



**Longing to belong:
how immigration detention applies to stateless persons**

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“A human being can come into the world anywhere, in the most careless way and for no good reason, but a passport never can. When it is good, the passport is also recognized for this quality, whereas a human being, no matter how good, can go unrecognized.”

- Bertolt Brecht, Refugee Conversations (1940)

Table of Contents

List of abbreviations	6
CHAPTER I: Introduction	7
1.1 Research problem	7
1.2 Research methodology	8
1.2.1 Research question	8
1.2.2 Structure	9
1.3. Preliminary argument	10
1.4 Key concepts	11
1.4.1 Immigration detention	11
1.4.2 Statelessness	12
CHAPTER II: International and regional framework	14
2.1 International framework	14
2.1.1 International Covenant of Civil and Political Rights	14
2.1.2 1954 Convention relating to the Status of Stateless Persons	17
2.1.3 Stateless persons in detention	19
2.2 Council of Europe	20
2.2.1 European Convention on Human Rights	20
2.2.2 Stateless persons in detention	23
2.3 European Union	25
2.3.1 EU Return Directive	25
2.3.2 Stateless persons in detention	26
2.4 Conclusion	28
CHAPTER III: a void to fill: statelessness determination procedures	30
3.1 Statelessness Determination procedure	30
3.2 The rights granted to recognized stateless persons	32
3.3 Conclusion	33
Conclusion	35
Appendix	38
Bibliography	40

List of abbreviations

1954 Convention — Convention relating to the Status of Stateless Persons 1954

1961 Convention — Convention on the Reduction of Statelessness 1961

CJEU — Court of Justice of the European Union

CoE — Council of Europe

ECHR — European Convention of Human Rights

ECtHR — European Court of Human Rights

EU — European Union

HRC — Human Rights Committee

ICCPR — International Covenant of Civil and Political Rights

UDHR — Universal Declaration of Human Rights

UN — United Nations

UNHCR — United Nations High Commissioner for Refugees

CHAPTER I: Introduction

1.1 Research problem

*“The waiting is the worst part of detention. It’s like you don’t have any control anymore, you just sit and wait. You wait for someone else to tell who you are and what is your country”*¹. With these words, Farid, a stateless man from Pakistan interviewed in Poland, described the situation in which he has been for years. Like him, around 600 thousand stateless people in Europe alone² are facing or have faced immigration detention. François Crépeau, UN Special Rapporteur on Human Rights Migrants, in 2015 described immigration detention of stateless persons as *“one of the silent tragedies of our globalized world that plays out behind closed doors, away from the gaze of the media, but with significant, irreparable human cost”*³. *“It is a tragedy”*, he continued, *“that is completely preventable, but due to a lack of will and attention, continues to harm thousands of lives all around the world every year”*⁴.

The concept of immigration detention refers to a restriction of the right to liberty and security of the person, a basic entitlement guaranteed by Article 3 of the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations (UN). Since then, the respect of the right to life and the prohibition of arbitrary detention have been included in the many international and regional treaties. Within this framework, stateless persons, defined in international law as individuals “who are not considered as nationals by any state under the operation of its law”⁵, experience the situation differently than other migrants: unlike other individuals in detention, in fact, they face a more problematic situation since there is no State to address them to. Due to a lack of regularization of their status, they are found to be illegally staying in a country and, thus, vulnerable to detention. Stateless people often do not have legal residence neither in the country they are illegally

¹ European Network on Statelessness, *“Protecting Persons From Arbitrary Detention. An Agenda For Change”* (2017) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf> accessed 12 August 2019. Page 8

² United Nations High Commissioner for Refugees, 'Statelessness Around The World' (UNHCR) <<https://www.unhcr.org/statelessness-around-the-world.html>> accessed 12 August 2019.

³ European Network on Statelessness, *Protecting Persons From Arbitrary Detention. A Regional Toolkit For Practitioners* (2015) <http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf> accessed 12 August 2019. Page 3

⁴ *Idem*, page 3.

⁵ 1954 Convention Relating to the Status of Stateless Persons. Article 1(1)

staying nor in the country of their “habitual” residence. Consequentially, since there is no country that recognizes them as their nationals, they can neither stay nor be send back. Therefore, “although they benefit from the same rights as other human beings, they are at greater risk of unlawful or arbitrary detention”⁶. According to customary international law, arbitrary detention is not completely prohibited: there must be a legitimate purpose to detain a person, otherwise detention becomes arbitrary and illegal. The immigration detention system should be “used as a last resort measure by State and for the sole purpose of achieving a legitimate administrative objective such as removal or prevention of unlawful entry”⁷. However, since the removal of stateless persons is often either impossible or delayed, “detention would either serve no administrative purpose or it would be a disproportionate mean of achieving an administrative purpose — where removal is likely to take an unreasonable length of time”⁸.

1.2 Research methodology

1.2.1 Research question

In the present study, hence, it will be analyzed the particular situation of immigration detention of stateless persons within the European context in an attempt to answer the following question: to what extent is considered legitimate the detention of stateless persons under international and European law?

For that purpose, the following sub-questions will be answered:

- how international, regional and European Law limit state sovereign power to detain migrants for administrative purposes?
- how does the detention system apply to stateless persons?
- what is at the root of the problem?

⁶ UN High Commissioner for Refugees (UNHCR), 'Back To Basics: The Right To Liberty And Security Of Person And 'Alternatives To Detention' Of Refugees, Asylum-Seekers, Stateless Persons And Other Migrants' (2011) <<https://www.refworld.org/docid/4dc935fd2.html>> accessed 13 August 2019. Page 16

⁷ Guidelines To Protect Stateless Persons From Arbitrary Detention: Introduction' (2012) 14 European Journal of Migration and Law. Page 39

⁸ *Idem*, page 74.

- how is the statelessness determination procedure relevant?

In order to answer those questions, an analysis of case laws and the current legal frameworks that regulates immigration detention will be presented. All three regimes that interact in the European Continent — the United Nations, the European Union and the Council of Europe — will be discussed.

Through the International Covenant of Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the EU Return Directive, international, regional and European provisions regulating detention and the conditions that define it unlawful will be analyzed. This section will also refer to the main international instrument for the protection of stateless persons, the 1954 Convention relating to the Status of Stateless Persons (1954 Convention). Furthermore, it will be explained how these provisions apply to stateless persons. To conclude, the thesis will look at how statelessness determination procedure can be relevant in addressing the issue.

1.2.2 Structure

The thesis is structured into four chapters: an introductory chapter, a second chapter in which are explained the three normative frameworks that interact in the European continent (the United Nations, the Council of Europe and the European Union regimes), and a final chapter that focuses on the determination procedure.

Before starting the analysis, in this chapter, it will be given an explanation of the two core concepts of the research: immigration detention, and statelessness. In particular, it will be explained the meaning of immigration detention, and the reasons behind its use by states, as well as what it means to be and/or become stateless, and why these individuals without nationalities should be considered in a different way.

The second chapter will introduce the three legal regimes that influence EU member states. This chapter is divided in three paragraphs, corresponding to the three regimes, and it will present the same structure inside. Each one of them is made of two parts: a first part, in which the provisions that regulate the immigration detention system is analyzed in a general way, i.e. by showing how the system works for immigrants in general, and a

second part in which the same system and the same elements that were discussed previously, will be analyzed in reference to stateless persons. In this way, it will seek to comprehend how international provisions on immigration detention apply to stateless persons and how each system present a protection gap when we talk about stateless persons. The last chapter will examine closely the statelessness determination procedure and how the identification and recognition of stateless persons as such could prevent prolonged detention of stateless persons.

1.3. Preliminary argument

The immigration detention system, as it is structured today throughout Europe, does not take into account the “unique characteristics that set stateless people apart from other migrants”⁹. For such persons, the infeasibility of their expulsion increases as their time in detention — “essentially on the basis of their involuntary status of statelessness”¹⁰. In countries where there is no legal limit on migratory detention, this is an issue. With the recent “refugee crisis” and the increase of the number of migrants coming to the EU, (immigration) detention measures have been used by states to regulate the flows. The concern about stateless persons is that states use detention measures as a way to identify, address and give a status to migrants. In other words, States use them as arbitrary measures rather than as a last resort. The failure to implement the 1954 Convention and the inability to establish procedures for the determination of statelessness, leave stateless persons unprotected. Therefore, the determination of their status plays a key role for them. The application of immigration detention has further implications to the protection of stateless persons from human rights violations: the act of being detained without a limit being set out has been shown to have “significant long-term psychological and physical implications, even after the person has been released”¹¹. Thus, “once

⁹ European Network on Statelessness, *Protecting Persons From Arbitrary Detention. A Regional Toolkit For Practitioners* (2015) <http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf> accessed 12 August 2019. Page 8

¹⁰ Tendayi Bloom, 'Immigration Detention And Stateless Persons. Policy Report No. 02/03.' [2013] United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM) <<http://collections.unu.edu/eserv/UNU:1971/pdf41-unu-gcm-03-02.pdf>> accessed 12 August 2019. Page 5

¹¹ *Idem*, page 13

detained, because of the significant barriers to their removal, their detention is likely to be arbitrary”¹².

The detention, therefore, does not solve the problem of their status: after being arrested and released they remain stateless and without nationality. Although people without a specific status do not have a nationality or country of origin where they can be sent back, they are forced to face detention, or even to risk, due to the application of immigration detention legislation. This inadequacy of the detention system has created a gap in their protection that detention itself — as a mean of “deprivation of liberty in a confined place”¹³ — cannot change. Although the United Nations and the European Union are taking important steps to reduce and stop statelessness in the world, current practice shows that it will not decrease soon: stateless persons will increase and the EU needs to find a way to address this issue and to find a common solution in order to avoid a situation in which these people found themselves without protection. Therefore, the intent of this thesis is to analyze how this gap is formed and how it could be addressed in the European context.

