

## **Briefing - Overview of the index, case law and administrative practice**

### **Introduction**

The inclusion of Georgia into the European Network on Statelessness (ENS) Statelessness Index in January 2024 marks a significant milestone in the country's journey towards addressing statelessness. This development provides an opportunity to examine Georgia's legal framework, judicial practice, and administrative approaches to statelessness determination. Recent court decisions and administrative practices have highlighted both the progress made and the challenges that remain in protecting stateless individuals and preventing statelessness within Georgia's borders.

The inclusion of Georgia in the Statelessness Index represents Georgia's integration into a broader European framework for addressing statelessness issues. This development allows for systematic comparison of Georgia's practices with international standards and facilitates the identification of both strengths and areas requiring improvement in the country's approach to statelessness determination, prevention and reduction.

### **1. Georgia's Legislative Framework**

Georgia's commitment to addressing statelessness is reflected in its substantial legislative framework, which has evolved significantly since the introduction of a dedicated statelessness determination procedure (SDP) in 2012. The country maintains a strong record of accession to international treaties and is a party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The existing framework provides for a relatively accessible determination procedure, with no application fees and no lawful stay requirements, making it theoretically available to all potential applicants across the country.

A particularly noteworthy development occurred in early 2024 when Georgia reduced the naturalisation period for stateless persons from ten to five years and eliminated application fees for this group. This change demonstrates the country's growing recognition of the unique challenges faced by stateless individuals and represents a significant step towards facilitating their integration into Georgian society. The reform acknowledges the particular vulnerability of stateless persons and aims to provide them with a more accessible path to nationality, thereby reducing the overall incidence of statelessness within the country.

However, the framework still presents certain challenges, particularly in the absence of state-funded legal aid during the determination procedure, which places a considerable burden on non-governmental organisations providing free legal assistance. This gap in support particularly affects the most vulnerable applicants, who often lack the resources to navigate the complex legal procedures effectively. Additionally, the current requirement for applications to be submitted in writing and exclusively in Georgian, coupled with the inability to initiate procedures *ex officio*, creates potential barriers for some of the most vulnerable individuals seeking recognition of their statelessness status.

The Government's 2023 Statelessness Action Plan represents another positive development, incorporating measures specifically designed to enhance the SDP. This comprehensive plan addresses various aspects of statelessness determination and prevention, including measures to improve data collection, enhance procedural efficiency, and strengthen coordination between relevant government agencies. The plan also acknowledges the need for capacity building among decision-makers and the importance of raising awareness about statelessness issues among both officials and the general public.

## **2. Case Law Analysis: Balancing Family Unity and State Security**

The Supreme Court's 2023 ruling in the case of F.A.R.J. versus the LEPL Public Services Development Agency represents a turning point in Georgian jurisprudence regarding statelessness determination.<sup>1</sup> The case highlighted the complex interplay between state security concerns and the fundamental right to family unity. At its core, the case challenged the administrative practice of relying solely on classified security information to deny statelessness status, particularly in cases where the applicant has established significant family ties within Georgia.

The Court's approach demonstrated a sophisticated understanding of the need to balance competing interests, particularly in cases involving family ties to Georgian nationals. The judgment emphasised that administrative bodies must conduct a thorough proportionality assessment when weighing state security concerns against family unity rights. The Court's reasoning was particularly noteworthy in its critique of the lower courts' failure to adequately consider the impact of the decision on the applicant's Georgian national spouse and minor children, thereby establishing a precedent for more comprehensive consideration of family circumstances in future cases.

The decision's significance extends beyond the immediate case, as it establishes important principles regarding the use of classified information in administrative decision-making. The Court emphasised that while state security concerns are legitimate considerations, they cannot serve as a blanket justification for denying statelessness status without proper consideration of other relevant factors. This approach aligns with international human rights standards and reflects a growing recognition of the need for proportionality in administrative decision-making, particularly in cases affecting fundamental rights such as family unity.

Furthermore, the Court's application of European Court of Human Rights jurisprudence in its reasoning demonstrates the growing integration of international human rights standards into domestic decision-making processes. By emphasising the need for a careful balance between national security interests and individual rights, the Court has established a framework that requires administrative bodies to engage in more nuanced and comprehensive evaluations of statelessness applications, particularly when family unity is at stake.

The judgment takes on particular significance given the prevalent administrative practice of invoking state security concerns as grounds for denying statelessness status. The Court's judgement addresses a systemic issue where security considerations have been applied expansively and often without sufficient scrutiny. Of particular concern is the procedural framework where security services' positions remain classified, preventing even the Public Service Development Agency from fully accessing and independently assessing the underlying security risks. This creates a problematic dynamic where decision-making bodies are required to make determinations without complete access to the evidence upon which their decisions must be based. The Court's judgement therefore represents a crucial step toward ensuring that security-based rejections are subject to meaningful review and proper procedural safeguards, requiring authorities to demonstrate more concrete and specific security threats rather than relying on generalised security concerns.

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<sup>1</sup> The Supreme Court of Georgia, N BS-715(K-23), F.A.R.J. v. the LEPL Public Services Development Agency.

### **3. Case Law Analysis: Temporary Documentation and Nationality Rights**

The case of Mr. M.A.S.A.j. provides crucial insights into the interpretation of temporary travel documents in the context of statelessness determination.<sup>2</sup> The case centered on the fundamental question of whether possession of a temporary Jordanian passport could be equated with nationality rights, challenging common assumptions about the relationship between travel documents and nationality status. The Appeals Court's decision effectively challenged the administrative body's oversimplified approach to documentation assessment, establishing important precedents for future cases involving similar issues.

