



# LITIGATION TOOLKIT ON STATELESSNESS

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## INTRODUCTION

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Statelessness affects over half a million people in Europe. To be stateless is to have no nationality, and for the millions of stateless people around the world, this can mean denial of basic rights most people take for granted. Some States cause statelessness, or cause it to continue, through ostensibly neutral or in some cases allegedly positive laws and policies that result in statelessness and/or the failure to protect stateless people.

Statelessness is, however, a solvable issue, and a key component of the work to end statelessness is litigating for change, both in domestic, international and regional courts and bodies, with the purpose of developing and effectively implementing the right to a nationality and the human rights of stateless people. Achieving better standards on the protection of stateless people and prevention of statelessness depends on a general knowledge and understanding of the rights that stateless people are entitled to under the core statelessness conventions and international human rights law, and familiarity with their respective jurisprudence.

The Litigation Toolkit on Statelessness aims to provide a framework and guidance for legal practitioners on conducting litigation on statelessness. Volume I provides an overview of statelessness and the right to a nationality (section I), a framework to understand impact or strategic litigation and guidance to identify impactful cases (section II), an overview of the key legal instruments, courts and mechanisms to address statelessness (section III), and considerations on the implementation of judgments (section IV). Volume II outlines a summary of the key jurisprudence from the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU) and United Nations (UN) Treaty Bodies that either directly concern the rights of stateless people or address other connected human rights issues that impact on people without a nationality.

### IMPORTANT NOTE

This toolkit does not purport to be exhaustive and should not be relied on as a single source for legal practitioners bringing cases before any court or monitoring body. Legal practitioners are strongly encouraged to read in detail the relevant instructions for litigation and the practice directions, the original judgments and decisions referred to in this toolkit, and to receive specialised training by qualified providers.

Legal practitioners are encouraged to consult complementary resources and stay up to date on developments, including through <https://www.statelessness.eu/>. There are also further materials available in different formats, including this [educational video](#) on Strategic Litigation in the field of International Protection, published by the Hungarian Helsinki Committee. For further information or assistance to this end please feel free to contact [ENS](#) and [The AIRE Centre](#).

# KEY JUDGMENTS ON STATELESSNESS FROM EUROPEAN AND INTERNATIONAL MECHANISMS

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Below is a list of key judgments on statelessness from regional and international courts and bodies. More detailed case summaries and further cases from national courts can be accessed in the Statelessness Case Law Database (<https://caselaw.statelessness.eu/>), a free online resource containing summaries of national, regional and international jurisprudence covering Europe, managed by the [European Network on Statelessness](#) (ENS) with contributions and support from [ENS members](#) and [partners](#). The case summaries included in this toolkit and the database either directly concern the rights of stateless people or address other connected human rights issues that impact on people without a nationality. For accuracy and completeness, readers should refer to the original judgments and decisions, which are available online on [HUDOC](#), [CURIA](#) and [OHCHR](#).

## 2.1. Children's right to a nationality and birth registration

Children's rights to a nationality and to birth registration is enshrined in several UN instruments, but the lack or inadequacy of safeguards to ensure that stateless children can acquire a nationality and a birth certificate may lead to violations of such rights. Discriminatory practices from the authorities against particular groups may also lead to violations. The ECtHR and the CJEU have both recognised the importance of nationality in fulfilling the right to respect for private and family life, including in relation to recognition of legal parentage, birth registration, and acquisition of a nationality without discrimination.

### Court of Justice of the European Union

- *V.M.A v. Stolichna Obsthina*, C-490/20 (14 December 2021)

Bulgarian authorities refused to issue a birth certificate to the daughter of a Bulgarian mother and a British mother, who was born in Spain and issued a Spanish birth certificate with the names of both mothers, on the basis that it could only recognise parents of different genders. The Court found that where a birth certificate issued in another Member State designates parents of the same sex, the Member State of which the child is a national is required to issue an identity card or a passport to the child, without requiring a birth certificate to be drawn up beforehand by its national authorities. It also held that the Bulgarian authorities, and any other Member State, must recognise the parent-child relationship as established by the Spanish authorities for the purposes of permitting the exercise of the child's right to move and reside freely

within the EU, and any documents that would allow such travel. Further detail in this [case summary](#) or in the [full judgment](#).

See also the [case summary](#) and [full judgment](#) of *Rzecznik Praw Obywatelskich, C-2/21* (24 June 2022).

