

CASE NOTE

GERMANY: PROHIBITION OF DEPORTATION FOR BIDOONS WITH COMOROS PASSPORTS

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I INTRODUCTION

The struggles of stateless Bidoons¹ in the Middle East have sparked global attention, particularly in context of the controversial agreement between the Union of Comoros ('Comoros') and the United Arab Emirates ('UAE'). This agreement entailed the sale of Comoros 'economic citizenship' passports to the UAE Government, the latter of which then issued them to marginalised Bidoons born on UAE territory.² This action came in response to mounting international pressure on the UAE to tackle the statelessness of long rejected minorities in its territory.³ The stateless population in the UAE is estimated to be around 100,000 people, composed of members of nomadic tribes, refugees and migrants who entered the country decades ago.⁴ However, instead of being naturalised in their newly allocated country of origin, the Comoros, approximately 47,500 Bidoons found themselves holding an 'economic citizenship' passport without the right to

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1 'Bidoon jinsiya' ('without nationality').

2 See Zahra Albarazi and Yoana Kuzmova, 'Trafficking in (Non)-citizenship in Kuwait and the UAE' in Roel Meijer, James N Sater and Zahra R Babar (eds), *Routledge Handbook of Citizenship in the Middle East and North Africa* (Routledge 2021) 349, 356–8; Yoana Kuzmova, 'Statelessness Elimination Through Legal Fiction: The United Arab Emirates' Comorian Minority' in Tendayi Bloom and Lindsey N Kingston (eds) *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press 2021) 281–2; Bronwen Manby, *Citizenship Law in Africa, A Comparative Case Study* (Open Society Foundations 2016) 82–3.

3 Laura van Waas, 'The Situation of Stateless Persons in the Middle East and North Africa' (Report, October 2010) 12–3 <<https://www.unhcr.org/uk/4ce63e079.pdf>>, archived at <perma.cc/K7XF-MXK4>; Maureen Lynch, 'Lives on Hold: The Human Cost of Statelessness' (Report, Refugee International, February 2005) 21 <<https://www.refworld.org/reference/themreport/ri/2005/en/53165>>, archived at <perma.cc/KJW9-MDBE>. Refugee International's work is also mentioned in this report: United Nations General Assembly, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General. Arbitrary Deprivation of Nationality: Report of the Secretary-General*, UN Doc A/HRC/10/34 (26 January 2009) [71].

4 Zeineb Alsabeehg and Yoana Kuzmova, *Report on Citizenship Law: United Arab Emirates* (Report, RSC/GLOBALCIT-CR, November 2022) 2–4, 18.

enter, reside, or enjoy civil and political rights in the Comoros.⁵ In the UAE, they became ‘foreigners’ with restricted access to services, shifting the reason for their marginalisation within society.⁶

This case note highlights the legal and humanitarian dilemmas of Bidoons with Comoros passports, emphasising the need for a nuanced understanding of their situation in international contexts. It presents the challenges faced by a Bidoon family of Arabic descent, who received UAE Government-issued Comoros passports without their consent. The case reveals three critical issues that surfaced during the family’s appeal to the Administrative Court of Sigmaringen (‘Administrative Court’) in Germany following their rejected asylum application:⁷ first, the controversial use of ‘economic’ or ‘investor citizenship’⁸ to reduce statelessness among Bidoons in the UAE; second, the ongoing precariousness experienced by Bidoons who possess passports without associated rights; and third, the difficulties encountered by courts like those in Germany in procuring updated evidence to evaluate the circumstances of Bidoons in the context of asylum appeals.⁹ The selected judgment from 2022 is notable as it seems to be the only publicly accessible lawsuit in Germany offering helpful insights on similar proceedings. To date, there is a dearth of scholarly research examining how courts in Europe navigate asylum cases involving ‘stateless’ Bidoons with ‘economic citizenship’.¹⁰

