



# STATELESSNESS

## Case Law Database

### [Netherlands - Council of State \(Raad van State\), ECLI:NL:RVS:2014:1788](#)

The case concerns a child born in the Netherlands to an undocumented mother of Chinese origin. The child is registered in the municipal records as having an "unknown" nationality. The mother attempts to register him as "stateless" to strengthen his claim to Dutch citizenship, but cannot meet the high standard of proof set by the municipality for registering statelessness. The Court sides with the municipality in this case, but implies that the legislator ought to establish a statelessness determination procedure in the Netherlands.

**Case name (in original language) :** ECLI:NL:RVS:2014:1788

**Case status:** Decided

**Case number:** ECLI:NL:RVS:2014:1788

**Date of decision:** 21/05/2014

**State:** Netherlands

**Court / UN Treaty Body:** Council of State of the Netherlands (Raad van State)

**Language(s) the decision is available in:** Dutch

**Applicant's country of birth:** Netherlands

**Applicant's country of residence:** Netherlands

**Legal instruments:** 1961 Statelessness Convention, Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR)

**Key aspects:** Acquisition of nationality, Burden of proof, Childhood statelessness, Standard of proof, Statelessness determination

**Relevant Legislative Provisions:**

Article 3(1) and 7 of the Convention on the Rights of the Child

Article 24 ICCPR

Article 1(1) 1961 Convention on Reduction of Statelessness

Article 5 of the Chinese Nationality Law of 1980

## **Facts**

The case concerns a child born in the Netherlands in 2010, to a mother of Chinese origin, born in China in 1989, and trafficked to the Netherlands at the age of 15. The child is registered in the municipal records as having an "unknown" nationality. If he was recognised as "stateless", this would strengthen his claim to Dutch citizenship, but the municipality sets a very high standard of proof, with the burden of proof fully on the applicant, to substantiate lack of any nationality.

## **Legal arguments by the applicant**

The applicant argued that based on international treaties the Netherlands is party to, such as CRC, ICCPR, and 1961 Convention, there is an obligation to establish the nationality of a child within a reasonable time-frame, or alternatively register him as stateless. The registration category "nationality unknown" cannot be a long-lasting one.

## **Legal arguments by the opposing party**

The municipality argued that the mother was born in China and presumable has Chinese nationality. On the basis of Article 5 of the Chinese Nationality Law of 1980, her son would have also acquired Chinese nationality. It is up to the mother, who is the applicant in this case, to prove that her child is not recognised by China as a national. She has to prove it with objectively verifiable data. Only then can statelessness be registered in the municipal records.

## **Decision & Reasoning**

The Council of State reasons as follows:

"The Municipal Registry is a system for registering personal data. As has been ruled by the Council of State before (in particular in the judgment of 28 November 2012,

nr. 201200045/1/A3), it is important to state that the data in the Municipal Registry has to be reliable and clear. The users of the Registry should be able to trust that the data is correct. In light of the facts, the municipality is left with no choice but to register nationality as "unknown" if no documents can substantiate that the child is stateless. The Law on the Municipal Registry does not oblige the municipality to research whether an individual is stateless or to determine statelessness when there is no clarity as to the nationality status of that person. No such obligation can be derived from articles 3 and 7 of the CRC, article 24(3) of the ICCPR and article 1 of the 1961 Convention, regardless whether any of these are binding, simply because they do not contain any rules on determining statelessness."

"The applicant did not submit any documents which indicate that her son does not have any nationality, and is therefore stateless."

"The Council of State considered various studies about the position of stateless person in the Netherlands, among which the report of the Advisory Committee on Migration entitled "No country of one's own [Geen land te bekennen]" of December 2013. It is clear that currently there is no specific procedure to legally determine the status of statelessness. As long as the statelessness of persons without a nationality is not being determined, they cannot invoke protection on the basis of treaties on Statelessness and the Dutch laws that implement those treaties. Establishing such a procedure goes beyond the scope of the task of a judge."

## **Decision documents**

[DennnyZhao.pdf](#)

## **Outcome**

The application was denied, and the child remained registered as having an "unknown" nationality. The case was submitted to the Human Rights Committee and the outcome is pending.

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

<https://www.statelessness.eu/blog/every-downside-has-its-upside-run-sta...>

<https://www.justiceinitiative.org/litigation/zhao-v-netherlands>

<https://pilpnjcm.nl/en/dossiers/statelessness/>