

Dagmar LANTAJOVÁ   
Trnava University, Slovakia\*

## Discrimination Concerning Nationality in the Case Law of Judicial Bodies

### • Abstract •

This paper addresses the issue of discrimination in the area of the right to nationality in the context of the case law of judicial and quasi-judicial human rights protection bodies. The development of international human rights law and the case law of judicial bodies in recent decades has significantly challenged the absolute nature of the state's discretionary power in matters of nationality. Nationality is increasingly perceived not only as a formal legal status but also as a significant element of an individual's legal identity. The starting point is the wording of selected international human rights treaties on the right to nationality and the prohibition of discrimination. The focus will be on analysing the extent to which the requirements of non-discrimination and the prevention of statelessness are reflected in the case law of universal and regional judicial or quasi-judicial human rights protection bodies. The contribution comparatively examines the approaches of universal quasi-judicial treaty bodies, the European Court of Human Rights, and the inter-American and African human rights protection bodies to disputes in which nationality serves as both an element of legal identity and a potentially discriminatory criterion. Particular attention is paid to the question of whether the courts recognize the existence of discrimination in access to nationality based on grounds other than gender equality, especially based on origin, ethnicity, birth, or migration status. The conclusion of the contribution identifies trends towards the convergence of case law and formulates implications for domestic legal regulations and application practice.

**Keywords:** Human Rights, Statelessness, Gender Equality, Legal Status, Legal Identity.

### Introduction

Nationality represents the fundamental legal status of an individual, establishing a permanent legal relationship between a person and a state and conditioning the

---

\* ORCID ID: 0000-0002-4701-9521; address: Kollárova 545/10, 917 01 Trnava, Slovakia; e-mail: [dagmar.lantajova@truni.sk](mailto:dagmar.lantajova@truni.sk)

exercise of a broad spectrum of rights and obligations. Traditionally, international law recognized it as an area within the exclusive competence of the sovereign state, and differential treatment based on nationality was regarded as a legitimate and natural manifestation of state sovereignty (Brownlie, 2013, p. 415). This approach was particularly evident in the fields of political rights, the entry and residence of foreigners, and social and public-law entitlements.

However, the development of international human rights law and the jurisprudence of judicial bodies over the past few decades has significantly challenged the absolute character of this discretionary power. Nationality is increasingly perceived not only as a formal legal status but also as a significant element of an individual's legal identity, closely linked to the protection of private and family life, the principle of equality, and the prohibition of discrimination. Distinctions based on nationality can therefore no longer be automatically considered legitimate; they are subject to scrutiny under the proportionality, legitimate aim, and necessity tests.

A particularly sensitive area concerns discrimination based on nationality, where differential treatment affects the core of fundamental rights, such as the right to family life, the right to legal identity, the prohibition of arbitrariness, and the protection of children and other vulnerable groups. The jurisprudence of regional and international courts and quasi-judicial bodies shows that the boundary between permissible differentiation and prohibited discrimination in the field of nationality is increasingly narrow and is subject to more rigorous judicial review.

Although the European Court of Human Rights does not expressly recognize a subjective right to nationality, through its interpretation of Article 8 and Article 14 of the European Convention on Human Rights, it has gradually developed case law that evaluates discrimination relating to nationality in terms of its impact on the private and family life of the individual (*Genovese v. Malta*; *Biao v. Denmark*).<sup>1</sup> Similarly, the Inter-American Court of Human Rights, relying on the explicit right to nationality under the American Convention on Human Rights, considers discriminatory denial or deprivation of nationality a serious violation of human rights (*Yean and Bosico Children v. Dominican Republic*).<sup>2</sup> The African human rights system, although it does not contain an explicit right to nationality, has developed protection against discrimination in nationality matters through

---

<sup>1</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*; ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

<sup>2</sup> Inter-American Court of Human Rights, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

case law as part of the right to legal identity and human dignity (*Anudo Ochieng Anudo v. United Republic of Tanzania*).<sup>3</sup>

Quasi-judicial bodies play an essential complementary role in the field of nationality alongside judicial human rights bodies. UN treaty bodies as well as regional mechanisms, through individual complaints, views, and recommendations, gradually develop normative standards on the prohibition of discrimination, the prohibition of arbitrariness, and the protection of legal identity in the context of nationality. Although their decisions are not formally binding, their authoritative interpretation of international treaties significantly influences the case law of courts, national practice, and doctrinal development regarding the acquisition, loss, and deprivation of nationality.

