BOOK REVIEW

NATIONALITY AND STATELESSNESS IN EUROPE: EUROPEAN LAW ON PREVENTING AND SOLVING STATELESSNESS BY CAIA VLIEKS (INTERSENTIA, 2022). 286 PAGES. PRICE €102.00. ISBN 9781839702617

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To this day, statelessness in Europe remains a multi-faceted issue. In comparison to other regions of the world, statelessness has been most comprehensively mapped in Europe, and it is estimated that more than 500,000 stateless persons live in Europe today.[1] The causes and consequences of statelessness are diverse, differing from state to state, and are closely intertwined with the history of the country. Large stateless populations live in former Soviet States, such as Estonia and Ukraine, as a consequence of the dissolution of the Soviet Union, while other European countries primarily host stateless migrants.[2] The protection awarded to stateless persons also varies widely, as some states, such as Hungary and France, have implemented a specific protection status for stateless persons, while other States have not.[3] This diversity and complexity makes Europe an interesting case study for statelessness research, and various scholars have conducted extensive research on this particular region.[4] *Nationality and Statelessness in Europe: European Law on Preventing and Solving Statelessness*[5] by Caia Vlieks makes a valuable contribution to this body of literature.

In her book, Vlieks goes beyond existing works by providing a comprehensive overview of the legal efforts of the Council of Europe ('CoE') and the European Union ('EU') to address statelessness in Europe, which she labels as 'European law' on preventing and solving statelessness.[6] She analyses how these two

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1 However, the number of stateless persons currently living in Europe remains an estimate due to the lack of reliable data and is presumably even higher: Institute on Statelessness and Inclusion ('ISI'), *The World's Stateless: Deprivation of Nationality* (Report, March 2020) 91 <https://files.institutesi.org/WORLD's_STATELESS_2020.pdf>, archived at <perma.cc/L2KV-HNG4>.

2 ibid 91–92.

3 See Katia Bianchini, *Protecting Stateless Persons: The Implementation of the Convention relating to the Status of Stateless Persons across EU States* (Brill Nijhoff 2018) 273, 287–89 ('*Protecting Stateless Persons*').

4 See, eg, ibid; Katia Bianchini, 'The "Stateless Person" Definition in Selected EU Member States: Variations of Interpretation and Application' (2017) 36(3) *Refugee Survey Quarterly* 81; Gábor Gyulai, 'Statelessness in the EU Framework for International Protection' (2012) 14 *European Journal of Migration and Law* 279; Roland Schärer, 'The Council of Europe and the Reduction of Statelessness' (2006) 25(3) *Refugee Survey Quarterly* 33; Caroline Sawyer and Brad K Blitz (eds), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press 2011); Katja Swider and Maarten den Heijer, 'Why Union Law Can and Should Protect Stateless Persons' (2017) 19 *European Journal of Migration and Law* 101.

5 Caia Vlieks, *Nationality and Statelessness in Europe: European Law on Preventing and Solving Statelessness* (Intersentia 2022).

6 ibid 25.

regional organisations contribute to preventing and solving statelessness in Europe, and what this contribution adds to the understanding of nationality today. Vlieks' study is limited in two important ways: it only analyses the legal frameworks of the CoE and the EU, respectively, and analyses these organisations' legal efforts only with regard to preventing and solving statelessness. The latter topic of analysis includes 'any legal norm that helps us to ensure that less persons become or remain stateless'.[7] Hence, the identification of stateless persons as such, as well as the rights and protection status awarded to them once they are identified as stateless, do not form the primary focus of the study. The choice to exclude identification and protection seems appropriate as these aspects of statelessness have not yet received much regional attention, and remain primarily regulated by the 1954 *Convention relating to the Status of Stateless Persons* ('*1954 Convention*')[8] and its domestic implementation.[9]

