



Submitted by the European Network on Statelessness to the Borgating Court of Appeal in Norway,
in case number 17-073503ASD-BORG/01 *[anonymised version – personal data omitted]*

25 May 2018

According to Section 15-8 of the Norwegian Dispute Act, written submissions may be submitted by “organisations and associations within the purpose and normal scope of the organisation” to shed light on matters of public interest. The present case concerns the protection of stateless persons under international law, an important human rights issue of public interest.

The European Network on Statelessness (ENS) is a network of non-governmental organisations, academic initiatives, and individual experts committed to address statelessness in Europe, and as such, the world’s first regional network dedicated specifically to statelessness. ENS was founded in 2012, and currently has 128 members from 40 European countries, including leading human rights organisations and several leading academic experts.¹ The author of this document is Gábor Gyulai, the President of ENS and a leading international statelessness expert (see his biography and publication list in the annex).

On the basis of its specific mandate and its unique expertise, ENS wishes to share its views with the Borgating Court of Appeal regarding the question of whether state parties to the 1954 Convention relating to the Status of Stateless Persons² are bound by an obligation to provide stateless persons with a protection status, including the right of residence. To this end, the *amicus curiae* reviews authoritative international guidance, potential analogies with other fields of international protection, global trends in state practice and relevant jurisprudence. Copies of the *amicus curiae* were sent to the parties in the case on 26 May 2018.

I. UNHCR GUIDANCE

The UN High Commissioner for Refugees (UNHCR) is the international organisation mandated by the international community with a particular responsibility for stateless persons (on an equal basis to refugees), as summarised in the UNHCR Handbook on Protection of Stateless Persons:

UNHCR’s responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention. In this capacity, UNHCR was involved in the drafting of the 1954 Convention. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness (“1961 Convention”) UNHCR’s mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally by General Assembly Resolution 50/152 of 1995, which endorsed UNHCR Executive Committee Conclusion 78. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.³

¹ For more information, see www.statelessness.eu

² Hereinafter 1954 Statelessness Convention or 1954 Convention

³ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Paragraph 4, <http://www.refworld.org/docid/53b676aa4.html>

Given its unique and globally recognised mandate, UNHCR's guidance is particularly authoritative with regard to statelessness-related legal issues. The UNHCR Handbook on Protection of Stateless Persons confirms that granting the right of residence is an implicit obligation in the 1954 Convention relating to the Status of Stateless Persons:

147. *Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, **granting such permission would fulfil the object and purpose of the treaty.** This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.*

148. *It is therefore recommended that States **grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable** in the interests of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.*⁴

II. ANALOGY WITH 1951 REFUGEE CONVENTION

The 1951 Convention relating to the Status of Refugees⁵ and the 1954 Convention relating to the Status of Stateless Persons are “sister conventions”. The two treaties not only share a common historical context,⁶ but also the scope of ensuring international protection to a specific vulnerable population, exposed to a heightened risk of suffering grave human rights violations. Most importantly, the vast majority of the two treaties’ text is identical, setting out mainly similar rights and a similar legal status to refugees and stateless persons. Therefore, refugee protection obligations constitute an obvious analogy when assessing states’ duties emanating from the 1954 Convention, especially since refugee protection – unlike statelessness-specific international protection – is, by now, well-established in several decades of global practice and a vast body of international treaties, doctrine, literature and jurisprudence.

Neither of the two conventions includes – in explicit terms – the right of residence. At the same time, nowadays **it would be unheard of for a protection regime not to provide recognised refugees with the right of residence** (and even more so in a European context). Without ensuring lawful stay, a stable legal status and a documentary proof thereof states parties to the 1951 Refugee Convention would be unable to grant, in practice and in an effective manner, the rights enshrined in this treaty. No state is known to have argued that the mere determination of “refugeehood” would suffice for the fulfilment of its duties under the 1951 Refugee Convention, even without conferring the right of residence to those found to have a well-founded fear of persecution. On the contrary, the UNHCR Executive Committee has repeatedly called upon states to issue refugees official documentation certifying their identity and their *status* as a refugee.⁷ EU law stipulates, in explicit terms, member states’ obligation to **issue a residence permit to all refugees**.⁸

The catalogue of civil, social and economic rights stipulated by the 1951 Refugee Convention has given rise to a *de facto* (and in the EU, even an explicit *de jure*) **consensus that ensuring the enjoyment of these rights requires the conferral of the right of residence**, even if this is not, as such, explicitly set forth by the 1951 Convention. By analogy, the same principle should apply to the quasi-identical set of civil, social and economic rights stipulated by the 1954 Convention relating to the Status of Stateless Persons.