The objective of this article is to analyse how judicial and quasi-judicial bodies at the international and regional levels assess discrimination in relation to nationality, and to identify the criteria they use to distinguish between legitimate differential treatment and violations of the principle of equality. Particular attention is dedicated to the case law of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights.

The methodology of this paper consists of analysing and subsequently synthesizing relevant international legal norms and the jurisprudence of regional courts and quasi-judicial bodies, with a focus on identifying criteria for assessing discrimination in the field of nationality. The comparative dimension enables an evaluation of converging trends and differences across various human rights protection systems.

## Nationality as a Discriminatory Criterion in Law

Discrimination represents one of the fundamental categories of human rights protection and, in the broadest sense, refers to unjustified differential treatment of persons in comparable situations based on a particular characteristic or status. International human rights law distinguishes most notably between direct discrimination, where differential treatment is explicitly based on a protected characteristic, and indirect discrimination, where a seemingly neutral rule or practice in fact disadvantages a certain group of persons (Strážnická et al., 2013, pp. 522–523).

---

<sup>3</sup> ACHPR, Application No. 012/2015, *Anudo Ochieng Anudo v. The United Republic of Tanzania*, Judgment of 22 March 2018.

Nationality represents the fundamental legal status of the individual, establishing a lasting legal relationship between the person and the state, which subsequently also defines the state's international obligations and corresponding rights regarding nationality (Čepelka and Šturma, 2003, p. 322). Distinctions between citizens and non-citizens are regarded as a legitimate expression of state sovereignty, especially in the areas of political rights, entry and stay in the territory, or access to public office (Brownlie, 2013, pp. 416–417). International law long accepted that the regulation of acquisition and loss of nationality belongs to the core of a state's domestic jurisdiction.

The development of international human rights law has gradually led to the view that nationality must be understood not only as a formal legal status but also as a significant element of an individual's legal identity, directly affecting the enjoyment of fundamental rights and freedoms. Distinctions based on nationality are therefore subject to review under the principles of equality and non-discrimination, particularly when they affect private and family life or lead to legal uncertainty or exclusion.

It is necessary to distinguish between permissible differential treatment and prohibited discrimination. While some differences in the legal status of citizens and non-citizens may pursue a legitimate aim, differential treatment based on nationality cannot be considered legitimate if it is arbitrary, disproportionate, or has discriminatory consequences for protected groups. Judicial and quasi-judicial bodies have repeatedly emphasized that the decisive factor is the practical impact of the measure, not its formal justification (*Biao v. Denmark*).<sup>4</sup>

Special attention is required for the relationship between nationality and other grounds of discrimination, such as gender, ethnic origin, or place of birth. A formally neutral criterion of nationality may, in practice, serve as a proxy for prohibited discrimination, especially when it affects groups historically exposed to marginalization (*Genovese v. Malta*).<sup>5</sup> This is particularly relevant in cases involving transmission of nationality to children, deprivation of nationality, or access to registration and identification documents.

## State Discretion in Matters of Nationality

The regulation of the acquisition and loss of nationality has traditionally been part of the core of state sovereignty. International law has long recognized that each

---

<sup>4</sup> ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

<sup>5</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

state has the right to determine the conditions under which a person is considered its national. This principle was explicitly confirmed in the case law of the International Court of Justice (*Nottebohm Case*).<sup>6</sup>

The state's discretionary power in matters of nationality is not unlimited. International human rights law requires states to respect the principle of equality, the prohibition of arbitrariness, the protection of fundamental rights, and essential procedural safeguards (*M.A.S. and I.E.J. v. Italy*).<sup>7</sup> This is particularly relevant when decisions on nationality have a crucial impact on the individual's legal identity, family life, or lead to statelessness. This normative shift provides the basis for judicial review of discrimination in matters of nationality and forms the starting point for the analysis in the following sections.

### **Universal International Legal Framework on the Prohibition of Discrimination in Matters of Nationality**

The prohibition of discrimination is a foundational principle of international human rights law and serves as one of the key normative pillars protecting human dignity. Its significance lies in securing equality in the enjoyment of rights and freedoms, irrespective of personal status or other relevant characteristics. In the field of nationality, this principle is fundamental, as nationality conditions access to a wide array of rights, and its denial or restriction may have profound consequences for a person's legal status.

The Universal Declaration of Human Rights (1948) provides the foundational basis of the prohibition of discrimination in Article 2 and explicitly recognizes the right to nationality and the prohibition of its arbitrary deprivation in Article 15. Although the Declaration is not legally binding, it has had a significant impact on subsequent treaty-making and national legislation. Many scholars believe that several of its provisions have gradually acquired customary status (Jankuv et al., 2016, p. 170).