II FACTS

The first plaintiff in the aforementioned case claimed to be a stateless Bidoon of Arabic descent born in the UAE who applied for asylum — along with his wife (the second plaintiff) and son (the third plaintiff) — in Germany in 2014. He attended school in the UAE. Until the family’s departure, he served in the military and worked as a security guard.¹¹

During his asylum hearing at the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* or ‘BAMF’) in 2017, the first plaintiff indicated he possessed birth certificates and a Comoros passport. However, he explained that he had never been to the Comoros. The UAE’s Ministry of Interior (‘the Ministry’) had forcibly issued Comoros passports to him and his family (wife and son) in 2011.¹² His wife, a member of the Baluch tribe and a native of the

5 An investigation by the Assembly of the Union of Comoros suggests that more than 47,500 passports were issued to the United Arab Emirates (‘UAE’): Assemblée De L’Union Des Comores [Assembly of the Union of Comoros], *Rapport de la Commission d’Enquête Parlementaire sur la Loi Relative à la Citoyenneté Economique* [Report of the Parliamentary Commission Inquiry on the Law Relating to Economic Citizenship] (Report, 2017) 65.

6 Albarazi and Kuzmova (n 2) 356–8; Manby (n 2) 82–3.

7 VG Sigmaringen [Administrative Court of Sigmaringen], A 8 K 3735/2018, 7 November 2022 (‘AC Sigmaringen’). All translations of this case are by the author.

8 Jelena Džankić, ‘Investor Citizenship Must Not Be Used as a Remedy For Statelessness’, *European Network on Statelessness* (Blog Post, 13 June 2019) <www.statelessness.eu/updates/blog/investor-citizenship-must-not-be-used-remedy-statelessness>, archived at <perma.cc/79YA-DNTE>.

9 ‘Send Him Away!’, *The Economist* (online, 21 July 2012) <www.economist.com/middle-east-and-africa/2012/07/21/send-him-away>, archived at <perma.cc/V23X-6GHN>.

10 Džankić (n 8).

11 AC Sigmaringen (n 7) [3].

12 *ibid.*

UAE, confirmed his statement.¹³ With the onset of the Arab Spring,¹⁴ the first plaintiff had undergone repeated interrogations by members of the Ministry due to his objections to having been issued with Comoros passports. He had denied possible affiliations with any specific religious belief group or party. The first plaintiff was subsequently alerted that an impending arrest warrant was being issued for him, prompting the family to leave the UAE in 2014 and seek asylum in Germany.¹⁵

The first plaintiff expressed concerns about potential imprisonment without a trial if he were to return to the UAE. Considering the prospect of relocating to the unfamiliar Comoros, the first plaintiff worried about his family's ability to live there and the risk they would face in Comoros of deportation to the UAE.¹⁶ The first plaintiff's wife shared his concerns.¹⁷ Thus, the first and second plaintiffs and their son sought asylum in Germany.¹⁸ They applied for subsidiary protection in the alternative while also requesting the determination of a deportation prohibition.¹⁹

In 2018, the BAMF rejected the plaintiffs' claims and instructed the family to leave Germany.²⁰ Failure to comply would lead to deportation to the Comoros or another admissible destination. The BAMF argued that the couple had not presented compelling grounds for fleeing their home country, the Comoros — a prerequisite for refugee status. Additionally, it could not identify any humanitarian conditions or imminent life-threatening circumstances to justify a prohibition on deportation.²¹ The BAMF deemed the couple's employment history adequate to support themselves in the unknown country.²²

The family appealed against the BAMF's decision to the Administrative Court.²³ They questioned their supposed Comorian nationality, citing their lack of naturalisation certificates. They also stressed that they had signed an order (*Belehrung*) in the UAE which prohibited them from using their passports to enter the Comoros or asserting any rights therein. Lastly, they emphasised the first plaintiff's risk of deportation.²⁴ The BAMF refused their application.²⁵

13 *ibid* [4].

