



STATELESSNESS

Case Law Database

France - Council of State - Judgment n°457625 of 27 December 2022

The case concerns the challenge before the French Council of State (*Conseil d'État*) of a refusal by the Administrative Court of Appeal to grant the applicant statelessness status. As the Administrative Court of Appeal misinterpreted the arguments of the French Office of Protection of refugees and stateless people (OFPRA), the Council of State quashed its ruling and decided on the merits of the case. The Council of State however reached the same outcome as the Administrative Court of Appeal and refused to grant the applicant statelessness status.

Case name (in original language) : Conseil d'Etat, 2ème – 7ème chambres réunies, 27 décembre 2022, 457625

Case status: Decided

Case number: Judgment n°457625

Citation: Council of State, 2nd and 7th Chambers, Judgment n°457625 of 27 December 2022

Date of decision: 27/12/2022

State: France

Court / UN Treaty Body: Council of State

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

Key aspects: Stateless status and documentation, Statelessness and asylum, Statelessness determination

Relevant Legislative Provisions:

- Article 1 of the 1954 Statelessness Convention
- Charter of the United Nations
- Articles 812-1 and 812-2 of the French Code of Entry and Residence of Foreigners and the Right of Asylum

- French Code of administrative justice

Facts

The applicant was born in the Western Sahara region, which is considered a non-autonomous region under the supervision of Morocco under Article 73 of the Charter of the United Nations. His birth certificate states that he is a Moroccan national but the applicant never took any necessary steps before the Moroccan authorities to obtain Moroccan identity documentation.

He fled to France in 2013 where he requested asylum. His request was however denied. He filed two subsequent requests, one for a residence permit and one for recognition of his statelessness status, both were denied. France also ordered him to leave the country.

The refusal decision of the Office for the Protection of Refugees and Stateless Persons (OFPRA) was based on the birth certificate of the applicant which stated that he was Moroccan and on the ground that the applicant never sought to obtain Moroccan identity documentation.

The applicant challenged the refusal to be granted statelessness status before the first instance court and the Administrative Court of Appeal, which both upheld OFPRA's decision not to grant him such status.

The Administrative Court of Appeal confirmed the refusal but considered that OFPRA requested a substitution of reasoning on the basis that OFPRA mentioned in its statement that the father of the applicant was Spanish and the applicant had never sought to obtain such nationality. The Administrative Court of Appeal stated that, irrespective of the conflict between Morocco and the birth region of the applicant, the applicant did not bring any evidence that he had requested the Spanish nationality as a son of a Spanish national or was prevented to do so. The applicant therefore challenged the decision before the French Council of State.

Legal arguments by the applicant

Before the Administrative Court of Appeal, the applicant argued that Morocco was an 'occupying power' of the Western Sahara region which has no sovereignty rights on Western Sahara. According to the applicant, under international law, an occupying power is prohibited from imposing its nationality onto those of the occupied territory.

Therefore, the reference to its Moroccan nationality was to be considered erroneous and illegal and OFPRA could not rely on the applicant's birth certificate which indicated that he was Moroccan to deny him the stateless status.

The applicant also claims that he could not take the necessary steps to obtain Moroccan identity documents as he has no legal relationship with the country and does not reside on a regular basis in Morocco. Doing so would also have put him in danger as the political situation is very tense between Western Sahara and the Moroccan authorities.

Legal arguments by the opposing party

The Administrative Court of Appeal considered that OFPRA's reasoning was based on the birth certificate of the applicant and in the alternative on a substitution of reasoning based on the fact that the applicant's father holds a Spanish passport and that the applicant never sought to obtain Spanish nationality.

The Administrative Court of Appeal went for the alternative and substituted the reasoning. It argued that the applicant never took any steps to request Spanish nationality nor showed that he was not able to take those steps. The Administrative Court of Appeal upheld OFPRA's decision stating that the applicant did not bring any evidence that he was stateless.

Decision & Reasoning

The Council of State quashed the reasoning of the Administrative Court of Appeal, ruling that the Administrative Court of Appeal misinterpreted the arguments of the parties, and in particular the alleged request for substitution of reasoning of OFPRA, and ruled on the merits.

The Council of State reminded that '*statelessness status requires evidence that the State likely to regard one person as its national by application of its legislation does not regard them as such*' (par. 5).

The Council of State considered that such evidence was not brought forward by the applicant and highlighted the following elements:

- The applicant did not seriously challenge its birth certificate and even avail himself of his Moroccan nationality in his asylum request;

- The applicant does not bring forward any rule of international law which would defeat the application of the 1954 Statelessness Convention which gives full effect to the recognition of its own nationals by a State;
- The fact that Western Sahara is a non-autonomous territory under Article 73 of the Charter of the United Nations is not sufficient to consider that a person born in this region which has received the Moroccan nationality is stateless;
- The fact that the applicant states that he gave up his Moroccan nationality unilaterally is not enough to grant him statelessness status.

The Council of State therefore dismissed the appeal on points of law of the applicant and upheld OFPRA's decision.

The Council of State also considered unnecessary to request a preliminary ruling to the Court of Justice of the European Union.

Decision documents

[Judgment](#)

Outcome

The Council of State upheld OFPRA's decision not to grant the applicant statelessness status.

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

[French Administrative Supreme Court rejected a stateless status application from a Sahrawi applicant | European Network on Statelessness](#)