- ***Tjebbes and Others, C-221/17* (12 March 2019)**

The authorities refused to examine the applications of Dutch nationals, with dual nationality of a non-EU country, for renewal of their Dutch passports. The decision was based on the fact that they had lost their Dutch nationality because they possessed a foreign nationality and had their principal residence for an uninterrupted period of 10 years outside the Netherlands and the EU. The CJEU found that Member States may lay down rules regulating the loss of their nationality and, as a result, the loss of EU citizenship, where the genuine link between the person and that State is durably interrupted. Nevertheless, the loss of nationality must respect the principle of proportionality, which requires an individual assessment of the consequences of that loss for the person from the point of view of EU law. Further detail in this [case summary](#) or in the [full judgment](#).

## European Court of Human Rights

- ***Genovese v. Malta*, application no. 53124/09 (11 January 2012)**

Maltese authorities denied Maltese nationality to a child on the basis that they were born out of wedlock to a Maltese father and a British mother. Domestic legislation only conferred nationality to children born out of wedlock if the mother was Maltese. The Court rejected the argument advanced by the Maltese Government that this case was justified on the basis that a mother is always certain, whereas a father is not. It concluded that no reasonable grounds were adduced to justify such a difference in the treatment of the applicant and found a violation of Article 14 in conjunction with Article 8 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Menesson v. France*, application no. 65192/11 (26 September 2014)**

The case concerns the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. The Court found that totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was a violation of Article 8 concerning the children's right to respect for their private life, under Article 8. Further detail in this [case summary](#) or in the [full judgment](#).

- ***D.B. and Others v. Switzerland*, application nos. 58817/15 et 58252/15 (22 November 2022)**

The case concerns two Swiss nationals in a registered same-sex partnership, who had a child in the United States through a surrogacy agreement. A US court had named both parents as the child's legal parents, but Switzerland only recognised the parent-child

relationship of the genetic father and not the intended father. The intended father was unable to adopt the legally-recognised child of his registered partner as this option was, until January 2018, only open to married (heterosexual) couples. The Court found a violation of the child's right to respect for private and family life under Article 8 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- *C. v. Italy*, application no. 47196/21 (31 August 2023)

The Italian authorities refused to transcribe the applicant's Ukrainian birth certificate, either in full or in part. The applicant, who was born through gestational surrogacy in Ukraine, was consequently denied a legal parent-child relationship with her intended parents under Italian law, as well as any nationality. The Court ruled that the Italian authorities' refusal to transcribe the birth certificate, even in part, prevented the establishment of a legal parent-child relationship between the applicant and her biological father, which was in contradiction with Article 8 ECHR. Further detail in this [case summary](#) or in the [full judgment](#) (in French).

- *G.T.B. v. Spain*, application 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 and repatriated to Spain after an earthquake. Despite his mother's attempts, his birth was not registered upon arrival in Spain as the necessary documentation had been destroyed by the earthquake in Mexico, and he was issued with an ID card only at 21. The Court found that, upon becoming aware of the situation, Spanish authorities were under a positive obligation to assist the applicant in obtaining documentation and the failure to do so resulted in a violation of Article 8 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- Pending case: *Ramadani v. Serbia*, application no. 32903/22 (communication published on 8 January 2024)

The application concerns a child of Romani origin born in Serbia. The Serbian authorities refused to enter her name into the birth register because her mother had no identity document in support of this request, which is an explicit legal requirement in Serbia.

The judgment of the ECtHR is pending, for details see the Court's [communication](#). ENS and The AIRE Centre submitted a [third-party intervention](#) analysing States' obligations under Article 8 and Article 14 ECHR, and under other international instruments. For more information on this topic, see also ENS' [Legal briefing: Statelessness and the prohibition on discrimination against Romani communities](#).

## United Nations Treaty Bodies

- Human Rights Committee, *D.Z. v. the Netherlands*, no. 2918/2016 (19 December 2020)

A child was born in the Netherlands was registered as having 'unknown' nationality and the authorities refused changing it to 'stateless' on the ground that the child had not proved that he had no nationality, as the burden of proof was on the child and not on

the authorities. Without being recognised as stateless, the author could not acquire Dutch nationality. The Committee adopted the view that this requirement rendered the author of the complaint unable to effectively enjoy his right as a minor to acquire a nationality, in violation of the rights guaranteed under Article 24(3) in conjunction with Article 2(3) ICCPR. Further detail in this [case summary](#) or in the [full views of the Committee](#).

