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DOI

[10.2139/ssrn.2434573](https://doi.org/10.2139/ssrn.2434573)

Publication date

2014

Document Version

Submitted manuscript

[Link to publication](#)

Citation for published version (APA):

Swider, K. (2014). *Statelessness determination in the Netherlands*. (Amsterdam Law School legal studies research paper; No. 2014-33). Amsterdam Centre for European Law and Governance, University of Amsterdam. <https://doi.org/10.2139/ssrn.2434573>

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UNIVERSITY OF AMSTERDAM

STATELESSNESS DETERMINATION IN THE NETHERLANDS

Katja Swider

Amsterdam Law School Legal Studies Research Paper No. 2014 - 33

Amsterdam Centre for European Law and Governance Research Paper No. 2014 - 04

Statelessness Determination in the Netherlands

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**Amsterdam Centre for European Law and Governance
Working Paper Series 2014 - 04**

Available for download at www.acelg.uva.nl/publications
or at the author's SSRN page

Katja Swider is a PhD Researcher at the Law Faculty of the University of Amsterdam. Her thesis 'Identification of statelessness in Europe' is expected to be completed in 2016. The research project is funded by the Netherlands Organisation for Scientific Research (NWO) under its Mosaic-scheme.

May 2014

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Abstract

The Netherlands lacks an adequate mechanism for the identification of stateless persons, and is therefore not complying with its international obligations in the field of statelessness. Contrary to the position of the Dutch government, the existing procedures that stateless persons can appeal to are not in conformity with the relevant international standards. This paper contains a detailed analysis of the two procedures which have been invoked by the Dutch government in defence of the current statelessness protection and identification regime in the Netherlands, namely the registration of individuals in population registers, and the procedure for obtaining the so-called 'no-fault' residence permit. It illustrates that neither of the two are effective alternatives for statelessness determination. In addition, recent legislative changes that might affect the registration of statelessness in the Netherlands are discussed, and a proposal put forward by the UNHCR for a determination procedure in courts is evaluated.

Introduction

The Netherlands has been a party to the two UN statelessness conventions for decades already, thereby having committed itself to reduce and prevent statelessness, as well as to protect stateless persons.¹ This paper argues that the Netherlands is not living up to these commitments. One of the underlying reasons for this failure is that the Netherlands does not have an adequate mechanism for identifying stateless persons on its territory. The two procedures that have been repeatedly invoked by the Dutch government in defence of the current statelessness protection regime are proven to be insufficient in light of the international obligations of the Netherlands.

The importance of statelessness determination procedures have been increasingly recognised on the international level.² Stateless persons cannot receive protection in accordance with international standards without being identified as stateless. The reduction and prevention of statelessness also depends on the identification of stateless persons or persons at risk of becoming stateless.

Dutch national legal instruments secure a number of rights for stateless persons that aim at their protection, as well as at the reduction of statelessness.³ However, these rights remain inaccessible for most of their addressees. The available procedures that

¹ For more on international law on statelessness, and the two UN Conventions, see Part I, section 1, below.

² UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 2006.

³ See more in Part II below.

stateless persons can appeal to in the Netherlands are insufficient to enable them to establish their statelessness in the eyes of state authorities.

The paper focuses specifically on the identification of stateless persons in the Netherlands, and does not address the rights which a person can access once his or her statelessness is no longer disputed. That does not mean that the rights of recognised stateless persons in the Netherlands are flawless in light of international standards on the protection of stateless persons, and the prevention and reduction of statelessness.⁴ It is, however, the subject of a different discussion, which becomes particularly relevant once the identification of stateless persons is fully functional. Without statelessness determination procedures statelessness remains an invisible problem which cannot be comprehensively addressed.

The paper consists of two parts. The first shorter part discusses statelessness from the point of view of international law, and the role of determination procedures in addressing the problem of statelessness. It introduces the UNHCR Guidelines on Statelessness of 2012, which later serve as a reference point for the discussion on the Netherlands. The second and main part analyses the two procedures which have been invoked by the Dutch government in defence of the current statelessness protection and identification regime in the Netherlands, and illustrates their inadequacies. It also addresses the recent legislative changes that influence the dynamics of identification of stateless persons in the Netherlands, and evaluates a proposal for a judicial statelessness determination procedure.

Part I. Statelessness and its determination: international perspective

1. Statelessness

The UN defines a stateless person as a person 'who is not considered as a national by any State under the operation of its law'.⁵ It is a negatively formulated definition, where statelessness is described in terms of absence of the legal status of nationality. In this definition statelessness is not a clearly shaped legal status, but rather as the lack of a status. Statelessness is indeed not just a type of nationality status; it is largely ignored by national bureaucracies, and rarely gets recognised or registered as a status in its own right.⁶ There are therefore no reliable statistics on the scope of the problem of statelessness worldwide. UNHCR has an official figure of 3.5 million

⁴ See, for example, UNHCR 'Mapping Statelessness in the Netherlands' (Nov. 2011), in particular recommendation on p. 3, para 15(vi); ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, recommendations 2, 4 and 5 on pp. 91-92; 2014; G-R. de Groot 'Het optierecht van in Nederland geboren staatloze kinderen op het Nederlanderschap', 2006, Issue 9, pp. 312-318; O. W. Vonk et al, 'Protection Against Statelessness: Trends and Regulations in Europe', (EUDO Citizenship Observatory, May 2013), pp. 41-42.

⁵ 1954 UN Convention on the Status of Stateless Persons, art. 1.

⁶ R. Mandal 'Procedures for Determining Whether a Person is Stateless' (UNHCR Discussion Paper, Nov. 2010, unpublished), pp. 6-7.

stateless people living in 64 states, but estimates that the worldwide number is over 10 million.⁷ Other organisations quote higher estimates.⁸ In the absence of procedures to properly identify stateless persons in most parts of the world this figure remains just a rough estimation.

The causes of statelessness are varied. On the technical level it is always the result of a loss or a non-acquisition of nationality, but the root causes of statelessness can be traced to a variety of factors and circumstances. These may include structural discrimination of a minority group,⁹ inequality between men and women in their rights to acquire a nationality and pass it on to their children¹⁰ and deficient birth registration mechanisms.¹¹ Statelessness often occurs in the context of state succession, when some of the nationals of the predecessor state fail to acquire a nationality of any of the successor states.¹² Sometimes statelessness is caused by an unfortunate combination of nationality laws from different states that apply to the same person, often in the context of migration and international families.¹³ This is not an exhaustive list of causes of statelessness,¹⁴ and an individual case of statelessness can be caused by different factors.

A stateless person is often faced with a number of legal and practical problems, which may include the inability to prove his or her identity,¹⁵ to travel, to register marriage,¹⁶ to access healthcare, employment, housing and so on.¹⁷ The need to prevent statelessness and to protect stateless persons has been widely recognised.

⁷ See UNHCR website, 'Stateless People Figures', at <www.unhcr.org/pages/49c3646c26.html>, [accessed on the 15th of April]. For earlier estimates see magazine 'Refugees', special issue on statelessness, 'The strange, hidden world of the stateless', No. 147, Issue 3, 2007, in Editor's introduction 'New Twist to a sad Tale', available here: <www.unhcr.org/46d2e8dc2.pdf>, [accessed on the 16th of March].

⁸ See Open Society Foundations, 'Statelessness', available here: <www.opensocietyfoundations.org/projects/statelessness>, [accessed on the 15th of April 2014].

⁹ For examples, see C. Lewa 'North Arakan: an open prison for the Rohingya in Burma', 2009, pp. 11-13, and A. H. Adam 'Kenyan Nubians: standing up to statelessness' 2009, pp. 19-20.

¹⁰ See C. L. Bredbenner 'A Nationality of Her Own: Women, Marriage, and the Law of Citizenship', (University of California Press 1998).

¹¹ For examples, see S. Heap, C. Cody 'The Universal Birth Registration campaign', 2009, pp. 20-22; M. Lynch and M. Teff 'Childhood statelessness', pp. 31-33.

¹² K. Southwick 'Ethiopia-Eritrea: statelessness and state succession', 2009, pp. 15-18; J. van Selm 'Stateless Roma in Macedonia', 2009, pp. 46-48. See also ACVZ 'Geen land te bekennen.' ('No country of one's own.') Dec. 2013, pp. 27-28.

¹³ O. W. Vonk, et al 'Protection Against Statelessness: Trends and Regulations in Europe', (EUDO Citizenship Observatory, May 2013), pp. 10-11; ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, pp. 25-26.

¹⁴ See also H. Alexander, J. Simon 'Sinking into Statelessness' *Tilburg Law Review* 19 (2014), pp. 20-25.

¹⁵ A. H. Adam 'Kenyan Nubians: standing up to statelessness', 2009, pp. 11-13, pp. 19-20.

¹⁶ Z. Albarazi 'No Legal Bond, No Family Life', 2014, pp. 11-19.

¹⁷ See also O. W. Vonk, et al 'Protection Against Statelessness: Trends and Regulations in Europe', (EUDO Citizenship Observatory, May 2013) , pp. 11-13.