1.4 Key concepts

1.4.1 Immigration detention

Migration is a global phenomenon that states seek to regulate by “adopting restrictive migration policies”¹⁴. This may involve the “use of coercive measures, including the systematic use of detention, both administrative and criminal”¹⁵. A non-punitive administrative measure that states use to monitor irregular entry and/or stay within the territory is immigration detention. Detention, defined by UNHCR as “deprivation of liberty and confinement in an enclosed place of an individual”¹⁶, constitutes an interference with the right to liberty and security of persons and freedom of movement, which are

¹² European Network on Statelessness, *Protecting Persons From Arbitrary Detention. A Regional Toolkit For Practitioners* (2015) <http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf> accessed 12 August 2019. Page 8

¹³ Guidelines To Protect Stateless Persons From Arbitrary Detention: Introduction' (2012) 14 European Journal of Migration and Law. Page 38

¹⁴ 'ICRC Policy Paper On Immigration Detention' (2017) 99 International Review of the Red Cross. Page 360

¹⁵ *Idem*, page 360

¹⁶ 'Guidelines To Protect Stateless Persons From Arbitrary Detention: Introduction' (2012) 14 European Journal of Migration and Law. Page 38

fundamental principles of liberal democracies protected in all international and regional human rights instruments. Under international and European law, states have the competence to hold foreign nationals for the purposes of regulating entry and pending removal; at the same time, however, they must guarantee the protection of individuals from arbitrary detentions regardless of their immigration status. Therefore, there is a tension between the human rights of the individual *per se* and the state's interest in maintaining and implementing effective migration policies — a practice that has been commented by the UN Working Group on Arbitrary Detention as “growing and preoccupying”¹⁷. This growing trend results in having a high number of detainees for “reasons that are unlawful or arbitrary”¹⁸. In this situation stateless persons find themselves “trapped in the system and subject to ongoing detention”¹⁹. Administrative immigration detention should consequently only be used in cases where an individual assessment confirms the “existence of an acceptable basis for which it can be justified”²⁰. Hence, immigration detention, which should only be carried out as a last resort, should not be used as a mean to regulate immigration through “deterrence or punishment for irregular entry and/or stay, as this does not characterize for itself one of the limited acceptable reasons this may justify the detention of migrants”²¹.

1.4.2 Statelessness

Statelessness, defined in international law as the absence of nationality status, is equivalent to the loss of all rights: “not only citizenship rights, but also rights as human beings”²². In this sense, the concept of nationality plays a significant role as a source of rights, which are “not given by virtue of an individual’s abstract humanity, rather they are

¹⁷ The Working group on arbitrary detention, When does deprivation of liberty become arbitrary? United Nations Office Geneva, *Fact Sheet No 26* (Office of the UN High Commissioner for Human Rights 2000).

¹⁸ European Network on Statelessness, “*Protecting Persons From Arbitrary Detention. An Agenda For Change*” (2017) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf> accessed 12 August 2019. Page 7

¹⁹ *Idem*, page 7.

²⁰ 'ICRC Policy Paper On Immigration Detention' (2017) 99 International Review of the Red Cross. Page 362

²¹ *Idem*, page 362

²² Seyla Benhabib, *The Rights Of Others* (Cambridge Univ Press 2000). Chapter 2, page 50

an artifact associated with membership of a political community”²³. “Being excluded from the political community is equivalent to being excluded from the sphere of rights”²⁴. Therefore, it can be said that “human rights derive from citizenship in such a way that the right to have rights becomes the right to citizenship”²⁵. “Those who are not citizens, who do not belong to a community of equals, however, remain invisible and have no place from which to be seen”²⁶. The stateless persons have long been recognized as people who do not have a nationality (*de jure*) or people whose nationality is not effective because it does not benefit from the protection of any state (*de facto*). (see APPENDIX 1). In this sense, “nationality is not only the link between the individual and the state, but also between the individual and international law”²⁷. Through the international recognition of the right to nationality in Article 15 of the UDHR, the legal and practical importance of nationality for the enjoyment of human rights was recognized²⁸. In this sense, with the UDHR states were called to “promote and protect human rights of all people, without looking at where they were, and whether they had a nationality or not”²⁹. Hence, although the attribution of nationality is an issue addressed at the state level, international human rights law emphasizes that it is not absolute and that states have to comply with their human rights obligations regarding the granting and the loss of citizenship. In the absence of a bond of nationality, stateless persons need special attention and protection; in this regard, a recognized stateless person is protected by both the 1954 Convention, which remains the only international treaty specifically aimed at regulating statutory treatment standards³⁰, and by international human rights treaties.

²³ Alison Kesby, *The Right To Have Rights* (Oxford University Press 2012). Page 3

²⁴ *Idem*, page 5

²⁵ *Idem*, page 5.

²⁶ *Idem*, page 122.

²⁷ BERNARD RYAN, 'Acquisition And Loss Of Nationality: Policies And Trends In 15 European Countries (Two Volumes) - Edited By R. Bauböck, E. Ersbøll, K. Groenendijk And H. Waldrauch' (2008) 46 *JCMS: Journal of Common Market Studies*. Page 4

²⁸ UNHCR, 'Protecting the Rights of the Stateless Persons. The 1954 Convention relating to the Status of Stateless Persons' Page 2

²⁹ Amal De Chickera, *Unravelling Anomaly* (Equal Rights Trust 2010). Page 2

³⁰ UNHCR, 'Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.' (2014). Page 11

CHAPTER II: International and regional framework

Within this chapter the criteria that determine the lawfulness and/or arbitrariness of immigration detention will be presented. Subsequently, it will be analyzed the way in which international and regional provisions apply to stateless persons and the extent under which they can be held.

2.1 International framework

In the two following paragraphs, it will be examined the two main instruments that interconnect in the protection of stateless persons for immigration detention, respectively the 1954 Convention and the ICCPR. In theory, stateless persons should enjoy two types of protection deriving from being stateless and being held. In this sense, both legal instruments will be investigated.

2.1.1 International Covenant of Civil and Political Rights

“Since detention in itself is not a violation of human rights, international law has progressively endeavored to define the limits beyond which detention, whether administrative or judicial, would become arbitrary”³¹. In particular, international human rights instruments assure that the right to personal liberty is protected and not arbitrarily stripped away³². Under the international regime, the right to liberty and security of persons can be found in two provisions of the UDHR: article 3 and 9 respectively underline “*right of everyone to life, liberty and security of person*” and that “*no one shall be subjected to arbitrary arrest, detention or exile*”. Despite being a declaration and having no legal force, the UDHR has exerted a considerable influence on the evolution of contemporary international law. In particular, the right of every human being to life, liberty and security of person, as well as protection against arbitrary arrest or detention, was later reiterated in Article 9 of the ICCPR. This article applies to all types of deprivations, including

³¹ The Working group on arbitrary detention, When does deprivation of liberty become arbitrary? United Nations Office Geneva, *Fact Sheet No 26* (Office of the UN High Commissioner for Human Rights 2000). Page 2

³² *Idem*, page 2.

immigration detention and, although broad and general, it provides that “*no one shall be subjected to arbitrary arrest or detention or deprived of liberty except on such grounds and in accordance with such procedures as are established by law*”³³.

Article 9, unlike the ECHR which will be discussed in the next paragraphs, does not provide states with an exhaustive list of permissible grounds for detention, which is sometimes referred as “power to detain”³⁴, instead, it establishes the obligation to ensure that the right to liberty must be guaranteed and that arbitrariness must be precluded by national regimes and legal norms³⁵. It provides that each case must be evaluated and justified on its merit and it prohibits any form of unlawful and arbitrary detention. In fact, any type of deprivation of liberty must be carried out with respect for the rule of law³⁶. However, despite being authorized by national law, an arrest or detention can be considered arbitrary: in fact, domestic legislation has to comply also with international human rights standards. For instance, “compulsory detention of asylum seekers was considered unlawful as a matter of international law regardless of the existence of national legislation sanctioning the practice”³⁷. Hence, Article 9 does not prohibit detention pursuant to immigration control *per se*; instead, it recognizes that deprivation of liberty can be justified if it satisfies the requirements of arbitrariness and legality, for instance, “in cases of enforcement of criminal laws and is carried out with respect for the rule of law”³⁸. In *A v Australia*³⁹, the HR Committee, contrary to the position taken by the Court, recalled that *the notion of “arbitrariness” must not be equated to “against the law” but be interpreted more broadly to include such elements of “inappropriateness, injustice and lack of*

³³ International Covenant of Civil and Political Rights. Art. 9(1)

³⁴ UN High Commissioner for Refugees (UNHCR), 'UNHCR Guidelines On The Applicable Criteria And Standards Relating To The Detention Of Asylum-Seekers And Alternatives To Detention' (2012) <<https://www.refworld.org/docid/503489533b8.html>> accessed 12 August 2019 Page 19

³⁵ General Comment No. 35- Article 9 (right to liberty and security), CCPR/C/GC/35. 15 December 2014. file:///C:/Users/hp/Downloads/G1424451.pdf Page 3

³⁶ *Idem*, page 3.

³⁷ UN High Commissioner for Refugees (UNHCR), 'Back To Basics: The Right To Liberty And Security Of Person And 'Alternatives To Detention' Of Refugees, Asylum-Seekers, Stateless Persons And Other Migrants' (2011) <<https://www.refworld.org/docid/4dc935fd2.html>> accessed 13 August 2019. Page 19

³⁸ General Comment No. 35- Article 9 (right to liberty and security), CCPR/C/GC/35. 15 December 2014. file:///C:/Users/hp/Downloads/G1424451.pdf Page 3

³⁹ *A v Australia* [1997] HRC, CCPR/C/59/D/560/1993 (HRC).

