



Ad-Hoc Query on Citizenship status of persons from Western Sahara (Sahrawi citizens)

Requested by FI EMN NCP on 10.4.2015

Compilation produced on 9th of June

Responses from Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Sweden, United Kingdom plus Croatia (14 in Total)

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1. Background Information

There are some Sahrawi citizens as asylum seekers in Finland every year. Some have identification cards such as birth or citizenship certificates issued by the authority of Western Sahara. Sahrawi citizens have also presented certificates where it is mentioned that their main residential place is a refugee camp in Algeria. These citizens staying in Algeria may also have a passport issued by Algeria. Algeria is issuing passports also to the citizens of Western Sahara in order for the Sahrawis to be able to travel to countries that do not recognize the independence of Western Sahara. The Algerian nationality is very clearly stated on the identification page of the passport. However, the possession of an Algerian passport does not automatically mean that the person is a citizen of Algeria.

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Also, Morocco states that all the people born in Morocco (including Western Sahara) are citizens of Morocco. This means that Sahrawis born in Western Sahara could also have the citizenship of Morocco. Thus, it is possible that a Sahrawi citizen born in Morocco (present Western Sahara) and currently staying in a refugee camp in Algeria holds a passport issued by Algeria, but at the same time has the right to obtain Moroccan citizenship. Because of the controversial and non-autonomous situation of Western Sahara, it is very complicated and challenging to determine the citizenship status of a Sahrawi citizen.

Questions:

1. How is the citizenship status of a Sahrawi citizen determined in your (Member) State?
2. Is it considered *possible* for a person born in Western Sahara to obtain Moroccan citizenship in practice?
3. Is it considered *reasonable* to expect that a person born in Western Sahara obtains Moroccan citizenship?
4. Is it considered possible for a person born in Algeria, but whose parents were born in Western Sahara to obtain Moroccan citizenship?
5. In your experience, does Algeria issue passports (but not citizenship) to Sahrawi citizens for travel purposes?

We would appreciate your responses by **Friday 8th May**.

2. Responses

		Wider Dissemination?	
	Estonia	Yes	<ol style="list-style-type: none"> 1. Republic of Estonia has not recognized the travel documents issued by the authority of the Western Sahara and Republic of Estonia has not recognized the state as independent and therefore we cannot recognize the Sahrawi citizenship. 2. Since the Republic of Estonia have not had any asylum seekers from Western Sahara we do not have experiences with this matter and we cannot give our input whether it is possible for a person born in Western Sahara to obtain Moroccan citizenship in practice or not. 3. Although the Republic of Estonia do not have experiences with this matter, a research in COI shows that by default it would not be reasonable to expect a person born in Western Sahara to obtain a Moroccan citizenship in a situation where the Moroccan authorities clamp down Sahrawi self-determination efforts, arrests Sahrawi activists and is unwilling to compromise. We are in opinion that the reasonability should be assessed on a case by case basis. 4. Since the Republic of Estonia have not had any asylum seekers from Western Sahara we do not have experiences with this matter and we do not have any expertise which means we cannot give our input whether it is possible for a person born in Algeria, but whose parents were born in Western Sahara to obtain Moroccan citizenship.