Two UN Statelessness Conventions are at the core of the international statelessness regime. The 1954 UN Convention Relating to the Status of Stateless Persons guarantees various political, social and economic rights for stateless persons, often through a requirement to treat stateless persons not less favourably than foreign nationals in similar circumstances, or even as favourably as nationals, depending on the type of the right in question. The 1961 UN Convention on the Reduction of Statelessness mainly focuses on the rights of those who are at risk of becoming stateless, with the aim of preventing statelessness from occurring. Many other international and regional agreements, as well as national laws, guarantee various rights specifically to persons who are stateless or at risk of becoming stateless.¹⁸

2. *Statelessness determination procedures and UNHCR Guidelines*

Establishing whether a person or a group of people does not have nationality bonds with any state in the world is not a trivial task. A number of recent studies show that very few states have adequate mechanisms for the identification of stateless persons.¹⁹ That is while the two major UN statelessness conventions have been in force for over half a century.²⁰

The lack or the deficiencies of determination mechanisms are the root cause of the failure to protect stateless persons.²¹ Identification of stateless persons was therefore one of the major issues addressed in the UNHCR's set of Guidelines on Statelessness issued in 2012 (hereafter, the Guidelines).²² This section briefly summarises the major challenges states may face when establishing statelessness of an individual, with references to the relevant standards set by the Guidelines.

A preliminary question to address is whether an international obligation to establish statelessness determination procedures exists at all. The two UN Statelessness Conventions do not explicitly place such an obligation on their state parties. The

¹⁸ See Council of Europe European Convention on Nationality of 1997, art. 6 (1b, 2b, 4g); American Convention on Human Rights of 1969, Art. 20(2). See for more information on national and international legal provisions tackling statelessness on the UNHCR resource website on statelessness Refworld: <www.refworld.org/statelessness.html>, [accessed on the 1st of March 2014].

¹⁹ R. Mandal 'Procedures for Determining Whether a Person is Stateless' (UNHCR Discussion Paper, Nov. 2010, unpublished). See also UNHCR Guidelines on Statelessness No. 2, para 4.

²⁰ The 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness.

²¹ See UNHCR Mapping Projects: 'Mapping Statelessness in the United Kingdom' of November 2011, summarized in recommendations nos. 1, 2, 4, 7, 8, 10, 13 and 14 on pp. 150-151; UNHCR 'Mapping Statelessness in the Netherlands' November 2011, summarized in paras. 141-144 on pp. 56-58; 'Mapping Statelessness in Belgium' of October 2012, pp. 47-90. See also C. A. Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', *International Journal of Refugee Law*, Vol. 10, Issue 1-2 (January 1, 1998).

²² UNHCR Guidelines on Statelessness 2012: Guidelines Nos. 1, 2, 3 and 4, available here: <www.refworld.org/statelessness.html>, under 'Statelessness Policy and Doctrine', accessed on the 7th of Mar. 2014. The Guidelines are not a legally binding document in itself, but they are an official interpretation of the obligations that the state parties to the two UN Statelessness Conventions have committed.

Guidelines maintain, however, that this obligation is implied in the Conventions.²³ A parallel can be drawn with the UN Refugee Convention,²⁴ which also does not contain an explicit obligation to establish a refugee determination procedure, but with regard to which the implicit obligation to do so has been widely recognised.²⁵ The reasoning in both cases is that it is impossible to comply with the Conventions if the beneficiaries of the rights guaranteed in them are not identified.

Since the obligation to establish statelessness determination procedures is only implicit, the Guidelines acknowledge that '[s]tates have broad discretion in [their] design and operation'.²⁶ One qualifying standard is established, and that is that 'the determination of statelessness must be a specific objective of the mechanism in question',²⁷ otherwise the procedure is not a statelessness determination procedure. In addition to this, the Guidelines set procedural and substantive standards for the determination of statelessness that are necessary for the effective implementation of the Conventions.

The most obvious problem with the determination of the negatively defined status of statelessness is that it is near to impossible to prove with absolute certainty that someone is not a national of any state in the world. The limited resources, if any, that states are willing to allocate for dealing with stateless persons are not sufficient to undertake research about a potential nationality bond of a given individual with each and every state in the world. The Guidelines solve this problem by suggesting to limit the scope of states investigated to those with which the individual has a relevant link, such as by birth, decent, marriage or habitual residence.²⁸ This amounts to lowering the level of certainty with which statelessness is established, but it is a necessary sacrifice for statelessness definition to become implementable in practice.

Another challenge relates to evidentiary requirements. Statelessness is often poorly documented. There is by definition no state authority which bears an international responsibility for the individual based on the link of nationality, and therefore no state which would be obliged to supply the individual with identity or travel documents, and any other relevant evidence. That is not to say that in all cases of statelessness determination there would be no state willing and able to provide documentary evidence of the individuals identity, family links or residence history.

²³ See UNHCR Guidelines on Statelessness No. 2, para 1. See also I. Sturkenboom 'De identificatie van staatloosheid is een plicht' (Identification of stateless persons is an obligation), 2013, pp. 261-265.

²⁴ 1951 UN Convention Relating to the Status of Refugees.

²⁵ See, for example, UNHCR Handbook on Procedures and Criteria for Determining Refugee Status of 1979, as re-edited in January 1992, in particular para. 189. See also H. Battjes '*European Asylum Law and International Law*', (Martinus Nijhoff 2006), pp. 466-468.

²⁶ UNHCR Guidelines on Statelessness No. 2, para 10.

²⁷ UNHCR Guidelines on Statelessness No. 2, para 10.

²⁸ UNHCR Guidelines on Statelessness No. 1, para 11; UNHCR Guidelines on Statelessness No. 2, paras. 40-41.

Some cases of statelessness are in fact very well documented.²⁹ However, since no state has a responsibility to do so, no blank requirement can be placed on the individual to supply specific types of state-issued documents in the course of a statelessness determination procedure. The Guidelines therefore emphasise the importance of considering a broad range of legal and factual evidence which the applicant might be able to provide,³⁰ including the testimony of the applicant, marriage certificate, military service record, school certificates, medical certificates, identity and travel documents of direct relatives, and record of sworn oral testimony of neighbors and community members.³¹ The standard of proof cannot be set very high, and the burden of proof is to be shared between the state and the individual, as the state has better equipped for conducting necessary investigations.³²

The Guidelines warn states against the temptation to limit the definition of a stateless person by placing additional arbitrary conditions on the access to this status. Thus, a stateless person is not necessarily a migrant who seeks a right of legal residence,³³ and therefore the determination process cannot be limited to the domain of migration law. Statelessness is not dependent on whether the person had a nationality in the past, or can (easily) acquire it in the (near) future, and therefore statelessness determination procedures should focus on the status of an individual at the moment of determination.³⁴ Similarly, the culpability of the stateless person in his or her statelessness is irrelevant for the determination of the status.³⁵

In addition to discussing the peculiarities of statelessness determination, the Guidelines devote considerable attention to procedural standards of a more general character, rooted in the principles of good governance, rule of law and protection of human rights. These include the accessibility of the procedure for all stateless persons,³⁶ as well as its fairness, transparency and clarity.³⁷ It is emphasised that the decisions on statelessness determination should be reasoned, should not take too much time, and that there should be a possibility to appeal against an unfavourable first instance decision.³⁸ The Guidelines set standards for the minimum protection for

²⁹ See, for example, the documentation in the case of Skrijevski couple in the Netherlands, as summarized in the judgment *Rechtbank 's Gravenhage* of 8 December 2011, case nos. AWB 11/39533 and AWB 11/39534. See also Anya's story below.

³⁰ UNHCR Guidelines on Statelessness No. 1, paras. 16-17.

³¹ UNHCR Guidelines on Statelessness No. 2, para 32.

³² UNHCR Guidelines on Statelessness No. 2, para 37-38.

³³ UNHCR Guidelines on Statelessness No. 1, para. 7.

³⁴ UNHCR Guidelines on Statelessness No. 1, para. 43.

³⁵ It might, however, become relevant when deciding on the form and the scope of protection a stateless individual is entitled to. See UNHCR Guidelines on Statelessness No. 1, para 44, and UNHCR Guidelines on Statelessness No. 3, paras 42-43. See also judgment *Rechtbank Den Haag* (Court of the Hague) of 19 Feb. 2014, paras. 10-15.

³⁶ Meaning that relevant information needs to be widely available, and unnecessary legal hurdles, such as deadlines and legal status requirements, should be avoided. See UNHCR Guidelines on Statelessness No. 2, paras 16-18.

³⁷ See UNHCR Guidelines on Statelessness No. 2, para 19.

³⁸ UNHCR Guidelines on Statelessness No. 2, paras 19, 22-25.

applicants awaiting the determination of their statelessness,³⁹ and urge states to avoid arbitrary detentions,⁴⁰ and to safeguard the best interests of the child in the course of such procedures.⁴¹

Even though the Guidelines lay down a set of very important standards on this previously poorly regulated issue, they do not provide solutions to all the problems that the determination of statelessness may pose. For example, the question of nationality of potential statelessness of individuals who have a nationality bond with an entity the statehood of which is disputed is not resolved by the Guidelines.⁴²

Part II. Statelessness determination in the Netherlands

The Netherlands has been a party to both UN Conventions on Statelessness for almost three decades.⁴³ Its legal system grants a number of specific rights to stateless persons,⁴⁴ and therefore one would expect the Netherlands to have a mechanism in place to identify the beneficiaries of these rights. However, the questions of whether such a mechanism exists, and if so, whether it is effective are debatable.

