



Discovering Nationality

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About the Statelessness Programme

Initiative of Tilburg University (the Netherlands),
dedicated to:

- **Research:** e.g. treatment of stateless people under the Dutch immigration law
- **Training:** e.g. course for undergrad students; capacity building focal point ENS
- **Outreach:** e.g. April 2012 symposium about the effects of gender discrimination in nationality law

www.tilburguniversity.edu/statelessness

Statelessness & Nationality

Statelessness

- **Stateless Person:** “a person who is not considered as a **national** by any state under the operation of its law”
- Stateless persons are non-nationals *everywhere*, which has consequences for their enjoyment of rights
- Number affected worldwide: approx. 12 million

Why statelessness is a concern

- **Impact on individuals:** statelessness can limit a person's enjoyment of a wide range of rights.
- **Impact on families:** statelessness can affect the enjoyment of family life and be passed on from parent to child.
- **Impact on communities:** statelessness can lead to social tension and impair economic development.
- **Impact on states / international relations:** statelessness can lead to forced displacement and may contribute to conflict.

Nationality

- **Nationality:** the legal bond between a person and a state
- Nationality is a form of membership that results in rights and duties, for instance:
 - Right to enter and reside in the state; political rights
 - Duty to perform military service
- Nationality vs. citizenship

The mechanics of nationality

CASE STUDY:

- Born in Belgium
- British mother
- British father
- Lived in Belgium until age 4
- Lived in the Netherlands from age 4
- Married to a Dutch national

CASE STUDY: DUAL NATIONAL

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Nationality reflects *connections*

- Family links:
 - Parents, *jus sanguinis*
 - Husband / wife

- Territorial links:
 - Place of birth, *jus soli*
 - Long-term residence

CASE STUDY:

Fatima, 24 years old

- Born in the Netherlands, out of wedlock
- Bahraini mother
- Danish father
- Lived in the Netherlands until age 2
- Lived in Bahrain from age 2

CASE STUDY: STATELESS

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Nationality law basics

- **Domestic law** sets the conditions for acquisition and loss of a state's nationality
- Acquisition of nationality can be:
 - at birth or later in life
 - automatic or non-automatic
 - discretionary or non-discretionary
- Nationality can also be lost - this may be voluntary or involuntary (renunciation vs. deprivation)

CASE STUDY:

Automatic or non-automatic? Discretionary?

An alien shall be granted nationality if he

1. Was born on the territory and has been stateless since birth;
2. Has had his principal domicile on the territory for a period of not less than ten years, of which a continuous period of not less than five years preceding the granting of nationality [...]
5. Applies for naturalization after the age of 18 years and not later than two years after having attained majority.

CASE STUDY:

Non-automatic. Discretionary?

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The letter of the law is not the full story

- Law may be ambiguous – e.g. discretionary?
- Competent authorities may interpret the law differently to how you would
- Practice of applying the law may be arbitrary or discriminatory
- Need to understand **law** and **practice** applicable in the **individual case**

Examples of problems with practice

- Safeguards against statelessness not widely known, so not applied in practice
- “Otherwise stateless” child not identified, so relevant safeguard not applied (e.g. Denmark)
- Statelessness not identified, so no access to e.g. facilitated naturalisation (e.g. Netherlands)

Nationality in Europe

Is nationality relevant in an era of EU citizenship?

- EU citizens benefit from an extra set of rights within Europe:
 - Free movement
 - Political rights (e.g. voting for EP, local elections)
- But... EU citizenship linked to nationality!
 - To be an EU citizen, you must first be considered as a national by an EU member state
 - *A stateless person cannot be an EU citizen*

Does the EU have any say in member states' nationality policy?

- Each state is free to regulate access to nationality, *within the limits set by international law*
- Because of the link between nationality and enjoyment of EU citizenship... EU member states “must have **due regard for community law** when laying down the conditions for acquisition and loss of nationality” (Rottmann)
 - E.g. principle of proportionality

What Council of Europe norms limit states' freedom to regulate nationality?

- European Convention on Nationality
- Council of Europe Convention on the avoidance of statelessness in relation to state succession
- Recommendations of the Committee of Ministers
- Nationality as part of a person's "Social Identity" and protected under private life, article 8 ECHR (Genovese)

Do Council of Europe standards impact treatment of stateless people?

- European Convention on Human Rights: standards apply to everyone within a state's jurisdiction, including stateless people
- Jurisprudence shows some success stories of stateless people asserting their rights on the basis of the ECHR (e.g. Kuric, Andrejeva)