14 The Arab Spring spurred numerous protests by stateless Bidoons across the Middle East and North Africa ('MENA') region, demanding naturalisation and associated rights: see, eg, Rania El Gamal and Sylvia Westall, 'Arab Spring Energizes Gulf's Stateless', *Reuters* (online, 19 December 2012) <www.reuters.com/article/idUSBRE8BI0TL>, archived at <perma.cc/CF6J-U6XP>.

15 AC Sigmaringen (n 7) [3].

16 *ibid*.

17 *ibid* [4].

18 *Asylum Act*, 2008, I Federal Law Gazette [BGBl I] 1798, s 3 (Germany) ('*Asylum Act*'); *Basic Law for the Federal Republic of Germany*, III Federal Law Gazette [BGBl I] 2478, s 16(a)(i) (Germany).

19 *Asylum Act* (n 18) s 4; *Act on the Residence, Employment and Integration of Foreigners in Germany* ('*Residence Act*'), I Federal Law Gazette [BGBl I] 166, ss 60(5), 60(7) (Germany) ('*Residence Act*'); AC Sigmaringen (n 7) [5], [9].

20 AC Sigmaringen (n 7) [5].

21 *Asylum Act* (n 18) s 4(1)(2); *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 3 ('ECHR').

22 AC Sigmaringen (n 7) [5].

23 *ibid* [11]–[15].

24 *ibid* [6].

25 *ibid* [7]–[14].

III ISSUES

This case note focuses on a dispute related to the prohibition of deportation to the Comoros under s 60(5) of the *Residence Act*²⁶ in conjunction with art 3 of the *European Convention on Human Rights* ('ECHR'), which states that: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

IV HOLDING

The Administrative Court of Sigmaringen rejected the plaintiffs' asylum request partly because of its lack of link with their 'presumed' country of origin (Comoros).²⁷ However, it recognised the family's entitlement to the determination of a national prohibition of deportation and found that the BAMF had violated their rights.²⁸

The Court provided two reasons:²⁹ first, it interpreted the term 'poor humanitarian conditions' in the country of destination as constituting 'treatment' under art 3 of the *ECHR*; and second, the conditions required for establishing a national prohibition of deportation according to the *Residence Act* s 60(5) in conjunction with art 3 of the *ECHR* were not met.

Firstly, the Court noted that 'poor humanitarian conditions' resulting from 'exceptional individual circumstances' can be considered as a form of 'treatment' in the country of destination for the purposes of art 3 of the *ECHR*.³⁰ The *Residence Act*³¹ acknowledges potential threats stemming from precarious living conditions.³² In this context, the Court noted that the European Court of Human Rights ('ECtHR') 'explicitly repeated' considerations of general conditions in deportation destinations when assessing individual circumstances.³³

Next, to justify a prohibition of deportation, the Court referred to the German Federal Administrative Court (*Bundesverwaltungsgericht*), which upheld the ECtHR's stipulation for a 'minimum level of severity' of risks in the destination country. This determination hinges on various case-specific factors like the duration of the 'treatment' in terms of humanitarian conditions and the resulting physical and mental consequences, as well as issues surrounding gender, age and health.³⁴ Moreover, by building on another judgment of the Higher Administrative Court of Baden-Württemberg, the Administrative Court of Sigmaringen indicated that the evaluation of 'inhuman or degrading treatment' also takes into account the

26 'A foreigner may not be deported if deportation is prohibited under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II, p. 685)': *Residence Act* (n 19) s 60(5).

27 AC Sigmaringen (n 7) [24]–[30].

28 *Code of Administrative Court Procedure*, I Federal Law Gazette [BGBl I] 846, s 113(5)(1) (Germany); *Residence Act* (n 19) s 60(5); AC Sigmaringen (n 7) [20].

