

Spain: National Court. Chamber of Contentious-Administrative Proceedings, 10th April 2019, Appeal No. 908/2017

País de la Sentencia:

Spain

País del Solicitante:

Iraq

Fecha de la Sentencia::

10-04-2019

Número de Registro de la Sentencia::

Chamber of Contentious-Administrative Proceedings Case 1695/2019, of 10 April 2019.

Nombre del Tribunal:

Audiencia Nacional. Sala de lo Contencioso.

Palabras Clave- Principal:

Right to remain pending a decision (Suspensive effect)

Subsidiary Protection

Instrumentos Jurídicos de la UE Aplicables::

International Law

International Law > [1951 Refugee Convention](#) [1]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2] > [Art 7](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 18](#) [6]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [7] > [Article 9](#) [8]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [9] > [Article 24](#) [10]

Extracto:

Even if not explicitly referred to in domestic laws, such as the Civil Code, those provisions on subsidiary protection should be interpreted in light of international law. Therefore, even if the literal interpretation of article 22.3 of the Civil Code only refers to asylum, the consideration of the social context and international law would call for an extension of this provision on reduced residency requirements to also cover those holding subsidiary protection status.

Hechos:

The applicant, from Iraq, was denied Spanish nationality on 30th August 2017 due to a consideration that subsidiary protection follows the standard requirement of ten years of residency in order to grant nationality.

He first asked for asylum on 30th October 2007, which was denied on 7th July 2008 granting him an authorization to reside in Spain for humanitarian reasons. On 29th January 2010 he claimed subsidiary protection, which he was granted on 6th October 2010.

He filed his application for Spanish nationality 30th June 2014, considering that he should be required to have a five-year residency on account of his right to subsidiary protection in the same terms as refugeehood, and in opposition to the general requirement of ten years of residency.

Fundamentos de Derecho:

The contested decision was made on the basis that the condition of subsidiary protection falls under article 22.1 of the Spanish Civil Code, therefore requiring ten years of residency to grant Spanish Nationality. Article 22.3 considers the reduced requisite of five years only for those granted refugee status.

The reduced requisite for refugees was first introduced in Spain by the Law 18/1990 that reformed the Spanish Civil Code in nationality matters. Articles 34.3 of the Organic Law 4/2000, as well as Civil Code and Constitution, refer to refugeehood and asylum. The term 'subsidiary protection' was designed by the European Union in response to the social reality, and was first introduced in domestic legislation by the Law 12/2009, establishing a distinction between refugeehood and subsidiary protection and pairing both notions in situations as the authorizations of residency and work contained by the Organic Law 4/2000.

Even if not explicitly referred to in domestic laws, such as the Civil Code, those provisions on subsidiary protection should be interpreted in light of international law. Therefore, even if the literal interpretation of article 22.3 of the Civil Code only refers to asylum, applying the social context and international law would call for an extension of this provision on reduced residency requirements to also cover those holding subsidiary protection status.

Fallo:

Appeal partially granted. In order to obtain Spanish Nationality, those holding subsidiary protection status would be required five years of residency, declaring annulling the contested decision. However, this particular case calls for an analysis of the legal subjective criteria of the individual to grant him nationality.

Procedimientos Posteriores:

Comentarios/Observaciones:

When analysing an individual case to acquire nationality, both subjective and objective criteria have to be analysed by the Court. In this case, the main question treated by the Court referred to the objective criteria, particularly the one on whether those holding subsidiary protection would have the same requirements as refugees.

However, the contested decision did not provide the facultative Report of the Civil Registrar, necessary for the Court to decide if he would be granted nationality. There was only a note analysing the subjective criteria for the application, where it is stated that the applicant had a poor knowledge of the Spanish language and lack of adaptation of the style of living of the community. As this does not comply with the necessary procedural elements for the Court to be able to assess this particular case, the integration test should be practised again.

Attachment(s):



[SENTENCIA 5 AÑOS RESIDENCIA PARA NACIONALIDAD CON PROTECCIÓN SUBSIDIARIA.pdf](#)[11]

Otras Fuentes citadas:

Judgment of the National Court n. 2022/2017 (Contentious Chamber, Section 1), of May 9, 2017 (appeal 1227/2015) ? (Sentencia de la Audiencia Nacional n. 2022/2017 (Sala de lo Contencioso, Sección 1ª), de 9 de mayo de 2017 (recurso 1227/2015)).

Judgment of the National Court n. 689/2018 (Contentious Chamber, Section 3), of March 1, 2018 (appeal 697/2016) ? (Sentencia de la Audiencia Nacional n. 689/2018 (Sala de lo Contencioso, Sección 3ª), de 1 de marzo de 2018 (recurso 697/2016)).

Judgment of the National Court n. 1762/2016 (Contentious Chamber, Section 3), of May 12, 2016 (appeal 2237/2014) ? (Sentencia de la Audiencia Nacional n. 1762/2016 (Sala de lo Contencioso, Sección 3ª), de 12 de mayo de 2016 (recurso 2237/2014)).

Judgment of the National Court n. 2933/2018 (Contentious Chamber, Section 8), of June 25, 2018 (appeal 25/2017) ? (Sentencia de la Audiencia Nacional n. 2933/2018 (Sala de lo Contencioso, Sección 8ª), de 25 de junio de 2018 (recurso 25/2017)).

Judgment of the National Court n. 4291/2018 (Contentious Chamber, Section 5), of October 31, 2018 (appeal 60/2017) ? (Sentencia de la Audiencia Nacional n. 4291/2018 (Sala de lo Contencioso, Sección 5ª), de 31 de octubre de 2018 (recurso 60/2017)).

