



STATELESSNESS

Case Law Database

[Luxembourg - Administrative Court, judgment no. 43950C](#)

The applicant originates from former Soviet Union, and has lived in Luxembourg since 2004, unsuccessfully applying for the recognition of a statelessness status on numerous occasions. His identity has never been confirmed, and there were doubts as to the credibility of his testimony stemming from his asylum procedures. The applicant claimed that after 15 years of inability to determine the country of destination for his removal the attempts at deportation should be terminated, and his statelessness recognised, especially considering his poor health condition.

Case name (in original language) : 43950C

Case status: Decided

Case number: 43950C

Citation: <https://ja.public.lu/40001-45000/43950C.pdf>

Date of decision: 02/04/2020

State: Luxembourg

Court / UN Treaty Body: Administrative Court of Luxembourg

Applicant's country of birth: Soviet Union {former}

Applicant's country of residence: Luxembourg

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Access to social and economic rights, Burden of proof, Country of return, Deportation and removal, Detention, Determination/confirmation of nationality, Establishing identity, Protection, Residence permit, Standard of proof, State succession, Statelessness and asylum, Statelessness determination

Facts

The applicant was born in Tajikistan in 1968. He applied for numerous asylum and other protection and toleration statuses in Luxembourg since 2004.

He first applied for a statelessness status in 2006, which was denied to him as his identity was not proven and there were doubts as to the credibility of his statements based on his asylum procedure. He was asked to provide a birth certificate, prior residence permits, as well as a statement from Tajik authorities confirming that he has lost his Tajik nationality. He later made a number of further unsuccessfully applications for a statelessness status, 2008, 2013, 2015, and most recently in 2018, the latest rejection being contested in this judgment.

The applicant had a tolerated status in Luxembourg between 2007 and 2011.

On 18 May 2018 the applicant took a linguistic test, which indicated that it is unlikely he comes from Tajikistan, and that it is most probable that he comes from Russia.

Legal arguments by the applicant

The applicant argued that he has been in Luxembourg since 2004 and has no nationality. Both Tajik and Russian authorities have confirmed that he is not one of their nationals. He has evidenced that he qualified for a statelessness status. He reiterates that he was born in Tajikistan, and has lived in Uzbekistan, Lithuania and Ukraine. He has contacted the authorities of these states, but they refused to recognise him as a national. Regarding the linguistic test, the applicant claims that his father was a soldier, and he lived in a Soviet military base in Tajikistan, where Russian was the spoken language, which explains the outcome of the linguistic test. He further argues that the fact he has been uncooperative in the past is due to health problems, and this should not be held against him, especially considering he has lived in Luxembourg for 15 years, and now survives in precarious conditions, relying on help from friends.

Regarding the removal proceedings against him, the applicant pointed out that it would be inconsistent to remove him to Tajikistan while relying on the outcome of the linguistic test which suggests he does not come from Tajikistan to question his credibility. He moreover argued that the removal proceedings against him should be terminated, as it has proven impossible to identify a country of destination for nearly 15 years, which is contrary to the principle of proportionality. He has serious health issues, and he needs to be able to make an argument against removal proceedings on the basis of his health, which he is unable to do if the destination country is not identified.

Legal arguments by the opposing party

The authorities request the Court to confirm the findings of the lower instance court.

Decision & Reasoning

On the issue of applicant's statelessness Court ruled as follows:

"[...] The [court of lower instance] rightly noted that the person requesting to be recognised as stateless bares the burden of proof that he has lost his original nationality or never had one. The applicant does not have to prove that he does not have any nationality in the world, but rather that he cannot access the nationalities of States with which he has a relevant link, in particular through birth on the territory, parentage, marriage or habitual residence. The [first instance judges] were also correct in asserting that statelessness is not presumed, and that it is up to the applicant to establish that he has met the conditions for being recognised as a stateless person on the day that the disputed administrative decision was taken."

