

## **Decision of the Swiss Federal Administrative Court regarding exclusion from the 1954 Convention (Art. 1(2)(ii))**

[Judgment F-6147/2015, 5 January 2017](#)

### **The facts:**

The applicants are a Kurd from Syria (*ajanib*) and his two sons who were born in Greece and Switzerland respectively. The applicants were granted refugee status and asylum in Switzerland in 2014, and applied for statelessness status in 2015. The State Secretariat for Migration ('SEM') rejected the applications. The SEM found that persons who have been granted asylum and consequently were granted a residence permit possessed the same economic and social rights as Swiss nationals, and concluded that the applicants were to be excluded from the 1954 Convention in accordance with Art. 1(2)(ii) ("rights and obligations attached to the possession of the nationality of the country of residence").

### **Decision of the FAC:**

In its decision, the FAC first examines the applicants' *locus standi*: Contrary to refugees who have been granted asylum, recognised stateless persons are entitled to a permanent residence permit after five years of lawful residence in Switzerland (Art. 31(3) Federal Act on Foreign Nationals). The FAC finds that the applicants thus have an "interest that is worthy of protection in the revocation or amendment of the ruling" (Art. 48(1)(c) Federal Act on Administrative Procedure), and therefore a right to appeal and thereby confirms its judgment from 2014 ([C-1873/2013](#)). The FAC then confirms that neither of the applicants currently possesses a nationality, and goes on to examine whether the applicants fall under the exclusion clause set out in Art. 1(2)(ii) 1954 Convention. In order to determine the meaning of "as having the rights and obligations which are attached to the possession of the nationality of that country", the FAC mainly refers to academic writing on Art. 1E 1951 Convention. The FAC summarises that according to the literature, Art. 1E refers to all but political rights, and includes the (absolute) protection against expulsion and deportation. The FAC then finds that the rights and obligations that the applicants enjoy as refugees with asylum holding a residence permit in Switzerland cannot be put on a level with those of Swiss nationals in terms of Art. 1(2)(ii). The FAC considers it sufficient to refer to the protection against expulsion and extradition, which Swiss nationals enjoy under Art. 25(1) of the Federal Constitution of the Swiss Confederation: While Swiss nationals may not be expelled and may only be extradited with their consent, refugees can be expelled under certain circumstances and do not enjoy an absolute prohibition against return, unless they are facing the threat of torture or inhumane treatment or punishment. The FAC **concludes that refugees who have been granted asylum in Switzerland and hold a residence permit do not fall under the exclusion clause set out in Art. 1(2)(ii)**, and determines the applicants to be stateless under the 1954 Convention.