III. CONSISTENT STATE PRACTICE

After decades of neglect, several countries have introduced legal regimes specifically designed to identify and protect stateless persons in recent years. Especially since 2010, an accelerating proliferation of so-called

⁴ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Paragraphs 147-148, emphases added <http://www.refworld.org/docid/53b676aa4.html>

⁵ Hereinafter 1951 Refugee Convention or 1951 Convention

⁶ Note that the text of the 1954 Convention was initially intended to become a draft protocol to the 1951 Refugee Convention. Yet, when the latter was adopted, the statelessness protocol remained a draft. Later, a separate conference transformed it into a self-standing specific convention on stateless persons.

⁷ UNHCR Executive Committee Conclusions No. 8 (XXVIII) of 1977, Paragraph (e) (v); UNHCR Executive Committee Conclusions No. 35 (XXXV) of 1984, Paragraph (b), <http://www.refworld.org/pdfid/4b28bf1f2.pdf>

⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Article 24, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

statelessness-specific protection regimes can be witnessed, in particular in Europe and the Americas. These states **consistently and without exception introduced an automatic grant of a residence permit** to those found to be stateless through a dedicated statelessness determination procedure (SDP), as shown by the following table:

Country	Year of introduction of protection regime	Type of residence permit	Validity of residence right	Renewable?
France	1952/53	Residence permit for purposes of "private and family life" ⁹	1 year	Yes
Italy	Unknown ¹⁰	Residence permit for stateless person ¹¹	2 years ¹²	Yes
Spain	2001	Foreigners' identity card (for long-term residence) ¹³	5 years	Yes
Latvia	2004	Temporary residence permit ¹⁴	5 years	Yes
Hungary	2007	Humanitarian residence permit ¹⁵	3 years	Yes ¹⁶
Mexico	2007	Permanent residence card ¹⁷	Indefinite	Not relevant
Georgia	2012	Residence permit for stateless person ¹⁸	3 years	Yes
Moldova	2012	Identity card for stateless person ¹⁹	Indefinite	Not relevant
Philippines	2012	Stateless person visa ²⁰	Indefinite	Not relevant

⁹ Act on the entry and stay of foreigners and on the right to asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), Section L313-11 (10)

¹⁰ This is a purely judicial determination system, the origins of which are difficult to trace. The earliest judgments granting protection to stateless persons ever consulted by the author date back to the 1970s.

¹¹ Italy has been operating a judicial protection regime for stateless persons for several decades, which is estimated to have provided several thousands of stateless persons with a residence permit and a protection status (unfortunately, no exact statistics are available). Nevertheless, the actual protection regime still lacks a proper regulatory framework and most standards have emanated from a large body of jurisprudence and state practice. Italian law does not specify what type of residence permit shall be issued to those recognised as stateless. As confirmed by ENS member organisation the Italian Council for Refugees (CIR) (e-mail correspondence of 11 May 2018 with local expert lawyer Daniela di Rado), as well as by the thematic guidelines issued by Italian ENS member Association for Juridical Studies on Immigration (https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf), and by the author's previous own research, recognised stateless persons are issued a residence permit in Italy as a matter of long-standing and consequent state practice.

¹² In lack of a clear regulatory framework, Italian authorities usually issue a 2-year residence permit to stateless persons, by analogy with the residence permit previously issued to refugees (for which the legal framework has been recently modified, extending its validity to 5 years). At the same time, Italian ENS members report about some diversity in state practice in this respect, with residence permits occasionally issued for shorter (or exceptionally, longer) periods.