In 2011 a UNHCR report 'Mapping Statelessness in the Netherlands' was published,⁴⁵ criticising a number of aspects of how the Netherlands was protecting stateless persons and preventing statelessness. One of the recommendations was to institute a statelessness determination procedure. The government's official response to the report was rather defensive, not showing much of an intention to implement any changes.⁴⁶ The issue of statelessness determination, however, must have caught the responsible Minister's attention, because he requested a follow up study about it from the national Advisory Committee on Migration Affairs (*Adviescommissie*

³⁹ Individuals awaiting the determination of their statelessness status are entitled to a set of rights on the basis of the 1954 Conventions, among which are the right to property, access to courts, rationing, public education, administrative assistance, freedom of religion, the right to identity papers, the right to engage in self-employment, freedom of movement within a state and protection from expulsion. It is also recommended to grant such individuals the right to engage in wage-earning employment. See UNHCR Guidelines on Statelessness No. 3, paras 13-16, 26-27.

⁴⁰ UNHCR Guidelines on Statelessness No. 2, paras. 59-62.

⁴¹ UNHCR Guidelines on Statelessness No. 2, paras. 66-67.

⁴² UNHCR Guidelines on Statelessness No. 1, para. 13.

⁴³ Information on state parties to international treaties is available from the United Nations Treaty Collection, available here: <treaties.un.org>, accessed on the 15th of March 2014.

⁴⁴ Firstly, both UN Statelessness Conventions have a legally binding force within the national Dutch legal systems, by virtue of Arts. 93, 94 of the Dutch Constitution (*Grondwet voor het Koninkrijk der Nederlanden* 2008), and some of the Convention's provisions have been found to be directly applicable in the Netherlands (see Judgment of the Court Zwolle of 9 September 2010). Secondly, the Dutch migration and nationality laws contain rights specifically addressed to stateless persons, such as the right to travel documents and simplified access to Dutch nationality (See *Vreemdelingencirculaire* (Circular on Foreigners) of 2000, art. B/17; and *Rijkswet op het Nederlanderschap* (Law on Nationality) of 1984, art. 6(1b) and Art. 8 (4)).

⁴⁵ UNHCR 'Mapping Statelessness in the Netherlands', November 2011.

⁴⁶ Letter from the Dutch Ministers to the head of the UNHCR mission in the Hague 'Concerning Policy response to the UNHCR Report "Statelessness in the Netherlands"', dated 20 August 2012.

Vreemdelingenzaken).⁴⁷ Interestingly, at that point the Advisory Committee has already started looking into the issue of statelessness in the Netherlands on its own initiative. The report was completed in December 2013, and supported the UNHCR's standpoint that the Netherlands should institute a dedicated statelessness determination procedure.

The official position of the Dutch government is that it complies with its international treaty obligations and provides sufficient protection to stateless persons.⁴⁸ The two procedures that have been repeatedly referred to as fulfilling the aims of a statelessness determination are, firstly, the registration in the main population database (*Basisregistratie personen*, hereafter BRP),⁴⁹ and secondly, the 'no-fault' (*buitenschuld*) immigration procedure.⁵⁰ The remainder of this paper analyses these procedures, and tries to establish how the rights of stateless persons have been exercised by their addressees in the Netherlands so far, and whether the call for a new procedure is justified.

1. The population register

Everyone who resides legally in the Netherlands for an extended period of time should in principle get registered in the population database through the local municipality.⁵¹ This database, the BRP, contains a number of obligatory entries, and nationality is one of them.⁵² If individuals do not have documents indicating their nationality, then they are registered with a status 'nationality unknown'.⁵³ Even though it is possible to register a person as 'stateless' in the BRP, the rules of evidence for this type of entry are not specified, and the instructions directed at the relevant civil servants are unclear.⁵⁴ This leads to a very restrictive use of this

⁴⁷ Letter from the State Secretary for Security and Justice, Mr. F. Teeven, to the ACVZ 'Request for a practice-oriented research on statelessness', of 14 November 2012. ACVZ is an independent Committee that advises the Dutch Government and Parliament on immigration law and policy. The advice of the Committee is not binding, but the government is obliged to take note of it, and issue a formal response to each report. See more on <www.acvz.org>.

⁴⁸ At the moment of writing, the official response of the Minister to the report of Advisory Committee on Migration Affairs has not been published yet, but should appear shortly on the website of the ACVZ, here <www.acvz.org>.

⁴⁹ The *Wet Basisregistratie personen* (Law on the Population Register) of 2013 has replaced the *Wet Gemeentelijke Basisadministratie* (Law on Municipal Basic Registration) of 1997 in Jan. 2014, and thereby renamed the database from GBA into BRP. Therefore documents from before Jan. 2014 speak of GBA as opposed to BRP. The GBA has been referred to as an equivalent to the statelessness determination procedure in the response of the Dutch Ministers responsible for immigration to the UNHCR's Report 'Mapping Statelessness in the Netherlands' (See Letter from the Ministers to the head of UNHCR Mission in the Hague, of 20 August 2012).

⁵⁰ See, for example, the Ombudsman Report on case No. 2007/328, section 4.

⁵¹ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 2.4.

⁵² *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 2.7.

⁵³ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, Art. 2.15, para 3.

⁵⁴ See sections A and B below.

category in practice.⁵⁵ In 2012, 2005 persons were recorded as stateless in the BRP, while 88,313 were registered as having an 'unknown nationality'.⁵⁶ A recent demographic study of statelessness in the Netherlands commissioned by the UNHCR found that the entries in the BRP on statelessness do not create an adequate picture of the problem of statelessness on the territory of the Netherlands.⁵⁷ Firstly, it is possible that a large number of stateless persons are among those registered with 'unknown' nationality, due to the unreasonably high burden of proof for the registration of statelessness in the BRP.⁵⁸ Moreover, stateless persons may also be registered in the BRP as having a certain nationality which they in fact do not have.⁵⁹ In addition, stateless persons in the Netherlands might belong to the largely invisible, but considerably sizable, group of individuals who never had a right of to reside legally in the Netherlands, and therefore never got registered in the BRP.⁶⁰

*Tam's story*⁶¹

Tam was born in Vietnam, but fled to Yemen with her entire family at the age of 3. She married a Yemenite national at the age of 16. By the age of 22 she was forced to escape the abusive marriage by secretly leaving Yemen.

Through illegal routes, Tam ends up in the Netherlands. In the file documenting her first asylum application of 1997 her nationality is registered as 'stateless', with the explanation that 'the applicant declared to have neither Vietnamese nor Yemenite nationality'. In 1999 Tam turned to the Vietnamese embassy with a question of whether she perhaps is a Vietnamese national. She received a confusing written statement, namely that she 'should be Vietnamese'.

⁵⁵ P.H. Oostendorp, 'Staatloosheid, onbekende nationaliteit en de GBA' (Statelessness, unknown nationality and the Municipal Basic Administration), 1998, pp. 127-134; L. Evers, G.-R. de Groot, 'Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?' ('Stateless, or of unknown nationality, or nationality under investigation'), (2011, unpublished).

⁵⁶ Numbers from *Centraal Bureau voor Statistiek* (Dutch Central Statistics Office), as quoted in ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, on p. 31. Statistics until 2010 is available on the website of Centrale Bureau voor Statistiek, Bevolking: geslacht, leeftijd en nationaliteit. <<http://statline.cbs.nl/>>. Centrale Bureau voor Statistiek, Bevolking: geslacht, leeftijd en nationaliteit. Cijfers van 1 januari 2010. Beschikbaar via <<http://statline.cbs.nl>>.

⁵⁷ UNHCR 'Mapping Statelessness in the Netherlands', Nov. 2011, p. 33.

⁵⁸ UNHCR 'Mapping Statelessness in the Netherlands', Nov. 2011, para. 66 on p. 29. See also section A below.

⁵⁹ UNHCR 'Mapping Statelessness in the Netherlands', Nov. 2011, case of Nalin on pp. 49-50. See also Tam's story below.

⁶⁰ See P. G.M. van der Heijden et al 'Schattingen illegaal in Nederland verblijvende vreemdelingen 2009' (Estimation: foreigners illegally residing in the Netherlands), which estimated very roughly the number of illegal residents in the Netherlands to be around 97 thousand. It is hard to determine how many of these people are stateless, but according to the UNHCR 'a significant percentage of stateless people stays completely under the radar' in the Netherlands. See UNHCR 'Mapping Statelessness in the Netherlands', November 2011, p. 34.

⁶¹ Based on a real case, anonymized. Sources: interview with Tam and her son on the 29th of March 2012, in Leiden; interview with Tam's lawyer on the 16th of April, in Hoofddorp; copies of anonymized relevant documents from Tam's case file on record with the author.

Presumably on that basis her nationality was registered in the BRP as 'Vietnamese', although neither she nor her lawyer know exactly on which basis this BRP entry has been made. She subsequently applied for a Vietnamese passport, but that application was rejected 'due to the lack of necessary documents'. A request for a Laissez-Passer to Vietnam was also rejected, this time because 'there was no record of hers in [the government's] archive any more'. In 2006 Tam's case was presented by the Dutch immigration service to a representative of the Vietnamese government. The official record of that meeting summarises the statement of the Vietnamese official that the 'applicant has no Vietnamese nationality'. When the official was confronted with the letter from the embassy of 1999 that the applicant 'should be Vietnamese', he commented that 'this is incorrect'. He elaborated further that '[t]he statement was made on the basis of the Vietnamese birth certificate, and it says that the applicant "could be Vietnamese". We looked at all the facts and spoke to the applicant, and we come to the conclusion that the applicant does not fulfil the conditions for possessing Vietnamese nationality'. Tam's request to change her nationality registration from 'Vietnamese' to 'stateless' in the BRP was refused, despite careful documentation of all the statements by representatives of Vietnam illustrating that Tam is not considered as one of their nationals.