Regarding the selection of regional organisations, Vlieks provides well thought out reasoning. While acknowledging that both organisations are very different in a number of ways (such as the powers of the respective organisations and the legal instruments they can employ), she argues that they also share a number of important characteristics that bear relevance for the present study. They both engage in European lawmaking, thereby having a unifying effect on domestic laws throughout Europe, and they both engage in lawmaking in the area of human rights, on which the analytical framework used in the research is based.[10] Vlieks also sets out why she did not include the Organisation for Security and Co-operation in Europe ('OSCE') in her study, in spite of its work in the field of human rights. The OSCE is excluded from the research scope as it has members from other regions of the world (rather than exclusively from Europe). It also only makes political decisions, whereas Vlieks' research focuses solely on legal efforts.[11] While the exclusion of the OSCE seems reasonable for feasibility reasons, the organisation's potential role in European lawmaking on statelessness seems to be dismissed too quickly. At the *High-Level Segment on Statelessness* in 2019, the OSCE made six pledges — among others — to make recommendations to OSCE participating States on addressing childhood statelessness through improvement of legislation and administrative practices.[12] In 2017, it produced a handbook on international standards and good practices regarding statelessness in the OSCE area.[13] Such recommendations could be soft law instruments and relevantly, for the analysis of the CoE and the EU, Vlieks includes soft law.[14]

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7 ibid 13.

8 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) ('*Convention relating to the Status of Stateless Persons*').

9 According to Katia Bianchini, 'the identification of statelessness and the implementation of the *1954 Convention* remain a highly uncoordinated area of immigration law and policy, leaving a stateless person subject to different treatments across the EU': Bianchini, *Protecting Stateless Persons* (n 3) 70.

10 Vlieks (n 6) 25.

11 ibid 26.

12 United Nations High Commissioner for Refugees ('UNHCR'), *High-Level Segment on Statelessness: Results and Highlights* (Report, May 2020) 80 <https://www.refworld.org/docid/5ec3e91b4.html>, archived at <perma.cc/G4ZJ-V2PL>.

13 Organisation for Security and Co-operation in Europe ('OSCE') and UNHCR, *Handbook on Statelessness in the OSCE Area International Standards and Good Practices* (Handbook, 28 February 2017) <https://www.refworld.org/docid/58b81c404.html>, archived at <perma.cc/3WCP-DPHR>.

14 Vlieks (n 6) 26.

In addition to the research questions and methods employed by Vlieks, the relevance of the study and the conceptual framework she employs, Chapter One sets out the analytical framework upon which the other chapters of the book are built. The European law on preventing and solving statelessness is studied on the presumption of an analytical framework that is designed from a human rights perspective. Vlieks thereby joins a prevalent discourse in current statelessness research; namely, that statelessness is a human rights issue and should be addressed as such.[15] The analytical framework is built on a brief analysis of the most important international and regional legal instruments addressing statelessness. These instruments include, among others: the *Convention on Certain Questions relating to the Conflict of Nationality Laws*;[16] the *Universal Declaration of Human Rights*;[17] the *1954 Convention*;[18] the *1961 Convention on the Reduction of Statelessness*;[19] international human rights treaties, such as the *International Covenant on Civil and Political Rights*;[20] and regional human rights treaties, such as the *American Convention on Human Rights*.[21] Through this analysis, a pattern of recurrent norms is distilled. On the basis of these norms Vlieks distinguishes five categories of substantive legal norms on preventing and solving statelessness. These categories include:

1. Legal norms aimed at preventing and solving *childhood statelessness*;
2. Legal norms concerning solutions to *conflicts of nationality law* and preventing *loss of, (arbitrary) deprivation of, and denial of nationality*;
3. Nationality matters and reduction of statelessness in the context of *state succession*;
4. Legal norms aimed at the *right to a nationality* and the *right to acquisition of a nationality for people who became stateless in the past and remain stateless today, and/or who arrive to a country stateless*; and
5. Legal norms ensuring *non-discrimination* and *equality before the law* in nationality matters.[22]

These five categories articulate different aspects of the human right to a nationality. The right to a nationality takes on a central role in the research in two ways. On the one hand, European human rights law does not contain an explicit right to a nationality, as neither the *European Charter of Fundamental Rights* (‘*EU*

15 See, eg, Michelle Foster and Helene Lambert, ‘Statelessness as a Human Rights Issue: A Concept Whose Time Has Come’ (2016) 28(4) *International Journal of Refugee Law* 564; Laura van Waas, ‘Are We There Yet — The Emergence of Statelessness on the International Human Rights Agenda’ (2014) 32(4) *Netherlands Quarterly of Human Rights* 342.