¹³ Royal Decree No. 557/2011 of 20 April approving the Regulation of Act 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, following its amendment by Act 2/2009 (*Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*), Section 148 (3) (f)

¹⁴ Immigration Act of Latvia, Section 23 (1) (27)

¹⁵ Act II of 2007 on the entry and stay of third-country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), Section 29 (1) (a) and (2) (a)

¹⁶ For 1-year periods (but after 3 years the stateless persons can already be eligible to apply for permanent residence)

¹⁷ Migration Act of 25 May 2011 (*Ley de Migración, publicada en el Diario Oficial de la Federación el 25 de mayo de 2011*), Section 54 (I)

¹⁸ Law of 2014 on the Legal Status of Aliens and Stateless Persons, Section 15 (e)

¹⁹ Law No. 200 of 16 July 2010 on Foreigners in the Republic of Moldova, Section 72 (1)

²⁰ Philippines legislation contains no specific legal provision that would determine the exact type and validity period of the residence document issued to stateless persons. Section 13 of The Philippine Immigration Act of 1940 (Act No. 613 of 1940) is referred to as the general legal basis for stateless persons' admission to the country as legal residents (cf. Preamble of Department Circular No. 058 - Establishing the Refugees and Stateless Status Determination Procedure). Source of information: Anne Maureen Manigbas, Ateneo Human Rights Center, Philippines.

United Kingdom	2013	Limited leave to remain ²¹	2,5 years ²²	Yes
Turkey	2013	Stateless person identification document ²³	2 years	Yes
Kosovo	2015	Residence permit ²⁴	1 year	Yes
Costa Rica	2016	Residence permit for special category of migrants (stateless persons) ²⁵	0,5 year ²⁶	Yes
Brazil	2017	Immediate naturalisation or permanent residence (optional) ²⁷	Indefinite	Not relevant
Ecuador	2017	Temporary residence permit ²⁸	2 years ²⁹	Yes

A number of other states have already enacted legislation that **explicitly provides for the grant of a residence permit** for stateless persons (on the basis of their statelessness), but without yet adopting detailed rules on the determination procedure itself:³⁰

Country	Year of enacting residence right	Type of residence permit	Validity of residence right	Renewable?
Switzerland	2008	Residence permit ³¹	More than 1 year, limited in time ³²	Yes
Slovakia	2011	Permanent residence of unlimited duration ³³	Indefinite	Not relevant
Iceland	2016	Residence permit based on international protection ³⁴	4 years	Yes
Peru	2017	Humanitarian residence permit ³⁵	0,5 year ³⁶	Yes

²¹ Immigration Rules, Part 14, Paragraph 405 – Note that the UK allows a recognised stateless person, exceptionally, not to be granted a residence permit if they can be removed to another country where they enjoy residence rights.

²² 30 months

²³ Law No. 6458 of 2013 on Foreigners and International Protection (*Yabancılar ve Uluslararası Koruma Kanunu*, 04.04.2013), Section 50 (2)

²⁴ Administrative Instruction (MIA) No.05/2015 for the Procedure and Criteria of Determining the Status of the Stateless Person, the Manner of Acquisition of the Citizenship by the Stateless Person and the Person with Refugee Status, Section 16 (1.4)

²⁵ General Act No. 8764 of 2009 on Migration and Alien Policing (*Ley General No. 8764 de 2009 de Migración y Extranjería*) Section 94 (9); Decree No. 37112-G of 2012, Alien Policing Regulation (*Decreto No. 37112-G de 2012, Reglamento de Extranjería*), Section 238

²⁶ Note that the person's statelessness – and therefore her/his residence right – is recognised with a definitive character, only the residence permit needs to be renewed. Also, stateless persons have the right to apply for Costa Rican nationality already 2 years after they *filed their application* for stateless status. Thus the relatively frequent renewal obligation of the residence permits should not cause enduring difficulties for those recognised as stateless.

²⁷ Migration Act No. 13.445 of 24 May 2017 (*Lei de Migração No. 13.445 de 24 de mayo de 2017*), Section 26 (6) and (8)

²⁸ Act on Human Mobility (*Ley Orgánica de Movilidad Humana, Año IV - Nº 938*), Section 60 (13) and 114

²⁹ With the possibility to opt for permanent residence already after 2 years

³⁰ These states can be considered as “partly built” statelessness-specific protection regimes, many of which are expected to complete their legal regime by a dedicated statelessness determination procedure in the near future.

³¹ Federal Act on Foreign Nationals of 16 December 2015, Section 31 (1) – Note that while the Swiss legislator's will to grant the right of residence to stateless persons is clear, the exact rules for the proper application of this principle are still missing. See more on the actual state practice in the Statelessness Index of the European Network on Statelessness at:

<https://index.statelessness.eu/country/switzerland>.