The BRP's function as an effective statelessness determination procedure is therefore questionable. One of the general problems is that the BRP is inherently a registration system, not a determination procedure.⁶² As such, it is not equipped with appropriate resources to consider a wide variety of evidence and assess often poorly documented personal circumstances of applicants for a statelessness status. Civil servants managing it are trained to register information on the basis of unambiguous highly reliable documents, and often feel unqualified to deal with the sometimes rather complex questions about alleged statelessness of individuals.⁶³

Despite that, in the Dutch context the BRP registration of statelessness is the only procedure which has legal consequences of statelessness determination for the individual. State authorities require the registration of statelessness in the BRP in order to give effect to the rights of stateless persons.⁶⁴ It is the only system that identifies the beneficiaries of the rights of stateless persons. Therefore it is worth exploring what exactly happens when an individual requests to be registered as stateless in the BRP.

A. Procedural aspects of registering statelessness in the BRP

Evidence

Articles 2.15 and 2.17 of the Law on BRP specify the rules of evidence for registering a nationality in the BRP. They read as follows:

'1. The entry concerning the nationality is made on the basis

⁶² ACVZ 'Geen land te bekennen' ('No country of one's own'), Dec. 2013, p. 71-72.

⁶³ See K. Swider 'Staatloosheid en de GBA' (Statelessness and the Dutch population register), 2012.

⁶⁴ See judgment of Centrale Raad van Beroep (Administrative High Court), of 13-01-2004. See K. Swider 'Staatloosheid en de GBA' (Statelessness and the Dutch population register), 2012.

of a decision by an administrative or judicial authority whose competence is established according to the local laws, the purpose of which is to serve as a proof of the relevant nationality. Nationality can also be registered by application of the relevant nationality law.

2. If the information for the entry on the nationality cannot be obtained in accordance with the first paragraph, the entry can be made on the basis of a written statement which specifies the nationality, and is issued by an authority whose competence is established according to the local law.

3. If the individual has no nationality, or the nationality cannot be established, this information is to be registered.'

This article describes the primary sources of evidence for registering a nationality in the BRP. In January 2014 a new Article 2.17 has been introduced, allowing in some cases to register the nationality on the basis of the findings of the Dutch Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst, hereafter the IND).⁶⁵ It reads as follows:

'For the registration of a foreigner on the basis of Article 2.4, the entry concerning [...] nationality which cannot be made on the basis of [...] article 2.15, is made on the basis of a statement [about the nationality] by the Minister of Security and Justice, to the extent that he established [the nationality] in the course of the admission of the person concerned to the Netherlands'

The Law on the BRP does not specify which evidence should be relied on for the registration of statelessness, and in practice the same rules of evidence apply as to the registration of a foreign nationality.⁶⁶ However, statelessness is a different kind of a legal status than a foreign nationality is, and the analysis below shows that applying the same evidentiary standards to them leads to inaccuracies and confusion.

- *Documents indicating the nationality*

The first paragraph of Article 2.15 lays down the three types of evidence for registering nationality and statelessness. The highest in hierarchy are the documents which have been issued to serve as a proof of a nationality, usually passports and identity cards, as well as foreign nationality laws. In case the registration cannot be completed on the basis of these two, a third type of evidence can be considered - a written statement that indicates a nationality, issued by a foreign authority

⁶⁵ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 2.17.

⁶⁶ See, for example judgment of *Rechtbank Roermond* (Court of Roermond), LJN BA4086, 23 April 2007. See also ACVZ '*Geen land te bekennen*' ('No country of one's own') Dec. 2013, p. 52; K. Swider '*Staatloosheid en de GBA*' (Statelessness and the Dutch population register), 2012.

competent in nationality matters, also if the purpose of the statement is other than to serve as a proof of nationality.

Thus, nationality can be registered on the basis of a document which merely mentions the nationality, and is ideally meant to serve as a proof of that nationality, issued by an authority which is competent to make statements on the possession of that nationality according to the relevant foreign laws. This requirement assumes the existence of a state, which regulates the competence of authorities to declare the nationality of that state. For a stateless person, however, such a state authority per definition does not exist. This type of evidence is therefore unlikely to play an important role in the registration of statelessness for most people.

- *Application of foreign laws*

Statelessness also can be registered by application of foreign nationality laws. Statelessness can often be traced back to provisions in nationality laws of one or more states, so research into foreign nationality laws may lead to useful conclusions about an alleged case of statelessness. However, the BRP civil servants are instructed to rely on this type of evidence only in a restricted number of cases. The Handbook on Implementing Procedures (*Handleiding Uitvoeringsprocedures*, hereafter, the Handbook)⁶⁷ specifies that ‘the application of the relevant nationality law is only possible if there is a starting point, [...] for example when the nationality of the parents has been established, and the relevant nationality law provides for the automatic acquisition by the child of his or her parents’ nationality’.⁶⁸ In other words, nationality of person A is registered by application of foreign nationality laws only if nationality of person B has already been established, and person A derives his or her nationality status directly and unambiguously from that of person B’s. This provision can be used in a limited number of cases of stateless children born in the Netherlands to parent(s) whose nationality has been established, and who do not pass their nationality on to their children.⁶⁹ However, extensive research into the nationality laws of a number of states with which the individual has a connection is unlikely to be done within the BRP on the basis of this provision.⁷⁰ Thus, even though foreign nationality laws are listed in Article 2.15, they are not used as an independent source of evidence for establishing statelessness.

⁶⁷ *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 7 Ferbaury 2014. The Handbook is issued by the Ministry of Interior (*Ministerie Binnenlandse Zaken en Koninkrijksrelaties*) to guide the civil servants in the implementation of the Law on the BRP.

⁶⁸ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 7 Ferbaury 2014, para 3.32.2.

⁶⁹ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 7 Ferbaury 2014, pp. 133-134. The Handbook describes an example of statelessness registration based on the application of foreign nationality laws. See more in section B below.

⁷⁰ See ACVZ ‘*Geen land te bekennen*’ (‘No country of one’s own’) Dec. 2013, pp. 52-53.

- Findings of the IND

Since January 2014, Article 2.17 allows using the findings of the IND about the nationality for the purposes of the initial BRP registration, in case establishing nationality on the basis of Article 2.15 is not possible.

Andrey's story⁷¹

Andrey left the Soviet Union before its dissolution and the formation of the new republics. He has resided in the Netherlands since 1999, and legalised his stay in 2007 by accepting the so-called 'pardon' (amnesty) offer of the Dutch government. The offer entailed a residence permit, under the condition that the immigrant quits any legal proceedings concerning his or her residence status.

In all the IND documents, including on his residence card, Andrey's nationality has been consistently listed as 'stateless'. A court judgment concerning his residence status also refers to him as stateless.

In 2012 Andrey applies for naturalisation. He fulfils all the requirements, except for the requirement to identify himself with a foreign passport. He argues that he is stateless, and has been consistently recognised as such by the IND, and therefore the IND should not require him to submit a foreign passport. The IND, however, relies on the fact that in the BRP his nationality is registered as 'unknown'. He would first need to change this registration from 'unknown' to 'stateless' in the BRP in order to rely on his statelessness in the context of naturalisation, and obtain an exemption from the requirement to identify himself with a foreign passport on that basis.

The civil servant responsible for the BRP in the municipality of his residence refuses to make this adjustment because Andrey does not submit appropriate documents required for the registration of a nationality status, and the IND documents do not qualify.

Although like Article 2.15, Article 2.17 does not specifically refer to the registration of statelessness, it is likely that this additional ground for registering a nationality will be extended in practice also to the registration of statelessness.⁷² This would extend the very limited scope of evidence admissible for the registration of statelessness by including the findings of the IND.

The effects of this extension will depend strongly on what would be considered as an IND finding. According to the Handbook, a BRP civil servant needs to submit a formal request to the IND about the finding of the latter on the nationality of the individual concerned. The nationality can then be registered on the basis of an official response of the IND to that request.⁷³ Such a procedure excludes the possibility of considering any document or communication issued by the IND indicating the person's nationality as 'stateless' for purposes other than BRP

⁷¹ Based on a real case, anonymized. Source: email exchange with VluchelingenWerk (Organisation supporting asylum seekers in the Netherlands) of 3 september 2012, 11 October 2012, 2 November 2012, 30 May 2013 and 10 June 2013 (on record with the author).

⁷² See ACVZ 'Geen land te bekenen' ('No country of one's own') Dec. 2013, p. 52.

⁷³ Handleiding Uitvoeringsprocedures (Handbook Implementing Procedure), 2014, p. 38, para 3.23.

registration. Whether the Handbook will be followed on this point can make a significant difference, since the IND might be more cautious in declaring someone stateless for the purposes of BRP registration than in the context of its internal registration system. The effects of this Article and the role of the IND in statelessness determination in the Netherlands are discussed further in section 2 below.