29 AC Sigmaringen (n 7) [28].

30 See AC Sigmaringen (n 7) [29] for examples of cases in which 'poor humanitarian conditions can constitute "treatment" within the meaning of art 3 ECHR': Bundesverwaltungsgericht [Federal Administrative Court], BVerwG 10 C 13.12, 13 June 2013, [24]; Higher Administrative Court of Baden-Württemberg, A 11 S 697/13, 24 June 2013, [79]; *D v United Kingdom* (European Court of Human Rights, Chamber ('ECtHR') Application No 30240/96, 2 May 1997) [42]; *N v United Kingdom* (ECtHR, Application No 30240/96, 17 May 2008) [42]–[43]; *MSS v Belgium and Greece* (ECtHR, Application No 30696/09, 21 January 2011); *Sufi and Elmi v United Kingdom* (ECtHR, Application Nos 8319/07 and 11449/07, 28 June 2011); *Husseini v Sweden* (ECtHR, Application No 10611/09, 13 October 2011).

31 *Residence Act* (n 19) s 60(5).

32 AC Sigmaringen (n 7) [33].

33 *Paposhvili v Belgium* (ECtHR, Application No 41738/10, 13 December 2016) [33].

34 *ibid* [30].

individual's ability to meet basic needs (eg, shelter, food, healthcare, employment) and access to financial resources, including government-provided return assistance.³⁵ The presence of familial support or help from other networks was deemed equally essential.³⁶ Overall, the Court emphasised the need to ensure that foreigners can promptly secure their livelihood upon return to their country of origin and dismissed any long-term considerations.³⁷

Secondly, the Administrative Court concluded that the plaintiffs met the requirements for a national prohibition of deportation, citing the humanitarian conditions in the Comoros. The plaintiffs' circumstances were categorised as 'very exceptional' due to the 'precarious living conditions', justifying concerns for their lives and safety that may conflict with art 3 of the *ECHR*.³⁸

The Court was convinced of the plaintiffs' lack of ties to the Comoros and recognised their prior residence as stateless Bidoons in the UAE. In its decision, the Court noted the challenges of stateless Bidoons in the UAE to accessing essential rights and services (ie, birth and marriage certificates, healthcare, mobility) and opportunities (ie, employment).³⁹ Against this backdrop, the judgment highlighted the persistent uncertainty faced by Bidoons with an 'economic citizenship' passport, which may facilitate their legal stay in the UAE but falls short of providing citizenship rights.⁴⁰ The Court concluded that the plaintiffs required protection as their passport would render them 'completely rightless' in the Comoros, which is 'not their country of origin'.⁴¹

V ANALYSIS

The judgment by the Administrative Court of Sigmaringen highlights some pressing issues for Bidoons with Comoros passports from the UAE.

Firstly, the UAE Government's strategy to circumvent the naturalisation of stateless Bidoons — a long-rejected minority born on their territory — by purchasing an 'economic citizenship' from the Comoros has led to the emergence of yet another marginalised group of Bidoons. These people became 'foreigners' in their home country and were provided with a Comoros passport that does not extend constitutional citizenship. As emphasised by the Administrative Court, the passport solely served to legalise the applicant and his family's stay in the UAE.⁴²

While 'investor citizenships' based on national interest are permissible and used worldwide, passports are not usually issued without naturalisation.⁴³ This is

35 Higher Administrative Court of Baden-Württemberg, A 11 S 1704/17, 3 November 2017, *Juris Recitals* [172]–[184], cited in AC Sigmaringen (n 7) [31].

36 Higher Administrative Court of Baden-Württemberg, A 9 S 1566/18, 17 July 2019, [29], cited in AC Sigmaringen (n 7) [32].

37 Federal Administrative Court, BVerwG 1 C 10.21, 21 April 2022, cited in AC Sigmaringen (n 7) [25].

38 AC Sigmaringen (n 7) [38].

39 'Stateless Arabs Lose Bid to Call Comoros Home', *AlArabiya News* (online, 27 July 2008) <<https://english.alarabiya.net/articles/2008%2F07%2F27%2F53824>>, archived at <perma.cc/5UL2-NUSR>; Anna Zacharias, 'Citizenship Hope for UAE's stateless', *The National* (online, 31 July 2012) <<https://www.thenationalnews.com/uae/citizenship-hope-for-uae-s-stateless-1.362084>>, archived at <perma.cc/8L6D-R4ZN>.