- **Committee on the Rights of the Child, *A.M. (on behalf of M.K.A.H.) v. Switzerland*, no. 95/2019 (6 October 2021)**

The communication concerned M.K.A.H., a stateless child, and whether Switzerland violated his rights under Articles 2 (2), 6, 7, 16, 22, 24, 27, 28, 29, 37 and 39 UNCRC when it decided to return him and his mother to Bulgaria, pursuant to the agreement between Switzerland and Bulgaria relating to the readmission of migrants in irregular situations, where they had previously obtained subsidiary protection.

Some of the findings of the Committee were that (i) Switzerland had not respected the best interests of the child nor heard him at the time of hearing the asylum request; (ii) the child ran a real risk of being subject to inhuman and degrading treatment in case of a return to Bulgaria; (iii) Switzerland had not sought to take the necessary measures to verify whether the child would be able to acquire a nationality in Bulgaria. The Committee also found that Article 7 UNCRC implicates that States must take the necessary positive actions to implement the right to acquire a nationality. Further detail in this [case summary](#) or in the [full views of the Committee](#), and the [third party intervention](#) by the AIRE Centre, DCR, and ECRE.

## 2.2. Statelessness determination and protection

Many States lack effective national frameworks to uphold their commitments under international human rights law to protect stateless persons. States must ensure that stateless persons on their territory have access to juridical rights, the right to work, economic and social rights including housing, education and social security, freedom of movement, identity and travel documents, protection from expulsion, and other rights. Stateless persons should not be discriminated against on the basis of their statelessness or documentation status. Several cases have established that the failure to provide accessible routes to regularisation for stateless people, or to protect certain rights of stateless people, may lead to human rights violations.

### European Court of Human Rights

- ***Andrejeva v. Latvia*, application no. 55707/00 (18 February 2009)**

The applicant was previously a national of the former USSR, before becoming a “permanently resident non-citizen” of Latvia, where she moved at age 12. Latvia refused to take the applicant’s 17 years of employment in the former USSR into account when calculating her pension entitlement because she did not have Latvian citizenship. The Court found that the difference in treatment based on nationality was not proportionate and ruled that there had been a violation of the applicant’s rights under

Article 14 taken in conjunction with Article 1 of Protocol No. 1 and Article 6(1) of the Convention. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Kurić and Others v Slovenia*, application no. 26828/06 (26 June 2012)**

Eight applicants, some of whom were stateless and others were nationals of former Yugoslavia, failed to request Slovenian citizenship within the six months' deadline provided for permanent residents to apply for citizenship following Slovenia's independence. Two months after the deadline, their names were erased from the Register of Permanent Residents, resulting in them becoming stateless together with approximately 25,671 other people in Slovenia, who became known as "the erased". The Court held that the domestic legal system had failed to clearly regulate the consequences of the "erasure", resulting in a violation of Article 8(2), 13, and 14 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Hoti v. Croatia*, application no. 63311/14 (26 April 2018)**

A stateless person of Albanian origin, whose parents had been granted refugee status in the former SFRY, had lived in Croatia for nearly forty years, but his repeated attempts to regularise his residence were largely unsuccessful, apart from short term permits that were granted and withdrawn sporadically. The Court found that Croatia's failure to comply with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined amounted to a violation of the right to private and family life under Article 8 ECHR. The Court determined that the applicant was stateless and emphasised that statelessness was a relevant factor towards establishing Croatia's violation of the ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Sudita Keita v. Hungary*, application no. 42321/15 (12 May 2020)**

A stateless person faced protracted difficulties in regularising his legal situation, and was recognised as stateless only after residing in Hungary for 15 years. During 13 of those years, the applicant had no legal status in Hungary and was entitled to neither healthcare nor employment, nor was he able to marry. The Court held that Hungary had not complied with its positive obligation to provide an effective and accessible procedure enabling the applicant to have his status in Hungary determined with due regard to his private-life interests under Article 8 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Savickis and Others v. Latvia*, application no. 49270/11 (9 June 2022)**