The International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination through Articles 2 and 26. Article 2 obliges states to respect and ensure the rights recognized in the Covenant without distinction, including national or social origin or other status. Article 26 establishes an autonomous

---

<sup>6</sup> *Nottebohm Case, Liechtenstein v. Guatemala*, ICJ Reports 1955, p. 23.

<sup>7</sup> Communication No. 3589/2019, *M.A.S. and I.E.J. v. Italy*, CCPR/C/134/D/3589/2019, Views 2022.

right to equality before the law.<sup>8</sup> The Human Rights Committee has repeatedly emphasized that Article 26 applies even in areas not explicitly regulated by other provisions of the Covenant, including nationality decisions.<sup>9</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) obliges states to eliminate discrimination based on race, colour, descent, or national or ethnic origin.<sup>10</sup> The CERD defines racial discrimination as any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life (Article 1 of the Convention). The CERD Committee has repeatedly emphasized in its jurisprudence that although states may distinguish between citizens and non-citizens, such distinctions must not result in discrimination prohibited by the Convention, particularly where they have a disproportionate impact on certain ethnic groups.<sup>11</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is essential for gender equality, explicitly requiring equal rights of men and women in matters of nationality in Article 9.<sup>12</sup>

The Convention on the Rights of the Child (CRC) also plays a critical role. It prohibits discrimination in Article 2 and recognizes the child's right to a name and nationality in Article 7.<sup>13</sup> The Committee on the Rights of the Child stresses that states must adopt positive measures to prevent discrimination in children's access to nationality, especially in cases involving migrant or stateless parents.<sup>14</sup>

## Case Law of Universal Quasi-Judicial Bodies

Universal quasi-judicial human rights bodies, also referred to as UN treaty bodies, play an important role in interpreting and clarifying states' international ob-

---

<sup>8</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171.

<sup>9</sup> HRC, CCPR General Comment No. 18: Non-discrimination, 1989.

<sup>10</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 U.N.T.S. 195.

<sup>11</sup> CERD, *Concluding Observations on the thirteenth and fourteenth periodic reports of the Dominican Republic*, CERD/C/DOM/CO/13-14, 2013.

<sup>12</sup> CEDAW, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 U.N.T.S. 13.

<sup>13</sup> CRC, *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3.

<sup>14</sup> CRC, *General comment No. 20 on the implementation of the rights of the child during adolescence*, 2016, CRC/C/GC/20.

ligations regarding the prohibition of discrimination in matters of nationality. Through individual communications, general comments, and recommendations, they develop interpretative standards. Although their decisions are not formally binding, they carry significant authoritative weight, prompting states to remedy shortcomings in implementing their obligations under universal human rights treaties.

The UN Human Rights Committee (HRC) addressed this issue in *M.A.S. and I.E.J. v. Italy*,<sup>15</sup> where the complainants argued that Italian authorities had rejected a citizenship application. In the case of the female complainant, the decision was based solely on her husband's circumstances, without an individual assessment of her situation. She claimed this constituted discrimination (particularly under Article 26 ICCPR) and interference with her private and family life. The case serves as a quasi-judicial precedent demonstrating that even in areas of broad state discretion, such as naturalization, states must comply with the prohibition of arbitrariness and the principle of equality.

Within the Committee on the Elimination of Racial Discrimination, the situation in the Dominican Republic was examined under the reporting procedure. The Committee assessed the periodic report and recommended that the state remove administrative barriers preventing persons of Haitian descent from obtaining identity documents and restore documents that had been confiscated, annulled, or destroyed by the authorities. It also stressed that Dominican citizens of Haitian origin must not be deprived of their right to nationality, and that the state must adopt non-discriminatory policies regarding identity documents and ensure due process safeguards. The Committee further expressed concern that the judgment of the Inter-American Court of Human Rights in *Yean and Bosico Children v. Dominican Republic*<sup>16</sup> had not been fully implemented.

In *Salgado v. United Kingdom*,<sup>17</sup> the UN Committee on the Elimination of Discrimination against Women addressed historical legislation that prevented women from transmitting nationality to their children on equal terms with men, thereby constituting differential treatment in the transmission of nationality. The Committee examined the case primarily through the lens of Article 9 CEDAW (equality in matters of nationality) and admissibility requirements. Similarly, in

---

<sup>15</sup> Communication No. 3589/2019, *M.A.S. and I.E.J. v. Italy*, CCPR/C/134/D/3589/2019, Views 2022.

<sup>16</sup> *Yean and Bosico Children v. Dominican Republic*, Judgment of 8 September 2005, CERD/C/DOM/CO/13-14, para. 23.