40 Diala Alqadi, "'The Door that Cannot Be Closed': Citizens Bidoon Citizenship in the United Arab Emirates' (Honors Thesis, Duke University, 2016) 74.

41 AC Sigmaringen (n 7) [41]–[42].

42 *ibid* [41].

43 Jelena Džankić, *The Global Market for Investor Citizenship* (Palgrave Macmillan 2019) 7–13; Magdalena Zabrocka, 'The Sale of EU Citizenship and the "Law" Behind It' (2023) 5(1) *The Statelessness & Citizenship Review* 44, 49; Albarazi and Kuzmova (n 2) 359.

because, although states have the discretion to grant nationality under their legislation, the ‘law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized regarding nationality’.⁴⁴

Beyond that, regulations regarding naturalisation, which are typically contingent upon establishing a genuine and durable connection through factors such as habitual residence, family ties and integration into society, are also more relaxed for investor citizenships which seek to attract wealth into the country.⁴⁵

The naturalisation of stateless Bidoons might have also been envisioned when the UAE secretly invested USD200 million in the Comoros in late 2008.⁴⁶ However, the bilateral agreement between the Comoros president and the UAE Government predated the Comoros Assembly of the Union’s (parliament) passing of an ‘economic citizenship law’.⁴⁷ Contrary to expectations, the law adopted does not refer to the *1979 Comorian Nationality Code*, nor does it support entry and residence.⁴⁸ This became evident in the immigration restrictions imposed on passport holders, as noted by the Administrative Court.⁴⁹

The ‘legal’ status of these non-Comoros citizens with ‘economic citizenship’ has led to confusion among Western countries when Bidoons tried to travel abroad.⁵⁰ It is suggested that this confusion partly stems from (1) a gap in international legislation concerning ‘investor citizenships’ without naturalisation and other related rights, (2) a lack of expertise in recognising ‘the incompatibility’ between the Comoros economic citizenship law, the Comoros nationality and constitutional framework and (3) a failure to grasp that Comoros ‘economic citizenship’ is a legal construct (‘legal fiction’)⁵¹ falling outside existing international human rights law.⁵²

The Administrative Court’s language concerning the plaintiffs’ nationality subtly hints at this ambiguity. While assessing the latter’s asylum claim, the Court ‘presumed’ that the family held Comorian nationality based on their passports. However, the phrasing shifted slightly in the context of the prohibition of deportation. Here, the Court underscored the family’s ‘complete rightlessness’ stemming from the same passport, emphasising that ‘stateless Bidoons are not extended any rights’ from this document, which only afforded ‘formerly stateless Bidoons’ lawful stay in the UAE.⁵³

44 *Convention on Certain Questions relating to the Conflict of Nationality Law*, opened for signature 12 April 1930, 179 LNTS 89 (entered into force 1 July 1937) art 1.

45 *Nottebohm Case (Liechtenstein v Guatemala) (Judgement)* [1955] ICJ Rep 4, 23; Zabrocka (n 43) 45.

46 Manby (n 2) 83; Rania El Gamal, ‘UAE Stateless Activist Says Expelled to Thailand’, *Reuters* (online, 16 July 2012) <<https://www.reuters.com/article/idUSBRE86F0C8>>, archived at <perma.cc/BWA7-4H72>, cited in AC Sigmaringen (n 7) [36].

47 Manby (n 2) 82–3; Albarazi and Kuzmova (n 2) 356–8.

48 Albarazi and Kuzmova (n 2) 356.

49 AC Sigmaringen (n 7) [40].

50 Kuzmova (n 2) 283.

51 Douglas Lind, ‘The Pragmatic Value of Legal Fictions’ in William Twining and Maksymilian Del Mar (eds), *Legal Fictions in Theory and Practice* (Springer 2015) 83, cited in Kuzmova (n 2) 284.