This case concerns the difference in treatment between citizens of Latvia and 'permanently resident non-citizens' of Latvia with regard to the calculation of their pension rights. For the latter group, employment periods accrued outside of Latvia prior to 1991 in other parts of the USSR are excluded from the calculation. The Court found that direct difference in treatment on the grounds of nationality in pensions does not violate the ECHR, as when determining that difference in treatment, Latvia pursued a legitimate aim and this measure was proportionate to that aim. It noted that

applicants decided not to naturalise in Latvia, where they resided. The Court also found that the assessment of whether the difference in treatment is justified by 'very weighty reasons' (test applied where there is a direct difference of treatment on the sole ground of nationality) must be carried out considering the wide margin of appreciation in this case. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Dabetic v. Italy*, application no. 31149/12 (18 October 2022)**

The application concerns the difficulties of the applicant, a stateless person of Slovenian origin, in regularising his status in Italy. The ECtHR found the application inadmissible, for further details see [case summary](#) and the [full decision](#). ENS and the AIRE Centre submitted a [third-party intervention](#) analysing States' obligations under Articles 8, 13, and 14 ECHR and under the 1954 Convention Relating to the Status of Stateless Persons, focusing on the obligation to provide an accessible and effective route to regularisation for stateless persons.

- ***Ghadamian v. Switzerland*, application no. 21768/19 (9 May 2023)**

Switzerland refused to issue a residence permit to an elderly foreign national from Iran, who had been living in the country for over 50 years and cited strong family and social ties in Switzerland. The applicant was residing unlawfully because a deportation decision issued against him had not been enforced due to the lack of an Iranian passport. The Court found that Switzerland breached its positive obligation under Article 8 ECHR to regularise a foreigner who was unlawfully present, and found that a fair balance had not been struck between the public interest and his right to respect for private life. Further detail in this [case summary](#) or in the [full judgment](#).

- **Pending case: *Suji v. Greece*, application no. 13250/23 (communication published on 9 October 2023)**

The application concerns a stateless refugee who obtained refugee status in Greece, but has been unable to benefit from family reunification with his wife and children (living in Bangladesh), because the authorities would not examine his application due to a lack of documents.

The judgment of the ECtHR is pending, for details see the Court's [communication](#). ECRE, ENS, DCR, and The AIRE Centre submitted a [third-party intervention](#) analysing States' obligations to protect the right to family reunification of stateless refugees under Articles 8, 13, and 14 ECHR, and under the 1951 Refugee Convention, the 1954 Convention Relating to the Status of Stateless Persons, the Convention on the Rights of the Child, and EU law.

### 2.3. Deprivation of Nationality

Arbitrary deprivation of nationality may impact on the private life of the person concerned, leading to fundamental rights violations. As such, decisions to deprive a person of their nationality must comply with substantive and procedural standards, be prescribed by law, and proportionate to a legitimate aim. An assessment of the

applicant's circumstances should be conducted by the State before imposing measures which may affect the applicant's rights, as established by several courts.

## Court of Justice of the European Union

- ***Rottmann, C-135/08 (2 March 2010)***

An Austrian national by birth transferred his residence to Germany and naturalised as a German national. The naturalisation in Germany had the effect, in accordance with Austrian law, of causing him to lose his Austrian nationality. The German authorities later withdrew the naturalisation with retroactive effect, on the grounds that the applicant had not disclosed that he was the subject of a criminal investigation in Austria on account of suspected serious fraud, and that he had thus obtained German nationality by deception. The Court held that it is not contrary to EU law for a Member State to withdraw nationality obtained by deception, even if it results in losing EU citizenship, so long as the decision observes the principle of proportionality.

Observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of their Member State of origin. Further detail in this [case summary](#) or in the [full judgment](#).

- ***JY v Wiener Landesregierung, C-118/20 (18 January 2022)***

JY, an Estonian national, applied for Austrian nationality. As Austria operates a 'single nationality' approach, JY renounced her Estonian nationality after receiving an assurance that she would be granted Austrian nationality once proof of her renunciation was given. This assurance was subsequently revoked due to the applicant committing two road traffic offences, leaving her stateless. In its judgment, the CJEU confirmed that the situation falls within the scope of EU law, and that the authorities' decision to revoke an assurance to grant Austrian nationality was incompatible with the principle of proportionality considering the gravity of the offences committed. The Court noted that the concepts of 'public policy' and 'public security' must be interpreted strictly and clarified their meaning, concluding that it did not appear that JY represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or a threat to public security in Austria. It also held that traffic offences, punishable by mere administrative fines, cannot be regarded as capable of demonstrating that the person is a threat to public policy and public security which may justify the permanent loss of their EU citizenship. Further detail in this [case summary](#) or in the [full judgment](#).