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			5. Republic of Estonia does not have had any experience in this matter and therefore we cannot say whether Algeria issues passports to Sahrawi citizens for travel purposes or not.
	Finland	Yes	The Finnish Immigration Service has made this query, because in Finland there are very few if any comparable cases on determining the citizenship status of a Sahrawi citizen.
	France	Yes	<p>1. It is necessary to recall that France does not recognize the existence of the Sahrawi Arab Democratic Republic (SADR) as an independent state. As a consequence, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) considers that Sahrawi asylum seekers are of Sahrawi origin and not Sahrawi nationals. Moreover, in the case of Sahrawi people coming from the territory under Moroccan administration and providing, in support of their application, a birth certificate or any other identity or travel document established by the Moroccan authority, the OFPRA registers them as Moroccan nationals (since they have implicitly availed themselves of the protection of the Moroccan authorities when asking for the issuance of the documents). In the case of Sahrawi people living on the territories controlled by the Polisario Front (SADR + the portion of Algerian territory accommodating the Sahrawi refugee camps in Tindouf) and providing documents issued by the SADR or no document at all, the OFPRA registers them as “being of Sahrawi origin”.</p> <p>2. The Sahrawi people born and living in Western Sahara under Moroccan administration (in Laayoune for example) are de facto Moroccan citizens. For those born on the other side of the separating wall on the territory under SADR administration, it is possible that the Moroccan authorities refuse to recognize them as Moroccan nationals for imputed political motive (origin from a territory under enemy administration, connection with the Polisario Front).</p> <p>3. It is reasonable to expect that a Sahrawi obtains the Moroccan nationality, if he/she is born or if he/she is living on the Sahrawi territory under Moroccan administration. It is <u>not</u> reasonable to demand that a Sahrawi obtains the Moroccan nationality, if he/she is born or if he/she is living on the Sahrawi territory under the administration of authorities that are de facto of the Polisario Front.</p> <p>4. For the same reasons, it is difficult to imagine that the Moroccan authorities would recognize the Moroccan nationality to a Sahrawi (of origin) born in Algeria (country hosting and supporting the separatist enemy movement). In addition, even if his/her parents are born in Western Sahara, it all depends on the birth documents of the parents that the Sahrawi may be able to provide the Moroccan authorities with to apply for naturalization: birth or identity documents delivered before 1976 (end of the Spanish administration on the whole Sahrawi territory) or delivered after 1976, either by the Moroccan authorities, by the United Nations Mission for the Referendum in Western Sahara, or the SADR authorities according to the place of birth in Western Sahara.</p> <p>5. Among the hundreds of Sahrawi asylum applications registered each year by the OFPRA, there has been no case of issuance of an Algerian passport even for travel reason.</p>
	Germany	Yes	1. Sahrawi asylum seekers only rarely come to Germany (the exact number has not been recorded statistically, as a specific country code does not exist for the applicants from the Western Sahara). As a rule, these applicants do not submit any identification documents. Roughly half of the applicants alleging to have come from the Western Sahara, actually originate from Mauretania, Nigeria, Tunisia or

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			<p>Algeria; this can be easily detected with the help of a language test. Those that originate from the Western Sahara have been treated as Moroccan citizens when making application.</p> <p>2. The status of the Western Sahara has not been clarified by international law and Morocco considers this area as being a part of its territory. According to this, any asylum seeker originating from the Western Sahara should have the right to obtain Moroccan citizenship. The enforceability of such a claim depends on the individual submission of the Sahrawi asylum seekers. Should they have been born in the Western Sahara and should they also still be living there, the claim would most probably be easier to realise as if they were no longer staying there. We have no further information on the matter.</p> <p>3. If the submission of the Sahrawi reveals that they were indeed born in the Western Sahara, yet have not been staying anymore within the jurisdiction of the Moroccan State for a considerable period of time, e.g. if they belong to the group of expelled from the Western Sahara - here the further submission in the individual cases is decisive - the application to obtain Moroccan citizenship will be very difficult to enforce. Many a time such asylum seekers have been classified by us as being stateless and in the case of a rejection of their application for asylum will be issued with the deportation order to the country of their habitual residence, e.g. Algeria.</p> <p>4. In such cases, too, the Federal Office assumes that the asylum seeker would encounter difficulties in obtaining the Moroccan citizenship, depending on the submission – see individual cases – (e.g. many years of staying in a camp in Algeria), the person concerned will be either classified as being a Moroccan national or a stateless person and can be deported to the country of habitual residence. However, the number of those asylum seekers arriving from camps in Algeria is very low indeed. We have no further information on the matter.</p> <p>5. We have no information on this matter as such documents have so far not yet been presented to the Federal Office.</p>
	<p>Greece</p>	<p align="center">Yes</p>	<p>Hellenic Republic does not recognise Sahrawi Arab Democratic Republic as an independent state, therefore persons of such citizenship cannot be accepted in Greece, unless they hold a second nationality or other nationality. However, for information it is noted that no persons with Sahrawi citizenship have ever applied to acquire Greek citizenship in the competent authorities.</p>
	<p>Hungary</p>	<p align="center">Yes</p>	<p>1. Due to the fact that Hungary has a very low number of asylum seekers from the Western Sahara there is no specific practice applied for the determination of citizenship of asylum seekers originating from this area. Nevertheless, the asylum authority examines the asylum seeker's knowledge related to the geographic area and local customs to establish the origin/citizenship of the asylum seeker.</p> <p>2. Yes, considering that the Moroccan government encourages Sahrawi citizens to return home, on the condition that they recognize the Moroccan government's power over Western Sahara. The authorities have continued to issue passports to the Sahrawis. From the end of 2011, every Moroccan citizen who reached the age 18 needs to possess biometrical identity card instead of the old one. It is available from the police stations every day of the week. In 2008 the Moroccan government adopted a provision according to which the Interior Department shall issue biometrical passports. These passports contain both microchip and fingerprint, and are valid for 10 years.</p> <p>3. In terms of birth place it is necessary to clarify whether the question refers to the 2/3 of Western Sahara which is under the direction of</p>

