STATELESSNESS
Case Law Database

Netherlands - Court of Appeal The Hague, ECLI:NL:GHDHA:2016:1568

After twice being denied a residence permit, the applicant initiated civil proceedings against the Dutch state to obtain a declaratory judgment that the applicant is stateless. The District Court of The Hague considers, citing three cases from the European Court of Human Rights, that the determination of statelessness is not a fundamental right under art. 8 ECHR and there is no obligation for the country of residence to determine whether someone is stateless, if foreign authorities (such as the country of origin) refuse to grant nationality or acknowledge the applicant as a citizen. If fundamental rights can be safeguarded through a different procedure, there is no violation of art. 8 ECHR.

Case name (in original language) : Gerechtshof Den Haag, 14 juni 2016, ECLI:NL:GHDHA:2016:1568
Case status: Decided
Case number: ECLI:NL:GHDHA:2016:1568
Citation: Court of Appeal The Hague, 14 June 2016, ECLI:NL:GHDHA:2016:1568
Date of decision: 14/06/2016
State: Netherlands
Court / UN Treaty Body: Court of Appeal The Hague
Language(s) the decision is available in: Dutch
Applicant's country of birth: Azerbaijan
Applicant's country of residence: Netherlands
Legal instruments: 1954 Statelessness Convention, European Convention on Human Rights (ECHR)
Key aspects: Determination/confirmation of nationality, Residence permit, Stateless status and documentation, Statelessness determination
Relevant Legislative Provisions:

Art. 8 ECHR

Art. 27 1954 Statelessness Convention

Facts

The applicant was born in Baku, formally Soviet-union, now Azerbaijan, to a currently deceased (ethnic) Armenian father and a currently deceased (ethnic) Azeri mother. The applicant travelled to the Netherlands in 2002 as an unaccompanied underage asylum seeker. The Minister for Immigration and Integration denied the applicant an asylum residence permit. An appeal made by applicant was later denied by the District Court of the Hague and the Administrative Jurisdiction Division of the Council of State in 2004, because the applicant did not sufficiently demonstrate that he was in danger of persecution in Azerbaijan.

In 2008 the applicant applied for a regular residence permit on the grounds of "residence as a foreigner who cannot leave the Netherlands through no fault of his own". The Secretary of State denied the application in 2009. The District Court of the Hague admitted the appeal made by applicant, but this was later overturned by the Administrative Jurisdiction Division of the Council of State in 2010. The Administrate Jurisdiction Division ruled that the applicant had not tried to return to Azerbaijan, either by himself or with help from the International Organisation for Migration, and thus did not meet the demands for the requested residence permit. The Netherlands government currently does not provide for a procedure to determine statelessness.

After these failed proceedings, the applicant initiated a civil procedure against the Dutch State (Ministry of Justice and Security), asking a declaratory judgment that he is primarily "de jure" stateless, and subsidiarily "de facto" stateless.

Legal arguments by the applicant

The applicant stated that he is not recognised as a citizen of either Azerbaijan or Armenia and both countries refuse to give him a laissez-passer (temporary travel document). The applicant stated that, in general, no laissez-passer is granted to ethnic Armenians from Azerbaijan with a last name ending on -yan or -ian. The applicant stated that he has been unsuccessful in his attempts to return to either country, even with help from the International Organisation for Migration. This justifies the conclusion that the applicant had been stateless for a long period of time. Applicant stated that the civil judge is competent to determine his

statelessness. The applicant stated that the determination of statelessness is a right that is protected under art. 8 ECHR. Furthermore, the applicant stated that he has an interest in the declaration of his statelessness since, without such declaration, he cannot make an appeal to receive the protection under the statelessness conventions and the Dutch legislation, such as for instance the right to rent a house or to seek health insurance.

In his appeal, the applicant also stated that art. 27 of the 1954 Statelessness Convention grants him the right to an identification document.