*predictability*⁴⁰. The Committee, in doing so, stressed the importance of the concept of reasonableness, necessity, proportionality, and non-discrimination. In particular, detention “could be considered arbitrary if it is “not reasonable and necessary in all the circumstances of the case” — for example, to prevent flight, interference with evidence or the recurrence of crime⁴¹. Therefore, the HR Committee, in its General Comment No. 35 on liberty and security of person, requires that “*detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time*”⁴². To ensure this, human rights protection requires individualized assessments in which the necessity is evaluated. This is based on the fact that an unlawful entry is not sufficient to justify indefinite and prolonged detention.

The detention period raises also the problem of the detention facilities: it can happen that migrants are detained for an indefinite time and in inappropriate conditions; this underlines the need to have special detention centers for stateless persons. The length of the detention must also be examined and established *per case* as well. A maximum period of detention, established in order to prevent arbitrariness, must be set up by law and this may in no case be unlimited or of excessive length. Although there is no universally accepted maximum period of immigration detention, the EU has set six months for detainees awaiting removal. Nevertheless, this timeframe has been very criticized by EU Member states since it does not reflect the general state practice: in France, and Italy, for instance, the limit is ninety days for pre-removal detention⁴³, while in Portugal and Spain is sixty days. “Prolonging detention beyond this initial period on the sole ground that the individual has an undetermined nationality or identity would run against international standards and should be considered arbitrary”⁴⁴. Moreover, states should also provide a periodical review of decisions to detain as they constitute an important part of the process that states cannot

⁴⁰ Submission by the Office of the United Nations High Commissioner for Refugees in *A.L. v. Russia* (Application no. 57426/16) before the European Court of Human Rights, available at: <https://www.refworld.org/pdfid/595605064.pdf> Page 8 (4.3.2)

⁴¹ *Idem*, para 4.3.2, page 8

⁴² General Comment No. 35- Article 9 (right to liberty and security), CCPR/C/GC/35. 15 December 2014. file:///C:/Users/hp/Downloads/G1424451.pdf Para 5 Pag.3

⁴³ Organizations And Alliances - Global Detention Project | Mapping Immigration Detention Around The World | Italy Immigration Detention' (*Global Detention Project | Mapping immigration detention around the world*, 2019) <<https://www.globaldetentionproject.org/organisations-alliances/european-union-eu>> accessed 12 August 2019.

⁴⁴ UNHCR (2017). *Stateless persons in Detention. A tool for their identification and enhanced protection*. P. 7

avoid. Thus, the term “unlawful detention” includes a detention that was previously lawful but became unlawful due to changes in circumstances. In this context, “the element of proportionality becomes relevant”⁴⁵: the principle of proportionality requires that a government should not take any action other than what is necessary to attain the pursued objective. To meet the proportionality test, states must use alternative means to achieve their goals other than detention.

The UN Working Group on Arbitrary Detention, although it recognizes the sovereign power of states to regulate immigration, asserts that immigration detention should gradually be abolished since migrants in an irregular situation have not committed any crime⁴⁶. With this comment, it underlines the fact that detention should not be used for punitive purposes, but it should be used as a measure of last resort⁴⁷. The criminalization of irregular migration exceeds the legitimate interests of the States in protecting its territories and regulating irregular migration flows⁴⁸. Furthermore, states should embrace their obligations to respect, protect and fulfill human rights.

2.1.2 1954 Convention relating to the Status of Stateless Persons

“To address the problems of protecting stateless persons, particularly non-refugees, the international community has adopted the 1954 Convention relating to the status of stateless persons (“1954 Convention”)⁴⁹. Beside recognizing their international legal status, it establishes a minimum standard of treatment for stateless persons, without discrimination, beyond which States are free to extend further protection and rights to

⁴⁵ *A v Australia* [1997] HRC, CCPR/C/59/D/560/1993 (HRC). (9.2)

⁴⁶ IOM, 'IMMIGRATION DETENTION AND ALTERNATIVES TO DETENTION' <https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Immigration-Detention.pdf>. Page 1

⁴⁷ UN High Commissioner for Refugees (UNHCR), 'UNHCR Guidelines On The Applicable Criteria And Standards Relating To The Detention Of Asylum-Seekers And Alternatives To Detention' (2012) <<https://www.refworld.org/docid/503489533b8.html>> accessed 12 August 2019 (32)

⁴⁸ Human Rights Council, 'Report of the Working Group on Arbitrary Detention: Promotion and protection of all human rights, civil, political, economical, social and cultural rights, including the right to development', available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_AEV.pdf Page 24 (58).

⁴⁹ UNHCR, *Protecting the Rights of the Stateless Persons*. The 1954 Convention relating to the Status of Stateless Persons. P.1

them⁵⁰. It also guarantees three different levels of protection that states have to address: states have to guarantee a base level of rights enjoyment which is “accorded to aliens generally in the same circumstances”⁵¹. “Nevertheless, most of the provisions invite states to offer “treatment as favorable as possible” and some demand the same treatment as nationals”⁵². In addition, there are a number of absolute rights “which are not contingent upon the treatment of any other group but guaranteed directly”⁵³. By recognizing their vulnerability, the Convention provides for special measures for their protection. States are required to determine the nationality or statelessness of a person through the determination procedure⁵⁴ that is necessary to determine the country of destination to which someone has to be removed⁵⁵. Although states are not obliged to grant nationality to stateless persons within their territory⁵⁶, they must establish a legislative framework and apply technical practices and mechanisms to facilitate the access of applicants to the procedures⁵⁷. The identification of statelessness, therefore, is fundamental in this process: the guarantees for the procedure to follow for the acquisition of citizenship are established in the Convention on the Reduction of Statelessness of 1961 (“1961 Convention”). These legal and administrative procedures are, however, left to the discretion of the States⁵⁸. The initiative of the states would prevent illegal detention, would eliminate the phenomenon, would prevent social exclusion and establish safeguards for national security. In this procedure, individuals can demonstrate a link with the nationality of a state.

⁵⁰ 1954 Convention Relating to the Status of Stateless Persons. Article 3

⁵¹ Laura Van Waas, *Nationality Matters: Statelessness Under International Law* (Intersentia 2008). Page 73

⁵² *Idem*, page 73.

⁵³ Tamás Molnár, 'Stateless Persons Under International Law And EU Law: A Comparative Analysis Concerning Their Legal Status, With Particular Attention To The Added Value Of The EU Legal Order' (2010) 51 *Acta Juridica Hungarica*. Page 295

⁵⁴ UNHCR, '*Statelessness Determination Procedures and the Status of Stateless Persons*' (UNHCR, December 2010). Retrieved from: <<http://www.refworld.org/docid/4d9022762.html>>

⁵⁵ UNHCR, '*Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.*' (2014). Page 6

⁵⁶ UNCHR, '*Statelessness Determination Procedures Identifying And Protecting Stateless Persons*' (2014) <<https://www.refworld.org/pdfid/5412a7be4.pdf>> accessed 13 August 2019. Page 1

⁵⁷ G Gyulai, '*Statelessness In Hungary: The Protection Of Stateless Persons And The Prevention And Reduction Of Statelessness.*' (*Helsinki.hu*, 2010) <http://helsinki.hu/wp-content/uploads/Statelessness_in_Hungary_2010.pdf> accessed 12 August 2019. Page 15

⁵⁸ UNHCR, '*Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.*' (2014).

Therefore, these two Conventions are the “key international conventions addressing statelessness”⁵⁹, and yet, neither one of them address the particular issue of detention. The 1954 Convention does not include any prohibition on detention measures and, since it does not establish any specific framework or assign standards regarding the detention, in particular for stateless persons, the general rules of detention are also applicable to them⁷⁹. In other words, international standards and immigration regulations are also applicable to detention procedures for stateless persons.

2.1.3 Stateless persons in detention

In the previous paragraph, it has been described the way in which the immigration detention is regulated within the international regime; in particular, reference was made to article 9 of the ICCPR and to the main elements that regulate this practice: compliance with national law, the principles of proportionality, reasonableness and necessity, the limit and constant revision through an individualized approach. In this context, it was noted that no reference was ever made to the specific situation of stateless persons — which are dealt with in various international instruments without, however, any mention of a specific framework. Therefore, the international immigration detention regime applies to statelessness because there are no special provisions regarding detention measures imposed on states. Their vulnerability is particularly evident in this context: since they are not recognized by any state, they are more exposed to indefinite detention. There is no regulatory standard that applies exclusively or mainly to stateless persons. The principles applied to the detention of stateless persons are the same as those applied to refugees and irregular migrants.

Through an analysis of the case-law, it will be criticized if the imposition of detention measures described above leads inevitably to the arbitrariness of the measure itself against stateless persons. In *C v Australia*, the HR Committee asserted that “*detention should not continue beyond the period for which the State party can provide appropriate justification. The State party has failed to demonstrate that those reasons justify the author's continued detention in the light of the passage of time and intervening*

⁵⁹ UNHCR, UN Conventions on Statelessness, available at: <https://www.unhcr.org/un-conventions-on-statelessness.html>

*circumstances. In particular, the State party has not demonstrated that there were not less invasive means of achieving the same ends, that is to say, compliance with the State party's immigration policies*⁶⁰. With these few sentences, the Committee has stressed the need for states to exhaust all less coercive measures before imposing the confinement of an individual. Detention, as it was evident in this case, can have affect the mental well-being of an individual and therefore it should be used as last resort. In this sense, the concept of proportionality plays a central role in addressing an individualized assessment; it's in this phase that alternatives to detentions must be explored.

2.2 Council of Europe

Zooming on the specific framework of Europe, two different system cross: the Council of Europe and the European Union. The former is an international organization, active at the regional level, for the promotion and protection of the rule of law, democracy, and human rights. It is a separate organization from the European Union and its main instrument is the ECHR, which will be analyze in the next paragraphs.