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			<p>Morocco, or just the remaining 1/3, which is situated in the Algerian territory, a SADR (Sahrawi Arabic Democratic Republic), directed by Polisario.</p> <ul style="list-style-type: none"> - If Sahrawis living in the Moroccan territory subjected to the de facto authority of the Moroccan Government, they will be put at a disadvantageous situation in the field of civil freedoms. However, it is expected only from people living in the Moroccan territory to possess Moroccan citizenship. - Sahrawis living in SAD refugee camps in the countryside of the Algerian Tindouf are supposed to be SADR citizens. Following a difficult approval procedure they may obtain documents with which they can travel to other territories of Algeria. Documents issued by the SADR are valid only in countries which recognized the independence of the SADR. - For the Sahrawi colony (approx. 90.000-153.000 people) Algeria does not want to give any legal status, because in their opinion the competent authority in their case is the Polisario. In those countries that do not recognize the SADR, in reasonable cases (for example therapy) the Algerian authorities issue passport with a short period of validity. People can file for this passport from the Algerian authorities by the SADR bureaucracy (office system). These passports can be used only for travel and do not contain the recognition of the Sahrawis as Algerian citizens. <p>4. N/I.</p> <p>5. N/I.</p>
	Latvia	Yes	Latvia has no experience with people with Sahrawi citizenship.
	Lithuania	Yes	Lithuania doesn't have experience with the Sahrawi citizens, so we cannot provide answers to this query.
	Luxembourg	Yes	<p>1. In Luxembourg, there have not been any applications for international protection (between January 2014 and February 2015) in which the applicant indicated that s/he comes from the Western Sahara region and where s/he presented documents issued by the Western Sahara authority. In the past there have been cases before the administrative courts in which the majority of applicants who claimed that they came from that region mentioned that they were Moroccan citizens (See First instance Administrative Court, 2nd Chamber, n° 33191 and 33192 of 7 October 2013 and of the 3rd Chamber n° 27925 of 7 December 2011, 26318 of 19 November 2009 and 26219 of 29 October 2009) with the exception of the decision of the 2nd Chamber n° 22848 of 2 July 2007, in which the applicant claimed that he was an Algerian national. In all these cases the nationality was declared by the applicant and recognized by the Court.</p> <p>2. N/A.</p> <p>3. N/A.</p> <p>4. N/A.</p> <p>5. N/A.</p>