<sup>17</sup> Communication No. 11/2006, *Salgado v. United Kingdom*, CEDAW/C/37/D/11/2006.

*J.S. v. United Kingdom*,<sup>18</sup> the complaint alleged that legislative amendments had failed to eliminate the discriminatory effects of previous rules that favoured paternal over maternal transmission of nationality. The Committee viewed these cases as examples of the enduring impact of genderunequal nationality laws.

The issue of gender equality in the transmission of nationality is also central to the Global Campaign for Equal Nationality Rights, which aims to eliminate legal and practical forms of discrimination in acquiring, changing, and transmitting nationality. Its primary goal is to achieve equality between men and women in nationality laws, particularly concerning the right to confer nationality on children and spouses without discriminatory restrictions. The campaign also seeks to prevent statelessness, as genderdiscriminatory nationality laws are among the significant structural causes of statelessness. Another goal is to strengthen the recognition of nationality as a fundamental human right and a core element of an individual's legal identity, which requires protection beyond the framework of state sovereignty. The campaign supports the harmonisation of domestic legal systems with international human rights standards and emphasises the need for effective legal remedies for those affected by discrimination based on nationality. Currently, 24 countries still prevent mothers from conferring nationality on their children on equal terms with fathers, and in more than 40 countries, women are denied equal nationality rights with men, including the ability to confer nationality on non-citizen spouses (Global Campaign, 2023).

Universal quasi-judicial human rights bodies, when assessing individual communications, have concluded that although nationality falls within the sphere of state discretion, decisions concerning its acquisition or loss must respect the principle of equality and the prohibition of arbitrariness, including the duty to assess each case individually. Differential treatment in nationality matters based on the sex of the parent constitutes a form of discrimination incompatible with states' international obligations regarding gender equality. Discriminatory administrative practices in issuing identity documents may result in *de facto* denial of nationality and constitute violations of the right to equality and legal identity. The treaty bodies consistently stress that the prohibition of discrimination in matters of nationality applies not only to formal legal rules but also to their practical consequences for an individual's legal status.

---

<sup>18</sup> Communication No. 38/2012, *J.S. v. United Kingdom*, CEDAW/C/53/D/38/2012.

## **Regional International Legal Framework on the Prohibition of Discrimination in Matters of Nationality**

This part of the paper focuses on three regional human rights protection systems: the European system operating under the Council of Europe, the Inter-American system under the Organization of American States, and the African system under the African Union.

### ***European System of Human Rights Protection***

The European Convention on Human Rights (hereinafter “the Convention”)<sup>19</sup> represents the core regional human rights instrument of the Council of Europe, aimed at ensuring an effective and uniform protection of fundamental rights and freedoms of the individual. The Convention occupies a special position in international law, as it is not merely a declaratory instrument but a living legal instrument, whose application and interpretation are entrusted to an independent international judicial body, the European Court of Human Rights (ECtHR).

The ECtHR ensures compliance with the obligations arising from the Convention through individual and inter-state applications lodged against the Contracting States. The judgments of the ECtHR are legally binding on the states concerned, and their execution is supervised by the Committee of Ministers of the Council of Europe, ensuring both the normative and practical effectiveness of the Convention.

In exercising its mandate, the ECtHR respects the principle of subsidiarity, according to which the primary responsibility for protecting the rights guaranteed by the Convention lies with domestic authorities. This principle is reflected in the margin of appreciation doctrine, which grants states a degree of discretion in applying the Convention, particularly in areas sensitive to cultural, moral, or social differences.

The relationship between the Convention and the ECtHR is characterised by the Court’s dynamic interpretation of Convention provisions. The ECtHR repeatedly stresses that the Convention must be interpreted in light of present-day conditions and evolving European human rights standards. Through its case law, the Court has progressively expanded the content and scope of various rights, including those not explicitly mentioned in the Convention but implicitly protected

---

<sup>19</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005.

through its provisions, most notably Article 8, which guarantees the right to respect for private and family life.