2.2.1 European Convention on Human Rights

The legislative instrument that regulates and recognizes the right to freedom and security of the person is the European Convention on Human Rights. More precisely, article 5 asserts that *"everyone has the right to liberty and security of person and no one shall be deprived of his liberty"*⁶¹, which can only occur in specific circumstances and in accordance with a procedure prescribed by law.

This article embodies a key element in the protection of an individual's human rights. The European Court of Human Rights (ECtHR), which has the power to hear cases in relation to the ECHR and make binding judgments on parties, has emphasized its importance and

⁶⁰ *C v Australia*, [2002] HRC, CCPR/C/76/D/900/1999, (HRC). 8(2)

⁶¹ European Convention on Human Rights, art. 5 para 1

relevance within a democratic society, as well as underlining the role of states, which must strictly observe the rule of law when they interfere with the right to personal liberty⁶².

The key purpose of article 5 is “to prevent unjustified and/or arbitrary deprivations of liberty”⁶³. This provision sets the standards but does not prohibit arbitrariness. Specifically, it introduces a list of admissible grounds of detention that the ECtHR, in the case of *Saadi v UK*⁶⁴, defined as exhaustive: “*Any deprivation of liberty will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible*”⁶⁵. Therefore, if the arrest does not have the legitimate aim of preventing the illegal entry and/or the execution of a removal, it automatically violates the Convention.

The notion of arbitrariness expressed in Article 5 goes “*beyond the lack of conformity with national law, so that a deprivation of liberty can be licit in terms of domestic law, but still arbitrary and thus contrary to the Covenant*”⁶⁶. In *Gallardo Sanchez v Italy*⁶⁷, the ECtHR found Italy in breach of the art. 5 towards a Venezuelan citizen who was held in detention for the purpose of his extradition to Greece⁶⁸. In this case, the confinement of Mr. Sanchez was lawful under domestic law, but the Court found that the detention measures were not in compliance with the ECHR. As a result, the Court commented affirming that “*when the proceedings were not conducted due diligence, detention ceased to be justified and, therefore, lawful*”⁶⁹.

⁶² *Brogan & Ors v The United Kingdom*, [1988] ECtHR, Application nos. 11209/84, 11234/84, 11266/84, 11386/85,

⁶³ European Court on Human Rights, 'Guide On Article 5 Of The European Convention On Human Rights' (2019) <https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf> accessed 13 August 2019. Page 10

⁶⁴ *Saadi v. United Kingdom*, [2008] ECtHR, Application No. 13229/03.

⁶⁵ *Idem*, para 72.

⁶⁶ European Court on Human Rights, 'Guide On Article 5 Of The European Convention On Human Rights' (2019) <https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf> accessed 13 August 2019. Page 13 (38)

⁶⁷ *Gallardo Sanchez v. Italy*, [2015] ECtHR, Application No. 11620/07

⁶⁸ *Idem*, para 3.

⁶⁹ *Idem*, para 40.

As art. 9 of the ICCPR, also art. 5 requires detention to be exceptional, and that the criteria of proportionality and necessity be first met⁷⁰. States should, hence, implement measures of periodic review scrutinize the decisions taken previously — ensuring that detention measures are still in compliance with the established standards — and pay attention whenever the prospect of expelling a detainee is no longer possible or it does not fall anymore within the scope of the provisions of art. 5 of the Covenant.

The ECHR, unlike from the EU Return Directive, does not provide a specific length for detention; in this regard, the ECtHR ruled that: “*the length of the detention should not exceed that reasonably required for the purpose pursued*”⁷¹. It also asserted that the length of detention should be assessed case-by-case and should depend on the different circumstances. Nevertheless, the Court has ruled on the duration of detention when the deportation objective has been proved impossible to prosecute. It highlighted “*that the applicant’s detention with a view to expulsion was extraordinarily long. He was detained for more than three years and eleven months*”⁷². “*The applicant’s expulsion had become virtually impossible as for all practical purposes it required his co-operation, which he was not willing to give. While it is true that States enjoy an “undeniable sovereign right to control aliens’ entry into and residence in their territory” the aliens’ detention in this context is nevertheless only permissible under Article 5 § 1 (f) if action is being taken with a view to their deportation. The Court considers that in the present case the applicant’s further detention cannot be said to have been effected with a view to his deportation as this was no longer feasible*”⁷³. With this judgement, the ECtHR made it clear that in cases in which the removal is no longer possible due to complications in the procedure, detention cease to be lawful. This ruled is particularly important in the case of stateless persons, who risk to experience detention for indefinite time due to any difficulties in the negotiation process.

⁷⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Immigration detention. Retrieved from: <https://rm.coe.int/16806fbf12> Page 1 (4)

⁷¹ *Saadi v. United Kingdom*, [2008] ECtHR, Application No. 13229/03. (74)

⁷² *Mikolenko v. Estonia*, [2009], ECtHR, Application No. 10664/05, (64)

⁷³ *Idem*, para 65.

2.2.2 Stateless persons in detention

The right to liberty and security of person is guaranteed under the ECHR. However, with regard to immigration detention, Article 5 (1)(f) specifies that “*the lawful arrest or detention of a person*” is legitimate if used “*to prevent an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition*”⁷⁴. Although clear, this provision presents some problems if applied to stateless persons. For the latter the impossibility of their removal increases due to not having a nationality and therefore of a State to which a stateless person can be addressed. In this regard, the ECtHR has tried to shed some light. *Kim v. Russia*⁷⁵ is one of many examples in which a stateless person has been subjected to prolonged detention for immigration control. Mr. Roman Kim is a stateless person of Korean ethnic origin born in Uzbekistan during the Soviet era; with the dissolution of the USSR, he found himself without a state to consider him as a citizen and, due to the laws of the states issued on the dissolution, he could not acquire nationality⁷⁶. In 2011 he was arrested, his expulsion was ordered and a fine was imposed⁷⁷. During the first four months no contact was made with the competent Uzbek authorities in order to seek confirmation on his nationality. Without the possibility of accessing a judicial review process, he remained in detention. After two years of detention, in which the Uzbek and Russian authorities continued to negotiate the transfer, he was released as he reached the time limit for administrative purposes⁷⁸. The period of his detention and the progress of the negotiations for his expulsion were remarkably slow⁷⁹ and did not change his situation: the Uzbek authorities, in fact, did not recognize Kim as their citizen. Without the possibility of acquiring a nationality or recognition of his stateless status, he could neither obtain identity documents nor legal residence. People like Mr. Kim, without nationality and with the impossibility of being expelled, find themselves in a legal

⁷⁴ European Convention on Human Rights, Article 5 (1)(f)

⁷⁵ *Kim v. Russia* [2014] ECtHR, Application no. 44260/13, (ECtHR) Page 14 (74)

⁷⁶ Barrister A.B., 'Kim v Russia- The unlawful detention of stateless persons in immigration proceedings (European Network on Statelessness, 30 October) <https://www.statelessness.eu/blog/kim-v-russia---unlawful-detention-stateless-persons-immigration-proceedings>

⁷⁷ European Network on Statelessness, *Protecting Persons From Arbitrary Detention. A Regional Toolkit For Practitioners* (2015) <http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf> accessed 12 August 2019.

⁷⁸ *Idem*.

⁷⁹ *Idem*.

trap. They remain unprotected and are periodically detained. They have no state behind (which) to turn to and, due to their non-status, they find themselves unable to obtain a residence permit.

In 2013, Mr. Kim brought the case to the CJEU claiming the violation of Article 5 of the ECHR for excessive duration, the absence of a possibility of reviewing the detention and “the obvious impossibility of enforcing the order for the his expulsion to Uzbekistan”⁸⁰.

The ECtHR asserted that the reasons of Mr. Kim’s detention, in view of his expulsion from Russia, did not remain valid for the entire period of his detention due to the lack of a realistic prospect of his expulsion and due to the authorities' failure to conduct the proceedings with due diligence⁸¹. Therefore, the Court emphasized the obligation the national authorities to “*consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be, justified*”⁸². Moreover, the ECtHR underlined that “*the length of the detention should not exceed that reasonably required for the purpose pursued*”⁸³.

Kim v Russia was a striking case because it increased the visibility of the “plight of stateless persons who are detained for immigration control purposes”⁸⁴. However, the importance of this case lies in the Court recognition that statelessness influences the point at which detention, for the purpose of expulsion, becomes arbitrary and therefore illegal.

At first, it could be said that the detention of a stateless person for expulsion is arbitrary because there is no realistic prospect of removal due to the person being stateless. In recognizing the status of stateless person, the Court noted that, due to his condition, Mr. Kim is vulnerable to further persecution due to his lack of documents. To avoid this situation, the Court suggested the Russian government to take action. The Court's concern to end the difficulties caused by Mr. Kim's status as a stateless person shows awareness and sensitivity to the situation of stateless persons in the host countries. The need for

⁸⁰ *Kim v. Russia* [2014] ECtHR, Application no. 44260/13, (ECtHR) Page 6 (36)

⁸¹ *Idem*, para 56.

⁸² *Idem*, para 53.

⁸³ *Idem*, para 49.

⁸⁴ Adrian Berry, 'Kim V Russia – The Unlawful Detention Of Stateless Persons In Immigration Proceedings I European Network On Statelessness' (*Statelessness.eu*, 2014) <<https://www.statelessness.eu/blog/kim-v-russia---unlawful-detention-stateless-persons-immigration-proceedings>> accessed 12 August 2019.

identity documents to guarantee residence, work, social assistance and avoid penal sanctions places stateless persons at a particular disadvantage⁸⁵.

2.3 European Union

The European Union is an international political and economic organization with a supranational character; this means that member states have transferred or delegated the entire national sovereignty, or part of it, to an authority by the governments of the member states. In other words, EU laws have superiority in the territory of the Member States. This is a fundamental feature that member states need to take into account.