16 *Convention on Certain Questions relating to the Conflict of Nationality* Laws, 179 LNTS 89 (entered into force 1 July 1937).

17 *Universal Declaration of Human Rights*, UN Doc A/810 (10 December 1948).

18 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

19 *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 898 UNTS 175 (entered into force 13 December 1975).

20 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

21 *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978). For a full overview of the instruments, see Vlieks (n 6) 27–47.

22 ibid 48.

Charter')[23] nor the *European Convention on Human Rights* ('*ECHR*')[24] provide such a right. For this reason, Vlieks argues that Europe makes for an interesting case study as to how nationality and statelessness have been dealt with in absence of such a right.[25] On the other hand, Vlieks operationalises the right to a nationality as laid down in international human rights instruments by using the aforementioned five categories. In doing so, Vlieks brings clarity to the discussion of what the right to a nationality precisely entails.[26] In the annexes of the book, schematic overviews are provided of the relevant provisions of international and regional instruments, as well as of the instruments of the CoE and the EU, in the five substantive categories. This thereby provides researchers with a valuable tool to analyse other (future) instruments through the lens of the right to a nationality.[27] It would be interesting to see how this analytical framework would be applied to another region where an explicit right to a nationality exists, such as the Americas.

Chapter Two provides a detailed analysis of the context of the research, namely the historical evolution of statelessness in Europe, the causes and the responses to the issue throughout history, as well as the situation today. In doing so, Vlieks demonstrates that her research is embedded in a wider field of statelessness research and takes into account the historical and social context of statelessness. Nevertheless, the research does not aim to be interdisciplinary in nature and does not overstep its essentially legal character. Therefore in this chapter, Vlieks primarily makes use of secondary sources, consulting primary sources only where necessary.[28] Interestingly, Chapter Two not only embeds the research in its broader context, but it also demonstrates the relevance of the research. The CoE's focus on human rights and the EU's focus on cooperation and the development of EU citizenship showcase that both organisations are highly committed to connecting individuals to their respective states and to ensuring that everyone can enjoy their rights.[29] Hence, both organisations have a clear interest in preventing and solving statelessness. Finally, it is proclaimed that Chapter Two also serves to test the analytical framework as developed in Chapter One, and to amend it where necessary.[30] Vlieks comes to the conclusion that Chapter Two did not raise any further questions requiring any changes to the framework,[31] but it is not entirely clear how she reaches that conclusion. As a result, the analytical framework is not amended, but merely repeated.

Turning to the core of the study, Chapters Three and Four follow a well-designed, analogous structure. First, an overview is provided of the relevant instruments of the CoE and the EU, respectively, which are studied in connection with relevant explanatory background documents, case law, related legal

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23 *European Union Charter of Fundamental Rights*, opened for signature 7 December 2000, 326 OJ C 391 (entered into force December 2009).

24 *European Convention on Human Rights*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953).

25 Vlieks (n 6) 10.

26 For other analyses of what falls within the scope of the right to a nationality, see, eg, Mónika Ganczer, 'The Right to a Nationality as a Human Right?' in Marcel Szabó et al (eds), *Hungarian Yearbook of International Law and European Law 2014* (Eleven International Publishing 2015); Barbara von Rütte, *The Human Right to Citizenship: Situating the Right to Citizenship within International and Regional Human Rights Law* (Brill Nijhoff 2022) ch 5.

27 Vlieks (n 6) 224, 240–44.

28 ibid 55.

29 ibid 89–90.

30 ibid 90–91.