Since the Convention does not expressly guarantee a subjective right to nationality, the Court's jurisprudence confirms that issues of acquisition, loss, and consequences of nationality may nonetheless fall within the scope of protection of the Convention through Article 8, as nationality may constitute an essential element of an individual's identity (*Genovese v. Malta*).<sup>20</sup> The ECtHR has repeatedly emphasized that although states enjoy a wide margin of appreciation in regulating matters of nationality, the exercise of this power must comply with the principles of legality, proportionality, and the prohibition of arbitrariness (*Karassev v. Finland*).<sup>21</sup>

Where the loss or refusal of nationality interferes with family life, creates a risk of statelessness, or affects the social ties of the individual, it may constitute a violation of Article 8 (*Slivenko v. Latvia*).<sup>22</sup> The ECtHR stresses that interferences with private and family life must pursue a legitimate aim and be necessary in a democratic society (*Pretty v. the United Kingdom*).<sup>23</sup>

The prohibition of discrimination in the enjoyment of the rights and freedoms guaranteed by the Convention is set out in Article 14. Its distinctiveness lies in its non-autonomous nature: it applies only in connection with another right protected by the Convention. Thus, Article 14 does not prohibit discrimination in general, but only discrimination occurring in the enjoyment of a Convention right. The ECtHR interprets Article 14 as an expression of the principle of equality, which does not require absolute equal treatment but prohibits differential treatment of individuals in analogous situations unless it has an objective and reasonable justification (*Thlimmenos v. Greece*).<sup>24</sup> Such justification must pursue a legitimate aim and maintain a reasonable relationship of proportionality between the means employed and the aim sought (*Carson and Others v. the United Kingdom*).<sup>25</sup> The list of discriminatory grounds under Article 14 (e.g., sex, race, language, religion, national or social origin) is illustrative, allowing for a dynamic interpretation (Čapek, 2010, pp. 621–645). The ECtHR has therefore recognised additional prohibited grounds, including nationality, birth status, or sexual orien-

---

<sup>20</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

<sup>21</sup> ECtHR, Application No. 31414/96, 12 January 1999, *Karassev v. Finland*.

<sup>22</sup> ECtHR, Application No. 48321/99, 9 October 2003, *Slivenko v. Latvia*.

<sup>23</sup> ECtHR, Application No. 2346/02, 29 April 2002, *Pretty v. the United Kingdom*.

<sup>24</sup> ECtHR, Application No. 34369/97, 6 April 2000, *Thlimmenos v. Greece*.

<sup>25</sup> ECtHR, Application No. 42184/05, 16 March 2010, *Carson and Others v. the United Kingdom*.

tation (*Genovese v. Malta*).<sup>26</sup> In the context of nationality, Article 14 is particularly significant when read in conjunction with Article 8. The ECtHR has repeatedly held that decisions concerning acquisition, loss, or deprivation of nationality that interfere with private or family life may fall under the scope of the prohibition of discrimination (*Biao v. Denmark*).<sup>27</sup>

Unlike Article 14, Protocol No. 12 of the Convention introduces a general prohibition of discrimination applicable to the enjoyment of any right set forth by law as well as to actions of public authorities. This significantly expands the level of protection within the European human rights system (Strážnická et al., 2013, pp. 546–548). Protocol No. 12 removes the accessory nature of the prohibition of discrimination and enables challenges to discriminatory treatment even in areas not linked to specific Convention rights.<sup>28</sup> This broader scope is particularly relevant for matters of nationality, as it allows individuals to allege discrimination in the exercise of public authority without needing to demonstrate interference with another Convention right. Although the ECtHR's case law on Protocol No. 12 remains less extensive, the Court has confirmed that the criteria for assessing discrimination mirror those developed under Article 14, especially the requirement of objective and reasonable justification (*Sejdić and Finci v. Bosnia and Herzegovina*).<sup>29</sup> Its impact is limited by the number of ratifications (20 of 46 member states), resulting in uneven protection against discrimination across the Council of Europe.

### *Inter-American System of Human Rights Protection*

The Inter-American human rights system, established within the Organization of American States, draws inspiration from the Universal Declaration of Human Rights while also reflecting regional specificities. Its fundamental treaty is the American Convention on Human Rights (Pact of San Jose, ACHR),<sup>30</sup> which, building on the American Declaration of the Rights and Duties of Man, provides broader and more explicit protection of certain fundamental rights.

<sup>26</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

<sup>27</sup> ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

<sup>28</sup> Council of Europe, Explanatory Report to Protocol No. 12, §§ 15–18, ETS No. 177.

<sup>29</sup> ECtHR, Applications nos. 27996/06 and 34836/06, 22 December 2009, *Sejdić and Finci v. Bosnia and Herzegovina*.

<sup>30</sup> American Convention on Human Rights, "Pact of San Jose, Costa Rica" (B-32), OAS, Treaty Series, No. 36.

Unlike the European system, the Inter-American system explicitly recognises the subjective right to nationality in Article 20 ACHR. This provision grants everyone the right to nationality, prohibits arbitrary deprivation, and obliges states to ensure that no child is left stateless. When read together with Article 24 (equality before the law), Article 20 creates a strong normative framework for assessing discrimination in matters of nationality.