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	<p>Netherlands</p>	<p align="center">Yes</p>	<p>1. As far as we are aware, The Netherlands has not been confronted with Sahrawi asylum seekers.</p> <p>2. – 5. See answer to question 1. From our COI-experts, we obtained the following general information:</p> <p>Relating to q. 2: It is considered possible for a person born in the by Morocco controlled part of Western Sahara to obtain Moroccan citizenship. However outside this Moroccan controlled territory it is not possible to obtain Moroccan citizenship.</p> <p>Relating to q. 4: The Nationality Code 2007 states that Moroccan citizenship can be obtained by jus sanguinis; by descent of a father and a mother, whatever the birthplace (optional right for children of a Moroccan mother). The political counsellor at the Embassy of the Kingdom of Morocco in Ottawa stated on 25 September 2000 that a person whose parents were born in Sahara has an automatic right to Moroccan citizenship. According to Article 9 of the Moroccan Constitution, the person can relocate anywhere in Morocco without restrictions. Based on these sources, it could be considered possible for a person born in Algeria, with parents born in Western Sahara, to obtain Moroccan citizenship.</p> <p>Relating to q. 5. According to a letter from Abdallah Baali, Algeria’s ambassador in Washington, to Human Rights Watch from April 7, 2014 refugees can obtain a travel permit from the Algerian authorities, typically valid for three months, for travel inside Algeria beyond the zone of the camps. According to Algerian authorities, Algeria’s military communications office in Tindouf approves travel permits for Sahrawi refugees as a matter of course upon request from SADR’s interior ministry via the SADR coordination office in Tindouf.</p>
	<p>Slovak Republic</p>	<p align="center">Yes</p>	<p>Slovak Republic does not have experience in such cases.</p>
	<p>Sweden</p>	<p align="center">Yes</p>	<p>1. Since Morocco considers them to be citizens the Swedish presumption is that they are citizens of Morocco until the person can make any other claim probable.</p> <p>2. Must be considered based on the citizenship laws of Morocco.</p> <p>3. – 4. Sweden do not have very many asylum seeking sahrawis and can therefore not provide very much information regarding questions 3 and 4. In the Lifos database of the Swedish Migration Agency a lot of country information, COI, can be retrieved. In the database different ways to search is available (in Swedish). The database is available from the webpage of the Swedish Migration Agency: www.Migrationsverket.se</p>
	<p>United Kingdom</p>	<p align="center">Yes</p>	<p>1. Each applicant would be considered on a case by case basis as part of the asylum process where an individual has claimed asylum or by the status review unit on the submission of an application for leave to remain as a stateless person (FLRS)</p>

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			<p>2. The UK Home Office has no specific country policy on this issue, but there is evidence in the public domain to indicate persons born in Western Sahara are able to obtain Moroccan citizenship. All cases however need to be considered on their individual merits.</p> <p>3. The UK Home Office has no specific country policy on this issue. However, given evidence that persons born in Western Sahara are able to obtain Moroccan citizenship, it would not, in principle, be unreasonable to expect a person to do this. All cases however need to be considered on their individual merits.</p> <p>4. The UK Home Office has no specific country policy on this issue. However, there is evidence in the public domain to indicate persons born in Algeria, but whose parents are born in Western Sahara are still able to obtain Moroccan citizenship. All cases however need to be considered on their individual merits.</p> <p>5. The UK Home Office has no specific country policy on this issue. There is evidence in the public domain to indicate the Algerian government issues passports to Sahrawis for travel purposes, but that these do not recognise such persons as Algerian citizens.</p>
	<p>Croatia</p>	<p align="center">Yes</p>	<p>1. We had only one asylum seeker who claimed to be Sahrawi and declared as Moroccan citizen.</p> <p>2. Considered person has declared as Moroccan citizen born in El Alaiun (Western Sahara) but as nomad has never obtained documents.</p> <p>3. N/I.</p> <p>4. N/I.</p> <p>5. N/I.</p> <p><i>Source: Ministry of the Interior</i></p>
