



Statelessness at Home

The Story of a Stateless Student at Tilburg Law School

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Abstract

This article looks into the story of Hanna, a stateless student who is studying for her LLM at Tilburg Law School. By discussing Hanna's statelessness and her experiences in the Netherlands, this piece contributes to a better understanding of statelessness, while also using her situation as a backdrop for discussing some of the difficulties inherent in the current policy response to statelessness in the Netherlands.

Keywords

statelessness in the Netherlands – stateless student – statelessness programme – storytelling project – Tilburg University

1 Introduction

21-year old Hanna¹ completed her undergraduate degree in International and European Law at Tilburg Law School last summer and is now studying for her LLM. She is a bright and motivated student who is working hard towards her future. Just like her fellow Law School students, she spends time thinking about the career she would like to pursue and making plans. But, besides grades, choices and her CV, Hanna has something extra to worry about. Although she grew up in the Netherlands, speaks the language fluently and feels Dutch, she is not a Dutch national. Significantly, she also does not hold any other nationality. Hanna is stateless. It appears that she has been

¹ At the request of the interviewee and for confidentiality reasons a different name will be used to share this story.

since birth. Despite a country she proudly calls home and two loving parents who do both hold a nationality (namely, Vietnamese), Hanna has somehow missed out.

Hanna's situation confirms just how widespread the phenomenon of statelessness is. Statelessness is often and rightly described as a global challenge, affecting over 10 million people around the world.² This approach portrays statelessness as a problem of significant magnitude, but can also make it seem a rather anonymous and somehow far-away issue. This article demonstrates the daily reality of statelessness by taking a local perspective, as a problem that affects 'us', through the personal story of a member of the very Law School that produces this journal. By discussing Hanna's experiences, this piece contributes to a better understanding of statelessness, while also using her situation as a backdrop for discussing some of the difficulties inherent in the current policy response to statelessness here at home, in the Netherlands.

2 Experiences of a Stateless Student at Tilburg Law School

2.1 *Hanna's Statelessness*

Hanna was born in Germany in 1992, the daughter of two Vietnamese parents.³ In 1996, she moved with her parents to the Netherlands where they applied for asylum. After many years waiting to regularise their stay, in 2007, Hanna and her parents received a temporary residence permit with a limited validity of five years (*verblijfsvergunning regulier voor bepaalde tijd*) based on an immigration amnesty.⁴ Her residence permit has since been extended and is currently valid until 2018, providing her legal residence as an alien in the Netherlands.

2 United Nations High Commissioner for Refugees (UNHCR), 'Q&A: Campaign against statelessness gains around' (September 2013), <<http://www.unhcr.org/5231d3109.html>> accessed 30 October 2013.

3 Hanna did not acquire German nationality at birth because children born in Germany to foreign parents can acquire nationality only if one of the parents has been a legal ordinarily resident in Germany for eight years- a criterion which her parents did not fulfil. See German Nationality Act, section 4(3) under 1.

4 This amnesty regularised the stay of irregular migrants who had either applied for asylum before the first of April 2001 or had reported themselves at the alien police or Immigration and Naturalisation Service (IND) to apply for asylum before that date. Besluit van de Staatssecretaris van Justitie van 12 juni 2007, nummer WBV 2007/11 houdende wijziging van de Vreemdelingencirculaire 2000, Staatscourant 13 juni 2007, nr. 111 / pag. 12

Hanna first became aware that she might be stateless when she applied for a job at the Dutch Police Department in early 2012. Based on her experiences and skills she was selected from a pool of applicants to fill the vacancy but, unfortunately, to her dismay, she was informed that she could not be hired because she did not possess Dutch nationality, one of the key prerequisites for the position. After hearing this she went to the municipality of the city where she lives to apply for naturalisation.

The municipal officials told Hanna that she had to give up her Vietnamese nationality in order to be eligible for a Dutch nationality. According to the Vietnamese Law on Nationality, Hanna should have acquired Vietnamese nationality at birth because '*a child born inside or outside the Vietnamese territory whose parents, at the time of his/her birth, are both Vietnamese citizens has Vietnamese nationality*'.⁵ The Dutch authorities therefore assumed that Hanna had Vietnamese nationality because both her parents did. However, it came as a surprise to her that she was not aware of ever having acquired Vietnamese nationality.