The Inter-American Court of Human Rights interprets Article 20 as a norm aimed at preventing statelessness and protecting individuals from exclusion from the legal order. It emphasises that although states possess authority to regulate the acquisition and loss of nationality, this authority is not absolute and must be exercised in conformity with the principles of non-discrimination, the prohibition of arbitrariness, and the protection of legal identity.<sup>31</sup> The Court views nationality as a prerequisite for exercising other human rights and as a key element of legal and social inclusion (*Yean and Bosico Children v. Dominican Republic*).<sup>32</sup> The Court consistently holds that differential treatment is permissible only when pursued for a legitimate aim and is objectively and reasonably justified (*Atala Riffo and Daughters v. Chile*).<sup>33</sup>

Article 24 of the ACHR establishes a general right to equality before the law and to equal protection without discrimination. It is autonomous and applies even without a violation of another Convention right. Together with Article 1(1) ACHR (general non-discrimination clause), the Court is able to assess both formal and substantive equality, that is, not only the text of the law but also its real-world impact. The combined application of Articles 20 and 24 ACHR forms the core of the Inter-American system's protection against discrimination in matters of nationality.

### ***African System of Human Rights Protection***

The African human rights system is based on the African Charter on Human and Peoples' Rights (1981),<sup>34</sup> which enshrines the principles of equality and non-discrimination (Articles 2 and 3) and the right to legal personality (Article 5).

---

<sup>31</sup> Advisory Opinion OC-4/84, 19 January 1984, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica.

<sup>32</sup> IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, Judgment of 8 September 2005.

<sup>33</sup> IACtHR, Case of Atala Riffo and Daughters v. Chile, Judgment of 24 February 2012.

<sup>34</sup> African Charter on Human and Peoples' Rights (Banjul Charter), adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

These rights are protected by two complementary bodies: the African Commission on Human and Peoples' Rights (quasi-judicial) and the African Court on Human and Peoples' Rights (judicial).

Both bodies interpret Article 2's general prohibition of discrimination dynamically, applying it to grounds such as nationality, ethnic origin, and security status. They emphasise that equality under Article 3 requires not only formal equality in law but also an obligation on the state to prevent discriminatory effects in practice (*Anudo Ochieng Anudo v. United Republic of Tanzania*).<sup>35</sup>

Although the African Charter does not explicitly guarantee a right to nationality, both bodies have developed jurisprudence affirming that nationality is an essential component of legal identity, and its denial or deprivation may violate multiple Charter provisions, especially those on equality and non-discrimination.

In February 2024, African states adopted the Protocol to the African Charter on specific aspects of the right to nationality and the eradication of statelessness in Africa,<sup>36</sup> affirming the obligation of states to ensure the protection and respect of the right to nationality as a precondition for the exercise of all other human rights. The Protocol, not yet in force, is the first regional instrument to guarantee the right to nationality explicitly. It obliges states to grant nationality to children born on their territory where at least one parent was also born there. Importantly, due to low birth registration rates in many African states, the Protocol allows flexible evidentiary standards, including oral testimony and other indirect forms of evidence.

## Case Law of Regional Judicial and Quasi-Judicial Bodies

### *European Court of Human Rights*

As noted in the preceding sections, the international legal framework prohibiting discrimination and the decision-making practice of UN quasi-judicial bodies progressively limit the traditional understanding of state sovereignty in matters of nationality. These normative and interpretative foundations are also reflected in the jurisprudence of the European Court of Human Rights (ECtHR), which, although it does not expressly recognize a subjective right to nationality, has, thro-

---

<sup>35</sup> ACHPR, *The Matter of Anudo Ochieng Anudo v. United Republic of Tanzania*, Application No. 012/2015, Judgment of 22 March 2018.

<sup>36</sup> African Union (AU), *Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*, 18 February 2024.

ugh the interpretation of the European Convention on Human Rights, developed an effective mechanism of protection against discrimination in this field.

### *Nationality as Part of Personal and Legal Identity*

A landmark judgment in this regard is *Genovese v. Malta*,<sup>37</sup> in which the ECtHR explicitly held that nationality is an element of an individual's identity. That refusal to grant it may significantly affect the person's private life. The Court emphasized that although the Convention does not guarantee the right to acquire nationality, discriminatory refusal to grant it, when it affects the applicant's identity, falls for review under Article 14 in conjunction with Article 8. The key criterion was not the existence of a subjective right to nationality, but the actual impact of the refusal on the individual's personal circumstances.