2.3.1 EU Return Directive

Considering the EU framework, the right to liberty and security of a person is to be found in article 6 of the Charter of Fundamental Rights. It is not an absolute right and it may be restricted; however, *“given the importance of this right and the severity that detention presents, limitations on this right shall only be allowed when strictly necessary”*⁸⁶. In this regard, it is the EU Return Directive that establishes the conditions of lawfulness of detention: it *“confers an obligation to EU states to either return irregular migrants or to grant them legal status, thus avoiding a situation of “legal limbo”*⁸⁷: art. 15 of the Directive asserts that *“Member States may only keep in detention a third-country national, subject to repatriation procedures in order to prepare the return and/or carry out the removal process, in particular when there is a risk of absconding or the third-country national concerned avoids or hampers the preparation of return or the removal process”*⁸⁸.

Hence, the Directive considers detention only in serving the purpose of facilitating removal if *“no other sufficient but less coercive measures can be applied effectively in a specific*

⁸⁵ *Kim v. Russia* [2014] ECtHR, Application no. 44260/13, (ECtHR) Page 14 (74)

⁸⁶ JN cases (C-601/15 PPU) (56)

⁸⁷ European Commission, Migration and home affairs EU. Retrieved from: https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en

⁸⁸ EU Return Directive Article 15 (1)

case⁸⁹. This establishes the duty, for states, to examine every case individually and evaluate alternatives options, meaning that detention has to be necessary and used as last resort.

“The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient”⁹⁰. This signifies that detention shall “only maintained as long as removal arrangements are in progress and executed with due diligence”⁹¹. Thus, detention must end when the prospect of removal ceased to exist. In cases where the removal or return of a person is impossible due to its unfeasibility, the detention of the person shall be considered discriminatory, disproportionate and unreasonable as it would not achieve the stated purpose⁹².

The Return Directive provides a limit to the length of admissible detention that has to be for a maximum of six months⁹³, exceptionally extendable to a *“further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to: a lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries”⁹⁴*. After this period of eighteen months, detention cannot be extended neither for reasons of public order nor safety.

2.3.2 Stateless persons in detention

The scope of the EU Return Directive is to guarantee an effective procedure for repatriation of fundamental rights and human dignity⁹⁵. In theory, art. 15 tries to limit the

⁸⁹ *Idem*, Article 15

⁹⁰ *Idem*, Recital 16.

⁹¹ *Idem*, Art. 15

⁹² Guideline 30, The Equal Rights Trust, 'Guidelines On The Detention Of Stateless Persons: Consultation Draft.' (2011) 7 The Equal Right Trust Review.

⁹³ EU Return Directive Art. 15(5)

⁹⁴ *Idem*, art. 15 (6)

⁹⁵ *Idem*, Recital 2-4.

systematic and arbitrary use of detention. However, the reasons for which the EU Return Directive authorizes detention measures are not explicitly provided and their formulation leave space to different interpretations.

In the first place, the vague definition of “risk of absconding” leaves wide margin of interpretation, reason why different member states are using different criteria that are contributing in the creation of a more fragmented European framework. Art. 3(7) tries to describe the risk of absconding as *“the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a person under return procedures may abscond”*. This “objective criteria”, that the Directive describes, is not defined and it differs from country to country. For some member states “risk of absconding” consists in “the mere lack of identity documents or an instance of irregular entry and/or irregular stay”. However, as the CJEU already underlined in the *Mahdi* case, the lack of identity documents itself is not a ground to extend detention and does not constitute “risk of absconding”.

Moreover, the CJEU has tried to “clarify that administrative detention should be limited to cases in which migrants are awaiting repatriation”⁹⁶. The ruling in the *Kadzoev case*⁹⁷, tried to shed some clarity on the meaning of “reasonable prospect”: the court underlined that *“Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods”*⁹⁸.

Following this reasoning, which prevents national courts from detaining irregular migrants solely because of the question of the national identity of a third country (i.e. that detention can only occur if there is a possibility that the person is admitted to another state), stateless persons should not be detained⁹⁹.

⁹⁶ Maria Giovanna Manieri and Michele LeVoy, 'Position Paper On EU Return Directive.' [2015] PICUM <https://picum.org/Documents/Publi/2015/ReturnDirective_EN.pdf> accessed 12 August 2019. Page 5

⁹⁷ Said Shamilovich Kadzoev (Huchbarov) (Bulgaria) [2009] CJEU, C-357/09 PPU (CJEU).

⁹⁸ *Idem*, para 72(5).

⁹⁹ Detention of irregular migrants— the Return Directive shows its true colors in Mahdi (C-146/14 PPU), <https://europeanlawblog.eu/2014/09/15/detention-of-irregular-migrants-the-returns-directive-shows-its-true-colours-in-mahdi-c-14614-ppu/>

In the *Mahdi case*, it is also discussed the definition of “lack of cooperation”. Specifically, “the imposition of an obligation to cooperate on returnees might lead to arbitrary decisions, as little detail is provided for national authorities to determine the level of cooperation required of returnees”¹⁰⁰. This could have “disproportionate effects on stateless people who might not be able to provide the information required”¹⁰¹.

Therefore, the vague definitions of key elements of the EU Return Directive do not only give the Member States great discretion but put stateless persons in a more vulnerable position.

2.4 Conclusion

This chapter tried to answer the following sub-questions: “how international, regional and European law limit state sovereign power to detain migrants for administrative purposes and how does the detention system apply to stateless persons”.

As it has been pointed out earlier, the states are subjected to three different regimes; the European states are all part of both the ICCPR and the Council of Europe. The ICCPR, being an international human rights treaty, prevails over all national and regional rights and laws. This means that any law must comply with the ICCPR. As explained also by the ECtHR, Article 53 of the ECHR affirms that “*nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.*”¹⁰². This is valid also for EU laws, that always comply with international and regional standards. Hence, in order to understand how states are limited in the use of immigration detention, it is necessary to look at all three regimes.

This chapter presented the criteria under which immigration detention of a stateless person becomes arbitrary and, therefore, unlawful. In particular, we have seen that detention of stateless persons is not prohibited by any international or regional provision.

¹⁰⁰ European Parliamentary Research Service (2019) Recasting the Return Directive. available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI\(2019\)637901_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI(2019)637901_EN.pdf) Page 10

¹⁰¹ *Idem*, page 10.

¹⁰² European Convention on Human Rights. article 53

As underlined in UNHCR Guidelines No. 9, stateless persons enjoy the same criteria and standards of detention that apply to others. However, in the same guidelines, it is indicated the principle that *“asylum seekers should not be detained”*¹⁰³, as also stated by the Refugee Convention — the main instrument for the international protection of refugees. This system is not intended, however, for stateless persons. The 1954 Convention makes no mention of this. Thus, stateless persons fall into the same system as other migrants, despite the fact that the former differ from them due to the fact that they do not have a nationality and, therefore, a state that protects them. Although immigration detention within the EU poses more specific and strict features, it does not refer to the detention of stateless persons specifically.

The chapter, thus, argued that EU member states have certain obligations that needs to follow in the implementation of detention measure. The following elements have been discussed: it needs to be necessary, proportional and thus used as a last resort; it needs to have a reasonable and realistic prospect of removal, and to be in line with the purpose and human rights standards; it also has to be for the shortest period possible. However, those measures cannot be easily applied to stateless persons. According to European law, detention must have as its goal the removal and, when there is no possibility for the removal of the stateless person, the reasons for holding him/her cease to exist. Therefore, in cases in which there is no reasonable prospect of removal of an individual, the detention becomes arbitrary. In this sense, their non-status leads to greater complexity in the procedure. Removal postponed due to the extension of the period for the determination of his nationality and consequently of his/her removal, does not end with an authorization for the extension of the initial period of detention. Therefore, if the removal cannot be achieved, the detention becomes illegal, arbitrary and unnecessary. Recently the European states found themselves facing the arrival of hundreds of thousands of migrants on the Continent; the continuous flow has raised a variety of problems and the detention measures have been used arbitrarily in order to contain the wave. More and more people have found themselves inside structures, often inappropriate and in degraded conditions, for indeterminate periods, waiting to be identified. Within this context, the absence of legal instruments to address stateless persons leaves them in a legal trap.

¹⁰³ UN High Commissioner for Refugees (UNHCR), 'UNHCR Guidelines On The Applicable Criteria And Standards relating to the Detention of Asylum-Seekers' (1999), <https://www.refworld.org/docid/3c2b3f844.html> accessed 12 August 2019. Guideline 2

CHAPTER III: a void to fill: statelessness determination procedures

Immigration detention is a last measure that states can put in place to retain foreign citizens for the purpose of regulating entry and pending removal. To regulate this practice, there are European and international standards. Within the detention system, states face a particular situation when faced with a stateless person. The latter, since the individual does not have a nationality status, is not only considered illegal within the country, but does not even have a status where it can be returned. Therefore, within this chapter, we will consider the establishment of the statelessness determination procedure and how this can become relevant.

3.1 Statelessness Determination procedure

The major issue of stateless immigration detention stems from the absence of a determination procedure that can identify and define statelessness. Indeed, the 1954 Convention while establishing the international definition of a “stateless person”¹⁰⁴, does not oblige States to establish statelessness determination procedures and, thus, to identify stateless persons as such. However, it could be said that it is implicitly stated in the text: if states must “fulfill their convention obligations towards stateless persons who are in their territory, they must first be able to identify who they are”¹⁰⁵. Nevertheless, since the adoption of the Convention, only a few countries on the European continent have put them in place, such as France, Italy, Hungary, Spain. Until a stateless person is identified as such through a statelessness determination procedure, he/she will remain undocumented and without any protection under the 1954 Convention. In fact, only a recognized stateless person enjoys the rights of the Convention. However, although the recognition of stateless status offers protection and guarantees basic rights, it should not be considered an alternative legal condition; indeed, the “recognition of stateless persons does not replace the acquisition of nationality”¹⁰⁶.

