

Spain - Supreme Court (Contentious-Administrative Chamber), appeal no. 504/2004

The applicant, a statelessness individual originally from Iran, is subject to a deportation order as a result of the commission of a criminal offence in Spain. The Spanish Supreme Court establishes that a criminal conviction is not sufficient to expel a stateless person on grounds of national security and revokes his deportation.

Case name (in original language) : Sentencia del Tribunal Supremo, Sala de lo Contencioso, recurso nº 504/2004

Case status: Decided

Case number: ECLI: ES:TS:2007:3514

Citation: Spain - Supreme Court (Contentious-Administrative Chamber), appeal no. 504/2004, ECLI: ES:TS:2007:3514, 24 May 2007

Date of decision: 24/05/2007

State: Spain

Court / UN Treaty Body: Supreme Court (Tribunal Supremo)

Language(s) the decision is available in: Spanish

Applicant's country of birth: Iran

Applicant's country of residence: Iran

Legal instruments: 1954 Statelessness Convention, European Convention on Human Rights (ECHR)

Key aspects: Country of return, Deportation and removal, Protection

Relevant Legislative Provisions:

Convention Relating to the Status of Stateless Persons, 28 September 1954 (1954 Convention)

Article 3 of the European Convention on Human Rights (ECHR)

Article 15 of the Spanish Constitution

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (Foreigners Act).

Real Decreto 865/2001, de 20 de julio, por el que se aprueba el Reglamento de reconocimiento del estatuto de apátrida (Statelessness Determination Procedure Regulation).

Facts

The Madrid Government Delegate issued a deportation order against a stateless individual for having committed a drug-trafficking offence. The applicant appealed the decision before the Madrid High Court of Justice, who confirmed the decision of the Government Delegate. The applicant then challenged this judgement before the Supreme Court, emphasising his stateless status and arguing that if he was deported to Iran, he could be sentenced to death. The Supreme Court held that a person granted stateless status could be expelled from the territory for reasons of national security. The Court defined the term “national security” as the existence of a real, current and sufficiently serious threat that will affect the fundamental interests of society. The Court analysed the personal situation of the applicant in Spain and concluded that his criminal conviction it is not sufficient to consider that he will be a serious threat to the Spanish society. The Court overturned the judgement of first instance and revoked the deportation order.

Legal arguments by the applicant

The applicant argued that (Legal Reasoning no. 4):

(1) he is recognised as stateless and was granted stateless status in Spain;

(2) his deportation to Iran would result in a violation of Article 15 of the Spanish Constitution, in connection with Article 3 of the ECHR, which prohibits inhuman and degrading treatment, for the following reasons:

- he had to flee Iran because he was persecuted there due to his father being deprived of Iranian nationality and considered a dissident of the regime and a traitor to Islam. The applicant argues that his father was killed for those reasons and that if he returns, he would also be killed;
- he would be convicted in Iran for the crime committed in Spain, and most likely sentences with death penalty.

Legal arguments by the opposing party

The Government argued that (Legal reasoning no. 1):

(1) the applicant should be expelled from the Spanish territory, with the subsequent prohibition of entry for 10 years, following a conviction by the National High Court to a 25 years' prison sentence for a drug-trafficking offence.

Decision & Reasoning

The administrative decision and the first instance judgment do not violate Article 15 of the Spanish Constitution because the deportation of the applicant would not result in inhuman and degrading treatment.

Article 31 of the 1954 Convention states that the contracting states shall not expel a statelessness person from their territory save on grounds of national security and public order. The concept of "public order" means that there is a real and sufficiently serious threat that affects the fundamental interests of society. The mere existence of criminal convictions alone does not constitute grounds for expulsion. Only when there is evidence that the individual's personal behaviour constitutes a current threat to public order should his stay be restricted.

The applicant's stay in the Spanish territory does not constitute a real and sufficiently serious threat for the Spanish society, considering that the applicant: has been living in Spain since 1988; committed the crime in 1992 and was sentenced in 1996; was granted a temporary residence permit in 2001 and a work permit in 2002; owns a property where he lives with his two children; his employer has stated that his professional behaviour is extremely positive, his integration is good and he is worthy of trust; and is registered at the Municipal Register of Habitants and at the public healthcare system.

Decision documents

[Supreme Court \(Contentious-Administrative Chamber\), appeal no. 504/2004](#)

Outcome

The Court annulled the lower court's judgement and overturned the Government's decision to deport the applicant.

Caselaw cited

Sentencia del Tribunal Supremo nº 1250/2000, de 19 de Febrero de 2000, (appeal no. 270/1996)

Sentencia del Tribunal Supremo nº 1715/2000, de 4 de Marzo de 2000 (appeal no. 407/1996)

Sentencia del Tribunal Supremo nº 7918/2002, de 27 de Noviembre de 2002 (appeal no. 4252/1998)

Sentencia del Tribunal Supremo nº 8693/2002, de 20 de Diciembre de 2002 (appeal no. 5771/1998)

Sentencias del Tribunal Superior de Justicia de la Unión Europea, de 19 de Marzo de 1999 (appeal no. C-348/96)

Sentencias del Tribunal Superior de Justicia de la Unión Europea, de 27 de Octubre de 1977 (appeal no. 30/77)