

ENS Litigation Newsletter

March 2023 – July 2023

Welcome to the Litigation Newsletter from the [European Network on Statelessness](#) (ENS). This resource is in addition to ENS' general newsletter and focuses on bringing you an overview of developments on statelessness from European courts, an update on our litigation activities across the network, recent publications relevant for legal practitioners, and notification about upcoming events and opportunities.

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Update on Statelessness Litigation in Europe

This section includes relevant European case law on statelessness and nationality from regional and domestic courts. For more details about these judgments and to browse over 250 other cases, visit our [Statelessness Case Law Database](#).

Regional Courts

CJEU Advocate General's opinion: UNRWA's protection ceases when a stateless Palestinian cannot access required medical care

[Court of Justice of the European Union, Advocate General Opinion, Office français de protection des réfugiés et apatrides \(OFPRA\) v SW, Case C-294/22 \(4 May 2023\)](#)

A stateless person of Palestinian origin, who lived in one of UNRWA's areas of operations in Lebanon, made an asylum application in France claiming that it was impossible for UNRWA to provide him with sufficient access to medical care and appropriate living conditions required by his health condition. The Council of State (Conseil d'État) submitted a request for a preliminary ruling to the CJEU. Advocate General Emilou found that UNRWA's protection or assistance can be considered to have ceased where there is a serious risk to personal safety and when it is impossible for UNRWA to guarantee that the basic medical and health needs of the person will be met in the area of operations. A final judgment from the CJEU is still pending. Read also the [ELENA Weekly Legal Update of 9 June 2023](#).

CJEU: Hungary's asylum procedure does not comply with EU law

[Court of Justice of the European Union, European Commission v Hungary, C-823/21 \(22 June 2023\)](#)

The CJEU found that the Hungarian legislation requiring stateless persons and third-country nationals to obtain travel documents and submit an in-person declaration of intent at the embassy in Serbia or Ukraine, in order to apply for international protection, does not comply with Article 6 of the EU Qualification Directive. Read also the [ELENA Weekly Legal Update of 30 June 2023](#).

ECtHR: Serbia's refusal to issue a travel document to a recognised refugee violated the ECHR

[European Court of Human Rights, S.E. v Serbia, app. no. 61365/16 \(11 July 2023\)](#)

The ECtHR found that Serbia violated Article 2(2) of Protocol no. 4 ECHR when it refused for 7 years to issue a travel document to a Syrian national who was granted refugee status in Serbia and whose passport expired, on the ground that there were no subsidiary regulations yet to implement the Asylum Act. Read also the [ELENA Weekly Legal Update of 14 July 2023](#).

ECtHR: Azerbaijan in breach of Article 8 by terminating a journalist's citizenship which rendered him stateless

[European Court of Human Rights, Emin Huseynov v. Azerbaijan \(No. 2\), app. no. 1/16 \(13 July 2023\)](#)

The authorities in Azerbaijan terminated the nationality of an independent journalist and chairman of an NGO for the protection of journalists, rendering him stateless. The Court found that such measure had been arbitrary and in violation of Article 8 ECHR, given that it rendered the applicant stateless, in disregard for the 1961 Convention,

and was not accompanied by due procedural safeguards. In the particular circumstances of the case, for the purposes of examining the arbitrariness of the decision terminating the applicant's nationality, the Court did not consider it necessary to establish whether the applicant's renunciation of his nationality was forced or voluntary, which was a matter in dispute between the parties.

National Courts

A child born to surrogacy in the UK does not acquire Irish nationality from non-biological father

[Ireland - A, B and C \(A Minor Suing by His Next Friend, A\) v The Minister for Foreign Affairs and Trade \(Approved\) \[2023\] IESC 10 \(09 May 2023\)](#)

In a case concerning a child born in the UK through surrogacy to a same-sex couple with a non-biological father with dual Irish and British nationalities, the Supreme Court ruled that the child did not acquire Irish nationality from him. The court found that, while the father obtained a post-birth parental order in an English court, he was not classified as the child's 'parent' under Irish nationality law, which refers to the child's biological father and the birth mother. Read more in this [Irish Times article](#) and see also [Justice Hogan's judgment](#).

Analogy with the asylum procedure in Czechia is not preserved for court jurisdiction

[Czechia - Resolution of the Supreme Administrative Court, n. Nad 62/2023-59 \(17 May 2023\)](#)

In a dispute concerning court jurisdiction, the Supreme Administrative Court recognised the special circumstances of the claimant in an application for the determination of statelessness, and ruled that the court which would have been competent in an asylum procedure should continue the proceedings.

Applicants for statelessness determination in Czechia have the right to be issued an ID

[Czechia - Decision of the Municipal Court in Prague, n. 14 A 18/2023-35 \(24 April 2023\)](#)

The court found that, despite the Ministry of Interior's refusal to issue identity documents to persons applying to be recognised stateless, applicants have the right to be issued with an ID. The court referred to UNHCR Guidelines and to its previous ruling, according to which the analogy with the asylum procedure should be preserved regardless of whether statelessness determination is regulated under the Asylum Act or the Immigration Act (following a legislative amendment in 2021).