"The documents in the administrative file indicate that the applicant entered Luxembourg in 2004, according to his own statements. When submitting his asylum application, he presented himself under the identity of ... and declared that he was born on 5 February 1968 in ... in Tajikistan which was then part of the USSR and that he is of Jewish ethnicity. It should be noted that the applicant has not produced any documents establishing his identity as well as his place and date of birth. On the contrary, it emerges from the aforementioned linguistic test of 18 May 2018 that he can be excluded that the applicant comes from Tajikistan and that it is highly probable that he comes from Russia, the expert having based this conclusion that the applicant does not speak the Tajik language and that his knowledge of Tajikistan is incomplete. This conclusion is not successfully challenged by the applicant's assertion that he grew up in a Soviet military base in Tajikistan, since if this was true the applicant should be able to submit documentary evidence of their identity and place of birth, such as extract from a birth certificate. However, it appears from the letter sent by the Tajik embassy in Brussels of 15 December 2017 that the Tajik authorities were unable to identify the applicant as a national of Tajikistan. Similarly to the conclusion of [the Court of first instance], this Court considers that this can be explained by the fact that the applicant does not come from Tajikistan, rather than by the applicant's allegation that he has lost his nationality."

"The applicant also provided copies of letters sent by his representative to various embassies of successor states of the USSR, as well as copies of negative responses

from the embassies of Georgia, Moldova and Estonia. The embassies of other countries contacted by the representative replied that the applicant should contact them personally and/or send them specific documents that would allow better identification. The Court, just like [the first instance court], considers that the applicant does not have justification for claiming the statelessness status simply because some embassies have not been able to identify him. The difficulties in identifying him are better explain by applicant's lack of cooperation in the establishing which country he is likely to have come from than by him not being recognised as a national by the countries he approached. The applicant did not cooperate in establishing his identity, and offered a vague inconsistent recollection of his time in various countries that he claimed to have lived in before arriving to Luxembourg. It is not sufficient to provide negative responses from countries he did not have a relevant link with, such as through birth on the territory, parentage, marriage or habitual residence. In this context it must be noted that the applicant did not provide any documents that would make it possible to establish any links he may have with countries, such as residence permits issued by the authorities of the countries where he resided.

"Concerning the letter of 27 December 2017 from the Embassy of Russia in Luxembourg, which the applicant refers to, and in which he is allegedly denied Russian nationality, it appears from the content of this letter that, contrary to what is alleged by the applicant, Russian nationality is not denied to him, but the letter merely states that it cannot be confirmed that he is a Russian national as he has never acquired or applied for a Russian nationality, and has not lived permanently in Russia since the fall of the USSR. In this context, it should be noted that in contradiction to this the applicant maintained during his asylum hearing that he has a Russian passport and a Russian birth certificate."

"The Court is therefore led to conclude that the applicant still fails to show that he meets the conditions for obtaining the statelessness status, and, more specifically, that he has made useful sufficient effort to be recognised as a national by a relevant state, such as a state where he was born, where members of his family reside, and where he resided previously."

"As to the investigative measures the applicant requests in order to determine his nationality, considering that the responsibility for providing proof of lack of nationality lies on the person claiming the statelessness status, and the Court has just held that the applicant has not made any useful and sufficient effort to be

recognised as a national of a country with which he enjoys the relevant links, the request must be dismissed, as it is not up to the Court to compensate for the resulting deficiencies by ordering an investigative measure.”

“Considering the above circumstances, the Court agrees with the [lower instance judges’] conclusion that the applicant has no ground for claiming a statelessness status.”

The Court has also denied applicant’s request to delay removal procedures due to medical reasons as “premature”, since it has not been established yet to which country the authorities consider removing him.

Decision documents

[Luxembourg_2Apr2020.pdf](#)

Outcome

The Court rejected the complaint and upheld the ruling of the lower instance court against the applicant.