



Media relations
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Press Release

regarding judgment F-1297/2017 of 14 December 2021

Recognition of statelessness status

The Federal Administrative Court clarifies its jurisprudence on an interest worthy of protection in obtaining a decision on an application for the recognition of statelessness. On the merits, the Court admits the appeal of a Syrian Kurd who had been refused statelessness status by the State Secretariat for Migration.

Born in the al-Hasakah province of Syria as a member of the Ajanib minority (or “foreigner”), the appellant fled his country of birth in 2011 in a context of civil war. In August 2015, he filed an application for asylum in Switzerland which was denied in June 2016. Eventually, in 2018, the appellant was included in the refugee status granted to his spouse who had arrived in Switzerland after him and obtained asylum in 2017. In the meantime, the appellant had applied to be granted statelessness status. The State Secretariat for Migration (SEM) denied his application principally on the ground that he could have acquired Syrian nationality before leaving the country in 2011.

Interest in procedure

In its prior case-law,¹ the Federal Administrative Court (FAC) had ruled that a refugee had an interest worthy of protection in obtaining a decision on an application for the recognition of statelessness. This was justified by the fact that the waiting period for a residence permit in the case of stateless persons was five years and that they were thus in a privileged position compared with refugees who had to wait ten years. A legislative amendment abolished this distinction as of 1 January 2018, and the time limit is now ten years in both cases. As a result, the FAC had ruled² that there was no practical interest for a refugee to be recognised as stateless and that it was, therefore, no longer necessary to consider such applications.

In the case at hand, the Court finds that a distinction must be made in this regard between the precarity of the appellant’s derived refugee status, acquired through his wife, and that obtained on an individual basis. In the first case, it cannot be denied that the appellant has an interest in the statelessness recognition procedure.

¹ ATAF 2014/5

² Judgment of 24 June 2020 in case F-3483/2018

Moreover, the Court states in this leading case that any applicant who appears to have no nationality must in principle be recognised as having an interest worthy of protection in a decision on an application for recognition of statelessness status. Recent developments in the case-law of the European Court of Human Rights (ECtHR), notably in its Judgment *Hoti vs Croatia*,³ seem to tie the issue of statelessness to social identity, which is protected by the right to a private life (Article 8 ECHR). To deny access to a procedure designed to clarify this issue constitutes an unjustifiable interference with this right.

Stateless person status granted

On the merits of the case, the Court finds that the appellant has no nationality, and that he has never had one. Considering his refugee status, he cannot reasonably be expected to apply to the Syrian authorities for naturalisation under the presidential decree⁴ granting Syrian Arab nationality to those registered as Ajanib in the al-Hasakah province. Nor, considering the situation in Syria at the time, can he be deemed to have acted abusively in not applying for naturalisation during the four months he was in Syria after the decree was promulgated. As a result, the FAC grants the appellant the status of a stateless person.

This judgment may be appealed to the Federal Supreme Court.

Contact

Céline Jordan
Communication
+41 (0)58 465 67 23

medien@bvger.admin.ch

Rocco R. Maglio
Press secretary
+41 (0)58 465 29 86
+41 (0)79 619 04 83

medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 353 employees (297.3 FTE) and its 73 judges (65.15 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,200 judgments every year.

³ Judgment of 26 April 2018, appl. 63311/14

⁴ Presidential Decree no. 49 of 7 April 2011