

ENS Litigation Bulletin

June - September 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.

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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

Landmark CJEU judgment on Palestinian refugees' access to protection

[CJEU – Case C-563/22, Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite](#) (13 June 2024)

The Court of Justice of the European Union (CJEU) delivered its judgment in a case involving a stateless Palestinian child and her family, registered with UNRWA, who left the Gaza strip to seek protection Bulgaria. Their applications for international protection were rejected on the grounds that they had not proven that they had left the Gaza Strip for fear of persecution and that hostilities in the area did not rise to the level of armed conflict and indiscriminate violence. The CJEU held that UNRWA's protection or assistance must be considered to have ceased when (1) UNRWA finds itself unable, for whatever reason, to ensure dignified living conditions and (2) the applicant finds themselves in a state of serious insecurity if returned to that area, taking into account where applicable their vulnerability. The Court noted that both the living conditions in the Gaza Strip and UNRWA's ability to carry out its mission have suffered an unprecedented deterioration due to the aftermath of the events of 7 October 2023. Read the [full judgment](#) and a [news piece from Foundation for Access to Rights \(FAR\)](#), who are representing the family.

EU states not required to regularise third-country nationals unlawfully present

[CJEU - Case C-352/23, LF v. Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite](#) (12 September 2024)

The CJEU held that Member States are not required to grant, on compelling humanitarian grounds, a right to stay to third-country nationals who currently reside unlawfully in its territory, irrespective of the duration of their stay in that Member State. The case concerned a third-country national who has resided in Bulgaria since 1996 and been denied requests for international protection on several occasions, and whose removal was impossible. The Court found that the Charter of Fundamental Rights of the European Union cannot require the regularisation of stay, as this would extend the scope of EU law. The Court also held that, for as long as the individual has the status of applicant for international protection, they may rely on the rights enshrined in the Receptions Conditions Directive (2013/33/EU). While this case does not concern a stateless person, the Court's findings are relevant to stateless persons irregularly present within an EU Member State, who face a high risk of not being able to return to a country of origin or previous residence because they are not nationals. [Foundation for Access to Rights \(FAR\)](#) provided legal assistance in this case. Read the [full judgment](#).

National Courts

Austrian courts find UNRWA's assistance or protection ceased in areas of operation in Syria

[Austria - Federal Administrative Court, BF v. Federal Office for Immigration and Asylum, L512 2276189-1 \(2 August 2024\)](#)

The Austrian Federal Administrative Court ruled that a stateless person of Palestinian origin from Syria was entitled to refugee status ipso facto as UNRWA was unable to provide assistance or protection in areas of operations in Syria. Read a [summary on the EUAA Case Law Database](#).

French court finds UNRWA's protection ceases when a stateless Palestinian cannot access required medical care, applying CJEU case

[France - Council of State, French Office for the Protection of Refugees and Stateless Persons \(Office Français de Protection des Réfugiés et Apatrides, OFPRA\) v. Applicant, 449551 \(11 July 2024\)](#)

Following a ruling of the Court of Justice of the European Union (French Office for the Protection of Refugees and Stateless Persons v. SW, 5 October 2023; read the [full judgment](#) and a [summary on the Statelessness Case Law Database](#)), the French Council of State upheld the lower asylum court's ruling (CNDA) which found that UNRWA's protection or assistance must be considered to have ceased, as UNRWA was unable to provide access to health care and medication which the applicant's life depended on and living conditions in line with its mission of assistance, exposing the applicant to a state of serious insecurity such as to force him to leave Lebanon. Read the [full judgment](#) and a [summary on the EUAA Case Law Database](#).

Dutch court finds that child born to Cuban parents not registered with consulate is considered stateless pending judge's authorisation

[Netherlands - Rechtbank Den Haag ECLI:NL:RBDHA:2024:12597 C/09/665531 / HA RK 24-226 \(8 August 2024\)](#)

The court ruled that a child born to Cuban parents but not registered with the Cuban consulate should be considered stateless. The role of the district judge is essential in this case, as they must give permission to the parents to conduct these legal proceedings on behalf of their child. The court indicated that it is waiting for this authorisation before issuing a final ruling, which means that the case is currently pending.

Dutch court finds an applicant born in former Soviet Union stateless

[Netherlands, Rechtbank Den Haag ECLI:NL:RBDHA:2024:6968 C/09/654944 / HA RK 23-398 \(8 May 2024\)](#)

The competent authority argued that an applicant born in the former Soviet Union who was recognised as stateless might still be an Uzbek national, relying on the assumption that she could theoretically still claim this nationality. However, under Uzbek law, a person who lives abroad for over five years without consular registration loses their nationality, which was the case of the applicant. The court therefore ruled that there was no evidence that she was considered as such or as a national of any other country.

Dutch court finds an applicant born in UAE to Palestinian and Syrian parents stateless

[Netherlands, Rechtbank Den Haag ECLI:NL:RBDHA:2024:13673 C/09/665541 / HA RK 24-228 \(27 August 2024\)](#)

The court declared stateless an applicant born in the United Arab Emirates to a Palestinian father and a Syrian mother, which the Dutch Immigration and Naturalisation Service (IND) agreed with. Despite holding a Palestinian passport and a Syrian refugee travel document, he did not qualify for citizenship under Palestinian, UAE, or Syrian law. The court ruled that since no State recognises him as a citizen, his statelessness is confirmed.