In order to resolve her situation, Hanna went to the Embassy of the Republic of Viet Nam in The Hague. She explained what had happened at the municipality and made inquiries about her nationality. The Embassy told her that she was not Vietnamese and could not acquire Vietnamese nationality by any means simply because she was not born in Viet Nam. The fact that Hanna should automatically have acquired Vietnamese citizenship under the law, through her parents, who both possessed Vietnamese nationality at the time of her birth, was not taken into consideration by the Vietnamese Embassy. Hanna and her parents have since contacted the Vietnamese Embassy in The Hague again, as well as the Dutch Embassy in Viet Nam, several times to explain her situation. Thus far, to no avail. Hanna's attempts to confirm or acquire Vietnamese nationality through consular procedures resulted in a letter in which the Vietnamese Embassy stated that her claim to be recognized as a Vietnamese national was not evidenced sufficiently by documentary proof, despite the fact that she had shown the Embassy officials her parent's Vietnamese passports and her own birth certificate. These are documents that can prove one's Vietnamese nationality pursuant to the Vietnamese Nationality Law.⁶ At this moment in time then, regardless of what the Vietnamese nationality law provides, Hanna is not considered as a national by Viet Nam, nor by any other country. She is stateless.

5 Law on Vietnamese nationality (13 November 2008) No 24/2008/QH12, art 14(1) in conjunction with art 15.

6 Ibid, art 11(1).

2.2 *Hanna's Experiences with Authorities*

Complicating her story, Hanna is currently registered in the Municipal Basic Administration (GBA) as being of 'unknown nationality'. As mentioned, the municipal officials claim that Hanna cannot be considered stateless due to lack of sufficient evidence of this (yet they have also not deemed to register her as Vietnamese). This bureaucratic issue is a significant problem. If her nationality was to be registered as stateless in the GBA she would have had the right to acquire Dutch nationality through facilitated naturalisation.⁷

On their part, the Dutch Immigration and Naturalisation Service (IND) persistently state that Hanna is considered to be a Vietnamese national pursuant to the Vietnamese nationality law, regardless of the evidence to the contrary provided by the Vietnamese authorities. According to the IND, the earlier mentioned letter of the Vietnamese Embassy does not confirm whether Hanna is or is not a Vietnamese national as it only stated that her claim to be recognized as a Vietnamese national was not evidenced sufficiently by documentary proof. Looking at responses of the Vietnamese Embassy to Hanna's efforts in acquiring Vietnamese nationality, she has no perspective of obtaining Vietnamese nationality nor receiving a written statement of the Embassy officials in which an explanation is given why she cannot be considered as a Vietnamese national. Instead, Hanna's statelessness remains unacknowledged, her 'unknown nationality' masking her true status and leaving her in limbo. To be recognised as stateless in the GBA or by the IND would break the vicious circle Hanna currently finds herself in by not being able to be naturalized in the Netherlands because she cannot prove that she never acquired or is able to renounce Vietnamese nationality.

2.3 *Hanna's Experiences Living in the Netherlands*

Hanna has always been protected by her parents as much as possible to avoid stressful situations in relation to her legal status as a foreigner and feelings of insecurity while being in the process of applying for a residence permit.

Hanna did not talk much about her own situation until she gained a better understanding of statelessness after she attended a lecture on the topic by Laura van Waas, manager and founder of the Statelessness Programme at Tilburg Law School. After this lecture, Hanna was inspired to write her bachelor thesis on statelessness and did a great job in researching and writing on

7 To naturalise as a stateless person requires three years, instead of five years, of legal stay, in addition to a number of integration requirements e.g. assimilation into Dutch society and reasonable knowledge of the Dutch language. Dutch Nationality Act (*Rijkswet op het Nederlanderschap*), Article 8(4).

stateless children and how statelessness increases the vulnerability of this group to human rights violations.

While interviewing Hanna, she reflected upon some of her personal experiences and her own observations in relation to her statelessness. She pointed out that she was not able to travel in high school during the process of acquiring a residence permit in the Netherlands. Without a residence permit she was unable, for instance, to join her classmates on a school trip to France.