¹⁰⁴ The definition of a stateless person is found in Article 1(1) of the 1954 Convention: “a stateless person means a person who is not considered as a national by any State under the operation of its law”.

¹⁰⁵ Amal De Chickera, *Unravelling Anomaly* (Equal Rights Trust 2010). Page 230

¹⁰⁶ UNHCR, ‘Expert Meeting: Statelessness Determination Procedures and the Status of Stateless Persons’ Page 2 (2)

As mentioned in Chapter two, the detention of stateless persons can lead to an endless procedure, especially if there is no clear connection with another state and, therefore, no state in which he/she can be returned to. Hence, it is reasonable to place the absence of the identification of stateless persons at the root of the problem since, without it, neither removal nor a reasonable possibility of seeing it, is possible. Therefore, the recognition of statelessness, that can be reached through an effective statelessness determination procedures, is fundamental in “enhancing respect for the human rights of stateless persons, particularly through access to a secure legal status and enjoyment of rights afforded to stateless persons under the 1954 Convention”¹⁰⁷. On the other hand, the absence of this procedure will leave the individual unidentified, without a clear status and in detention for unlimited time. “Statelessness determination procedures are, therefore, an important mechanism to reduce the risk of prolonged and/or arbitrary detention”¹⁰⁸. The 1954 Convention, even though it does not explicitly place an obligation on state parties to introduce identification mechanisms¹⁰⁹, it indirectly introduces the issue by emphasizing the duty of states to identify stateless persons within the territory and offer them appropriate treatment¹¹⁰. Through the procedure, persons with an undetermined status can demonstrate a connection with the nationality of a state, which will then facilitate the identification and appropriate treatment of such persons¹¹¹. When a person with no effective nationality or any nationality is held in detention pending removal, the period for determining his/her nationality status may be extended as no legal proof can be provided. Successively, this person's detention will be extended and the removal will be delayed. During negotiations between states' authorities, if no state recognizes a stateless person as national, then the removal cannot be achieved and detention results to be arbitrary and unnecessary. In this case, the individual will be released without the problem of his/her status as an indeterminate national being resolved. As long as neither the determination of the status of the stateless person nor the understanding of the unattainable prospect of

¹⁰⁷ UNHCR, GUIDELINES ON STATELESSNESS NO. 2/ Procedures For Determining Whether An Individual Is A Stateless Person' (2012) <<https://www.refworld.org/pdfid/4f7dafb52.pdf>> accessed 13 August 2019 Page 2

¹⁰⁸ *Idem*, Page 13

¹⁰⁹ UNHCR, 'Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.' (2014). Page 6

¹¹⁰ *Idem*, page 6

¹¹¹ UNCHR, 'Statelessness Determination Procedures Identifying And Protecting Stateless Persons' (2014) <<https://www.refworld.org/pdfid/5412a7be4.pdf>> accessed 13 August 2019. Page 3

his/her removal occurs before the imposition of detention measures, the question of illegality and arbitrariness will continue to arise. This will turn into unreasonably prolonged detention, in inappropriate conditions, as no special detention centers for stateless persons have been registered. This chain of events leaves stateless persons trapped in a limbo without any prospectives. However, providing stateless persons with a status of “pending removal”¹¹² in accordance with international standards and, at the same time, implementing the goal of removal, is not simple. Detention authorities may face difficulties in identifying the state with which to undertake negotiations for the deportation of stateless persons. Without a clear state capable of providing concrete proof of connection with a country, the procedure becomes complicated. This does not mean, however, that they should be allowed to extend the detention period. When there is no possibility of removal of a stateless person, the reason for his/her detention is useless. Therefore, in the absence of its main objective, the detention measure is considered arbitrary.

3.2 The rights granted to recognized stateless persons

A recognized stateless person should be able to enjoy the rights under the 1954 Convention¹¹³. Identifying stateless persons as such, and thus ensuring that they enjoy some basic rights, allows them to participate and contribute fully to the society in which they live¹¹⁴. Therefore, it is essential that each state establishes procedures through which it is possible to identify stateless persons. “Establishing whether a person is stateless can be complex and challenging but it is in the interests of both States and stateless persons that determination procedures be as simple, fair and efficient as possible”¹¹⁵. Once stateless, the States should provide, according to the standards established by the 1954 Convention, a legal status of immigration, which “contributes significantly to the full

¹¹² Amal de Chickera and Katherine Perks, 'The Silent Stateless And The Unhearing World: Can Equality Compel Us To Listen?' (2009) 3 The Equal Rights Review, <<https://www.equalrightstrust.org/ertdocumentbank/perks%20and%20chickera.pdf>> accessed 12 August 2019.

¹¹³ UNHCR, 'Establishing statelessness determination procedures to protect stateless persons' Page 8

¹¹⁴ UNHCR, 'Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.' (2014). Page 7

¹¹⁵ UNHCR, GUIDELINES ON STATELESSNESS NO. 2/ Procedures For Determining Whether An Individual Is A Stateless Person' (2012) <<https://www.refworld.org/pdfid/4f7dafb52.pdf>> accessed 13 August 2019 page 4 (12)

enjoyment of human rights”¹¹⁶. States can also decide to provide stateless persons with a right of residence. Although not required under the 1954 Convention, current practice demonstrates that all States with statelessness determination procedure grant the right of residence to recognized stateless persons¹¹⁷; accompanied to that, there should be the right to work, to have access to health care and social assistance, to have identity papers and a travel document. These shall provide stateless persons the right to live with dignity and in security.

3.3 Conclusion

This chapter has attempted to respond to sub-questions two and three. In particular, it focused on trying to understand the basis of the problem in the prolonged and arbitrary detention of stateless persons, as well as the need to provide a statelessness determination procedure in every state. In particular, it has been shown that identification procedures play a very important role: as long as stateless persons are not recognized as such, they do not enjoy the rights and protection under the 1954 Convention. Consequentially, most of them are found in immigration detention for prolonged time due to their illegal condition within the territory. It has been seen that stateless persons, in most cases, were detained for unlimited time and then released without seeing a change in their condition. Prolonged detention of stateless persons due to their inability to be removed and to the conditions in which they are detained may amount to inhuman behavior towards human beings. An effective procedures for the determination of statelessness put in place by States could have a significant impact on them: as a matter of fact, “identifying and documenting a stateless person allows the person’s stay in the country to be regularized”¹¹⁸. Moreover, it “reduces the risk that stateless persons will be arbitrarily detained or spend prolonged periods in detention”¹¹⁹. An effective procedure of determination “often allows States to confirm that some are nationals of a State and to

¹¹⁶ UNHCR, Expert Meeting: Statelessness Determination Procedures and the Status of Stateless Persons page 6 (25)

¹¹⁷ UNHCR, ‘Establishing statelessness determination procedures to protect stateless persons’ Page 8

¹¹⁸ UNCHR, ‘Statelessness Determination Procedures Identifying And Protecting Stateless Persons’ (2014) <<https://www.refworld.org/pdfid/5412a7be4.pdf>> accessed 13 August 2019. Page 3

¹¹⁹ *Idem*, page 3.

facilitate their acquisition of identity and travel documents”¹²⁰. This procedure could, therefore, have important effects on the life of stateless persons; although it remains used by few states within the EU, it remains a procedure that must be taken into consideration.

¹²⁰ *Idem*, page 3.

Conclusion

The present dissertation aimed at answering the following question: “to what extent is considered legitimate the detention of stateless persons under international and European law?” In order to answer this research question, the previous chapters guided the path of the research by providing answers to the sub-questions. In this sense, the results of this dissertation will be now summarized by highlighting the main findings addressed in each chapter.

The research is developed around two main concepts, i.e. immigration detention and statelessness, both introduced in the introduction. Immigration detention is used by states to regulate the flow of migration, specifically to monitor illegal entry and stay. On the other side, a stateless person is someone “who is not considered a national by any State under the operation of its law”¹²¹. This makes them particularly vulnerable, especially in the context of detention.

The second chapter sought to understand how the immigration detention system works by analyzing the three legal regimes that influence European states. It has been examined the effects that immigration detention has on statelessness, how the non-existence of norms is approached by States and whether this leaves room for discrimination or challenged detention. In order to do this, we have seen that immigration detention is not prohibited in the current legal frameworks, but simply regulated. Its use can be justified when certain parameters are respected: such as non-arbitrariness, proportionality, reasonableness, necessity, non-discrimination and last resort. Its length must be as short as possible — in any case within the six months provided for by the EU Return Directive — and must include review mechanisms. Furthermore, it must be authorized by national law and used only when all alternatives have been exhausted. In particular, it has been asserted the importance of having a realistic prospect of removal: indeed, the immigration detention framework underlines the necessity to have a concrete possibility to aim the established purpose, otherwise, detention ceases to be legitimate. In this regard, it has been shown that there is no special legal regime for the detention measures that is imposed on stateless persons. In this sense, stateless persons, while not having a nationality, being more vulnerable and, thus, more exposed to any type of

¹²¹ 1954 Convention Relating to the Status of Stateless Persons. Article 1(1)

violation, do not enjoy special rules, as is the case for asylum seekers. Therefore, stateless persons, despite the problems caused by statelessness, also face the imminent threat of detention. As a matter of fact, states confine them in order to send them back to their state of origin. However, since stateless persons are not recognized by any state by definition, this perspective of removal is unachievable also because, if it existed, it would put an end to the problem of statelessness. In this sense, the infallibility of the implementation of a stateless removal procedure should be clear in the early stages in which the respondent State does not recognize the individual as a citizen. The fact that there is no effective determination procedure has a negative impact on the life of stateless persons: without being identified as such and without legal documents, they remain in a state of detention indefinitely. Stateless people are neither legal nor illegal. Without a legal status, they remain invisible. They simply do not exist. Therefore, stateless persons find themselves experiencing a different situation than other immigrants and the gap that has been created in their protection, makes them more exposed to violations of human rights, as well as to discriminatory and disproportionate treatments. Moreover, detention has irreparable effects on people's lives: being detained in inhuman conditions can affect the mental well-being of an individual.

