was first and foremost up to the legislator to remedy this situation, as only the legislator can set the conditions under which stateless persons are entitled to acquire a residence permit. The Constitutional Court went on to say however that until such time as this legislative gap is filled, courts that receive appeals against refusals to award family allowance to stateless persons are entitled to overturn those decisions if the refusal was based solely on the stateless person's unlawful residence in Belgium; and if the individuals involved had involuntarily lost their nationality and could prove that they could not obtain a legal and durable residence permit in another state with which they have ties.

### **Decision documents**

[Constitutional Court, judgment no. 1/2012 \(French\)](#)

[Constitutional Court, judgment no. 1/2012 \(Dutch\)](#)

### **Outcome**

The case was referred back to the Labour Court, as this court had asked a preliminary question.

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

Lejeune Julie and Van Doren Wout, "Statelessness in Belgium: a blurred landscape", European Network on Statelessness Blog, 7 March 2019.

European Network on Statelessness and Nansen vzw/asbl, “Avis conjoint du réseau européen sur l’apatridie et de Nansen sur la proposition de loi modifiant la loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers, en vue de régler le droit de séjour des apatrides », 1 March 2019.

UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Belgium, October 2012, available at: <https://www.refworld.org/docid/5100f4b22.html>

### **Caselaw cited**

Constitutional Court, Judgment no. 198/2009 of 17 December 2009