Nonetheless, Hanna received a temporary residence permit when she was 15 years of age. She said:

I am happy that I received a residence permit when I was in high school. If I did not receive a residence permit at the time I would have had to study at an expensive private school or pay a higher tuition fee for foreign students at university without having the right to receive a study allowance from the Ministry of Education, Culture and Science.⁸

As mentioned before, Hanna is a smart student who is finalizing her Masters in law and has the ambition of becoming a lawyer. She states:

Luckily I do not need a Dutch nationality in order to become a lawyer just like a Dutch nationality is required if you would like to work for most governmental organisations. Nonetheless, I would like to have the freedom to choose the field I would like to work in and apply for jobs where Dutch nationality is required.⁹

Hanna grew up in the Netherlands and took part in Dutch society, yet she cannot vote in the country she identifies herself with. In terms of traveling, she would like to go to Viet Nam and see her family that she has never met before. For now, she has an alien passport and can travel abroad if she is granted a visa.¹⁰ However, without a nationality she is not able to travel to some countries where she would like to spend her holidays, such as the United States of America.

People have told Hanna that her parents should be blamed for her situation of statelessness, which is an opinion that derives from ignorance and gives more reason to inform the general public on the causes and consequences

8 Interview with Hanna

9 Ibid.

10 Paspooitvoeringsregeling Nederland 2001, Article 16(4)b.

of statelessness. For the time being, Hanna remains a face amongst the crowd of students at Tilburg Law School: coming to class every day, submitting assignments, sitting for exams. Even though she feels Dutch, she is constrained and stuck in limbo as face in the crowd of stateless persons limited to certain rights and freedoms as an individual compared to her friends and peers whom she has grown up with here in the Netherlands.

3 Statelessness in the Netherlands

In 2010 there were 85069 persons in the Netherlands registered as stateless or of unknown nationality.¹¹ From this group, only 2062 persons were registered as stateless whereas the other 83007, including Hanna, were registered as being of unknown nationality. This means that persons who are in fact stateless can still be registered with unknown nationality. Hanna's situation confirms that statelessness, indeed, exists in this country and pinpoints some of the difficulties stateless persons can face in the Netherlands. This individual story shows that authorities do not necessarily have the tools or expertise to deal with statelessness, which is a reflection of the low level of awareness and little research that exists on statelessness in the Netherlands so far.

In November 2011, UNHCR published its mapping report on the situation of stateless people in the Netherlands.¹² While the Netherlands has been a party to both the 1954 Convention Relating to the Status of Stateless persons and the 1961 Convention on the reduction of Statelessness¹³ since 1962 and 1985 respectively, this study made clear that gaps exist in the implementation of these international norms and that the protection of stateless people in the Netherlands is not guaranteed in all cases. In theory, a stateless person can also enjoy the rights that are attached to the temporary and permanent residence permits that exist in the Netherlands, providing in general the protection to stateless people as set out in the Statelessness Conventions and UNHCR Guidelines on Statelessness. However, the lack of a statelessness determination procedure and the fact that statelessness is not a ground for acquisition of

11 UNHCR, 'Mapping Statelessness in the Netherlands' (November 2011) <www.refworld.org/docid/4eef65da2.html> accessed 30 October 2013.

12 Ibid.

13 As from now referred to as 1954/1961 Convention. Convention on the Reduction of Statelessness (adopted 30 Augustus 1961, entered into force 13 December 1975) 989 UNTS 175 Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117.

any of the forms of residence permit makes it uncertain whether the Netherlands is doing enough to meet its international commitments.

Without a statelessness determination procedure it is difficult to identify the number of stateless people residing in the Netherlands and define the magnitude of the problem. More importantly, a statelessness determination procedure would not only provide a better insight into the phenomenon of statelessness in the Dutch context, but it would also enable better supervision of the country's compliance with international standards. Furthermore, a statelessness determination procedure would lead to procedural improvements, as stateless people will have an appropriate procedure rather than being obliged to start an unsuitable asylum procedure or a no-fault procedure.