- ***X v. Udlændinge-og Integrationsministeriet, C-689/21 (5 September 2023)***

The case concerns the loss of Danish nationality by the applicant who was born outside Denmark to a Danish mother and had spent less than a year in Denmark prior to her 22nd birthday, in accordance with the Law of Danish Nationality. The Court held that Article 20 TFEU, read in conjunction with Article 7 of the Charter of Fundamental Rights of the European Union, did not preclude such legislation by Member States, provided that the persons concerned had the opportunity to lodge, within a reasonable period, an application for the retention or recovery of nationality, for the authorities to examine

the proportionality of the consequences of the loss of nationality from the perspective of EU law, and allow the retention or recovery of nationality. However, the period must extend for a reasonable time beyond the date by which the person concerned reaches the age stated in the legislation, and cannot begin to run unless the authorities have informed the person of the loss of nationality, and the right to apply for the maintenance or recovery of nationality. Further detail in this [case summary](#) or in the [full judgment](#).

## European Court of Human Rights

- ***Ramadan v. Malta*, application no. 76136/12 (21 June 2016)**

An Egyptian national, who resided in Malta and acquired Maltese nationality, was granted authorisation to renounce his Egyptian nationality as he could not hold dual nationality while in Malta. He was deprived of his Maltese nationality years later, following a decision that found that he had obtained his Maltese nationality from his first marriage through fraud. The Court found that there was no violation of Article 8 and held that the decision to deprive the applicant of his Maltese nationality did not adversely affect him. Further detail in this [case summary](#) or in the [full judgment](#).

- ***K2 v. the United Kingdom*, application no. 42387/13 (7 February 2017)**

The applicant challenged a decision depriving him of his British citizenship and excluding him from the United Kingdom because of his alleged involvement and link to terrorist-related activities. After failing in his appeals to the High Court, Court of Appeal and the Special Immigration Appeal Tribunal, the applicant complained to the European Court of Human Rights ('the Court') under Articles 8 and 14. The Court rejected all of the applicant's complaints, finding them to be manifestly ill-founded, and declared the application inadmissible. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Usmanov v. Russia*, application no. 43936/18 (22 March 2021)**

After discovering that the applicant had omitted information when applying for Russian nationality, his nationality was annulled and an entry ban was enforced. The Court applied a two-pronged approach to assess whether the deprivation of the applicant's nationality was an interference with his right to private and family life, which assessed (i) the consequences for the applicant, and (ii) whether the measure was arbitrary. In light of the far-reaching consequences of this decision and its apparent arbitrary nature, the Court held that the annulment interfered with the applicant's rights guaranteed under Article 8 ECHR. Further, the Court found that the expulsion of the applicant from Russian territory failed to respect the principle of proportionality, given the lack of evidence of any threat to Russian national security posed by the applicant, thereby violating Article 8. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Hashemi and Others v. Azerbaijan*, application no. 1480/16 and 6 others (13 January 2022)**

Azerbaijani authorities refused to issue an identity card to children born in Azerbaijan to foreign parents, thereby denying them Azerbaijani nationality (as domestic law

applicable at the time applied the *jus soli* principle). The Court held that the refusal by the national authorities to deliver an identity card to the children is tantamount to a refusal to recognise their Azerbaijani nationality. This had considerable negative consequences for the children and therefore constituted an interference with their right to a private life in violation of Article 8 ECHR. It further found that the necessary procedural guarantees were not in place and that the decision was arbitrary. Further detail in this [case summary](#) or in the [full judgment](#) (in French).

- ***Johansen v. Denmark*, application no. 27801/19 (1 February 2022)**

The case concerns Danish authorities' decisions to deprive a dual national of his Danish citizenship and to deport him, following conviction for receiving training with ISIS. This was found to be compliant with Article 8 ECHR. The Court reasoned that deprivation of nationality was not arbitrary, that there had been sufficient opportunities to appeal, and that the crime in question, terrorism, was a serious one that endangered human rights. The punishment of deprivation of nationality was found to be proportionate. The Court also found that deprivation of nationality in this instance did not result in impermissible consequences as it did not render the applicant stateless. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Emin Huseynov v. Azerbaijan*, application 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. Further detail in this [case summary](#) or in the [full judgment](#).