It is important to note, however, that the application of Article 2.17 is limited to the procedure of the initial registration of the person in the BRP,⁷⁴ and does not extend to the procedures of making changes to the existing registration. Therefore, if an individual wants to have his or her nationality status changed, Article 2.17 cannot be invoked, and only the evidence described in Article 2.15 can be relied on. This means that all the persons who are already registered in the BRP as having an 'unknown nationality' or a nationality which they do not have cannot rely on IND's finding of their statelessness to adjust their nationality status in the BRP.

- *Other evidence*

Neither of the two articles state that the types of evidence listed in them are exhaustive, but in practice it is often interpreted that way. In a case of a Syrian Kurd, who requested to change the registration of his nationality in the BRP from 'unknown' to 'stateless', the court of Roermond confirmed that the municipality was entitled to reject this request on the sole basis that he did not submit any documents as prescribed by this article.⁷⁵ The municipality and the court did not consider various other types of evidence submitted by the applicant, such as his identity card which does not mention nationality and reports by the Dutch government about the statelessness of Syrian Kurds. Thus, the court interpreted Art. 2.15 BRP as presenting an exhaustive list of documents on the basis of which nationality and statelessness can be registered in the BRP.

Burden of proof

The burden of proof for the registration of any information in the BRP lies exclusively on the individual.⁷⁶ The registration of statelessness does not form an exception. A recent judgment of Court of Utrecht confirmed that the obligation to provide the required types of evidence for the registration of nationality or statelessness in the BRP rests solely on the applicant.⁷⁷ The latter is also to bear the risk and the consequences of being unable to comply with this requirement, and no

⁷⁴ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, arts. 2.4 and 2.17. The initial registration is regulated by Article 2.4 of the Law, to which a reference is made in Article 2.17.

⁷⁵ Judgment *Rechtbank Roermond* (Court of Roermond), LJN BA4086, 23 April 2007.

⁷⁶ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, arts. 2.44-2.26. See also the interpretation of these articles in relation to the registration of statelessness in the judgment *Rechtbank Midden-Nederland* (Court of Utrecht), SBR 12/3509, of 19 February 2013, para 6.

⁷⁷ Judgment *Rechtbank Midden-Nederland* (Court of Utrecht), of 19 February 2013, para 6.

obligation arises for the municipality to assist the individual in obtaining the necessary documents.

B. Substantive aspects of registering statelessness in the BRP

The Handbook on the implementation of the Law on BRP is openly discouraging the registration of statelessness in the BRP. The main message of the Handbook concerning statelessness is that this phenomenon ‘hardly ever occurs in practice’.⁷⁸ Moreover, the Handbook provides incorrect examples of when an individual is *not* stateless: according to the Handbook, people who lose their nationality in the context a state dissolution and do not acquire any new nationality are not stateless.⁷⁹ This instruction is in outright conflict with the definition of statelessness, with the UNHCR Guidelines, and with the widely known fact that state succession is one of the major causes of statelessness precisely in these circumstances.⁸⁰

Ironically, the only instance where the Handbook provides an example of when statelessness should be registered is in a case where such registration is technically correct, but not necessary from the point of view of protection of stateless persons. Specifically, it refers to children born in the Netherlands to Portuguese parents.⁸¹ As Portugal requires a child born to its nationals abroad to be registered at an embassy before the acquisition of Portuguese nationality takes place, such a child is born stateless. In the Netherlands, the registration of birth of the child with the municipality takes place within 3 days from the date of birth, which is before the parents usually get around to making a trip to the Portuguese embassy. Therefore, at the moment of registration the child is stateless, and the registration can be made on the basis of applying foreign nationality laws, since the nationality of the parents has already been established, and form the discussed earlier ‘starting point’.⁸² This type of statelessness is, however, likely to be very temporary. There is no immediate practical necessity for the parents to adjust the nationality status of the child in the BRP from ‘stateless’ to ‘Portuguese’ after the registration with the embassy had taken place. Therefore, these children often remain registered as stateless also after they have acquired a nationality.⁸³ They are, however, unlikely to invoke their rights as stateless persons in the Netherlands. These examples illustrate that the Handbook’s instructions on substantive aspects of registering statelessness in the BRP are not

⁷⁸ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 2014, pp. 83-84, 144, 244.

⁷⁹ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 2014, p. 325-326.

⁸⁰ See Part I above. See also Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession of 2006, which has been ratified by the Netherlands.

⁸¹ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 2014, pp. 133-134.

⁸² See above in section on ‘Application of foreign nationality laws’; *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 2.15.

⁸³ UNHCR ‘*Mapping Statelessness in the Netherlands*’, November 2011, para 55 and footnote 75 on p. 25.

always correct, and do not serve the purpose of protecting stateless persons in the Netherlands.

C. The practice of registering statelessness in the BRP

Easy alternative: 'nationality unknown'

Frequent use of the category 'nationality unknown' in the BRP can be explained by the stringent rules on evidence for using any other category, the lack of comprehensive instructions on how and when to register statelessness, and the general discouraging advice to register statelessness.⁸⁴ Registering a nationality as 'unknown' is an easier and safer option for civil servants, as it simply means that they did not receive adequate documents to register anything else. Moreover, the registration as 'unknown' does not imply an obligation to conduct further research in order to find out what the nationality status is.⁸⁵ An individual's nationality can in principle be registered as 'unknown' forever, and be passed on from generation to generation. If a parent's nationality is registered as 'unknown', so will be the child's nationality,⁸⁶ unless the child acquires a nationality on grounds other than *iure sanguine* from that parent.

Divergent practices

There is evidence of cases where civil servants show flexibility in applying the rules on registering statelessness in the BRP,⁸⁷ sometimes to the extent of deviating from the administrative instructions, often in the interest of providing good administration to the residents of their municipalities.⁸⁸ The divergence of practices regarding the registration of statelessness among the municipalities⁸⁹ can be explained by the lack of clear and reasonable instructions to civil servants on this issue. The latter also cause disagreements within municipalities.⁹⁰ Various internal and inter-municipal communications indicate that civil servants are not comfortable being vested with the responsibility of determining individuals' statelessness without the necessary legal tools, resources and support.⁹¹ Practitioners express the

⁸⁴ P.H. Oostendorp, 'Staatloosheid, onbekende nationaliteit en de GBA' (Statelessness, unknown nationality and the Municipal Basic Administration); L. Evers, G.-R. de Groot, 'Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?' ('Stateless, or of unknown nationality, or nationality under investigation'), (2011, unpublished).

⁸⁵ AVCZ 'Geen land te bekenen' ('No country of one's own') Dec. 2013, p. 53.

⁸⁶ See L. Evers, G.-R. de Groot, 'Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?' ('Stateless, or of unknown nationality, or nationality under investigation'), (2011, unpublished).

⁸⁷ L. Jordens-Cotran 'Notitie opnemen onbekende nationaliteit' ('Note on registering unknown nationality'), 2004, p. 5-6; ACVZ 'Geen land te bekenen' ('No country of one's own'), Dec. 2013, p.71. See also Anya's story below.

⁸⁸ See also Anya's story below.

⁸⁹ See ACVZ 'Geen land te bekenen' ('No country of one's own'), Dec. 2013, p. 53.

⁹⁰ Interview with policy advisors Municipality Utrecht on 11 September 2012, in Utrecht; email exchange from Municipality Leiden, July 2012 (on record with the author).

⁹¹ ACVZ 'Geen land te bekenen' ('No country of one's own') Dec. 2013, p. 72; K. Swider 'Staatloosheid en de GBA' (Statelessness and the Dutch population register), 2012.

need to be able to accept the oral testimony of the allegedly stateless person as evidence in certain cases,⁹² and call for more clarity in the instructions on registering statelessness in the BRP.⁹³

Anya's story ⁹⁴

Anya is a member of a rare community of Latvian non-citizens of Russian descent.⁹⁵ She has a residence permit in the Netherlands as a spouse of a Dutch national, and requested to be registered in the GBA as stateless. To support this request she submitted her 'non-citizen' passport issued by the government of Latvia and her USSR birth certificate. In addition, she provided a statement from the Latvian embassy that it has been established in accordance with Latvian law that she is neither a citizen of Latvia, nor a citizen of any other successor state of the former Soviet Union.

She explained to the GBA civil servant that her parents are of Ukrainian and Belarusian origins and that she was born in the former Soviet republic of Kazakhstan. At the time of the dissolution of the Soviet Union she was permanently residing in Latvia, but did not receive Latvian citizenship because of the Latvian nationality laws, nor did she receive the citizenship of any other state. She instead received the status of a Latvian non-citizen.

The GBA civil servant consulted the Handbook on the implementation of the Law on GBA, and concluded that according to the Handbook Anya's documents and oral testimony are not sufficient to register her nationality as 'stateless' in the GBA, particularly due to paragraph 7.16 of the Handbook, which advises against registering statelessness when it resulted from state succession.

A question about this case was submitted to the Dutch Association for Civil Affairs,⁹⁶ which also advised against Anya's registration as 'stateless', motivating it as follows:

'Before you register someone as stateless, it has to be established that this is indeed the case. It is established that she is not Latvian, but perhaps she is Ukrainian or Belarussian. Only if it is really excluded that a person has a nationality can he or she be registered as stateless. In addition, we are not familiar with such certificates as issued by the Latvian embassy.'