This concept was further developed in case law on deprivation of nationality. In *Ghoumid and Others v. France*, the ECtHR confirmed that the deprivation of nationality constitutes an interference with Article 8, as it directly affects a person's identity and social links.<sup>38</sup> Although the Court found no violation in that case, it clearly stated that such measures cannot be regarded as legally neutral and must undergo strict proportionality scrutiny. Understanding nationality as an element of legal identity, therefore, plays a crucial role in assessing discrimination, as it requires heightened protection.<sup>39</sup>

### *Non-discrimination and Nationality*

In *Genovese v. Malta*,<sup>40</sup> the Court held that the refusal to grant nationality based on birth status outside marriage violated Article 14 in conjunction with Article 8. The Court noted that the decisive factor is the comparability of the situation and the impact of the measure on personal identity, not the formal absence of a subjective right to nationality. This demonstrates that Article 14 functions as a corrective even in areas where states claim a broad margin of appreciation.

Similarly, in *Biao v. Denmark*,<sup>41</sup> the Grand Chamber found a violation of Article 14 in conjunction with Article 8 due to the indirect discriminatory effects of

---

<sup>37</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

<sup>38</sup> ECtHR, Application No. 52273/16 and 4 others, 25 June 2020, *Ghoumid and Others v. France*.

<sup>39</sup> ECtHR, Application No. 50963/99, 20 June 2002, *Al-Nashif v. Bulgaria*.

<sup>40</sup> ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

<sup>41</sup> ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

immigration legislation, which disproportionately disadvantaged persons of foreign origin. Although the case did not directly concern nationality, it underscored that legal rules affecting personal status and family life, and having discriminatory effects, are subject to strict review. These rulings confirm that Article 14 of the Convention is a key tool in uncovering hidden discrimination in matters relating to nationality.

### *Deprivation of Nationality and Discrimination*

Deprivation of nationality constitutes one of the most severe interferences with an individual's legal status and can result in exclusion from society. The ECtHR has repeatedly stated that such measures may fall within Article 8, as they directly affect a person's identity and social ties (*Slivenko v. Latvia*).<sup>42</sup>

The discriminatory dimension emerges particularly when deprivation affects persons of migrant background or dual nationals. In *Ghoumid and Others v. France*,<sup>43</sup> the Court acknowledged that deprivation of nationality interferes with private life and found no violation only because the measure was lawful, pursued the legitimate aim of national security, was subject to individual assessment, and did not lead to statelessness. Nonetheless, the ECtHR stressed that deprivation measures must always undergo strict proportionality review and must not be discriminatory. Selective application against particular population groups is a matter of special concern.

Conversely, in *Biao v. Denmark*,<sup>44</sup> the Court rejected differential treatment in family reunification based on the duration of the applicant's Danish nationality because this criterion resulted in indirect discrimination against naturalised citizens of foreign origin. The Court held that distinctions closely linked to ethnic origin must be justified by very weighty reasons, which were absent in the case.

Although this case did not involve deprivation of nationality, it demonstrates that indirect restrictions on rights associated with nationality may also have discriminatory effects. Overall, the Court's case law confirms that denationalisation is not merely a matter of public security or sovereign discretion, but a fundamental human rights issue that requires an especially rigorous application of the prohibition on discrimination.

---

<sup>42</sup> ECtHR, Application No. 48321/99, 9 October 2003, *Slivenko v. Latvia*.

<sup>43</sup> ECtHR, Application No. 52273/16 and 4 others, 25 June 2020, *Ghoumid and Others v. France*.

<sup>44</sup> ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

### *Procedural Aspects and Positive Obligations of the State*

In addition to substantive issues, the ECtHR also emphasizes procedural safeguards in nationality-related decisions. Even in areas of state discretion, adequate procedural guarantees must be in place to prevent arbitrary or discriminatory decision-making (*AlNashif v. Bulgaria*).<sup>45</sup> These guarantees include the obligation of individualised assessment, reasoned decisions, and access to effective judicial review.

The ECtHR's jurisprudence on nationality demonstrates a significant shift from traditional sovereign understandings toward a human rights-oriented approach. Although the Convention does not explicitly guarantee a right to nationality, the Court, through Articles 8 and 14, has created an effective framework for protecting individuals from discrimination where decisions on acquisition, loss, or deprivation of nationality interfere with identity, family life, or social inclusion.

Key conclusions include that differential treatment based on nationality, origin, birth status, or migration background is subject to strict scrutiny; even formally neutral legislation may produce indirect discriminatory effects; deprivation of nationality affects the core of legal identity and therefore requires strict proportionality and strong procedural safeguards; ECtHR case law significantly limits state discretion in nationality matters, aligning the European system with broader international human rights standards.