- **Pending case: *Pham v. U.K.*, application no. 37478/20 (communication published 14 December 2020)**

The case concerns an alleged violation of Article 8 as a result of a decision to deprive the applicant of his British nationality. The applicant was born in Vietnam and acquired British nationality as a child after moving to the UK. The UK deprived him of his British nationality after finding that he was involved in terrorism-related activities. The Vietnamese Government has refused to acknowledge his Vietnamese nationality.

The judgment of the ECtHR is still pending, for details see the Court's [communication](#). ENS and the AIRE Centre submitted a [third-party intervention](#) focusing on States' obligations to prevent and reduce statelessness under Article 8 ECHR, and an analysis of the key provisions of the 1954 and 1961 Statelessness Conventions as well as other relevant international legal standards.

## 2.4. Protection of Palestinians

Palestinians should be considered stateless for the purposes of the 1951 Refugee Convention and the 1954 Convention relating to the Status of Stateless Persons, unless they hold another nationality. Countries across Europe have different approaches to providing protection to Palestinians, and many do not recognise that Palestinians are stateless which leads to barriers for Palestinians in accessing adequate protection. Additionally, as the Conventions conditionally exclude from its protection people who are protected or assisted by a UN agency other than UNHCR, some of the core issues raised in recent jurisprudence cover the interpretation of such exclusion clauses in relation to Palestinians who received assistance from UNRWA.

ENS, together with the BADIL Resource Center for Palestinian Residency and Refugee Rights, published a report in June 2022 on [Palestinians and the Search for Protection as Refugees and Stateless Persons](#). The report considers the legal status of Palestinian refugees and stateless persons, providing a summary and critical analysis of jurisprudence relating to Article 1D of the Refugee Convention, and statelessness determination relating to Palestinians under the 1954 Convention. ENS has published a summarised version in a [briefing](#), and a further [Briefing on the right to a nationality of children born to Palestinian parents in Belgium](#).

### Court of Justice of the European Union

- ***Bolbol*, C-31/09 (17 June 2010)**

The case concerns a stateless person of Palestinian origin who was refused asylum in Hungary. The question before the CJEU concerned the circumstances in which a person is considered to be receiving "protection or assistance from organs or agencies of the United Nations other than [UNHCR]" within the meaning of Article 12(1)(a) of the 2004 Qualification Directive (equivalent to Article 1D of the Refugee Convention), and may therefore be entitled to refugee status when that protection or assistance ceases. The CJEU held that the words "at present" mean the present day, and that a person receives protection or assistance from UNRWA when that person has actually availed themselves of that protection or assistance, and not if they are entitled to but have not done so. It also noted that persons who have not actually availed themselves of protection or assistance from UNRWA, prior to their application for refugee status, may, in any event, have that application examined pursuant to Article 2(c) of the Directive. Further detail in this [case summary](#) or in the [full judgment](#).

- ***El Kott and Others*, C-364/11 (19 December 2012)**

The case concerns the interpretation and scope of Article 12(1)(a) of the 2004 Qualification Directive (equivalent to Article 1D of the Refugee Convention). The CJEU held that persons who have registered with UNRWA or received UNRWA's assistance will not be excluded from refugee status if that assistance has ceased for reasons beyond their control and independent of their volition. However, mere absence from UNRWA's area of operation or a voluntary decision to leave it cannot be regarded as cessation of

assistance. A person will be considered to have been forced to leave UNRWA's area of operation where their personal safety was at serious risk and it was impossible for UNRWA to guarantee their living conditions. Where UNRWA's assistance has ceased for reasons beyond the control of the applicant, and other exclusion clauses are not applicable, the applicant is automatically entitled to refugee status, but they are required to have made an application for refugee status. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Serin Alheto, C-585/16 (25 July 2018)***

The case concerns the eligibility for protection of a person born in Gaza, who holds a passport issued by the Palestinian National Authority, is registered with UNRWA, and sought asylum in Bulgaria. Interpreting Article 12(1)(a) of the 2011 Qualification Directive (equivalent to Article 1D of the Refugee Convention), the CJEU found that Article 1D, as *lex specialis*, must be considered prior to Article 1A of the Refugee Convention, that prior registration with UNRWA does not necessarily mean that the applicant could access sufficient protection in an UNRWA area, and that Palestinians are not included under the second paragraph of Article 1D and automatically entitled to protection if they could be admitted to any area where they could access effective assistance or protection from UNRWA and could live there in safe and dignified conditions for as long as necessary. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Bundesrepublik Deutschland v XT, C-507/19 (13 January 2021)***

The case concerns the interpretation of Article 12(1)(a) of the 2011 Qualification Directive (equivalent to Article 1D of the Refugee Convention). The applicant requested international protection in Germany as he no longer had access to assistance from UNRWA in Syria. The Court held that to determine whether a person is no longer receiving protection or assistance from UNRWA, national authorities should consider all the fields of UNRWA's areas of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein. Further detail in this [case summary](#) or in the [full judgment](#).