31 ibid 91.

documents, literature and commentaries from academics, and as a complementary source, studies from civil society organisations and reports from non-governmental organisations.[32] Subsequently, the instruments are scrutinised by means of the five substantive categories of the analytical framework.[33] The result of Vlieks' comprehensive mapping exercise is a thorough reference work that will be valuable for researchers, practitioners and advocates alike. Through her analysis, she identifies striking weaknesses in the respective legal frameworks, such as the focus of the CoE on lawful residence on the European territory, thereby linking statelessness to immigration policy and creating additional barriers for stateless persons.[34] With respect to the EU, the overall conclusion is that its contribution to preventing and solving statelessness in Europe is rather limited, and a clear and coherent effort to address statelessness is lacking.[35]

The findings of the previous chapters are brought together in a coherent, overarching analysis in Chapter Five of the book. While at first sight the legal frameworks of the CoE and the EU seem irreconcilable, considering the intergovernmental nature of the CoE on the one hand, and the supranational nature of the EU on the other hand, Vlieks brings these two organisations together in their similar core mission: to protect human rights in Europe. She claims that they form 'part of a larger, living ecosystem of evolving (human rights) norms' on preventing and solving statelessness.[36] Nevertheless, one cannot help but wonder how the norms of these two organisations interact with each other, considering that EU law and the *ECHR* have a complex relationship. Article 52(3) of the *EU Charter* stipulates that the scope of the rights provided by the *EU Charter* are the same as those provided by the *ECHR*, as a result of which interpretations of relevant rights by the European Court of Human Rights will also impact EU law.[37] A more elaborate analysis on the interaction between the respective legal frameworks would have been desirable for the comprehensiveness of the research.

While it is beyond the scope of the present book, it would be interesting to understand how the norms produced by the CoE and the EU effectively exert influence on the domestic level. With respect to statelessness in Europe today, Vlieks states that: 'Despite all historical and legal developments, despite the fact that the key legal instruments were adopted years ago by States, people remain trapped in situations of misery, uncertainty and rightlessness without a nationality.'[38] This statement makes one wonder to what extent the problem is also situated at the level of implementation of these regional instruments. Further research on the transposition of these regional norms into domestic legal systems could potentially clarify this issue. Vlieks only uses domestic legislation as an illustration[39] and it is not clear how these illustrations are selected or what their precise contribution is to the analysis. Given the highly disparate nature of

32 ibid 96–125, 168–94.
33 ibid 168.
34 ibid 165.
35 ibid 220.
36 ibid 230.
37 Wolfgang Weiss, 'Human Rights in the EU: Rethinking the Role of the European Convention on Human Rights after Lisbon' (2011) 7(1) *European Constitutional Law Review* 64, 64.
38 Vlieks (n 6) 90.
39 ibid 7.

statelessness legislation at the domestic level,[40] the selection could influence the findings of the research.

The last chapter, Chapter Six, provides an overarching, innovative reflection on the contributions of the CoE and the EU to the legal concept of nationality in Europe. Vlieks concludes that, in essence, nationality in Europe has an exclusionary character as a result of the focus on legal and habitual residence as well as the acquisition of nationality on the basis of the *jus sanguinis* principle.[41] She rightly states that: 'Nationality was — certainly in the 19th and the beginning of the 20th century — and is still used as a way to protect the people that belong to the state and to keep out anyone who might be perceived as compromising that common identity.'[42] Interestingly, while it was the absence of an explicit right to a nationality in European law that made Europe an interesting case study, it is precisely that absence that, according to Vlieks, explains why the dichotomy between the right to a nationality and state sovereignty is balanced in favour of the latter, leaving the door open for statelessness.[43] In her final reflections, Vlieks makes some recommendations, such as promoting the ratification of instruments of the CoE and mainstreaming statelessness provisions in EU law.[44] However, these recommendations remain rather limited and positivist, and do not add much to the value of the book. A normative analysis of which legal approaches could potentially address the problem would be sufficient material for a separate research project based on Vlieks' valuable findings.

As such, the book makes an important contribution to the growing body of statelessness research, both on an academic and practical level. Not just academics will benefit from this reference work, as it also speaks to a broader audience, encompassing students, practitioners and advocates. The book provides a comprehensive overview of the legal efforts to combat statelessness by the CoE and the EU, on which future research can build. Being a young scholar in the statelessness field, Vlieks sets a great example for other young scholars to make novel contributions to this expanding field through publication of their dissertations.

40 On the divergent implementation of international standards related to statelessness, see, eg, Bianchini, *Protecting Stateless Persons* (n 3).

41 Vlieks (n 6) 232–35.

42 ibid 234.

43 ibid 236.

44 ibid 237–38.