

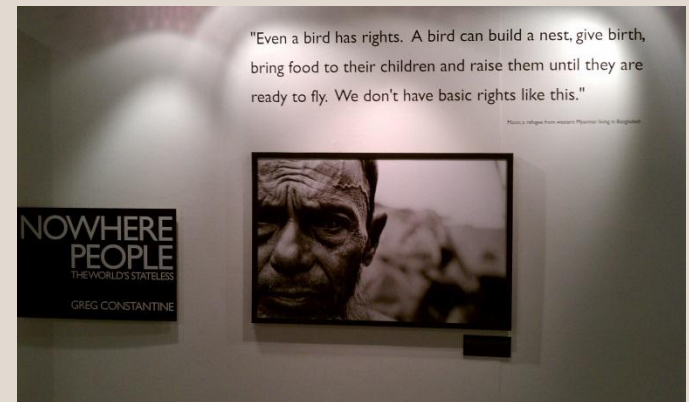


# Litigating statelessness and the right to nationality

*Can the right to nationality be realized in court? What is the role of litigation in enforcing protection for stateless persons?*

# Litigation basics

- Initiating a case:
  - Individual action;
  - Group action/collective complaints;
  - Inter-state action;
  - National court referral
- Exhausting domestic remedies
- Interventions by third parties – TPI & experts
- The pros and cons of litigation
  - Adversarial measure
  - Threat to applicants
  - May make government collaboration difficult
  - Can lead to quick changes
  - May provide strong advocacy arguments
- Strategic litigation
  - The benefits of success extends beyond the courtroom.
  - Addressing patterns of violations/abuses through a single case



# Litigation basics – choice of forum

- European Court of Human Rights
  - Individuals, groups, organizations, inter-state
- European Committee of Social Rights
  - European Social Charter
- Court of Justice of the European Union
  - Infringement of EU law
  - Interpretation of EU law (reference for preliminary ruling)
- UN Treaty Bodies
  - 9.5 treaty bodies (CCPR, CESCR, CERD, CEDAW, CAT, CRC, CMW, CRPD, CED, SPT)
- International Court of Justice
- Other?

# Litigating statelessness and the right to nationality

- Typically, litigation in this area concerns violations of the right to nationality
  - Arbitrary deprivation of nationality
  - Discrimination in access to nationality
  - Arbitrary procedures around acquisition or proof of nationality
  - Sometimes we address issues that are tangential to nationality without addressing the right to nationality itself.
- But, litigation can also be used to enforce protection for stateless persons
  - Standards for protection can be obtained or extrapolated from, for instance
    - Convention relating to the status of stateless persons
    - European convention on nationality
    - European convention on human rights
    - International human rights treaties

# Case study: *Kuric v. Slovenia*

Facts: “Erasure” of 25,671 people from register of permanent residents who were citizens of Yugoslavia and another constituent republic

Forum: European Court of Human Rights (Third Section and Grand Chamber)

Arguments:

- Article 8 (right to private life): deprived of the possibility to acquire citizenship and/or of preserving permanent residence status;
- Article 14 (discrimination, with article 8): difference in treatment between “real aliens” who were allowed to retain their permanent resident status and citizens from former Yugoslav republics;
- Article 13 (effective remedy): failure to redress alleged violations of article 8

Implementation: Many of the applicants and others in similar situations have managed over time to regularize their status. Some are still stateless. Some are stateless abroad.

# Case study: *Rottmann v. Freistaat Bayern*

Fact: Mr. Rottmann born in Austria with Austrian nationality from birth. Naturalized in Germany and lost Austrian nationality as a result. Rottmann didn't tell German authorities that he was a subject of criminal proceedings in Austria. Germany revoked citizenship on basis of fraud.

Forum: Court of Justice of the European Union (from German Federal Administrative Court)

Issue: Is withdrawal of nationality in this case permitted if it results in statelessness? Did the withdrawal of nationality observe the principle of proportionality and was it justified by a reason relating to the public interest?