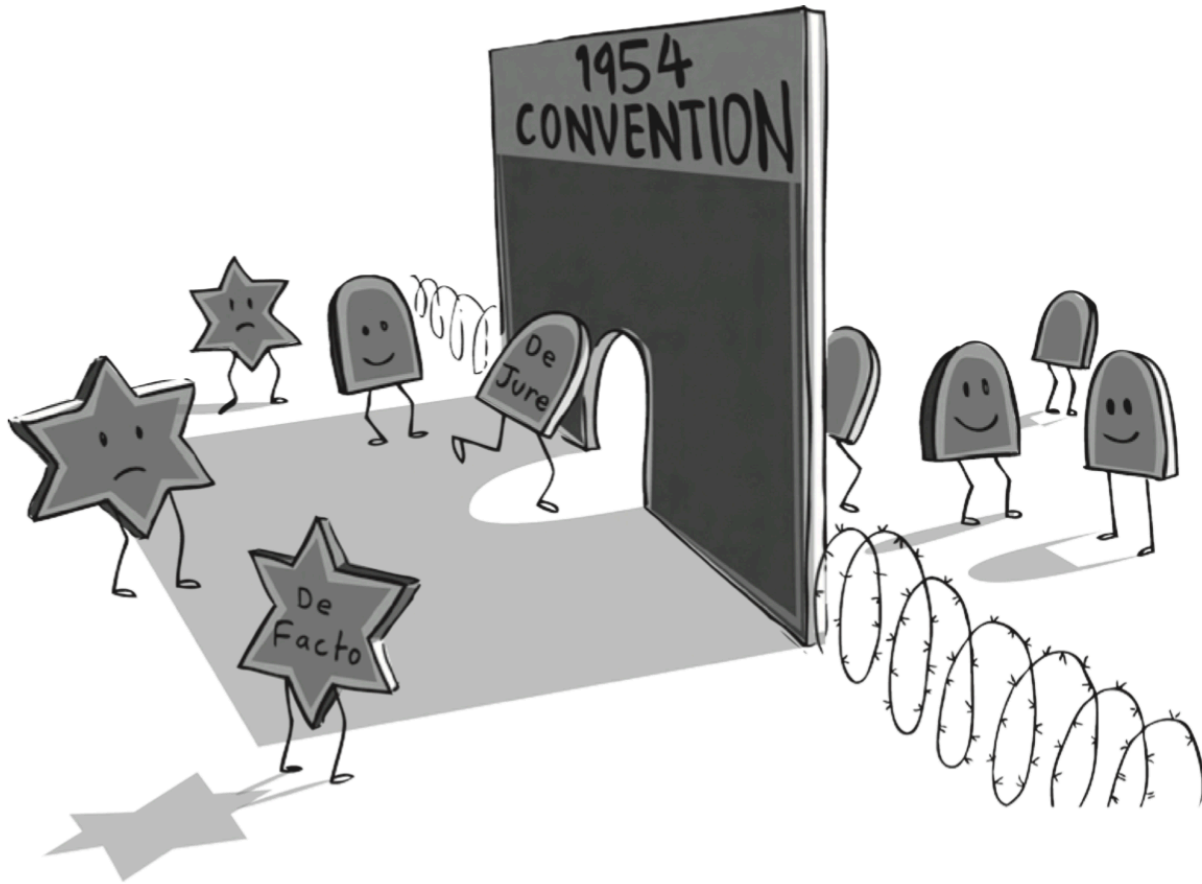
Thus, after it was shown that the current legal frameworks that do not provide adequate protection to stateless persons in immigration detention, the third chapter tried to focus deeply on the stateless determination procedure. It has been shown that stateless persons are more vulnerable to remain in custody for indefinite periods of time. This stems from the fact that stateless persons do not have identity documents that prove their nationality, allowing them to be identified. In this sense, the introduction of determination procedure of stateless persons could help to move in this direction. In the case in which states were obliged to introduce identification procedures for stateless persons, they could see, or at least nurture the hope of seeing their condition change: first of all, they would receive identity and travel documents that would allow them to live in a dignified and legal manner within the country; immigration detention would occur for a short period within which their condition would be verified and regularized. Indeed, it is important to understand that detention does not serve any purpose: it neither reduce nor eliminate statelessness. Until the problem is addressed and a solution imposed to all European states, the situation of stateless persons will not be improved.

In summary, states use immigration detention as a regulative measure in order to monitor who enters within the country. The immigration detention regime, as it is set today, applies in the same manner to stateless persons and its established aim is their removal. However, as we have seen, stateless persons are not recognized by any state and, therefore, do not have a state in which they can be deported to. This condition of theirs, which is visible from the start, makes them remain in detention for an indefinite time. Despite the obvious condition in which they find themselves, without the possibility of being released and receiving legal document, stateless persons live in detention without having any hope of leaving and without seeing their condition resolved. This legal trap in which they have fallen, comes back to the moment when, after having exceeded eighteen months of detention, they must be released without having seen their condition change: they still remain undocumented and with uncertain status. “The failure of immigration regimes to comprehend and accommodate the phenomenon of statelessness, identify stateless persons and ensure that they do not directly or indirectly discriminate against them is resulting in people being punished for their statelessness”¹²².

¹²² European Network on Statelessness, *“Protecting Persons From Arbitrary Detention. An Agenda For Change”* (2017) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf> accessed 12 August 2019. Page 18

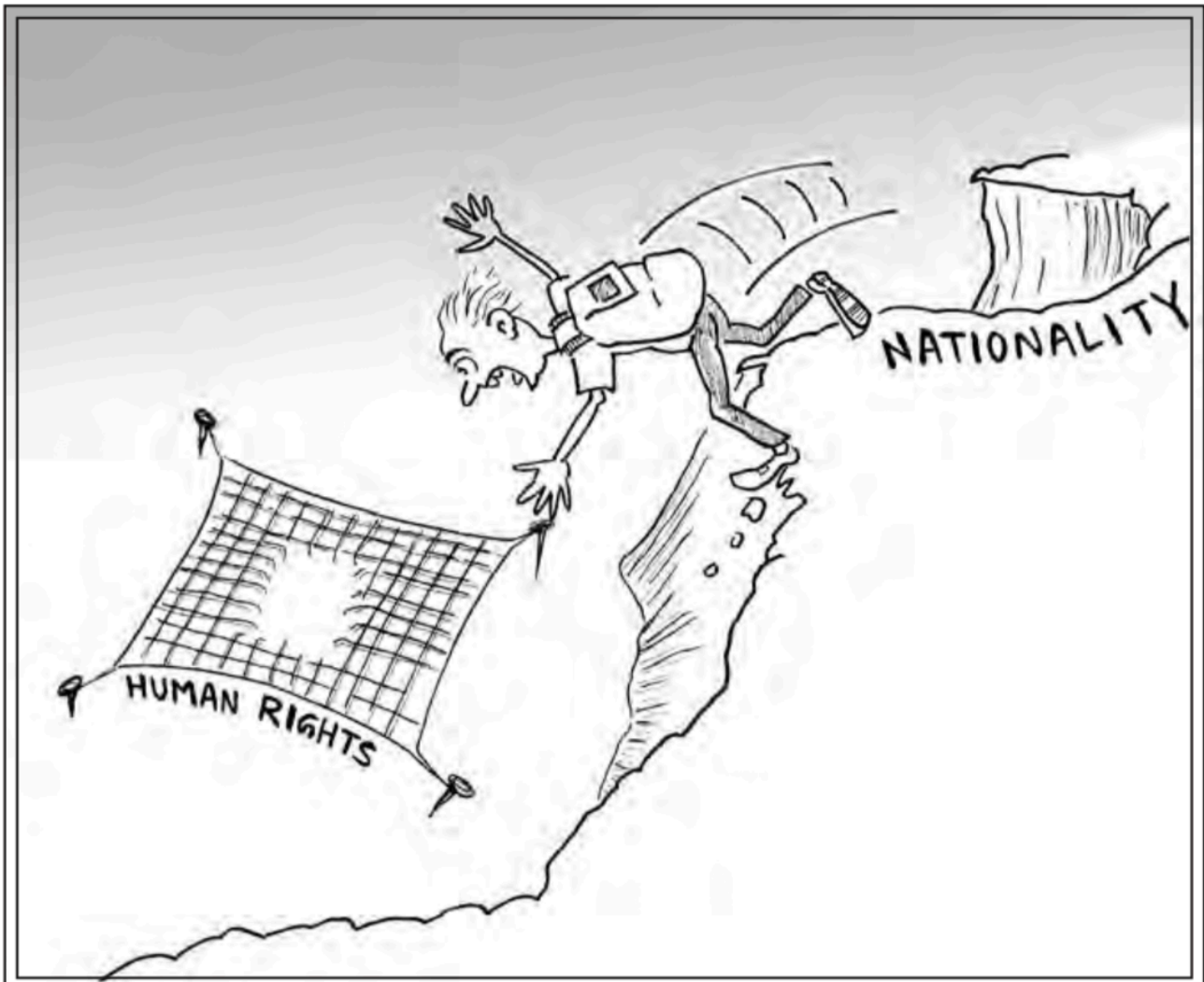
Appendix

Appendix 1: Illustration by Gihan De Chickera, first published in Unravelling anomaly: Detention, discrimination and the protection needs of stateless persons. The Equal Rights Trust. London, July 2010. P.52