Legal arguments by the opposing party

The Dutch State argued that the applicant's claim should be declared inadmissible because of a lack of interest. The State also argued that art. 8 ECHR does not comprise a general fundamental right to be declared stateless. Furthermore, the applicant had not sufficiently proven his identity.

Decision & Reasoning

The District Court of the Hague dismissed the applicant's claim due to insufficient interest. The Court of Appeal of the Hague confirmed the judgment.

The applicant's appeal on the rights of stateless persons failed. The Court of Appeal considered that the 1954 Statelessness Convention does not contain an obligation to establish a statelessness determination procedure. States can uphold their obligations under the Convention through other means than such determination procedure. It is also unclear whether the applicant is in fact stateless, as he might have the nationality of Azerbaijan and/or Armenia, or might still be recognised as a citizen by either country.

The applicant's appeal under art. 8 ECHR also failed. The court considered that it does not follow from the ECtHR caselaw that art. 8 ECHR entails a general right for statelessness to be determined by the country of residence. The cases cited by the applicant (Mikulić/Kroatië ECtHR 7 February 2002, nr. 53176/99, Genovese/Malta ECtHR 11 October 2011, nr. 53124/09 and Karassev/Finland 12 January 1999, nr. 31414/96) consider that it is always dependant on the circumstances whether the refusal to grant a certain nationality is a violation of art. 8 ECHR. The Court cited Genovese/Malta:

“The Court also reiterates that the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person’s physical and social identity (see Dadouch v. Malta, no. 38816/07, § 47, ECHR 2010-... (extracts)). The provisions of Article 8 do not, however, guarantee a right to acquire a particular nationality or citizenship. Nevertheless, the Court has previously stated that it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see Karassev v. Finland (dec.), no. 31414/96, ECHR 1999-II, and Slivenko v. Latvia (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II)”

The Court of Appeal concluded by stating:

As rightly argued by the State [...], it cannot be recognised that the determination of statelessness by a state where someone actually resides constitutes a (fundamental) right. The obligation expressed in the aforementioned judgment to (under certain circumstances) grant a certain nationality or citizenship does not mean that the country of residence is obliged under Article 8 ECHR to declare statelessness by means of a procedure whenever, where appropriate , the foreign authorities (eg of the country of birth or of the father or mother) refuse to grant nationality or to recognise the person as their national. If the fundamental rights of a person can be safeguarded by means other than statelessness, there is no violation of Article 8 of the ECHR. [par. 10]

The Court concluded by considering that the applicant can apply (again) for a residence permit on the grounds of "residence as a foreigner who cannot leave the Netherlands through no fault of his own", to eventually obtain a residence permit and identification. The fact that according to UNHCR, this is not the right procedure to determine whether someone is stateless, is irrelevant as the procedure allows the applicant to accomplish what he wants: a residence permit and (eventually) identification. The question whether art. 27 of the 1954 Stateless Convention grants the applicant a right to an identification document can therefore be left unanswered. The court concluded by determining that it is not up to the civil court to issue a declaratory judgment regarding the applicant's statelessness.

Decision documents

ECLI_NL_GHDHA_2016_1568.pdf

Outcome

The Court of Appeal upheld the judgment from the District Court of the Hague, dismissing the applicant's claims.

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

Mentioned in:

- College for Human Rights, Advice, 'Law establishing a statelessness determination procedure', 28 November 2016, https://mensenrechten.nl/nl/publicatie/5b46fce9748c2212a545181a

- Administrative Jurisdiction Division of the Council of State 7 December 2017, ECLI:NL:RVS:2017:3385, annotation by P.R. Rodrigues, AB 2018/228

Caselaw cited

Administrative Jurisdiction Division of the Council of State 21 May 2014, ECLI:NL:RVS:2014:1788

Mikulić/Kroatië ECtHR 7 February 2002, nr. 53176/99

Genovese/Malta ECtHR 11 October 2011, nr. 53124/09

Karassev/Finland 12 January 1999, nr. 31414/96