- ***NB, AB v Secretary of State for the Home Department, C-349/20 (3 March 2022)***

This case concerns a mother and child, NB and AB, stateless Palestinians formerly residing in Lebanon who are registered with UNRWA. AB is severely disabled and has complex medical issues and other needs. They sought asylum in the United Kingdom on the basis of Article 1D of the Refugee Convention. The Court considered whether they qualify to be granted *ipso facto* refugee status under Article 1D of the Refugee Convention. The Court found that the burden of proof lies with the applicants to prove that they have actually had recourse to UNRWA's protection or assistance and that that protection or assistance has ceased, but, once that is established, if the authority considers that the applicant could now return to UNRWA's area of operation, it is for that authority to demonstrate that the circumstances have changed in the area of operations concerned and that the applicant can access adequate protection or assistance from UNRWA. It also held that the applicant does not need to prove that there was any intentional infliction of harm or failure; it is sufficient to establish that

UNRWA's assistance or protection has in fact ceased for any reason (beyond the applicant's control). The Court held, *inter alia*, that if UNRWA cooperates with a civil society or host government agency or actor to fulfil its mission, the services by those organisations are relevant to considerations of whether UNRWA can provide adequate assistance or protection only if there is a stable and formal relationship between UNRWA and the relevant organisations, and the applicant has a durable right to such services. Further detail in this [case summary](#) or in the [full judgment](#).

## 2.5. Detention and statelessness

There are limits on the detention of stateless people especially when there is no reasonable prospect of removal, but the lack or inadequacy of identification procedures may lead to prolonged and arbitrary detention. These have been mostly assessed through either Article 5 ECHR (right to liberty and security) or EU law relating to return and removal procedures. The ECtHR has also found that situations of deprivation of liberty may impact an individual's right to respect for private and family life due to the harm it may cause to their physical and moral integrity.

### Court of Justice of the European Union

- *Kadzoev*, C-357/09 PPU (30 November 2009)

A stateless person of Chechen origin, whose real identity could not be determined with certainty, was detained in Bulgaria for several years. His application for asylum was rejected, but he stayed in detention as several countries denied him the right to enter. By the time the case reached the CJEU, the applicant had been in detention for 37 months. The court ruled that where there is no reasonable prospect of successful expulsion, individuals cannot be detained. The Court ruled on several points regarding the interpretation of Article 15(4) to (6) of Directive 2008/115/EC (EU Returns Directive), including on the calculation of the maximum period of detention. The Court also interpreted the concept of a (lack of) reasonable prospect of removal within the meaning of Article 15(4) of the Returns Directive, according to which detention ceases to be justified and the person concerned must be released immediately when it appears that, for legal or other considerations, a reasonable prospect of removal no longer exists. The Court found that Article 15(4) and (6) of the EU Returns Directive must be interpreted as requiring the person concerned to be released immediately upon expiry of the maximum period of detention, even if the person is not in possession of valid documents, their conduct is aggressive, and they have no means of supporting themselves. Further detail in this [case summary](#) or in the [full judgment](#).

- *Joined cases Staatssecretaris van Justitie en Veiligheid v C, B* (C-704/20), *X v Staatssecretaris van Justitie en Veiligheid* (C-39/21) (8 November 2022)

A Dutch court asked through a preliminary ruling whether a national court may, when required to review the lawfulness of detention or continued detention, be limited by a procedural rule of national law which prevents it from taking into account pleas or arguments not put forward by the applicant. The CJEU found that EU directives should

be interpreted as requiring courts to raise any failure to comply with conditions governing the lawfulness of detention, including those not invoked by the applicant. Further detail in this [case summary](#) or in the [full judgment](#).

