

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English): "District court of The Hague", Rechtbank Den Haag	
<b>Date of the decision:</b>	2014/02/19
<b>Case number:</b> <sup>2</sup>	SGR 13/2490
<b>Parties to the case:</b> E. Bojadzjan, applicant vs. The mayor of The Hague, defendant	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: <a href="http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:2255">http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:2255</a>	
(If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Dutch	
<b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Georgia	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Georgia	
<b>Any third country of relevance to the case:</b> <sup>3</sup>	
<b>Is the country of asylum or habitual residence party to:</b>	
The 1951 Convention relating to the Status of Refugees <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>(Only for cases with statelessness aspects)</b> 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: <b>Article 27 and Article 28</b>
<b>(Only for cases with statelessness aspects)</b> The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>(For AU member states):</b> 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:
<b>For EU member states:</b> 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, Access to Procedures, Stateless persons**

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

The applicant originates from Abkhazia. In 1996, due to ethical reasons, he renounced his Georgian nationality. In 2001 the applicant travelled to the Netherlands, where he has since made several applications for a temporary residence permit, such as is meant in Article 28 of the Aliens Act 2000. These applications have all been rejected. The applicant resides illegally in the Netherlands and is not registered in the Municipal Basic Administration. By means of a letter of 13 February 2012 the applicant requested the defendant to issue him with a statelessness passport.

The defendant, the Mayor, took the view that the request of the applicant for the issuance of a statelessness passport aims at the granting of a proof of identity in terms of Article 27 of the Convention relating to the Status of Stateless Persons (Statelessness Convention) as well as the granting of a travel document in terms of Article 28 of the Statelessness Convention. The defendant argues that he has neither the authority to grant a Dutch identity card to aliens, nor does he have the authority to refuse such applications. Although within Article 27 of the Statelessness Convention there is an obligation on the States parties to the Convention to issue identity documents to each stateless person in their territory who does not possess a valid travel document, the Dutch legislator has omitted to provide a regulation in which the execution of this Article is arranged.

The defendant referred the request for an identity document to the Minister of Security and Justice. The defendant concluded that the request of the applicant for a travel document could not be taken into consideration because the applicant has not given any proof of his identity, nationality or residence status.

**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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Considering that the Aliens Circular 2000 determines in Chapter B11/17.2 that if a foreigner is stateless as meant in the Statelessness Convention and that he is explicitly registered in the alien administration as a stateless person (and thus not as an foreigner with an unknown nationality), he is, based on the Statelessness Convention, eligible for a travel document for foreigners. The Circular also determines that the Dutch travel documents for foreigners shall be issued by the mayor of the municipality in which the applicant resides. Before the municipality issues a travel document, the Immigration and Naturalization Service [Immigratie- en Naturalisatiedienst (IND), part of the Ministry of Justice] needs to verify the information on the basis of an application form and send an advisory opinion to the municipality.

The Court considers that the document that the applicant has requested, a statelessness passport, does currently not exist as such. The applicant argues that in absence of such a document he can be apprehended any time, be detained and be fined on the bases of the Law on the Duty of Identification. Considering this, the Court determines that the applicant has requested the issuance of identity papers as meant in Article 27 of the Statelessness Convention. The Mayor has, inaccurately, interpreted the applicant's request as also involving an application for the issuance of a travel document in terms of Article 28 of the Statelessness Convention.

Based on Article 27 of the Statelessness Convention, the Netherlands bears the duty as one of the States parties to the Convention to issue identity papers to each stateless individual within Dutch territory who does not possess a valid travel document. The Court takes the view that these treaty obligations also apply to persons who voluntarily renounced their original nationality, such as the applicant. In this context the Courts refers to the four sets of UNHCR Guidelines on Statelessness (noting however that these are not binding). Specific reference is made to Guidelines No. 1, paragraph 44 and to Guidelines No. 3 paragraphs 13-14 and 42-43.

The Court understands from this that a person who falls under the definition of a stateless person and who is under the jurisdiction of a States party to the Statelessness Convention, will, at a minimum, have the right to, inter alia, identity papers.

The Court rules that the Mayor has rightly asserted that he is not authorized to handle the request for identity documents. The referral of the request to the Minister of Security and Justice, at least the IND, was however not the right thing to do: the Minister nor the IND are authorized to consider applications for identity papers from stateless persons who are illegally residing in the Netherlands.

In paragraph 20 the Court, in its summary, rules that the applicant has the right to be issued with identity documents by the Dutch State, but that he cannot realize this right in an administrative procedure since the Dutch State has not established a procedure for this purpose. The Court rules therefore, based on article 8:71 of the General Administrative Law, that an applicant in this situation can only bring a claim to give effect to his right to a civil court.

The Court:

- Declares the appeal grounded.

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

This is the first time that a court rules that there is no administrative procedure for a person who is deemed stateless to obtain identity papers. It is also the first time that a reference is made to UNHCR's Statelessness Guidelines. In the absence of an administrative procedure, the Court refers to the civil court as the court of last resort in such cases.

## **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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