However, the civil servant was not convinced by these instructions. He felt that the documents that Anya presented in combination with her oral testimony made it highly likely that she is indeed stateless. He considered the document issued by the Latvian embassy in which it is determined that Anya is not a national of any of the states that she has a relevant connection with. He judged Anya's oral testimony to be consistent with the widely available

⁹² L. Jordens-Cotran 'Notitie opnemen onbekende nationaliteit' ('Note on registering unknown nationality'), 2004, p. 5-6; email exchange with municipality Leiden of 16 July 2012 (on record with the author).

⁹³ Email exchange municipality Herenveen, 19 November 2012 (on record with the author). See also K. Swider 'Staatloosheid en de GBA' (Statelessness and the Dutch population register), 2012.

⁹⁴ Based on real case, anonymized. Sources: email exchange with the responsible GBA civil servant of 13 August 2012, 16 November 2012 and 19 November 2012, and an interview with the civil servant on the 28 November 2012 in Amsterdam (on record with the author).

⁹⁵ See more on Latvian non-citizens in K. Kruma 'Checks and balances in Latvian nationality policies: National agendas and international frameworks', 2009.

⁹⁶ Nederlandse Vereniging voor Burgerzaken (NVVB), see more about the organisation on their website www.nvvb.nl.

information on Latvian citizenship laws and practices, and with the fact that she possessed a non-citizen passport from Latvia.

After evaluating all the evidence available to him, and in fact conducting a more in-depth research into the situation than what is required of him by the GBA registration system, the civil servant thought it appropriate to register Anya's nationality as 'stateless'.

D. Evaluation of BRP as a statelessness determination procedure in light of international standards

The very limited types of evidence being admissible for the registration of statelessness in the BRP contrast sharply with the UNHCR's Guidelines on these matters. As already discussed in the introduction, the Guidelines advocate considering a wide range of evidence, including the oral testimony of the individual, and various sources of information on the countries with which the individual has a relevant connection.⁹⁷ The rules on evidence in the BRP, and their interpretation in practice, do not leave the flexibility to consider such sources. As far as oral testimonies are concerned, the Handbook specifically forbids the registration of a nationality status (and therefore statelessness) on the basis of a testimony.⁹⁸ Other documents which are not explicitly listed in either Article 2.15 or 2.17 of the Law on BRP are not accepted for the substantiation of the statelessness status.

The BRP is essentially a registration system, usually registering information on the basis of one specific non-ambiguous document. There is no practice of considering more than one document for a single entry, or weighing the cumulative strength of a number of sources taken together for the substantiation of a legal status. Consequently, BRP civil servants do not have the flexibility of approaching the registration of statelessness as a determination procedure. Within this context, it is difficult to comply with the Guidelines' requirement to consider relevant legal provisions in light of the practice of their implementation.⁹⁹ The in-depth investigation involving evidence from a variety of sources which is described in the Guidelines goes far beyond what the BRP registration system is designed to do. The individual bearing the full burden of proof is also not in line with the Guidelines, which advocate for the state authorities' involvement in searching for evidence, and a shared burden of proof.¹⁰⁰

In addition, civil servants lack comprehensive instructions on the substantive aspects of registering statelessness in the BRP. The few examples provided to them about when statelessness occurs are either incorrect or not very important in light of the protection needs of stateless persons.

⁹⁷ UNHCR Guidelines on Statelessness No. 2, para 32; UNHCR Guidelines on Statelessness No. 1, paras 15, 33.

⁹⁸ See *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 2014, para 3.32.2.

⁹⁹ UNHCR Guidelines on Statelessness No. 2, para 31, 33. See also UNHCR Guidelines on Statelessness No. 1, para 15.

¹⁰⁰ UNHCR Guidelines on Statelessness No. 2, para 37-38. See also Part I, section 2 above.

The UNHCR Guidelines define statelessness determination procedure as a procedure where the determination of statelessness is ‘a specific objective of the mechanism in question’.¹⁰¹ Even though the BRP contains an option of registering statelessness, the lack of rules on how this option can be exercised indicates that in practice the registration of statelessness is not an aim of the BRP. Moreover, the advice to civil servants not to register statelessness even in cases when statelessness occurs leads to an even stronger conclusion, namely that that one of the aims of BRP is *not to register statelessness*. To the extent that the determination of statelessness does occur in the BRP context, the rules that are customarily applied in such cases are in conflict with number of international standards.

2. The IND

The Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*, the IND) is an agency within the Dutch Ministry of Security and Justice with exclusive competence to issue residence permits and to decide upon naturalisation applications in the Netherlands. For the purpose of fulfilling its public duties the IND registers personal information of foreigners whom it is dealing with.¹⁰² That personal information includes an entry on nationality, and individuals are sometimes registered as stateless in the IND system.¹⁰³ This section looks first at IND’s rules and practice of registering a person’s nationality, and the role of these for the determination of statelessness in the Netherlands. It subsequently discusses the ‘no-fault’ procedure, which is implemented by the IND, and which is often quoted as the way the Netherlands is complying with its international obligations towards stateless persons.¹⁰⁴

A. Registration of nationality in the BVV

The IND register personal information in the Database on Foreigners (*Basisvoorziening Vreemdelingen*, hereafter BVV),¹⁰⁵ and nationality is one of the entries. It is important to start with the observation that the BVV is subordinate to the BRP,¹⁰⁶ and in principle any state authority is obliged to consult the BRP when performing its tasks.¹⁰⁷ Therefore stateless people who are registered in the BRP with

¹⁰¹ UNHCR Guidelines on Statelessness No. 2, para 10

¹⁰² E. Brouwer, L. Middelkoop ‘Identiteitsmanagement in de vreemdelingenketen’ (Identity management in the immigration network’), Jul. 2013.

¹⁰³ See ACVZ ‘*Waar een wil is, maar geen weg*’ (‘Where there’s a will but no way’), p. 43-44.

¹⁰⁴ See, for example, the National Ombudsman of the Netherlands, Report 2007/328, section 4. See also, Letter from the Dutch Ministers to the head of the UNHCR mission in the Hague ‘Concerning Policy response to the UNHCR Report “Statelessness in the Netherlands”’, dated 20 August 2012, p. 4, 7, 8.

¹⁰⁵ *Vreemdelingenwet* (Dutch Law on Foreigners) of 2000, art. 107(1). See E. Brouwer, L. Middelkoop ‘Identiteitsmanagement in de vreemdelingenketen’ (Identity management in the immigration network’), Jul. 2013, p. 29.

¹⁰⁶ PIL 2014, para 1.3(f) on p. 8.

¹⁰⁷ See E. Brouwer, L. Middelkoop ‘Identiteitsmanagement in de vreemdelingenketen’ (Identity management in the immigration network’), Jul. 2013, pp. 15-16.

a different nationality status, cannot rely on their rights as stateless persons with any state authority, including the IND, even if they are registered as 'stateless' in the BVV. Why is it interesting then to look at the practices of registering nationality in the BVV at all? Firstly, not everyone in the Netherlands qualifies for a registration in the BRP, and therefore the registration of nationality in the BVV may carry some weight for those stateless persons who are not registered in the BRP, if, for example, they have never enjoyed legal residence in the Netherlands.¹⁰⁸ Secondly, since January 2014, as described above, the findings of the IND can be used as evidence for establishing a nationality of an individual in the context of the initial registration in the BRP. Even though the registering civil servant does not consult the BVV directly, but instead submits a request to the IND about the latter's findings on nationality, the registration in the BVV is likely to be one of the sources based upon which the IND will provide a response to such a request.

The rules for the registration of nationality in the BVV are not regulated by law, but there is an internal Administrative Protocol (*Protocol Identificatie en Labeling*, hereafter PIL)¹⁰⁹ outlining how personal information should be registered. The PIL allows using a wide range of evidence, such as statements by individuals who are being registered, statements by third persons, results of linguistic tests and various official and non-official documents.¹¹⁰ The source of information is registered in the BVV alongside with that information,¹¹¹ and corrections can easily be made if at a later stage a stronger piece of evidence contains conflicting data.¹¹² The IND has rough guidelines on the hierarchy of various types of evidence.¹¹³ The issue of burden of proof is not directly addressed by the PIL, and seems to depend on the specific context under which information is being registered. In the context of an application for legal residence, the applicant is expected to furnish all the necessary evidence that illustrates his eligibility for that permit. However, if the establishment of personal data is taking place in the context of a deportation, then the state authorities take an active role in obtaining information necessary for making the deportation possible.¹¹⁴

In comparison to the BRP, the BVV may appear as a much more suitable system for the determination of statelessness in light of UNHCR Guidelines, since the scope of admissible evidence is much wider, and the state authorities at least in some cases play an active role in acquiring evidence. Moreover, the IND has more capacity and experience to execute status determination procedures than the civil servants

¹⁰⁸ See judgment *Rechtbank Den Haag* (Court of the Hague) of 19 Feb. 2014.

¹⁰⁹ PIL 2014.

¹¹⁰ PIL 2014, Annex 6. See also E. Brouwer, L. Middelkoop 'Identiteitsmanagement in de vreemdelingenketen' (Identity management in the immigration network'), Jul. 2013, p. 32.

¹¹¹ PIL 2014, p. 18.

¹¹² PIL 2014, p. 27.

¹¹³ PIL 2014, pp. 53-56.