## European Court of Human Rights

- ***Al-Nashif v. Bulgaria*, application no. 50963/99 (20 June 2002)**

A stateless person of Palestinian origin, born in Kuwait resided in Bulgaria with his two children who were born in Bulgaria and hold Bulgarian nationality. His permanent residence permit in Bulgaria was withdrawn on the grounds that he was engaged in alleged religious extremism, and he was detained and subsequently deported to Syria. The Court held that there had been a violation of Articles 5(§4), 8, and 13 ECHR as a result of the deportation. In this judgment, the Court outlines the procedural safeguards required by the ECHR in decisions to detain a person for the purposes of deportation, including where an allegation of a threat to national security is made. The guarantee of an effective remedy requires some form of adversarial proceedings, and that the competent independent appeals authority must be able to assess whether the conclusion that a person is a threat to national security, which justifies deportation, is arbitrary or unreasonable. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Auad v. Bulgaria*, application no. 46390/10 (11 October 2011)**

The case originated in an application against Bulgaria lodged by a stateless person of Palestinian origin. He had obtained subsidiary protection in Bulgaria, but was later served an expulsion order on national security grounds, detained for removal for 18 months and then released due to the impossibility of implementing the expulsion order. The Court reiterates that States have an obligation to identify a destination country in removal orders, stating that "*In cases of aliens detained with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities' diligence in handling the deportation*". The Court held that detention with an uncertain destination is violates Articles 3, 5, and 13 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Kim v. Russia*, application no. 44260/13 (17 October 2014)**

This case concerns a person born in 1962 in Uzbekistan, who has been residing in Russia since 1990. After the fall of the Soviet Union, the applicant did not acquire a new citizenship, and was therefore stateless. He was arrested and detained until expulsion because of his undocumented status, and released after two years based on the expiry of the time-limit for enforcement of the expulsion order. The applicant brought the case to the ECtHR on the grounds that appeal procedures and the conditions of his detention had been inadequate. The Court ruled that there had been a violation of Articles 3 and 5 ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Mainov v. Russia*, application no. 11556/17 (15 May 2018)**

This case concerns a stateless applicant born in the Tajikistan Soviet Socialist Republic of the Soviet Union, who was arrested for homelessness in Russia. The District Court

ruled that he had to be preventively detained until his expulsion to Tajikistan. Russia tried to obtain travel documentation for the applicant, overlooking the fact that the applicant was not a Tajik national and that Tajikistan had no legal obligation to admit him, resulting in his preventive detention for two years. The Court found a violation of Article 5 ECHR, as the applicant's detention was not carried out in good faith due to the lack of a realistic prospect of his expulsion and the domestic authorities' failure to conduct the proceedings with due diligence. Further detail in this [case summary](#) or in the [full judgment](#).

- ***Shoygo v. Ukraine*, application no. 29662/13 (30 September 2021)**

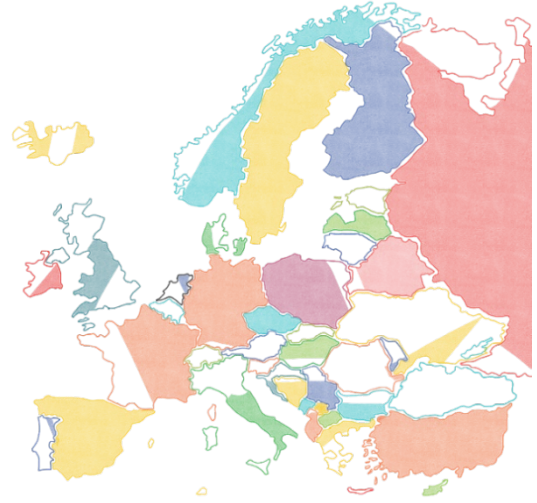
The applicant was born in the Russian Federation and his birth was not duly registered. Lacking identity documents and unable to prove his nationality, he was detained in Ukraine for the purpose of expulsion. The Court held that the authorities did not act diligently when they waited almost eleven months to contact the Russian embassy and obtain documentation to evidence the applicant's Russian nationality, and failed to review the lawfulness of his detention and to provide an effective remedy, in violation of Articles 5(1), (4) and (5) ECHR. Further detail in this [case summary](#) or in the [full judgment](#).

- ***F.S. v. Croatia*, application 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. However, 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. Further detail in this [case summary](#) or in the [full judgment](#).

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The Statelessness Case Law Database is a free online resource containing national and regional case law covering Europe, as well as international jurisprudence addressing statelessness. The database covers jurisprudence from any jurisdiction in Europe, the European Court of Human Rights, the Court of Justice of the European Union and UN human rights treaty bodies. It is managed by the [European Network on Statelessness](#) (ENS) with contributions and support from [ENS members](#) and [partners](#).



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