52 Kuzmova (n 2) 283; Atossa Araxia Abrahamian, ‘Who Loses When a Country Puts Citizenship Up For Sale?’, *New York Times* (online, 5 January 2018) <www.nytimes.com/2018/01/05/opinion/sunday/united-arab-emirates-comorans-citizenship.html>, archived at <perma.cc/X9NK-NZ3B>.

53 AC Sigmaringen (n 7) [27], [41].

Secondly, the passports created another ‘limbo of non-incorporation’⁵⁴ for stateless Bidoons.⁵⁵ As highlighted by the Court, Bidoons remain deprived of access to basic needs like healthcare, education and work.⁵⁶ While some Comoros passport holders noted a change regarding the possibility of moving (including abroad), working and intermarrying, they concede that challenges persist.⁵⁷

Thirdly, the ruling exposed the Administrative Court’s struggle in evaluating the situation of Bidoons holding Comoros passports through evidence shared by the German Federal Foreign Office. Overall, it underscored the need to improve access to up to date information to ease the burdens faced by the plaintiffs awaiting judicial outcomes and to ensure timely and fair decisions. Notably, the Court had to wait for two and a half years to receive a response to its information request from the Federal Foreign Office (ie, about the plaintiffs’ nationality, their entry possibilities into Comoros, their civil rights and employment assertions), only to be notified that the German Embassy in Dar es Salaam (Tanzania) could not provide a response, despite ‘intensive efforts’.⁵⁸ Thus, the Court had to rely on newspaper articles, academic sources and a report to understand the situation of stateless Bidoons in the UAE and those with Comoros passports.⁵⁹ Consequently, the inability to access updated evidence through governmental channels raises concerns about the data utilised by the BAMF to assess asylum applications from Bidoons with ‘economic citizenship’.

VI CONCLUSION

The Comoros ‘economic passport’ has served as a strategic tool in perpetuating discrimination against ethnic minorities within the UAE. By legalising the status of Bidoons as ‘foreigners’, the UAE sidestepped a much needed naturalisation process. This arrangement not only underscores the complexity of citizenship issues but also unveils a lesser explored facet of ‘economic’ or rather ‘investor citizenship’ without naturalisation for stateless people, a topic little explored in current scholarship. The lack of expertise raises questions regarding Bidoons’ ability to seek asylum or even naturalise through statelessness determination procedures abroad. Moreover, concerns remain about the implications for the family’s (possibly prolonged) toleration in Germany following the prohibition of deportation to the Comoros.

54 Kuzmova (n 2) 285.

55 Albarazi and Kuzmova (n 2) 353.

56 ‘UAE’s Bidoon, Systematic Discrimination and Constant Suffering’, *Emirates Leaks* (online, 9 November 2021) <<https://emiratesleaks.com/bidoons-2/?lang=en>>, archived at <perma.cc/49GX-9YE9>; AC Sigmaringen (n 7) [39].

57 Abrahamian (n 52); Anna Zacharias, ‘Special Report: Ten Years On, the UAE’s Stateless People Reflect on How Life Has Improved and on the Challenges Ahead’, *The National* (online, 5 September 2018) <<https://www.thenationalnews.com/uae/special-report-ten-years-on-the-uae-s-stateless-people-reflect-on-how-life-has-improved-and-on-the-challenges-ahead-1.767367>>, archived at <perma.cc/SD95-59LM>.

58 AC Sigmaringen (n 7) [16].

59 Some of these sources are also listed as country evidence for the UAE (the Comoros are absent) on the website of the Higher Administrative Court of the Federal State of Baden-Württemberg, to which the Court is subordinate: ‘Erkenntnismittellisten’ [‘Means of Knowledge Lists’], *Verwaltungsgerichtshof Baden-Württemberg [Higher Administrative Court of Baden-Württemberg]* (Web Page) <<https://verwaltungsgerichtshof-baden-wuerttemberg.justiz-bw.de/pb/Lde/Startseite/Service/Erkenntnismittellisten>>, archived at <perma.cc/3CEE-4DUS>.