Research that has been done on statelessness in the Netherlands since 2011 and the growing attention for this phenomenon has led to an increasing awareness on the issue. The Netherlands Institute for Human Rights has called for the establishment of a dedicated statelessness procedure that incorporates all necessary due process guarantees.¹⁴ Also, the Dutch Advisory Committee on Migration Affairs (ACVZ) has published its advice on the general functioning of the no fault policy in July 2013.¹⁵

The no-fault policy grants a temporary residence permit to those that provide sufficient evidence that they cannot leave the country through no fault of their own.¹⁶ This policy is a non-statelessness specific protection mechanism, which provides protection to a number of stateless migrants, but not all. The Statelessness Programme has conducted research on the functioning of the no-fault policy as a mechanism to protect stateless people by undertaking an analysis of 'no fault' case files of stateless persons at the IND Information and

14 College voor de rechten van de mens, 'Duidelijke procedure nodig voor vaststellen staatloosheid' (13 December 2012), <www.mensenrechten.nl/berichten/duidelijke-procedure-nodig-voor-vasstellen-staatloosheid> accessed, 29 October 2013.

15 ACVZ, 'Waar een wil is, maar geen weg', advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken', (13 September 2013) <www.acvz.org/publicaties/Advies38-ACVZweb.pdf> accessed, 29 October 2013.

16 Aliens Decree 2000 (Vreemdelingenbesluit 2000) 'Besluit van 23 november 2000 tot uitvoering van de Vreemdelingenwet 2000' (23 November 2000) BWBR0011825, art 3.4 (1) under w in conjunction with Article 3.6 (1) under a of. For specific substantial and procedural requirements of the no-fault policy see the Aliens Act Implementation Guidelines 2000 (Vreemdelingencirculaire 2000) 'Vreemdelingencirculaire 2000' (2 March 2003) BWBR0012289, art B8/4.1.

Analysis Center. One of the main findings is that statelessness does not seem to play a role in the investigation during this procedure nor does it lead to the determination of statelessness. As a result, not all stateless persons that reside in the Netherlands are guaranteed to be protected with this procedure.¹⁷ At the time of writing, a more specific study is published by the ACVZ which provides answers on whether the Netherlands is meeting its international obligations with regard to the prevention and reduction of statelessness and the protection of stateless persons. In this report, the commission recommends establishing a statelessness determination procedure and incorporating a new purpose of residence for stateless persons in the Aliens Act.¹⁸

4 Conclusion

Hanna's story illustrates the way the Netherlands deals with statelessness. Hanna has lived in the Netherlands throughout the majority of her life, she is fully assimilated into Dutch society and would like to naturalise and acquire Dutch nationality, the nationality of the country she identifies herself with. Hanna's parents were recently informed that they would be granted Dutch nationality in early 2014. Unfortunately, this will not solve her legal situation of being stateless as she is not a minor and therefore cannot be naturalized with her parents.

It is remarkable that no further steps have been undertaken by either the municipality or the IND to address Hanna's situation. For instance, neither appears to have contacted the UNHCR office in The Hague, despite this organisation being tasked by the UN General Assembly to assist states to address statelessness. UNHCR could play a pivotal role in solving this situation as part of fulfilling its mandate on statelessness, including by assisting Hanna to acquire or confirm Vietnamese nationality or to establish proof of her statelessness.

Given the research on statelessness in the Netherlands which has emerged in the last few years it is apparent that there is growing attention and awareness for the phenomenon of statelessness. It would be interesting to shed light

17 S Janghai and C Vlieks, 'Buitenschuldbeleid schiet tekort in bescherming staatlozen' (2013) 5/6 *Asiel & Migrantenrecht* 287.

18 ACVZ, 'Geen land te bekennen', een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland', (December 2013) <http://www.acvz.org/publicaties/Advies_39-WEB-DEF.pdf> accessed, 11 December 2013. (A summary in English is also included in the report).

on this on-going research and policy development on the situation of statelessness in the Netherlands and current developments during the First Global Forum on Statelessness which will be held on 15 to 17 September 2014 in The Hague.¹⁹ As the host country, this event marks an important occasion for Dutch researchers and policy makers to take stock of the lessons they have learned, as well as to benefit from the experiences of other states in Europe and around the world, which must deal with similar questions.

19 This forum will bring together about 300 academics, government representatives, international organisations, NGOs and stateless people from around the world and would be a great platform to exchange ideas, and explore good practices and challenges in terms of policy on statelessness but also to share experiences in research on statelessness. UN High Commissioner for Refugees (UNHCR), 'Pre-Announcement of The First Global Forum on Statelessness, New Research and Policy Perspectives' (4 May 2013) <www.unhcr.org/5141e6a29.html> accessed, 29 October 2013.