STATELESSNESS
Case Law Database

Luxembourg - Administrative Court, judgment no. 35177

The applicant appplicant was born in Russia and renounced his Russian nationality in 2000. He applied for a statelessness status in Luxembourg in 2008, but it was discovered that he had applied for asylum status in the Netherlands in 2006, which was rejected, so Luxembourg transferred the applicant to the Netherlands under the Dublin regulation. The applicant returned several times to Luxembourg and was sent back to the Netherlands. He made a repeated application for statelessness status in 2014, where the courts accepted his argument that statelessness status determination doesn't fall within the scope of the Dublin regulations, and the court also accepted that his voluntary renunciation of Russian nationality does not exclude him from protection under the 1954 Convention.

Case name (in original language) : 35177
Case status: Decided
Case number: 35177
Citation: https://ja.public.lu/35001-40000/36744C.pdf
Date of decision: 27/10/2015
State: Luxembourg
Court / UN Treaty Body: Administrative Court of Luxembourg
Language(s) the decision is available in: French
Applicant's country of birth: Soviet Union {former}
Applicant's country of residence: Luxembourg
Legal instruments: 1954 Statelessness Convention, European Union law
Key aspects: Access to social and economic rights, Burden of proof, Deportation and removal, Protection, Refugee status determination, Stateless status and documentation, Statelessness and asylum, Statelessness determination, Voluntary renunciation of nationality
Facts

The applicant was born in Russia. He renounced Russian nationality in 2000.

He applied for a statelessness status in Luxembourg in 2008. A police investigation found that the applicant already applied for an asylum status in the Netherlands in 2006, and his application was rejected. He was transferred to the Netherlands on the basis of relevant EU law (Dublin Regulation). The applicant clarified that he is not applying for an asylum status in Luxembourg, but instead for the recognition of his statelessness. He was denied legal entry into Luxembourg on the basis that he lacked means of subsistence, has been on the territory of Luxembourg illegally, and was likely to pose a threat to public order. He entered Luxembourg on several occasions since then, and was transferred back to the Netherlands. In 2014 he again applied for the recognition of his statelessness in Luxembourg. Amnesty International in Luxembourg intervened on behalf of the applicant, asking the authorities to expedite the procedure for the recognition of his status as a stateless person, as the applicant was homeless and in precarious conditions. The Ministry requested more details from the applicant, but did not take a decision within 3 months after the request was lodged, which implied refusal of the request. The applicant appealed against the refusal.

The first instance court ruled against the applicant, stating that statelessness status is intended for individuals who have no other means of protection, and not as a means of circumventing immigration rules, and therefore should not benefit those whose statelessness results from renunciation of their nationality, unless such renunciation was justified by factors outside of his will, such as the risk of inhumane or degrading treatment in the country of origin. The first instance court found that there was no risk of inhumane or degrading treatment in the case of the applicant, which was supported by the refusal of asylum status to him in the Netherlands in 2006. The first instance court, however, did agree with the applicant that Dublin III regulation does not apply to requests of recognition of statelessness.

This decision was appealed and resulted in the present judgment of the Administrative Court.

Legal arguments by the applicant

The applicant argued that his circumstances fall under the definition of a stateless person of the 1954 Convention, given that he no longer has a nationality since the Russian Presidential Decree of 2000 confirmed his renunciation, and that he could

therefore no longer be considered a national of his country of origin – where he was born and where members of his family reside, and where he had previous residence. Since he falls under the definition of a stateless person of the 1954 Convention, his application for a statelessness status cannot be characterised as a "means of circumventing immigration rules". He finds himself in a precarious and complicated situation due to not having a nationality, and his only wish is to live with a status that would allow him to "exist", which would be achieved by granting him a statelessness status.

Legal arguments by the opposing party

The authorities asked the court to confirm the ruling of the lower instance court.

Decision & Reasoning

The Court confirmed the lower instance court's finding that Dublin III regulation is not applicable to the applicant's request of statelessness status determination, as Dublin III is solely intended for determining the member state responsible for examining an application for an international protection status, and not for a statelessness status.

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

"Concerning the burden of proof for the statelessness status […] it is up to the person who claims not to have a nationality to bear the burden of establishing that he has lost his original nationality or that he never had one, without having to prove that does not possess every nationality in the world, but merely that he cannot be recognised as a national by any state that he has relevant links with, such as the state he was born in, where members of his family reside, where he used to reside."

"It is not contested that [the applicant] was born in Russia […], and that Russia is the only country in which he legally resided with members of his family."

"It has furthermore been established [by the lower instance court] that by Decree Nr. 2060 of 23 December 2000 the President of the Russian Federation has granted the applicant his request for "(…) termination of [the] nationality of [the] Russian Federation (…)", and that the latter must be perceived as having voluntarily renounced his nationality. The Court cannot, however, share the conclusion [of the lower instance court] that [the applicant's] request is to be rejected on the basis of

the mere fact that he has voluntarily renounced his nationality of origin without this being justified by reasons other than his will."

"Thus, it emerges from the documents in the file, including in particular an article published in the "Luxembourger Wort" of 27 February 2008, that [the applicant] did not renounce his Russian nationality out of "convenience", but out of political convictions, because of his dissent towards the ruling power in Moscow, which he had subscribed to since the days of the Soviet Union until his departure from Russia in 2005."

"Furthermore, it follows from the UNHCR document entitled "Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons" of 20 February 2012 (paragraph 44) that "voluntary renunciation relates to an act of free will whereby an individual gives up his or her nationality status. This generally takes the form of an oral or written declaration. The subsequent withdrawal of nationality may be automatic or at the discretion of the authorities. In some States voluntary renunciation of nationality is treated as grounds for excluding an individual from the coverage of Article 1(1). However, this is not permitted by the 1954 Convention. The treaty's object and purpose, of facilitating the enjoyment by stateless persons of their human rights, is equally relevant in cases of voluntary as well as involuntary withdrawal of nationality."

"The Court wishes to refer to a judgment of the Court of Cessation of Belgium of 6 June 2008 (n ° C.07.0385.F / 1) according to which "neither this provision [article 1(1) of the New York Convention], which refers to the objective criterion of the power of each State to determine by its legislation who are its nationals, nor any other provision allows to refuse statelessness status to a foreigner on the grounds that he has not fulfilled the steps to enable him to regain a nationality which he has lost, even if it was due to renunciation."

"The Court therefore concludes that the act of renunciation [by the applicant] of his nationality of origin was dictated by factors outside of his will, and that therefore his application for a statelessness status was not a means of circumventing immigration laws."

Decision documents

Luxembourg_27Oct2015.pdf

Outcome

The Court overruled the lower instance court’s decision, thus annulling the administrative decision denying the applicant his statelessness status, and ordered the authorities to adopt a new administrative decision.

Caselaw cited

Judgment of the Court of Cessation of Belgium of 6 June 2008 (n ° C.07.0385.F / 1)

Third party interventions

Amnesty International in Luxembourg intervened.