

Netherlands - Court of the Hague,
ECLI:NL:RBDHA:2019:7638

A child is born in the Netherlands in 2016, and has resided there since, without a legal residence permit. A request was made on behalf of the child to determine that he has Dutch nationality, on the basis of direct application of article 1 of the 1961 Convention, as he would otherwise be stateless. The Court refuses, as it considers this to be a question of granting Dutch nationality, and not of determination of Dutch nationality, which the Court is not empowered to do.

Case name (in original language) : ECLI:NL:RBDHA:2019:7638

Case status: Decided

Case number: ECLI:NL:RBDHA:2019:7638

Date of decision: 29/04/2019

State: Netherlands

Court / UN Treaty Body: Court of the Hague

Language(s) the decision is available in: Dutch

Applicant's country of birth: Netherlands

Applicant's country of residence: Netherlands

Legal instruments: 1961 Statelessness Convention, 1997 European Convention on Nationality

Key aspects: Acquisition of nationality, Childhood statelessness, Determination/confirmation of nationality, Residence permit, Statelessness determination

Relevant Legislative Provisions:

1961 Convention on the Reduction of Statelessness

1997 European Convention on Nationality

Article 17 of the Royal Law on Dutch nationality

Facts

A child was born in 2016 to two parents who have been residing without a legal residence permit in the Netherlands since 2014. Parents were born in Israel, presumably of Arabic origin.

Legal arguments by the applicant

The representative of the child argued that the child acquired Dutch nationality by direct effect of Article 1 of the 1961 Convention. The equivalent Dutch legislation that requires a stateless child to reside legally in the country for 3 years before accessing Dutch nationality should not be applied, as it contradicts binding international norms ratified by the Netherlands.

Legal arguments by the opposing party

The Ministry argued that the Court is not empowered to decide on whether the child does or does not have a Dutch nationality - the Court cannot consider requests for acquisition of Dutch nationality through the "right of option" - which is a procedure for acquisition of nationality by stateless children born in the Netherlands, in accordance with article 6(1b) of the Royal Law on Dutch Nationality.

Dutch nationality can only be acquired through the provisions of the Royal Law on Dutch nationality. There is no provision of Royal Law through which the child may have acquired Dutch nationality automatically.

In addition, the Ministry remarks that the child cannot acquire Dutch nationality through the option procedure for stateless children, as his residence status is undocumented. There is an intention of a legislator to introduce access to Dutch nationality also for stateless children without a legal residence permit born in the Netherlands, but the relevant legislative proposal has not yet been submitted to the Parliament.

Decision & Reasoning

"First of all the Court notes that the request to the Court has been based on Article 17 of the Royal Law on Dutch Nationality (RWN). On the basis of this Article the Court can only determine whether or not the applicant possesses Dutch nationality. The Court cannot grant Dutch nationality."

"It has not been established that the child has acquired Dutch nationality on the basis of one of the provisions of the RWN. The legal representative of the child has himself asserted that the RWN does not regulate situations such as that of this child. RWN contains an exhaustive set of circumstances in which Dutch nationality can be acquired and retained, and the case of the child does not fall under any of these circumstances, wherefrom follows that the child did not acquire Dutch nationality at birth or at any other later moment in time. The appeal to the 1961 Convention does not change this, as in this specific procedure the Court is bound to the legal scope of RWN, and cannot grant Dutch nationality - but merely determine it."

Decision documents

[ECLINLRBDHA20197638_OptierechtViaVaststelling.pdf](#)

Outcome

The child does not have Dutch nationality.