UK Supreme Court denies Shamima Begum permission to appeal against deprivation of citizenship

[UK – Permission to Appeal decision in the matter of Shamima Begum \(Appellant\) v Secretary of State for the Home Department \(Respondent\), UKSC 2024/0096 \(7 August 2024\)](#)

The UK Supreme Court has denied Shamima Begum, who travelled to Syria as a child to join 'ISIL', permission to appeal against the UK Secretary of State's decision to deprive her of her British citizenship, on the basis that she was a dual British and Bangladeshi national. The Supreme Court found that the grounds of appeal did not raise an arguable point of law. One of the grounds of appeal concerns the fact that the Secretary of State failed to have regard that the order to deprive her of her citizenship would render her stateless, in accordance with UK law, as it is not reasonably possible for her to be admitted into Bangladesh. The Supreme Court held that the lower courts found that the Secretary of State had taken into account the fact that the deprivation decision would render the applicant 'de facto' stateless and there was nothing indicating that there was an error of law in that conclusion. Read ENS blogs on this case, including the problematic distinction between "de jure" and "de facto" statelessness: [Shamima Begum: now stateless, but still deprived of her British citizenship](#), [Shamima Begum Supreme Court judgment: What are the implications for statelessness cases?](#), [Burden of proof in statelessness cases and the meaning of "by operation of its law"](#). Read summaries of previous judgments in the same case on the Statelessness Case Law Database: [Shamima Begum v Secretary of State for the Home Department \(23 February 2024\)](#) and [Begum v SIAC \(16 July 2020\)](#) & [Begum v SSHD \(7 February 2020\)](#).

Considerations on risk of return and standard of proof in a UK case on an undocumented person from Kashmiri India

[UK - Upper Tribunal Immigration and Asylum Chamber, Case No: UI-2024-000873 \(12 July 2024\)](#)

In a case concerning an appeal from an undocumented person from Kashmiri India against the Secretary of State for the Home Department's decision to refuse his protection claim, the Upper Tribunal upheld the First-tier Tribunal's decision which had allowed the appeal on the basis that the appellant was stateless and would be subjected to prohibited treatment on return to India as a result of his statelessness. The Upper Tribunal upheld the judge's assessment on the applicant's risk on return to India and finding that the applicant had taken reasonable steps to re-obtain his Indian nationality. The Secretary of State for the Home Department's appeal was therefore dismissed. The judgment includes interesting considerations on the standard of proof.



Stay Tuned

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

Pending cases

- The case [N.A. v. Sweden](#) (application no. [36702/23](#), published on 15 July 2024) has been communicated to the European Court of Human Rights. It concerns a stateless applicant of Palestinian origin whose asylum application in Sweden was rejected and he was ordered deportation.

Upcoming opportunities

- [ENS Webinar: Litigating on Statelessness: the right to respect for private and family life](#): Join us on Tuesday 1 October 2024 at 11 am (CET) for a webinar with experts on statelessness and litigators on how the courts can play a role in developing and effectively implementing the right to a nationality and the human rights of stateless people. We will also be launching a new legal briefing on statelessness and the right to respect for private and family life, analysing how this right can secure protection routes for stateless people and uphold the right to a nationality and to birth registration. [Register here](#).
- [Advanced ELENA Course 2024](#): The course will take place on 22-23 November in Porto, Portugal. Practitioners and others working in migration and refugee law will have the opportunity to hear from speakers from the European Court of Human Rights, the Court of Justice of the EU and the UN Treaty Bodies. See the [event registration page](#) or [draft agenda](#) for more information.
- [2025 Peter McMullin Centre on Statelessness Statelessness Intensive Course](#): Applications are open until 30 September for this online course which provides participants with the skills and practical tools to understand and address the problem of statelessness, particularly in the Asia-Pacific region. It runs over five days in February 2025.
- [Hungarian Helsinki Committee \(HHC\), European Council on Refugees and Exiles \(ECRE\), and the Polish Helsinki Foundation for Human Rights \(HFHR\)](#) - webinar on Access to Classified Data in National Security Related Immigration Cases: this webinar, funded by the European Philanthropic Initiative for Migration (EPIM), will be held on 17 October from 9 AM to 3 PM (CET). [Register here](#) by 6 October.

ENS trains members on strategic litigation

In July, ENS held a two-day training for ENS members and close partners on strategic litigation on statelessness in partnership with the AIRE Centre. These followed on from two training sessions organised in 2022. The trainings were intended for members and other partners litigating on statelessness. They focused on assisting in identifying suitable cases for litigation, ensuring that cases have strategic merit, navigating the European and international mechanisms and courts, measuring impact, and allowing better harnessing and employment of international law arguments in litigation work. There was also a discussion on challenges and good practices in conducting litigation

on statelessness, and identifying gaps and opportunities.



Resources

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

- [ENS, Using the law to end statelessness](#) (Jul 2024): ENS Legal Coordinator Patrícia Cabral's editorial reflects on the power of litigation to address injustice and tackle laws, policies, or practices that fail to protect stateless people, highlights the need to bring the courts closer to stateless people, and provides an overview of ENS' litigation work.
- [Statelessness & Citizenship Review, Vol. 6 No. 1 \(2024\)](#): Variety of articles, commentary, case notes, and book reviews.
- [The Dorothy and Brian Wilson Churchill Fellowship to investigate - Best practice models for providing legal education and aid to stateless children, Katie Robertson](#) (May 2024): Katie Robertson established the Stateless Children Legal Clinic in Australia. In this report, she examines similar legal services in comparable countries to identify best practice legal education and aid models suitable for assisting stateless children living in Australia.



STATELESSNESS
Case Law Database

For more updates and to browse over 300 other cases visit our [Statelessness Case Law Database](#).



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