Latest developments in the V.M.A. case: Bulgarian Supreme Court refuses to recognise Bulgarian nationality to baby Sara

[Bulgaria - Supreme Administrative Court, Decision No 2185/2023 in case No 6746/2022 \(1 March 2023\)](#)

The Supreme Administrative Court overthrew a judgment of the Sofia City Administrative Court, which had ordered the issuance of a Bulgarian birth certificate to a child who was born in Spain to same-sex parents, including a Bulgarian mother. The first instance court had requested a preliminary ruling to the CJEU in this case, which resulted in the groundbreaking [V.M.A. judgment](#), in which the CJEU held that the Member State of which the child is a national is required to issue an identity card or a passport to the child. The Supreme Court referred to the [CJEU judgment](#) but held that the question of nationality is within the jurisdiction of Member States, and therefore the child could not acquire Bulgarian nationality if her biological mother is not a Bulgarian national, according to national law. The Supreme Court of Bulgaria also

stated that Spanish law should be applied to the child's case instead of Bulgarian law. The judgment is final and cannot be appealed. Read also [ENS blog](#) published on this issue prior to the Supreme Court's judgment.

UK Supreme Court finds that excluding Palestinian refugee from resettlement scheme is lawful

[United Kingdom – Supreme Court, R \(on the application of Marouf\) v SSHD](#) (28 June 2023)

The Supreme Court found that the UK Resettlement Scheme, which resettles in the UK vulnerable refugees who have fled the conflict in Syria and referred by UNHCR (while Palestinian refugees are the responsibility of UNRWA), can lawfully exclude Palestinian refugees as there is no need to consider the equality impact. Read also the [Free Movement blog](#) on this case.

Shamima Begum deprived of her British citizenship and left stateless

[United Kingdom - Begum v SSHD, SIAC, Appeal No: SC/163/2019](#) (22 February 2023)

The UK Special Immigration Appeals Commission upheld the Home Secretary's decision to deprive the applicant, Shamima Begum, of her British citizenship, as she travelled to Syria as a child to join 'ISIL'. Read also [ENS blog](#) on this case.

Austrian court rules on eligibility for temporary protection

[Austria, Federal Administrative Court, W189 2265524-1](#) (10 February 2023)

The court found that the applicant, a stateless man who fled Ukraine with a temporary residence permit, does not qualify for temporary protection under the Austrian law implementing the Temporary Protection Directive, as he did not benefit from international protection or equivalent national protection in Ukraine.

France rejects statelessness status of applicant from Western Sahara granted Moroccan nationality

[France - Council of State, M.D.A. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\), No 457625 B](#) (27 December 2022): A person from Western Sahara,

whose birth certificate indicated he was a Moroccan national, was refused statelessness status by the authorities. The Council of State held that the mere fact that Western Sahara is a non-self-governing territory is not sufficient to regard people of Sahrawi origin who were granted Moroccan nationality as stateless. Read more about the case in the [EUAA Case Law Database](#) and in [ENS blog](#).



Stay Tuned

This section covers other litigation developments as well as updates on recent activities that we have been up to.

New legal briefing: Statelessness and the prohibition on discrimination against Romani communities

A [new legal briefing](#), published by ENS and the AIRE Centre, outlines the principle of non-discrimination and its impact on the prevention and reduction of statelessness among Romani communities in Europe. The briefing examines international and regional frameworks, states' obligations, and provides examples of countries implementing solutions to address barriers in nationality acquisition and birth registration for Roma and other minority groups. [Read the briefing](#).

Workshop on strategic litigation at our Annual General Conference

ENS and The AIRE Centre held a workshop on strategic litigation during our Annual General Conference in Madrid on 7 June, in which ENS members discussed opportunities and challenges to use impact litigation across Europe to address statelessness. We will be particularly developing our engagement with the judiciary and improving how we monitor the implementation of judgments, to ensure that stateless people's rights do not only stay on paper.

Upcoming opportunities

- The [Statelessness and Citizenship Review \(SCR\)](#) has a call for submissions to Volume 6(1) open until 1 October 2023 ([more information here](#)).
- The Melbourne Law School has an open call for applications to the [Visiting Fellowship Scheme at the Peter McMullin Centre on Statelessness](#). Applications for the 2024 Visiting Fellowship Scheme are open until 1 August 2023.



Resources

This section highlights recent publications, reports and blogs that we or other organisations have published.

- (ENS and The AIRE Centre) [Legal briefing: Statelessness and the prohibition on discrimination against Romani communities](#)
 - [RELATE Platform – Refugee Law Teaching Support Initiative](#): resource developed by the Hungarian Helsinki Committee to promote education on refugee law and statelessness.
 - [Migrant Rights Database](#) – new database benchmarking the extent to which States fulfil their international obligations to protection migrants' rights, including the right to a nationality.
 - [GLOBALCIT Citizenship Law Dataset](#): data updated and launched with an online event ([watch the recording](#))
 - [Statelessness & Citizenship Review, Vol 4 No. 2 \(2022\)](#)
 - (Barbara von Rütte) [The Human Right to Citizenship – Situating the Right to Citizenship within International and Regional Human Rights Law](#): book analysing the right to nationality in international and regional human rights law.
 - (Eric Fripp) [Statelessness, Inability or Unwillingness to Return, and the 'Country of His Former Habitual Residence' as the Country of Reference for the Purposes of Article 1A\(2\) of the 1951 Convention relating to the Status of Refugees \(International Journal of Refugee Law\)](#): article on the qualification as refugees for persons 'not having a nationality'.
 - (Maëliiss Guillaud) [French Administrative Supreme Court rejected a stateless status application from a Sahrawi applicant](#): blog analysing the French Council of State decision denying statelessness status to a person from Western Sahara residing in France since 2013.
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STATELESSNESS Case Law Database

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