¹¹⁴ E. Brouwer, L. Middelkoop 'Identiteitsmanagement in de vreemdelingenketen' (Identity management in the immigration network'), Jul. 2013, pp. 36-40.

maintaining the BRP.¹¹⁵ However, at the moment the BRP is the reference point for establishing the statelessness of an individual, and the BVV plays only a limited role through the newly introduced Article 2.17 of the Law on BRP.

It remains to be seen what the impact of Article 2.17 on the interaction between the two registration systems will be. As already described in section 1 above, the Handbook on the Implementation of the Law on BRP provides for a procedure whereby a BRP civil servant makes a formal request to the IND about the latter's findings on the nationality of the person to be registered. If such a procedure is followed, the IND might be cautious to indicate a person as stateless for the purposes of BRP registration, even if he or she is registered as such in the BVV. The IND has a strong policy mandate to implement the strict governmental immigration and naturalisation policies, and there is awareness in the IND that the registration of statelessness in the BRP has legal consequences. The PIL, for example, explicitly states that evidence of a known or unknown nationality of a person who is registered as 'stateless' in the BRP needs to be communicated to the BRP administration, because of the danger that a person might unjustifiably derive rights from the registration as 'stateless' in the BRP.¹¹⁶ Therefore a formalised procedure of requests to the IND in the context of applying Article 2.17 would limit the effects of this Article. The wording of the law, however, leaves the BRP civil servant the freedom not to initiate such a targeted communication with the IND, but instead to consider various documents and communications by the IND where the nationality of the individual concerned is mentioned. In doing so, the civil servant must be aware that the registration of nationality in the IND context might have been made solely on the basis of the statement by the individual, and additional supportive evidence might be needed. This Article may be used to increase the discretion of registering a person as stateless when the civil servant sees strong reasons to do so.

B. The 'no-fault' procedure

The IND is responsible for implementing the so-called 'no-fault' procedure, which – as we have already noted above – is often quoted as the way the Netherlands is complying with its international obligations towards stateless persons. It is an immigration procedure that leads to a temporary renewable residence status for those who, by no fault of their own, are unable to leave the Netherlands.¹¹⁷

There is a number of reasons why 'no-fault' is not a statelessness determination procedure. The UNHCR Guidelines on statelessness admit that states have a broad discretion in the design of statelessness determination procedures. However, in order for a procedure to qualify as a statelessness determination procedure, it needs to at

¹¹⁵ As explained above, the BRP is a registration system, while the IND is an organization responsible for handling asylum applications, and therefore enjoying extensive experience with status determination.

¹¹⁶ PIL 2014, p. 65.

¹¹⁷ Vreemdelingenbesluit (Decision implementing the Dutch Law on Foreigners) 2000, art. 3.4 (1w).

least have statelessness determination as one of its specific aims.¹¹⁸ Statelessness determination is not an aim of the 'no-fault' procedure. Even though the 'no-fault' procedure is often mentioned in discussions on statelessness, it seems that the reasons for that are largely of a historical nature, as this procedure was initially designed for stateless persons only.¹¹⁹ Nowadays, legal acts regulating the 'no-fault' procedure do not mention statelessness at all. The latter is only referred to in subsidiary administrative acts as one of the circumstances that can influence the applicant's ability to leave the Netherlands.¹²⁰ A successful applicant for a 'no-fault' residence permit does not necessarily need to be stateless, and his or her inability to leave the Netherlands might be, for example, health-related.¹²¹ A study of IND's case files shows that decisions on 'no-fault' applications by the IND rarely involve arguments related to statelessness.¹²² Therefore, while statelessness may play a role in the 'no-fault' procedure as a factor that impedes the applicant's ability to leave the Netherlands and legally enter another country, it does not need to be established in the course of the procedure, and rarely gets mentioned in practice. Therefore, the 'no-fault' procedure is not a statelessness determination procedure.

The Dutch government sometimes seems to imply that even though the 'no-fault' procedure is not a statelessness determination procedure, it offers sufficient protection for stateless persons without necessarily identifying them, thus eliminating the need for a statelessness determination procedure in the Netherlands.¹²³ A closer look at a few aspects of the 'no-fault' procedure shows that this argument is unfounded.

The UNHCR in its report 'Mapping Statelessness in the Netherlands' has already criticised the inaccessibility and limited effects of the 'no-fault' procedure on the protection of most stateless persons in the Netherlands.¹²⁴ To begin with, this procedure is confined to the domain of immigration. This excludes those stateless persons who already enjoy legal stay in the Netherlands, and want to exercise their right to a facilitated naturalisation, or their right to opt for the Dutch nationality.¹²⁵ This cannot be achieved through the 'no-fault' procedure. In addition, the accessibility of the 'no-fault' procedure for all of those stateless persons who do not have a residence permit is also questionable. The applicant does not get a legal residence status while awaiting the decision on his or her 'no-fault' request, which

¹¹⁸ See UNHCR Guidelines on Statelessness No. 2, para 10.

¹¹⁹ See ACVZ 'Waar een wil is, maar geen weg' ('Where there's a will but no way'), p. 22, footnote 9. See also ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, pp. 10, 56-57, 73.

¹²⁰ See Vreemdelingenwet (Law on Foreigners) of 2000, art. 14; Vreemdelingenbesluit (Decision implementing the Law on Foreigners) 2000, art. 3.4 (1w); and Vreemdelingen circulaire (Circular on Foreigners) 2000, B 14.3.2.2.

¹²¹ See Vreemdelingen circulaire (Circular on Foreigners) 2000, art. B 14.3.2..

¹²² S. JaghaI, C. Vlieks 'Buitenschuldbeleid schiet tekort in bescherming staatlozen', 2013.

¹²³ Letter from the Dutch Ministers to the head of the UNHCR mission in the Hague 'Concerning Policy response to the UNHCR Report "Statelessness in the Netherlands"', 20 August 2012, p. 7, 8

¹²⁴ UNHCR 'Mapping Statelessness in the Netherlands', November 2011, pp. 44-45.

¹²⁵ Rijkswet op het Nederlanderschap (Law on Nationality) 1984, arts. 6(1b), 8(4).

can take a long time.¹²⁶ Even though the application for the 'no-fault' residence permit is free of charge, the lack of a legal status while awaiting the outcome of the procedure makes it less accessible financially and psychologically, since the individual is unable to work and earn a living, and is exposed to prolonged legal insecurity without identity documents in the highly bureaucratised Dutch society. Lastly, individuals who have been declared 'unwanted' in the Netherlands, and whose presence on the Dutch territory is criminalised, cannot access the 'no-fault'. The UNHCR Report shows that stateless persons can be found among them.¹²⁷

Even if a stateless person manages to initiate the 'no-fault' procedure, the chances of obtaining the permit are slim. The conditions are very stringent and all the burden of proof to demonstrate the inability to leave the Netherlands lies exclusively on the individual.¹²⁸ It is quite telling that very few people apply for a 'no-fault' residence permits, and only a small fraction of those are successful. In 2011 only 290 'no-fault' applications were received, and out of those 30 permits were issued.¹²⁹ Stateless persons who lack the necessary qualities or resources to apply for a 'no-fault' permit and to substantiate their claim with a high degree of certainty cannot rely on this mode of protection. Thus, the 'no-fault' procedure is neither a statelessness determination procedure, nor does it offer sufficient protection to all stateless persons so as to eliminate the need for statelessness determination.

3. Prospects for the future: IND, municipalities and a court

It is interesting to observe the changing dynamics in the roles municipalities and the IND play in identifying and protecting stateless persons. At the moment, when stateless persons want to rely on their statelessness within the IND context (for example, when trying to access facilitated naturalisation), they are required to have their nationality status registered as 'stateless' within the BRP first.¹³⁰ The reasoning for the IND's practice of forwarding individuals to the municipalities for the determination of their statelessness is based on the BRP's role as a 'basis-registration'.¹³¹ This is highly problematic due to difficulties with registering

¹²⁶ Questions from a D66 MP Schouw to the minister of Immigration and Asylum, and the answers by the Minister on the 23rd December 2010, about the situation of stateless Roma in the Netherlands, question and answer No. 7, 10&11.

¹²⁷ UNHCR 'Mapping Statelessness in the Netherlands', Nov. 2011, p. 37

¹²⁸ Vreemdelingencirculaire (Circular on Foreigners) of 2000, section B 14.3.1, and 14.3.2. See also judgment of Centrale Raad van Beroep (Administrative High Court) of 13-01-2004; and ACVZ 'Waar een wil is, maar geen weg' ('Where there's a will but no way'), pp. 22, 84-85.

¹²⁹ Letter from the State Secretary of Security and Justice F. Teeven to the Chairperson of the Second Chamber, regarding 'Foreigners who cannot leave the Netherlands due to no fault of their own' of 18 December 2012, p. 4.

¹³⁰ See *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 1.7 (1), which requires all state authorities to rely on the information in the BRP about personal details of the individuals registered there.

