



France - Bordeaux Administrative Court of Appeal, case no. 15BX03207

The applicant was born in Kosovo and arrived to France irregularly in 2009. Her application for a statelessness status was rejected because OFPRA considered both Kosovo and Serbia to be potential countries of the applicant's nationality, and have rejected the applicant's arguments that as a member of Roma community she was subject to discrimination and would not be able to access those nationalities.

Case name (in original language) : CAA de BORDEAUX, 1ère chambre (formation à trois), 22/02/2016, 15BX03207

Case number: 15BX03207

Date of decision: 22/02/2016

State: France

Court / UN Treaty Body: Bordeaux Administrative Court of Appeal

Language(s) the decision is available in: French

Applicant's country of birth: Kosovo

Applicant's country of residence: France

Legal instruments: 1954 Statelessness Convention

Key aspects: Burden of proof, Deportation and removal, Discrimination, Standard of proof, State succession, Statelessness determination

Facts

The applicant was born in 1971 in Kline (now Kosovo) to parents who were also born there, and entered France irregularly in June 2009. In 2010 of a decree obliging her to leave France was issued against her, stating the country of her nationality or any other country where she would be admissible as possible countries of return. The expulsion measures against her failed as the Serbian authorities refused to issue her a laissez-passer. She applied to be recognised as stateless in 2012, but her request was denied in 2013.

Decision & Reasoning

The Court reasoned considered the procedural issue of whether the applicant received adequate translation support, as well as the issue of Roma discrimination in the Yugoslav successor states.

As to the procedural guarantees and adequate translation, the Court reasoned as follows:

"2. Firstly, article 24 of the law of 12 April 2000 on the rights of citizens in their relations with the administrative authorities reads: "With the exception of cases where a decision is taken upon a request from an individual, decisions with regard to individuals to which articles 1 and 2 of law nr. 79-587 of 11 July 1979 apply (...) are only taken after the individuals concerned had the opportunity to present written observations, and, where appropriate, oral observations. Such an individual may be assisted by counsel or a representative of their choice (...)"

"3. The applicant argues that OFPRA has disregarded the aforementioned provisions of article 24 of the law of April 12, 2000 and invalidated its decision with a procedural violation since the interview conducted in the course of the determination procedure was held without the assistance of a counsel. These provisions, however, cannot be usefully invoked to question a decision on a rejection of a statelessness status, which is taken upon the request from an individual. Similarly, the applicant cannot successfully argue that she was unable to successfully defend herself during the interview due to the interpreter having been Serbo-Croatian, and her only having a very imperfect command of that language, especially considering that in her request she declared to speak fluent Serbian."

As to the discrimination of Roma preventing the applicant from accessing a nationality, the Court reasoned as follows:

"5. The applicant maintains that the State of Kosovo practices a discriminatory policy towards the Roma community. This may explain the applicants choice not to claim Kosovar nationality, but does not affect the legal possibility to do so. The applicant submits that the Serbian authorities refused to issue her a laissez-passer which would allow to carry out the expulsion order of the prefect of Corrèze in 2010, and that she is in fact in a situation of statelessness. However, the refusal to issue a laissez-passer appears to be a result of lack of sufficient verifiable information about the applicant's identity - it does not lead to a conclusion that she is stateless, and

moreover does not constitute a response to any request initiated by her. The applicant neither proves not even claims to have taken any effective steps to ensure that Kosovo, where she was born just like her parents, or Serbia, where she lived for several years, recognise her as one of their nationals. Moreover, she does not dispute that she could rely, as the lower instance court rightly pointed out, on the legislation of those two States on nationality - in particular on Article 29.1 of the Law on Kosovo Nationality of February 20, 2008 providing for the acquisition of Kosovar citizens for citizens of the Federal Republic of Yugoslavia on January 1, 1998 who on that date had their habitual residence in Kosovo, or on the amended law of 16 July 1996 On Citizenship of the Federal Republic of Yugoslavia, composed of the Republic of Serbia and the Republic of Montenegro, which provides that "any citizen of the Socialist Federative Republic of Yugoslavia which resides abroad and has no other nationality may be recognised as Yugoslav national and from now on - Serbian". Under these circumstances the applicant cannot maintain that OFPRA has not examined her situation sufficiently ir disregarded the provisions of article 1 of the New York convention of September 28, 1954."

Decision documents

[Bordeaux22Feb2016.pdf](#)

Outcome

The Court upheld the administrative decision rejecting the applicant's statelessness status.