



STATELESSNESS

Case Law Database

[Spain - Supreme Court, no. 1582/2022](#)

The Supreme Court held that an asylum seeker may maintain during the appeal phase the benefits received during the asylum procedure, in particular the right to reside and work in Spain.

Case name (in original language) : Tribunal Supremo - Sala de lo Contencioso-Administrativo Sección Quinta Sentencia núm. 1582/2022

Case number: 1582/2022

Citation: Supreme Court, no. 1582/2022

Date of decision: 29/11/2022

State: Spain

Court / UN Treaty Body: Supreme Court

Language(s) the decision is available in: Spanish

Applicant's country of residence: Mauritius

Legal instruments: European Union law

Key aspects: Access to social and economic rights

Facts

The applicant is an asylum seeker who made an interim request to maintain during the appeal phase the benefits received during the asylum procedure, in particular the right to reside and work in Spain. The National High Court ruled in 2021 that the interim measure could not be adopted.

Decision & Reasoning

The Supreme Court admitted the appeal as it has a jurisprudential interest in determining the impact of the judgment of the Court of Justice of the European Union (Grand Chamber) of 19 June 2018 (Case C-181/16, Case Gnandi), in relation to the Asylum Procedures Directive (Directive 2013/32/EU), on the interpretation by the court when adopting interim measures for the extension of the benefits provisionally granted to the applicant during the administrative procedure as an asylum seeker,

where a negative administrative decision has been appealed.

For this purpose, the Supreme Court analyses the judgment of the European Court of Justice in the Ghandi case, which interprets the minimum standards for the procedures that Member States must apply in order to establish or reiterate refugee status, establishing the following: "*... in the light of the principle of non-refoulement and the right to an effective remedy, as enshrined in Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the determining authority from taking a return decision pursuant to Article 6, Article 6(1) of Directive 2008/115, against a third-country national who has lodged an application for international protection, from the moment at which it refuses that application or joins that refusal in the context of a single administrative act, and thus before the judicial review of that refusal has been completed, provided that the Member State concerned ensures that all legal effects of the return decision are suspended pending the outcome of such an appeal, that the applicant may benefit during that period from the rights deriving from Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States, and who may rely on any change in circumstances occurring after the adoption of the return decision which may significantly affect the assessment of his situation in accordance with Directive 2008/115, in particular Article 5 thereof, which it is for the national court to verify.*"

The Supreme Court upheld the appeal, concluding that, in the rejection of the interim measures, the return order would be implicit, which could entail the loss of the legitimate purpose of the appeal, so that as long as there is no court decision, the non-suspension of the appealed decision means that the purpose of the appeal is lost. The Asylum Procedures Directive provides for the right to effective remedy also during the appeal phase, as a return would otherwise prevent the implementation of a positive appeal decision. Thus, where a person whose asylum application is rejected lodges an appeal, they will continue to have the right to stay and work in Spain until the asylum procedure has been definitively finalised and therefore until the appeals lodged have also been rejected.

Decision documents

[Judgment, Supreme Court, no. 158/2022](#)

Outcome

The Supreme Court upheld the appeal.

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

European Legal Network on Asylum, [Spain: The Supreme Court recognized the right to reside and to work of asylum seekers while their judicial appeal is pending](#)