Judgment of the National Court n. 3593/2018 (Contentious Chamber, Section 7), of September 26, 2018 (appeal 33/2017) ? (Sentencia de la Audiencia Nacional n. 3593/2018 (Sala de lo Contencioso, Sección 7ª), de 26 de septiembre de 2018 (recurso 33/2017)).

CJEU - Case C-272/08, Commission v Spain, 9 July 2009.

National / Other Legislative Provisions:

[Act 12/2009 of 30 October regulating the Right of Asylum and Subsidiary Protection \(Ley 12/2009\)](#) [12]

[Spain - Spanish Constitution \(Constitución Española. Boletín Oficial del Estado\)](#) [13]

[Act 5/1984 of 26 March regulating the right to asylum and refugee status \(Ley 5/1984 \[14\]](#)
[Act 29/1998 of 13 July regulating the Administrative Jurisdiction \(Ley 29/1998 \[15\]](#)
[Spain - Act 37/2011 of 10 October regulating the measures of procedural facilitation \(Ley 37/2011 \[16\]](#)
[Act 6/1985 of 1 July regulating the Judicial Power \(Ley Orgánica 6/1985 de 1 de julio del Poder Judicial\) \[17\]](#)
[Spain - Act 29/1998 of 13 July regulating the Administrative Jurisdiction \(Ley 29/1998 \[18\]](#)
[Royal Decree of July 24 \[19\]](#)
[1889 \[20\]](#)
[publishing the Civil Code \(Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil\) ? Article 3 \[21\]](#)
[article 21 \[22\]](#)
[article 22 \[23\]](#)
[Spain - Organic Act 4/2000 on the Rights and Liberties of Foreigners in Spain and their Social Integration \(?Act on Foreigners?\) \[24\]](#)
[Spain - Act 9/1994 \[25\]](#)
[of May 19 \[26\]](#)
[modifying Law 5/1984 \[27\]](#)
[of March 26 \[28\]](#)
[regulating the right to Asylum and Refugee Status \(Ley 9/1994 \[29\]](#)
[de 19 de mayo \[30\]](#)
[de modificación de la Ley 5/1984 \[31\]](#)
[de 26 de marzo \[32\]](#)
[reguladora del derecho de asilo y de la condición de refugiado\) ? Article 17.2. \[33\]](#)
[article 31.3 \[34\]](#)
[article 17.2 of the Law 5/1984 \[35\]](#)
[Act 18/1990 \[36\]](#)
[of December 17 \[37\]](#)
[on the reform of the Civil Code in matters of nationality \(Ley 18/1990 \[38\]](#)
[de 17 de diciembre \[39\]](#)
[sobre reforma del Código Civil en materia de nacionalidad\) \[40\]](#)
[Act 36/2002 \[41\]](#)
[of October 8 \[42\]](#)
[modifying the Civil Code in matters of nationality \(Ley 36/2002 \[43\]](#)
[de 8 de octubre \[44\]](#)
[de modificación del Código Civil en materia de nacionalidad\) \[45\]](#)
[Royal Decree 203/1995 \[46\]](#)
[of February 10 \[47\]](#)
[approving the Regulations for the application of Law 5/1984 \[48\]](#)
[regulating the right to asylum and refugee status \[49\]](#)
[modified by Law 9 / 1994 \[50\]](#)
[of May 19 \(Real Decreto 203/1995 \[51\]](#)
[de 10 de febrero \[52\]](#)
[por el que se aprueba el Reglamento de aplicación de la Ley 5/1984 \[53\]](#)
[reguladora del derecho de asilo y de la condición de refugiado \[54\]](#)
[modificada por la Ley 9/1994 \[55\]](#)
[de 19 de mayo\) ? Article 31.3 \[56\]](#)
[article 11 of the Royal Decree. \[57\]](#)
[Spain - Spanish Royal Decree 557/2011 \[58\]](#)
[Act Ley 19/2015 \[59\]](#)
[de 13 de julio \[60\]](#)
[de medidas de reforma administrativa en el ámbito de la Administración de Justicia y del Registro Civil \(Ley 19/2015](#)

[61]
[de medidas de reforma administrativa en el ámbito de la Administración de Justicia y del Registro Civil](#) [62]
[Decree of November 14 1958 approving the Regulations of the Civil Registry Law \(Decreto de 14 de noviembre de 1958 por el que se aprueba el Reglamento de la Ley del Registro Civil\) ? Article 220](#) [63]
[article 221](#) [64]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [3] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%207>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [5] <https://www.asylumlawdatabase.eu/node/453>
- [6] https://www.asylumlawdatabase.eu/node/453#toc_85
- [7] <https://www.asylumlawdatabase.eu/node/3946>
- [8] https://www.asylumlawdatabase.eu/node/3946#toc_141
- [9] <https://www.asylumlawdatabase.eu/node/4038>
- [10] https://www.asylumlawdatabase.eu/node/4038#toc_264
- [11] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/SENTENCIA%205%20A%C3%91OS%20RE>
- [12] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11773>
- [13] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11952>
- [14] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11816>
- [15] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11778>
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- [18] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11955>
- [19] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12141>
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- [23] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11896>
- [24] <https://www.asylumlawdatabase.eu/es/taxonomy/term/8656>
- [25] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12145>
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- [31] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12151>
- [32] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11817>
- [33] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12152>
- [34] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12153>
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- [58] <https://www.asylumlawdatabase.eu/es/taxonomy/term/9534>
- [59] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12177>
- [60] <https://www.asylumlawdatabase.eu/es/taxonomy/term/11779>
- [61] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12178>
- [62] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12179>
- [63] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12180>
- [64] <https://www.asylumlawdatabase.eu/es/taxonomy/term/12181>