¹³¹ This is expressed in *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 1.3.

statelessness in the BRP.¹³² It could be argued that the IND is much better equipped to perform a statelessness determination procedure in terms of human resource capacity and experience with handling various types of evidence in, for example, asylum determination procedures. The law on the BRP also seems to leave room for the responsible authority not to rely on the registration of nationality in the BRP, among others when this is required for a proper fulfilment of their tasks,¹³³ which is a broad provision that can well be applied in cases of statelessness.¹³⁴ However, this flexibility does not provide a stateless person with reliable access to his or her rights. Studies show that IND civil servants make use of this discretion, but do so without apparent consistency.¹³⁵

*Story of Vincent and Alpha*¹³⁶

*Vincent and Alpha were born in the Netherlands in 2001 and 2007 respectively. They did not inherit their mother's nationality of Guinea Conakry because they were born out of wedlock. According to the laws of Guinea, both paternity and maternity of children born out of wedlock needs to be established through a special legal procedure in order to acquire nationality by decent.*¹³⁷

The children were registered in the population register with a status 'nationality unknown', and their request to change this registration to 'stateless' based on the relevant nationality laws of Guinea has been refused. After their mother's applications for an asylum residence permit for her and her children failed, the family became subject to deportation attempts. On one occasion the deportation went as far as brining the family to the airport in Conakry. There, while the mother was allowed to enter Guinea, the children were denied entry because they were not recognised as nationals. Even after this incidence the children had no legal tools to establish their statelessness in the eyes of Dutch authorities, and the attempts to deport them continued.

*In 2013, however, the mayor of the municipality where the children resided became convinced of the children's statelessness, and granted them Dutch nationality based on the so called 'right of option' to Dutch nationality that stateless children born in the Netherlands have.*¹³⁸

¹³² See section above on the registration of personal data.

¹³³ *Wet Basisregistratie personen* (Law on the Population Register) of 2013, art. 1.7 (2,d).

¹³⁴ Email exchange with Aart Koenhein, Ministry of Home Affairs, of 2nd of January 2013 and 13th of January 2013 (on record with the author).

¹³⁵ See also ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, p. 55. E. Brouwer, L. Middelkoop 'Identiteitsmanagement in de vreemdelingenketen' (Identity management in the immigration network'), Jul. 2013, pp. 17, 27, 39-40.

¹³⁶ Based on real case, anonymized. Sources: relevant documents from the children's case file, including court orders, deportation decisions, and the submissions of the legal representative to various state authorities (on record with the author).

¹³⁷ See the Civil Code of Guinea (Conakry) of 1983, Title III "Attribution of Guinean nationality by origin", Article 30(2) and Article 39. See also R. de Groot 'Het optierecht van in Nederland geboren staatloze kinderen op het Nederlanderschap', p. 317.

¹³⁸ See *Rijkswet op het Nederlanderschap* (Law on Nationality) of 1984, art. 6(1b), in conjunction with 1961 UN Convention on the Reduction of Statelessness, art. 1(1,2), as interpreted in the judgment of the Court of Zwolle of 9 September 2010. In the Netherlands the mayor is vested with the power to grant Dutch nationality by the exercise of the right of option.

This has ended the prolonged hardships the children had to endure as undocumented residents and subjects of repeated deportation attempts. However, due to the lack of a functioning statelessness determination procedure, their access to Dutch nationality was severely delayed and depended entirely on the mayor's personal discretion.

Registering statelessness in the BRP is impossible for most stateless persons, and there is no guarantee whatsoever that the state authorities responsible for effectuating their rights will deviate from what has been registered in the BRP. Perhaps now with the introduction of Article 2.17 the IND's expertise in establishing legal statuses will have stronger influence on the registration of stateless persons in the BRP. It remains to be seen how much use will be made of the opportunities this Article offers. In the meanwhile, the IND and the municipalities continue to awkwardly bounce back and forth the task of statelessness determination. Without a clear mandate, neither of the institutions feels fully responsible for it, and they are both unable to do the job any justice.

While in practice stateless persons still depend on municipalities and the IND for the determination of their status, a third authority could also come into play, namely a court. The UNHCR Mapping Report as well as the ACVZ's study on statelessness both argues for a statelessness determination procedure by a court in the Netherlands.¹³⁹

What would such a judicial determination of statelessness look like? What would be the advantages and disadvantages of judicial determination? And what effect would they have on the two currently existing procedures described above? The UNHCR report merely suggests that the District Court in The Hague should be empowered to establish statelessness, but does not go into detail of what a new Dutch statelessness determination procedure should look like. The report by the Dutch Advisory Committee on Migration Affairs supports the preference for the District Court of The Hague as a competent authority for statelessness determination, and devotes some attention to the procedural arrangements that would need to be made. It suggests modelling the statelessness determination procedure on the procedure for the determination of possession of Dutch nationality, which is an existing determination procedure within an exclusive competence of the District Court of The Hague.¹⁴⁰ The main advantage of placing statelessness determination in the hands of a court, as opposed to an administrative authority such as the IND, is that the determination of statelessness is an establishment of a fact of law, and such determination within the Dutch legal system is according to the Advisory Committee, best achieved in courts. Of course an administrative decision can also be appealed in courts, but Dutch administrative courts are careful not to infringe on the powers of the executive branch, and therefore review the decisions mainly for procedural violations and grave inadequacies. An administrative judge will therefore not engage in a full-

¹³⁹ UNHCR 'Mapping Statelessness in the Netherlands', November 2011, p. 53, para 135; ACVZ 'Geen land te bekennen' ('No country of one's own') Dec. 2013, ch. 7 on pp. 93-95.

¹⁴⁰ 'Vaststelling van het Nederlanderschap', see Rijkswet op het Nederlanderschap (Law on Nationality) of 1984, art. 17.

fledged establishment of a legal fact of statelessness, but merely check whether the administrative authority did not commit grave errors in the process of statelessness determination. The choice for the District Court of The Hague is made on the basis that this court has extensive expertise and experience with applying foreign nationality laws, and determining the possession of Dutch nationality.

The proposal for a determination procedure by the judiciary, specifically by the Dutch District Court of The Hague, is finding wide support in the Netherlands.¹⁴¹ Vesting a judge with an explicit power to determine statelessness, and ensuring access of allegedly stateless persons to such procedure certainly has a potential in filling a large gap that the current situation presents. Whether this potential will be fully exploited will depend on the procedural and legal details governing such a procedure. Careful attention would need to be paid to the accessibility of the judicial procedure centred in one single court. Even though the judges have expertise in dealing with foreign nationality laws, perhaps additional training on matters specific to statelessness would need to be conducted.

Even if despite the unfavourable political climate a court would be vested with explicit competence to determine statelessness, this does not mean that the IND and the municipalities will not need clarification of their mandates regarding statelessness persons. Not every case of statelessness can and should be confirmed in court. In analogy with the procedure for establishing the possession of Dutch nationality, not every Dutch person has their nationality status established in court. Only whenever doubts regarding the possession of Dutch nationality arise the Court of The Hague would get involved. Similarly with cases of statelessness – the BRP civil servant should have the possibility to register statelessness in unambiguous cases, and appropriate procedures and rules of evidence need to be designed. The IND should also be able to consider an individual as stateless for access to nationality and immigration related rights, and refer cases to the court only when doubts cannot be resolved on an administrative level.

Conclusion

The example of the Netherlands illustrates how the identification of stateless persons fails due to the lack of thought through statelessness determination procedures on the national level. Contrary to the position of the Dutch government, the existing procedures for identifying stateless persons in the Netherlands are not adequate in light of the relevant international standards. Neither the municipal system for registration of personal data nor the ‘no-fault’ procedure with the IND can be defended as effective alternatives for statelessness determination.

The deficiencies of the registration of statelessness in the BRP are apparent from the analysis of the rules governing these registrations. The latter are designed for the

¹⁴¹ See S. Goudsmit ‘Bescherming van staatlozen in Nederland vraagt om een aparte vaststellingsprocedure’, 2014, pp. 464-466.

registration of a foreign nationality, and do not take into account the peculiarities of statelessness. Stateless persons are thereby facing evidentiary requirements for the recognition of their status that they cannot fulfil by virtue of being stateless. Moreover, administrative instructions on the population register regarding substantive aspects of statelessness determination discourage the registration of statelessness generally, and also specifically in cases when individuals are in fact stateless.

The IND deals with stateless persons when fulfilling its tasks regarding immigration and naturalisation, and is thereby responsible for the implementation of a number of rights that stateless persons theoretically enjoy in the Netherlands. There is no established statelessness determination procedure within the IND mandate. As an organisation the IND appears more suitable than the municipalities for determining whether an individual is stateless, due to its experience with a wide range of evidence for determining individual statuses, and its experience with nationality matters. However, the BRP's registration of nationality is in principle binding on the IND when deciding on an individual's rights as a stateless person. The law grants flexibility to deviate from the BRP's registration, but this flexibility is insufficient for proper statelessness determination to take place in all cases. Firstly, there is no guarantee that the IND will decide to deviate from the BRP, and even when they do – there are no rules on statelessness determination within the IND, which leads to arbitrariness in the procedure and substance of such decisions. Recently it became possible to take the IND's findings account when registering nationality status in the BRP in a limited set of circumstances. It remains to be seen whether this provision will lead to more cases of statelessness being appropriately registered, considering the IND's potential in status determination.

The need for change is apparent from the dissatisfaction among the civil servants,¹⁴² as well as from the national and international reports on statelessness in the Netherlands. Calls for attention to the issue of statelessness are gradually taking the shape of concrete proposals for legislative amendments, among which the proposal to involve courts as a responsible authority for statelessness determination. Judicial determination of statelessness has numerous advantages, and the introduction of such a procedure can only be encouraged. However, it cannot and should not replace the need for the determination of statelessness to also take place on the administrative level.

¹⁴² See also judgment *Rechtbank Den Haag* (Court of the Hague) of 19 Feb. 2014.

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