³² Federal law does not determine the exact duration of the residence right (beyond the minimum one year benchmark). Residence permits are issued by the cantons where the stateless persons reside. See more at:

<https://index.statelessness.eu/country/switzerland>

³³ Act No. 404/2011 of 21 October 2011 on the Residence of Aliens and the Amendment and Supplementation of Certain Acts, Section 46 (2) (b)

³⁴ Act 80 of 16 June 2016 on Foreigners (*Lög nr. 80 16. júní 2016 um útlendinga*), Section 73

³⁵ Legislative Decree No. 1350 on Migration (*Decreto Legislativo No. 1350 de Migraciones*), Section 29.2 (k)

As the above-presented information confirms, **the vast majority of states operating a statelessness-specific protection regime implement UNHCR’s explicit recommendation** to issue a minimum 2-year (but preferably 5-year) residence permit to persons determined to be stateless:³⁷

Right to immediate naturalisation	Brazil (optional)
Permanent residence (indefinite validity)	Mexico, Moldova, Philippines, Slovakia, Brazil (optional)
Residence permit for 4-5 years (renewable)	Spain, Latvia, Iceland
Residence permit for 2-3 years (renewable)	Italy, Hungary, Georgia, United Kingdom, Turkey, Ecuador
Residence permit for 1 year or less (renewable)	France, Kosovo, Costa Rica, Peru
Residence permit, but unclear legal framework	Switzerland

Across the world, all currently known **draft laws** on the protection of stateless persons (pending before the countries’ legislative bodies and expected to be adopted in 2018-2019) all foresee the issuance of a **permanent residence permit** to those determined to be stateless:

Country	Type of residence permit	Validity of residence right	Renewable?
Uruguay	Permanent residence permit ³⁸	Indefinite	Not relevant
Paraguay	Permanent residence permit ³⁹	Indefinite	Not relevant
Argentina	Permanent residence permit ⁴⁰	Indefinite	Not relevant

IV. RELEVANT JURISPRUDENCE

The vast majority of the body of jurisprudence relevant for the protection of stateless persons originates from the court system of countries operating a dedicated statelessness determination procedure (such as Italy, Spain, France or Hungary). Since all these national jurisdictions provide for the grant of a residence permit to those determined to be stateless, this question – the focus issue of this *amicus curiae* – has understandably had no cause to have been addressed in these countries’ jurisprudence.

However, the **Constitutional Court of Belgium**, in its 2009 milestone judgment, clearly established that the absence of any legislative provision granting persons recognised as stateless in Belgium a residence right comparable to that enjoyed by recognised refugees is a form of discrimination.⁴¹ The Court emphasised that the 1951 Refugee Convention and the 1954 Statelessness Convention share the same historical roots, as well as they contain largely similar provisions, pointing out that “[n]one of the two conventions recognise their target persons’ right to residence on the territory of the State which recognise them as refugee or as stateless”.⁴² The Belgian Constitutional Court then adopts the same line of argumentation already presented in Section II of this document:

*B.6. The recognised stateless persons and the recognised refugees, thus, find themselves in **largely comparable situations**, considering not only the content of the provisions [of the 1951 and the 1954 Convention], but also the fact that by recognising their stateless or refugee status, respectively, **the authority recognises its duties vis-à-vis the persons concerned.***

³⁶ 183 days

³⁷ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Paragraph 148, <http://www.refworld.org/docid/53b676aa4.html>

³⁸ Bill of 9 October 2017 on the recognition of statelessness and the protection of stateless persons (*Proyecto de ley de Reconocimiento y Protección al Apátrida, 9 de octubre de 2017*), Section 18

³⁹ Bill of 24 May 2017 on the protection and facilitated naturalisation of stateless persons (*Proyecto de Ley “Protección y facilidades para la naturalización de las personas apátridas”, 24 de mayo de 2017*), Section 26

⁴⁰ Bill No. S0063/17 on the recognition of stateless status (*Proyecto de Ley General No. S0063/17 de reconocimiento de la condición de apátrida*), Section 22

⁴¹ Constitutional Court of Belgium, Judgment No. 198/2009 of 17 December 2009, <http://www.const-court.be/public/f/2009/2009-198f.pdf> (in French, all translations are unofficial and made by the author)

⁴² Op. cit., Paragraph B.5.