# Case study: Treaty Bodies

- Cases relating to statelessness and/or the right to nationality can be brought to some of the UN treaty bodies.
- What are the relevant conditions to launch a case?
  - States parties;
  - Rules of individual bodies (individual communications; time lapse, domestic remedies)
- Most relevant:
  - Convention on the rights of the child (7&8)
  - International covenant on civil and political rights (24)
  - Convention on the elimination of all forms of racial discrimination (5)
  - Convention on elimination of all forms of discrimination against women (9)

# How would you litigate - Denmark

## Facts:

- Mr. Y is originally from Iran and has resided in Denmark as a refugee for 20 years. He is a permanent resident.
- He suffers from post-traumatic stress disorder as a result of torture and doctors have confirmed that as a result he is unable to learn the Danish language.
- Because he does not speak Danish very well, he cannot pass the citizenship test.
- Danish law provides an exception to the language requirement in certain cases but struck post-traumatic stress disorder from the list of exceptions a few years ago.



# How would you litigate - Denmark

## Potential arguments:

### ECHR

- Article 8
  - The denial of Danish citizenship has left Mr. Y stateless and is a disproportionate interference with his right to private life under Article 8, interfering with his physical and psychological integrity, which includes his right to develop relationships in the community. The determination of his citizenship status concerns his legal identity, human dignity, and personal development.
- Article 8+14
  - Denmark has failed to treat the applicant differently on account of his vulnerable status as a stateless refugee suffering from a learning disability as a result of torture, breaching Article 8 in conjunction with Article 14.

# How would you litigate - Italy

## Facts:

- Mr. Z was among the “erased” in Slovenia and has lived in Italy for 20 years.
- He lost his right to reside in Italy when he lost his job.
- In order to stay in Italy he applied for statelessness status both through an administrative and a judicial procedure. Separately he has also applied for resident status in Slovenia.
- The administrative application was dismissed because one of the conditions to receive statelessness status is Italy is lawful residence.
- Italian law does not provide for a temporary stay permit while the judicial application is pending and Mr. Z is as a result vulnerable to detention, and deportation. Indeed, Italy has attempted to deport him to both Romania and Slovenia.

# How would you litigate - Italy

## Potential arguments:

### ECHR

- Article 6
  - The denial of a temporary permit of stay pending determination of Mr Z's legal status directly undermines the purpose of the status determination proceedings, depriving Mr Z of his Convention rights under Article 6(1).
- Article 6+14
  - While Mr Zis legally barred from receiving temporary protection pending the outcome of statelessness proceedings, asylum seekers receive automatic permits – an unjustified difference in treatment in violation of Convention Article 14 taken in conjunction with Article 6(1).
- Article 8
  - Italy's prolonged failure to regularize Mr Z's legal status, including by failing to grant him temporary protection necessary to claim stateless status in Italy, amounts to a violation of the right to respect for his private life under Article 8.
- Article 13
  - Italian authorities are barred by law from granting temporary permits pending resolution of stateless status applications, thus no effective domestic remedy exists for challenging the denial of a temporary permit in Mr Z's case.

# How would you litigate - Poland

## Facts:

- Ms. W is an infant born in Poland to Cuban national parents. The parents have permanent residence in Poland.
- Cuba does not give nationality to children born to nationals abroad unless they go back and reside in Cuba for at least three months
- Poland provides nationality to stateless children born on its territory, but only if the parents are unknown or stateless.
- Ms. W is as a result stateless.

# How would you litigate - Poland

## Potential arguments:

### ECHR

- Article 8
  - The gap in Polish law that has left Ms. W stateless interferes with her right to private life and amounts to a violation of article 8
- Article 8+14
  - Ms. W is in a disadvantaged position in comparison with stateless children born in Poland whose parents are also stateless.

### ICCPR

- Article 24(3)
  - Ms. W's right to acquire a nationality has been violated.
- Article 24(3) + 2
  - Ms. W is in a disadvantaged position in comparison with stateless children born in Poland whose parents are also stateless.
- Article 26
  - Ms. W faces discrimination due to her status as a child born stateless in Poland to foreign national parents (other status).