



[ECtHR - Hashemi and Others v Azerbaijan](#)

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.

Case name (in original language) : ECtHR - Hashemi and Others v Azerbaijan, application no. 1480/16 and 6 others

Case status: Decided

Case number: Application no. 1480/16 and 6 others

Citation: ECtHR - Hashemi and Others v Azerbaijan, application no. 1480/16 and 6 others

Date of decision: 13/01/2022

State: Azerbaijan

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: French

Applicant's country of residence: Azerbaijan

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Acquisition of nationality, Childhood statelessness, Respect for private and family life

Relevant Legislative Provisions:

- European Convention on Human Rights, Article 8
- Constitution of the Republic of Azerbaijan, Article 52
- Law on Citizenship of the Republic of Azerbaijan, Articles 1, 6, 10, 11, 12
- Law on the Rights of the Child, Article 10

- Family Code, Articles 49.1 and 59.1

Facts

The applicants fled from Afghanistan and Pakistan to Azerbaijan where they registered with UNHCR. Their children were born in Azerbaijan before 2014 and were issued a birth certificate by the Azerbaijani authorities. However, the authorities refused to issue them an identity card, thereby denying them Azerbaijani nationality, on the ground that their parents had another nationality (in this case Afghan or Pakistani nationality). Azerbaijani law provided until 2014 that a person born on the territory of Azerbaijan would acquire Azerbaijani nationality, in application of the principle of *jus soli*. The refusal to issue an identity card deprived those children from a wide range of social and economic rights and the effective exercise of many of the rights that only nationals can claim. The applicants brought actions against the Azerbaijani authorities' refusal to issue their children an identity card, which were rejected by the first instance court (the administrative and economic tribunal of Bakou) and by the Court of Appeal.

Legal arguments by the applicant

The applicants claimed that the refusal by the Azerbaijani authorities to recognise the Azerbaijani nationality of their children born in Azerbaijan, in application of the principle of *jus soli*, amounted to an unlawful and arbitrary interference with their children's rights to respect for private and family life under Article 8 ECHR. The denial of their Azerbaijani nationality deprived them of a wide range of social and economic rights (right to free higher education, right to free medical assistance and social security, freedom of movement, etc.) enjoyed by citizens and had numerous detrimental consequences for them. They further claimed that Azerbaijani law provide for the unconditional application of the principle of *jus soli* and therefore they contest the Government's argument that children born in Azerbaijan to foreign parents are not Azerbaijani nationals.

Legal arguments by the opposing party

The Government argued that the law in force until 2014 was silent on the question of whether a child born in Azerbaijan to foreign parents had Azerbaijani nationality

and that this silence created an ambiguity which placed authorities in a dilemma. Nevertheless, Azerbaijan did not recognise dual nationality, including at that time, and one of the Constitution's drafters considered that a child born in Azerbaijan to foreign parents had Azerbaijani nationality only if the parents could not grant their nationality. Moreover, the Government argued that the children were not threatened with deportation and that they could still apply for Azerbaijani nationality.

Decision & Reasoning

Referring to previous case law (*Genovese v. Malta* and *Ramadan v. Malta*), the Court recalled that the notion of private life within the meaning of Article 8 ECHR is a broad one, encompassing multiple aspects of a person's social identity. It also recalled that, while the right to nationality is not as such guaranteed by the ECHR, the Court has already dealt with nationality-related issues and has found, for example, that an arbitrary deprivation of nationality may raise a problem under Article 8 ECHR because of its impact on private life (paragraph 45)

In this case, the Court found 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 and therefore principles relating to deprivation of nationality are equally applicable in the present case by virtue of a mirror analysis of radically opposed situations. (paragraph 46).

It thus turned to analyse the consequences of the refusal decision as the criterion for establishing whether a deprivation of nationality amounts to interference with the exercise of the rights guaranteed by Article 8 ECHR (paragraph 47).

It found that the decision of the Azerbaijani authorities had considerable negative consequences for the children. In particular, the children's status and some of the social and economic benefits derived from it have been affected by their denial of Azerbaijani nationality. Moreover, an official document attesting to nationality, such as an identity card, is indispensable for the effective exercise of many of the rights that nationals alone can claim. The Court therefore found that the refusal decision constituted an interference with the exercise by the children of their right to a private life (paragraph 49). The Court further found that the decision was arbitrary. Indeed, while national law was amended after 2014 to restrict the possibilities of acquiring Azerbaijani nationality on the basis of *jus soli*, the current case concerns children born before that date. At that time, national law clearly and unconditionally granted Azerbaijani nationality on the basis of *jus soli* (paragraphs 53-54). Domestic

courts also did not explain on what legal basis they ruled that the children were not considered Azerbaijani nationals and never referred to the fact that the children had a birth certificate issued by Azerbaijani authorities, which according to national law had the status of a document attesting to Azerbaijani nationality (paragraph 56). Thus, the ECtHR found that the authorities did not interpret domestic provisions in a manner compatible with the Convention and the national judicial review did not provide the children with the necessary procedural guarantees. The ECtHR therefore held that that decision was arbitrary and that Azerbaijan had violated Article 8 of the Convention (paragraphs 57-58).

Decision documents

[ECtHR - Hashemi and Others v Azerbaijan, application no. 1480/16 and 6 others](#)

Outcome

The ECtHR found that Azerbaijan violated Article 8 ECHR.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

European Court of Human Rights, [Press release](#)

Caselaw cited

- [Genovese v. Malta, Application no 53124/09](#)
- [Ramadan v. Malta, Application no 76136/12](#)
- [Alpeyeva and Dzhalagoniya v. Russia, Applications nos 7549/09 et 33330/11](#)
- Ahmadov v. Azerbaïdjan, Application no 32538/10
- [Ghoumid and Others v. France, Applications nos 52273/16 et 4 others](#)
- [Usmanov v. Russia, Application no 43936/18](#)
- [K2 v. United Kingdom, Application no 42387/13](#)
- Slivenko v. Latvia, Application no 48321/99
- [Kurić and others v. Slovenia, Application no 26828/06](#)
- Piechowicz v. Poland, Application no 20071/07
- Tasev v. North Macedonia, Application no 9825/13