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Appendix 2: Illustration by Gihan De Chickera, first published in Unravelling anomaly: Detention, discrimination and the protection needs of stateless persons. The Equal Rights Trust. London, July 2010. P.19



Bibliography

- Benhabib S, *The Rights Of Others* (Cambridge Univ Press 2000)
- Berry A, 'Kim V Russia – The Unlawful Detention Of Stateless Persons In Immigration Proceedings I European Network On Statelessness' (*Statelessness.eu*, 2014) <<https://www.statelessness.eu/blog/kim-v-russia---unlawful-detention-stateless-persons-immigration-proceedings>> accessed 12 August 2019
- Bloom T, 'Immigration Detention And Stateless Persons. Policy Report No. 02/03.' [2013] United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM) <<http://collections.unu.edu/eserv/UNU:1971/pdf41-unu-gcm-03-02.pdf>> accessed 12 August 2019
- Cline D, 'Deprivation Of Liberty: Has The European Court Of Human Rights Recognized A 'Public Safety' Exception?' (2013) 29 Utrecht Journal of International and European Law
- Conklin W, *Statelessness: The Enigma Of An International Community* (Studies In International Law) (Bloomsbury Publishing 2014)
- De Chickera A, *Unravelling Anomaly* (Equal Rights Trust 2010)
- De Chickera A, Perks K, 'The Silent Stateless And The Unhearing World: Can Equality Compel Us To Listen?' (2009) 3 The Equal Rights Review, <<https://www.equalrightstrust.org/ertdocumentbank/perks%20and%20chickera.pdf>> accessed 12 August 2019
- European committee for the prevention of torture and inhuman or degrading treatment or punishment, 'CPT/Inf (2017)3 Factsheet' (Council of Europe, March 2017) available at: <<https://rm.coe.int/16806fbf12>>
- European Court on Human Rights, 'Guide On Article 5 Of The European Convention On Human Rights' (2019) <https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf> accessed 13 August 2019

- European Network on Statelessness, *Protecting Persons From Arbitrary Detention. A Regional Toolkit For Practitioners* (2015) <http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf> accessed 12 August 2019
- European Network on Statelessness, *“Protecting Persons From Arbitrary Detention. An Agenda For Change”* (2017) <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf> accessed 12 August 2019
- European Parliamentary Research Service (2019), ‘Recasting the Return Directive’. available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI\(2019\)637901_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637901/EPRS_BRI(2019)637901_EN.pdf)
- Flynn M, 'Immigration Detention And Proportionality' [2011] SSRN Electronic Journal
- 'Guidelines To Protect Stateless Persons From Arbitrary Detention: Introduction' (2012) 14 European Journal of Migration and Law
- Gyulai G, 'Statelessness In Hungary: The Protection Of Stateless Persons And The Prevention And Reduction Of Statelessness.' (*Helsinki.hu*, 2010) <http://helsinki.hu/wp-content/uploads/Statelessness_in_Hungary_2010.pdf> accessed 12 August 2019
- Human Rights Council, ‘Report of the Working Group on Arbitrary Detention: Promotion and Protection of all Human Rights, Civil, Political, Economical, Social and Cultural Rights, Including the Right to Development’, available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_AEV.pdf
- Kesby A, *The Right To Have Rights* (Oxford University Press 2012)
- 'ICRC Policy Paper On Immigration Detention' (2017) 99 International Review of the Red Cross
- IOM, 'IMMIGRATION DETENTION AND ALTERNATIVES TO DETENTION' <https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Immigration-Detention.pdf>
- Manieri M LeVoy, 'Position Paper On EU Return Directive.' [2015] PICUM <https://picum.org/Documents/Publi/2015/ReturnDirective_EN.pdf> accessed 12 August 2019

- Molnár T, 'Stateless Persons Under International Law And EU Law: A Comparative Analysis Concerning Their Legal Status, With Particular Attention To The Added Value Of The EU Legal Order' (2010) 51 Acta Juridica Hungarica
- Odysseus - Academic Network for Legal Studies on Immigration, *Alternatives to Immigration and Asylum Detention in the EU - Time for Implementation*, January 2015, available at: <https://www.refworld.org/docid/54f481094.html> accessed 12 August 2019
- 'Organizations And Alliances - Global Detention Project | Mapping Immigration Detention Around The World' (*Global Detention Project | Mapping immigration detention around the world*, 2019) <<https://www.globaldetentionproject.org/organisations-alliances/european-union-eu>> accessed 12 August 2019
- Perks KJ Clifford, 'The Legal Limbo Of Detention' (2016) <<https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/statelessness/perks-clifford.pdf>> accessed 12 August 2019
- RYAN B, 'Acquisition And Loss Of Nationality: Policies And Trends In 15 European Countries (Two Volumes) - Edited By R. Bauböck, E. Ersbøll, K. Groenendijk And H. Waldrauch' (2008) 46 JCMS: Journal of Common Market Studies
- The Equal Rights Trust, 'Guidelines On The Detention Of Stateless Persons: Consultation Draft.' (2011) 7 The Equal Right Trust Review
- UNHCR, 'Handbook On Protection Of Stateless Persons. Under The 1954 Convention Relating To The Status Of Stateless Persons.' (2014)
- United Nations, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3e2becbb4.html> accessed 12 August 2019
- UNHCR, 'Statelessness Around The World' <<https://www.unhcr.org/statelessness-around-the-world.html>> accessed 12 August 2019

- UN High Commissioner for Refugees (UNHCR), 'Back To Basics: The Right To Liberty And Security Of Person And 'Alternatives To Detention' Of Refugees, Asylum-Seekers, Stateless Persons And Other Migrants' (2011) <<https://www.refworld.org/docid/4dc935fd2.html>> accessed 13 August 2019
- UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers', 1999, available at: <https://www.refworld.org/docid/3c2b3f844.html> accessed 12 August 2019
- UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: <https://www.refworld.org/docid/503489533b8.html> accessed 12 August 2019
- UN High Commissioner for Refugees (UNHCR), 'GUIDELINES ON STATELESSNESS NO. 2/ Procedures For Determining Whether An Individual Is A Stateless Person', 2012, available at: <<https://www.refworld.org/pdfid/4f7dafb52.pdf>> accessed 13 August 2019
- UN High Commissioner for Refugees (UNHCR), 'Legal and Protection Policy Research Series: UNHCR and De Facto Statelessness', April 2010, available at: <https://www.refworld.org/pdfid/4cad88292.pdf> accessed 12 August 2019
- UN High Commissioner for Refugees (UNHCR), 'Protecting the Rights of the Stateless Persons. The 1954 Convention relating to the Status of Stateless Persons', available at: <https://www.refworld.org/pdfid/4cad88292.pdf>, accessed 12 August 2019
- UN High Commissioner for Refugees (UNHCR), 'Statelessness Determination Procedures and the Status of Stateless Persons' ("Geneva Conclusions"), 2010, available at: <https://www.refworld.org/docid/4d9022762.html> accessed 12 August 2019
- UN High Commissioner for Refugees (UNHCR), 'Statelessness Determination Procedures Identifying And Protecting Stateless Persons', 2014, available at: <<https://www.refworld.org/pdfid/5412a7be4.pdf>> accessed 13 August 2019

- UN Human Rights Committee (HRC), 'General comment no. 35, Article 9 (Liberty and security of person)', 16 December 2014, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/553e0f984.html>
- UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, May 2000, No. 26, available at: <https://www.refworld.org/docid/479477440.html> accessed 12 August 2019
- Van Waas L, *Nationality Matters: Statelessness Under International Law* (Intersentia 2008)
- Wilsher, D, *The liberty of Foreigners: A History, Law and Politics of Immigration Detention* (Wolf Legal Publishers 2008).

Case law

- A. v. Australia, CCPR/C/59/D/560/1993, 3 April 1997, UN Human Rights Committee (HRC).
- Auad v. Bulgaria, No. 46390/10, 11 January 2012, European Court of Human Rights (ECtHR).
- Brogan & Ors v The United Kingdom, No. 11209/84, 11234/84, 11266/84, 11386/85, 29 November 1988, European Court of Human Rights (ECtHR).
- C v. Australia CCPR/C/76/D/900/1999, 13 November 2002, UN Human Rights Committee (HRC).
- Gallardo Sanchez v. Italy, No. 11620/07, 24 March 2015, European Court of Human Rights (ECtHR).
- Kim v Russia, No. 44260/13, 17 July 2014, European Court of Human Rights (ECtHR).
- Mikolenko v. Estonia, No. 10664/05, 8 September 2009, European Court of Human Rights (ECtHR).

- Saadi v. United Kingdom, [GC],No. 13229/03, 29 January 2008, European Court of Human Rights (ECtHR).
- Said Shamilovich Kadzoev (Huchbarov) (Bulgaria). CJEU, C-357/09 PPU, Judgment [GC] of 30 November 2009.
- Vasilieva v. Denmark, No.52792/99, 25 December 2003, European Court of Human Rights (ECtHR).

Conventions

- The 1954 Convention Relating to Status of Stateless people. Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954.
- The 1961 Convention on Reduction of Statelessness. Adopted on 30 August 1961 by a Conference of Plenipotentiaries which met in 1959 and reconvened in 1961 in pursuance of General Assembly resolution 896 (IX) of 4 December 1954.
- Charter of Fundamental Rights of the European Union. Drafted in 2007 and entered into force in 2009;
- European Convention on Human Rights. Opened for signature in 1950, entered into force 3 September 1953.
- The UN Declaration on Human Rights. Proclaimed and adopted by the United Nations General Assembly in 1948.
- The International Covenant on Civil and Political Rights (ICCPR). Adopted by the General Assembly of the United Nations on 19 December 1966.
- The EU Return Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.