B.7. When it is established that the stateless person's status as such has been recognised because she/he had involuntarily lost her/his nationality and she/he shows that she/he cannot obtain a legal and durable residence permit in a State with which she/has links, the situation in which she/he finds her/himself is of a nature that **constitutes a discriminatory harm⁴³ to her/his fundamental rights.**

Consequently, **the different treatment regarding the right to residence between a stateless person who finds her/himself in this situation on Belgian territory and a recognised refugee is not reasonably justified.**⁴⁴

Finally, the Court concludes that **this discrimination originates from "the absence of a legislative provision that would grant stateless persons recognised in Belgium the right to residence comparable with that granted to refugees"**.⁴⁵ The Belgian Constitutional Court confirmed its position and repeated the same line of argumentation in another judgment in 2012.⁴⁶

Conclusion: UNHCR guidance, analogy between the 1951 Refugee Convention and the 1954 Statelessness Convention, the consequent practice of a growing number of states (especially in Europe and the Americas) and particularly relevant jurisprudence by the Belgian Constitutional Court unanimously confirm that states parties to the 1954 Statelessness Convention shall provide the right of residence to persons identified as stateless on their territory, in order to properly fulfil the object and purpose of that treaty.

Annex (see next page): Author's biography and publication list

[signature omitted]

⁴³ *Atteinte discriminatoire* in the original

⁴⁴ Op. cit., all emphases added

⁴⁵ Op. cit., Paragraph B.8., emphasis added

⁴⁶ Constitutional Court of Belgium, Judgment No. 1/2012 of 11 January 2012, <http://www.const-court.be/public/f/2012/2012-001f.pdf>

Annex

The author of this *amicus curiae* is Gábor Gyulai, President of the European Network on Statelessness and Refugee Programme Director at the Hungarian Helsinki Committee. He has been researching various aspects of statelessness in different countries and has been advocating for the rights of the stateless since 2006. He has extensively published on statelessness and nationality-related issues, many of his publications are considered ground-breaking in this field, very little researched until recently. He has trained over a thousand lawyers, state officers, judges, UNHCR and NGO staff and university professors from dozens of countries around the world on statelessness-related issues, and statelessness determination and the protection of stateless persons in particular. He is a regular lecturer at the world's only annual summer school on statelessness held at the Tilburg University in the Netherlands. He has directly or indirectly contributed to several governments' efforts to establish statelessness-specific protection regimes (including Hungary, Georgia, Moldova, Brazil and the Netherlands).

Gábor Gyulai's publications on nationality and statelessness:

- [*The Right to a Nationality of Refugee Children Born in the EU and the Relevance of the EU Charter of Fundamental Rights*](#), European Council on Refugees and Exiles, February 2017
- *Nacionalidade*. In: L. Cavalcanti, T. Botega, T. Tonhati, D. Araújo (eds.), *Dicionário crítico de migrações internacionais*, Universidade de Brasília, 2017
- [*The Black Box of Nationality. The Naturalisation of Refugees and Stateless Persons in Hungary*](#), Hungarian Helsinki Committee, 2016
- [*The Determination of Statelessness and the Establishment of a Statelessness-Specific Protection Regime*](#), in: Laura van Waas, Alice Edwards (eds.), *Nationality and Statelessness under International Law*, Cambridge University Press, United Kingdom, 2014
- [*Nationality Unknown – An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*](#), Hungarian Helsinki Committee, 2014
- [*Statelessness Determination and the Protection Status of Stateless Persons, European Network on Statelessness – A summary guide of good practices and factors to consider when designing national determination and protection mechanisms*](#), European Network on Statelessness, 2013
- [*Statelessness in the EU Framework for International Protection*](#), *European Journal of Migration and Law* 14 (2012), Martinus Nijhoff Publishers, Netherlands
- [*La apatridia: significado, magnitudes y alcances de la protección*](#), in: *Aportes Andinos*, 29 (2011), Universidad Andina Simón Bolívar, Ecuador
- [*Statelessness in Hungary – The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*](#), Hungarian Helsinki Committee, December 2010
- [*Practices in Hungary Concerning the Granting of Non-EU-Harmonised Protection Statuses*](#), European Migration Network, August 2009
- [*Remember the Forgotten, Protect the Unprotected*](#), in *Forced Migration Review*, Issue 32 (special issue on statelessness), April 2009, pp. 48–49.
- [*Forgotten without Reason – Protection of Non-Refugee Stateless Persons in Central Europe*](#), Hungarian Helsinki Committee, 2007