The Court's analysis delved deep into the distinction between permanent and temporary Jordanian passports, recognising the unique situation of Palestinians in Jordan. By examining the specific characteristics of temporary passports - including the absence of a national identification number and limited duration - the Court established a framework for evaluating the substantive rights associated with different types of documentation. This detailed analysis has significant implications for future cases involving similar documentation issues, particularly those concerning populations with complex historical backgrounds of displacement and uncertain nationality status.

The judgment's reasoning was particularly noteworthy in its recognition of the humanitarian nature of temporary travel documents. The Court emphasised that the issuance of such documents by host countries does not automatically confer nationality rights but rather represents a humanitarian measure to facilitate travel and basic documentation needs. This understanding aligns with international best practices in statelessness determination and reflects a more nuanced approach to evaluating evidence of nationality or lack thereof.

The case's successful resolution marked a significant shift in administrative practice regarding documentation assessment. Beyond its immediate impact in securing recognition of the applicant's statelessness status, the Court's decision established a sophisticated analytical framework that goes beyond the specific context of Jordanian temporary passports. By emphasising the distinction between humanitarian documentation and substantive nationality rights, the judgment provides administrative bodies with clear guidance for evaluating complex cases involving various forms of temporary documentation. This precedent is particularly valuable given the increasing global mobility and the diverse range of travel documents and temporary permits that stateless persons may possess. The Court's reasoning effectively bridges the gap between international legal standards and domestic administrative practice, establishing a more nuanced and rights-based approach to documentation assessment in statelessness determination procedures.

### **4. Administrative Practice: Emerging Challenges in Minor Cases**

Recent administrative practices, particularly in cases involving minors, reveal concerning trends in the implementation of Georgia's statelessness determination framework. The decision by the Public Service Development Agency exemplifies the procedural challenges facing vulnerable applicants, particularly minors, in navigating the statelessness determination system. The case highlights significant issues regarding burden of proof, evidence gathering, and the role of administrative bodies in ensuring fair and effective procedures.

The administrative body's practice of requiring applicants, particularly in cases involving minors, to obtain documentation from foreign authorities after the body's own attempts have failed represents a problematic shift in the burden of proof. This approach appears to contradict both the spirit and the

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<sup>2</sup> Court of appeals of Georgia, Ruling N3B2283-20, M.A.S.A.j. v. LEPL Public Service Development Agency.

textual interpretation of Georgian legislation, which explicitly tasks administrative bodies with gathering relevant information for decision-making processes. The practice becomes particularly problematic when considering the best interests of the child principle, which should guide all administrative and judicial decisions affecting minors.

This administrative practice also illustrates broader systemic issues in the handling of statelessness applications, particularly the tendency to place excessive documentary requirements on applicants even when such requirements are practically impossible to fulfill. The administrative body's decision to leave the application without consideration due to the inability to obtain documentation from South African authorities demonstrates a rigid approach that fails to account for the practical challenges faced by stateless persons and their representatives in obtaining official documentation.

Moreover, the administrative practice revealed in this case raises serious concerns about compliance with international standards and best practices in statelessness determination. The inadequate consideration of alternative forms of evidence and the failure to apply appropriate standards of proof in cases involving minors highlight an urgent need for comprehensive reforms in administrative practices addressing vulnerability in statelessness determination procedures.

## **Conclusion**

The inclusion of Georgia into the European Network on Statelessness Index in 2024 represents both a milestone achievement and an opportunity for critical evaluation of the country's approach to statelessness. The developments outlined in this analysis reveal a dynamic landscape where legislative progress and judicial innovation coexist with persistent administrative challenges. The reduction of the naturalisation period to five years and the elimination of application fees demonstrate Georgia's growing recognition of the unique vulnerabilities faced by stateless persons, while the 2023 Statelessness Action Plan provides a comprehensive framework for future improvements.

Recent judicial decisions have played a crucial role in shaping Georgia's approach to statelessness determination. The Supreme Court's ruling in the F.A.R.J. case has established important precedents for balancing state security concerns with fundamental rights, particularly regarding family unity. Similarly, the Appeals Court's decision in the M.A.S.A.j. case has provided valuable guidance on the evaluation of temporary documentation, contributing to a more nuanced understanding of the relationship between travel documents and nationality status. These decisions reflect Georgia's growing alignment with international human rights standards and recognition of the complex nature of statelessness cases.

However, the analysis of administrative practices, particularly in cases involving minors, reveals concerning gaps between legislative intent and practical implementation. This case highlights the persistent challenges in the current system, especially regarding burden of proof requirements and the handling of vulnerable applicants. These implementation challenges are further complicated by the absence of state-funded legal aid and language barriers in the application process, which can create significant obstacles for the most vulnerable applicants seeking recognition of their statelessness status.

Looking forward, Georgia's progress in addressing statelessness will largely depend on its ability to bridge the gap between its progressive legislative framework and practical implementation. The country's inclusion in the ENS Statelessness Index provides a valuable opportunity for systematic evaluation and improvement of its practices against European standards. This development,

combined with recent reforms and judicial precedents, positions Georgia to make further progress in protecting stateless individuals and preventing statelessness. Success will require continued commitment to reforming administrative practices, enhancing access to legal aid, and ensuring consistent application of judicial precedents across all levels of decision-making. The evolving framework for statelessness determination in Georgia thus stands at a crucial juncture, with the potential to serve as a model for other countries in the region while continuing to address its own remaining challenges.