

# ENS Litigation Bulletin

November 2023– February 2024

Welcome to the Litigation Bulletin 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.

## European Litigation Updates

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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 300 other cases, visit our [Statelessness Case Law Database](#).

## Regional Courts

**ECtHR: First case examining the right to a birth certificate under Article 8**  
[European Court of Human Rights, G.T.B. v Spain, app no. 3041/19](#) (16 November 2023)

The Court found a violation of Article 8, in a groundbreaking case regarding children's right to a birth certificate. The applicant was born in Mexico to a Spanish mother and, following an earthquake, he was repatriated to Spain with his mother and family. Despite the mother's attempts, the applicant's birth was not registered upon arrival in Spain as the necessary documentation had been destroyed by the earthquake in Mexico. The applicant was issued with an ID card at 21. The Court acknowledged that, upon becoming aware of the situation, Spanish authorities were under a positive obligation to assist the applicant in obtaining documentation. The Court therefore found a violation of the authorities' obligation to ensure the applicant's enjoyment of his right to respect for private life under Article 8. This was the first ECtHR case in which the right to a birth certificate was considered under Article 8. Read the [case summary](#) in the SCLD and the [full judgment](#) here.

### **ECtHR: No violation of Article 3 in case of return of a stateless Palestinian to Lebanon**

[European Court of Human Rights, H.A. v United Kingdom, app no. 30919/20](#) (5 December 2023)

The applicant is a stateless person of Palestinian origin who was born in a refugee camp in Lebanon. He applied for protection in the UK on several grounds, including that he was at risk of harm in breach of Article 3 ECHR because of attempts to recruit him to extremist armed factions in the camp, but his application was rejected. The ECtHR accepted that there was no risk in case of return to Lebanon, and found no information supporting the applicant's argument in a EUAA (former EASO) report regarding the recruitment of young Palestinians in refugee camps in Lebanon. The Court found no violation of Article 3 ECHR. Read the [case summary](#) in the SCLD and the [full judgment](#) here

### **ECtHR: Croatia violated the ECHR when ordering expulsion on national security grounds due to limited procedural rights**

[European Court of Human Rights, F.S. v Croatia, app no. 8857/16](#) (5 December 2023)

The applicant had renounced his Bosnian-Herzegovinian citizenship after having received an assurance that he would obtain Croatian citizenship, and became stateless. Croatia subsequently refused his citizenship application on national security grounds, without providing the reasons for this decision. He was issued an expulsion order and his permanent residence was terminated. While the applicant was in immigration detention, his Bosnian-Herzegovinian citizenship was restored and he left Croatia voluntarily. The Court found that the limitation in the applicant's procedural rights in his expulsion proceedings had not protected him against arbitrariness, and found a violation of Article 1 of Protocol n. 7. The remaining complaints were either found inadmissible or were not examined by the Court. Read the [case summary](#) in the SCLD and the [full judgment](#) here.

### **CJEU: AG Opinion on UNRWA's assistance to stateless Palestinians in Gaza**

[Court of Justice of the European Union, Case C-563/22, opinion of Advocate General Emiliou](#) (11 January 2024)

This case involves a stateless Palestinian mother and her child, registered with UNRWA, who left the Gaza strip to seek protection Bulgaria. Their applications for international protection were rejected. Advocate General Emiliou delivered an opinion emphasising that, while Palestinian refugees who receive assistance from UNRWA are excluded from the protection of the 1951 Refugee Convention (as per Article 1D, and the corresponding Article 12(1)(a) in the EU Qualification Directive), UNRWA's

protection or assistance must be considered to have ceased if there is exposure to undignified living conditions, ill-treatment, indiscriminate violence, and other serious harm. The opinion noted that the level of insecurity and the living conditions have been changing rapidly for people living in the Gaza Strip, particularly since 7 October 2023, and the general situation currently prevailing in the area must be taken into consideration. If UNRWA's area of operation or a part thereof experiences grave systemic deficiencies, it is not necessary to show that the general living conditions are undignified for the person concerned in an individualised manner in order to establish that UNRWA's protection or assistance has ceased. The opinion also underlined the importance of considering a child to be part of a particularly vulnerable group which may be more affected by such conditions. [Foundation for Access to Rights \(FAR\)](#) is providing legal assistance in this case. Read also our [news item](#) on this case, and ENS and BADIL's [report](#) and [advocacy briefing](#) on Palestinians and the search for protection as refugees and stateless persons.

