

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Afdeling bestuursrechtspreek Raad van State (Council of State (Administrative Jurisdiction Division))	
Date of the decision: 21/5/2014	Case number: ² 201302776/1/A3
Parties to the case: X and The Mayor and City Council Members of Utrecht	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=79205	
(If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(If so, which):	
Countr(y)(ies) of origin of the applicant(s): Parents: presumably China; Children: Unknown	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): The Netherlands	
Any third country of relevance to the case: ³	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision:

Topics / Key terms: (see attached ‘Topics’ annex):

Statelessness
Nationality

Key facts (as reflected in the decision): [No more than 200 words]

The appellant, a Chinese national, had requested to have the nationality of his children in the Municipal Personal Records Database changed from “unknown” to “stateless”. This request was rejected by the Mayor and the City Council, because the appellant did not make plausible that his children were in fact stateless.

According to Article 43 of the Act with regard to the Municipal Personal Records Database (the “Wet GBA”, where GBA refers to the Dutch register of civil status records), the nationality status of all legal residents of the Netherlands must be included in the data contained in the GBA for each person. The article specifies that this information is to be based on documents issued by a person or institution that is competent to determine citizenship in the jurisdiction concerned, or that can issue a document testifying to the person’s citizenship. The operational guidelines relating to the Wet GBA state that neither a declaration under oath by the person concerned, nor a document provided by the Immigration and Naturalisation Service (IND: Immigratie- en Naturalisatiedienst) mentioning an individual’s nationality are sufficient evidence.

Under Dutch law there is no obligation for the Mayor and the City Council to determine whether a person is stateless or not. The GBA is a system for the registration of personal data. The Council of State considers that neither the 1961 Convention on the Reduction of Statelessness, nor Articles 3 and 7 of the Convention on the Rights of the Child, nor Article 24 of the International Covenant on Civil and Political Rights oblige the Mayor and the City Council Members to determine whether a person is stateless. It falls therefore to the person concerned to submit the necessary documents to prove or at least make plausible that he does not have a nationality. The appellant failed to do so in this case.

The Council of State is familiar with the fact that different documents exist with regard to the plight of stateless persons in the Netherlands and referred to the advice of the Advisory Committee on Migration Affairs (ACVZ) of December 2013. However, the Council of State notes that there is at present no procedure in the Netherland to determine if a person who claims to be stateless is in fact stateless. The Council of State further notes that in the absence of such a procedure, a person without a nationality cannot claim the protection of the Conventions on Statelessness and the Dutch legislation that is based on the conventions. A response to the December 2013 ACVZ advice from the responsible government members is still being awaited. It falls at present outside the judicial powers of the Council of State to fill this lacuna.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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2. The Mayor and City Council Members maintained the rejection of the appellant's request to change the nationality of [child A] and [child B] in the municipal personal records database "unknown" to "stateless". The reason is that the appellant and his wife were born in China and presumably have the Chinese nationality. Article 5 of the 1980 Chinese nationality law states that a child born to Chinese parents in a foreign country in principle receives the Chinese nationality. The Mayor and the City Council Members thus asserted that the children can be presumed to have obtained the Chinese nationality. It is up to appellant to prove, or at least make plausible, that the children have not obtained the Chinese nationality, by means of objectively verifiable documents. Only then can the nationality in the municipal personal records database be changed to "stateless" according to the City Council.

4.2. The Law on the Municipal Personal Records Database ("Wet GBA") provides for a system of registration of personal data. The Council of State has previously stated (judgment of 28 November 2012 in case nr. 201200045/1/A3) that the data in the Municipal Personal Records Database must be reliable and comprehensible. The users must be able to rely on the correctness of the data. (Kamerstukken II 1988/89, 21 123 nr. 3, p. 13). Where there are no documents to prove that a person is stateless, the City Council has no choice but to register the person's nationality as "unknown".

Article 43(3) of the Wet GBA does not, in contrast to the appellant's claims, impose an obligation on City Council to examine whether a person is stateless or to establish the statelessness themselves. Such an obligation also does not follow from articles 3 and 7 of the Convention on the Rights of the Child, article 24(3) of the International Covenant on Civil and Political Rights, or article 1 of the 1961 Convention on the Reduction of Statelessness, regardless of the binding character of the conventions, because they do not contain any rules for the determination of statelessness.

4.3. The appellant did not submit any documents to show that his children do not have a nationality and are therefore stateless. The Court rightly decided that the Mayor and City Council Members were correct in holding the position that it is not determined that the children are stateless. Therefore the City Council was right to reject the applicant's request to change the registered nationality of his children from "unknown" to "stateless".

4.4. The Council of State noted that it was familiar with several documents with regard to the position of stateless persons in the Netherlands, including the advice from the Advisory committee for Migration Affairs (ACVZ), entitled "Geen Land te Bekennen" ("No Country to Be Found") from December 2013. However, as a matter of fact there is as yet no specific procedure in the Netherlands to determine the statelessness of persons in terms of the law at this moment. For as long as there is no procedure to determine whether a person without a nationality is stateless, such persons cannot claim the protection of the Statelessness conventions and the Dutch legislation based on those conventions. A response to the December 2013 ACVZ advice from the responsible government members is still being awaited. It is at present beyond the judicial functions of the Council of State to provide for such a procedure.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

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Case Postale 2500
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Switzerland
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