## National Courts

### **Stateless child born in the Netherlands must be granted nationality even without lawful residence**

[Netherlands – District Court, Zeeland West Brabant, BRE AWB 23/2442 RWNL](#) (7 December 2023)

This case concerns the refusal of a municipality to grant Dutch nationality to an undocumented, stateless child born in the Netherlands who has always lived in the country, because the child had not been residing 'lawfully' in the country for at least three years, as provided by the applicable law. The Dutch court ruled that the child should be granted nationality, as according to the 1961 Convention only 'habitual residence' is required. It noted that the amended Dutch Nationality Act, in force since October 2023, only provides for the requirement of habitual residence and no longer imposes a lawful residence requirement, and therefore this condition should not have been applied in this case, as it is contrary to international law. Read [a summary of this case in the SCLD](#). For more information on the recent reforms in the Netherlands, read this [news update on the Statelessness Index](#) and [this blog on ENS website](#).

### **Temporary protection in the Netherlands cannot end before the one-year period**

[Netherlands – Council of State, Administrative Jurisdiction Division, Case 202305663/1/V2](#) (17 January 2024)

The Netherlands had a wider scope of application of the EU Temporary Protection Directive, as it extended it to third-country nationals and stateless people fleeing Ukraine who had temporary stay and were unable to return to a country of origin. The law was then amended to restrict eligibility for temporary protection to people who registered at a Dutch townhall before 19 July 2022, and protection would only be valid until 4 September 2023. In this case, the Dutch Council of State ruled that the competent authority could not independently end the temporary protection of a third-country national who had a temporary residence permit in Ukraine before the start of the war before the end of the one-year period, in accordance with the EU Temporary Protection Directive. Therefore, temporary protection will end on 4 March 2024. Read also the [ELENA Weekly Legal Update of 19 January 2024](#).



## Stay Tuned

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

### **Russia reforms immigration detention laws after decade-long litigation**

Russia has enacted [reforms](#) to its immigration detention laws, introducing time limits and judicial oversight on the detention of migrants in immigration removal centres. The changes come after years of litigation and advocacy by ENS member ADC Memorial, including as part of ENS's #LockedinLimbo campaign to end arbitrary detention of stateless people, evidencing the value of advocacy, strategic litigation, and persistence.

"After so many years of working with victims of arbitrary detention, we are delighted that stateless people will no longer languish locked in limbo. While the reforms confirmed our efforts, it also goes to show that we need to keep the work going - real change takes time, and we must persist through every small victory and setback along the way" said Stephania Kulaeva, Director of [ADC Memorial](#).

The reforms follow a landmark 2017 ruling by Russia's Constitutional Court that found unlimited detention of stateless migrants unconstitutional (see [case summary](#)), and an ECtHR judgment in 2014 in the case of *Kim v Russia*, a stateless migrant unlawfully held in detention for two years (see [case summary](#)). For further information, see [ENS' news item](#).

### **Upcoming opportunities**

- [2024 World Conference on Statelessness](#): 26-29 February in Malaysia. Free online participation is available by [registering here](#).



## Resources

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

- [Statelessness & Citizenship Review, Vol. 5 No. 2 \(2023\)](#): variety of articles, commentary, case notes, and book reviews.
- [\(ENS\) How law firms are contributing to the fight to end statelessness in Europe](#): (video, Nov 2023): to celebrate Pro Bono Week 2023, this video showcases the impactful contributions of our pro bono partners in the fight against statelessness in Europe.
- [\(Giulia Bittoni\) Surrogacy Arrangements: Can Article 8 of the ECHR Combat Child Statelessness?](#) (Blog, Nov 2023): exploring surrogacy as a potential (indirect) contributor to statelessness and the possible legal remedies to avert new incidents of statelessness.
- [Systemic Justice, Community Toolkit for Change](#): the organisation Systemic Justice has published resources for leveraging the courts and to build the knowledge and power of communities and movements fighting for justice. This

includes a guide on strategic litigation, a glossary of legal terms, and a conversation starter with questions to bring into community spaces and meetings to start a collective conversation about how to use the courts to tackle injustice.



## STATELESSNESS Case Law Database

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