### ***Inter-American Commission on Human Rights and Inter-American Court of Human Rights***

The Inter-American Commission on Human Rights (IACHR) is a quasi-judicial body of the Organization of American States, established in 1959, whose principal mandate is to promote and protect human rights across the Americas. The Commission monitors compliance with the American Convention on Human Rights<sup>46</sup> and the American Declaration of the Rights and Duties of Man,<sup>47</sup> decides individual petitions, issues thematic reports and recommendations, and, where appropriate, refers cases to the Inter-American Court of Human Rights. Although

---

<sup>45</sup> ECtHR, Application No. 50963/99, 20 June 2002, *AlNashif v. Bulgaria*.

<sup>46</sup> American Convention on Human Rights, *Pact of San Jose, Costa Rica* (B-32), OAS, Treaty Series, No. 36.

<sup>47</sup> *American Declaration on the Rights and Duties of Man*, adopted by the 9th International Conference of American States, E/CN/122/Rev, 1\*, 8 October 1948.

its decisions are not formally binding, the Commission's findings carry significant authoritative and normative weight, particularly in interpreting the prohibition of discrimination and the right to nationality, including issues related to statelessness, birth registration, and discriminatory administrative practices. The IACHR has addressed, for example, the denial or deprivation of nationality based on origin, including discrimination against persons of Haitian descent in the Dominican Republic<sup>48</sup> and the treatment of Haitian migrants in the United States.<sup>49</sup> It found that deprivation or denial of nationality on grounds of origin violates the principle of equality and leads to mass statelessness. It has also confirmed the impermissibility of discrimination based on national origin or migration status (IACHR, 2015, pp. 152–159).

Because individuals do not have direct access to the Court, petitions are first submitted to the Commission, which assesses whether the complaint falls under the American Declaration (in which case only the Commission examines it) or under the American Convention (resulting in a two-stage procedure: examination by the Commission followed by referral to the Court) (Strážnická et al., pp. 159–162). Judgments of the Inter-American Court are final and binding, and no appeal is permitted. The Court may issue interpretative judgments where disputes arise regarding the meaning of its decisions. In addition to contentious cases, it also conducts advisory proceedings, issuing authoritative interpretations of the Convention and other regional human rights instruments. These decisions have a profound influence on national legal systems across Latin America.

### *Nationality as Part of Legal Identity and Protection Against Discrimination*

The Inter-American Court consistently emphasizes that nationality is part of an individual's personal identity, and its denial or restriction may lead to exclusion from the legal order. This approach was central to the landmark case *Yean and Bosico Children v. Dominican Republic*,<sup>50</sup> in which the Court held that the refusal to grant nationality to children born in the territory because of their parents' origin violated Articles 20 and 24 of the ACHR. The Court stressed that differential treatment based on origin or migration status is impermissible when it produces

---

<sup>48</sup> Inter-American Commission on Human Rights, *The Situation of Dominicans and Haitians of Dominican Origin in the Dominican Republic*, OEA/Ser.L/V/II. Doc. 45/15 (2015).

<sup>49</sup> Inter-American Commission on Human Rights, *Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96 (1997).

<sup>50</sup> IACHR, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

statelessness. The Court assessed discrimination not in isolation but in the context of its cumulative effects on dignity, identity, and equality of the children (*Yean and Bosico Children v. Dominican Republic*). This illustrates a substantive rather than formal understanding of discrimination.

### *Deprivation of Nationality and the Prohibition of Arbitrariness*

The discriminatory dimension of nationality also arises in cases of its deprivation. In *Iucher Bronstein v. Peru*,<sup>51</sup> the Court examined a situation where the applicant was stripped of his nationality because of his critical stance toward the government. The Court held that nationality cannot be used as a punitive tool against political opponents, and such actions violate Article 20 ACHR. Selective or repressive deprivation of nationality thus constitutes discrimination based on political opinion or another protected characteristic. This case reinforces that the prohibition of discrimination applies even in areas traditionally considered part of the state's broad discretion.

### *Positive Obligations of the State and the Protection of Vulnerable Groups*

A significant element of the Inter-American Court's jurisprudence is its emphasis on states' positive obligations to ensure the right to nationality without discrimination. In cases concerning children, stateless persons, and minority groups, the Court has repeatedly held that states must adopt active measures to remove administrative and legal obstacles preventing the recognition of nationality.

This approach was evident in *Yean and Bosico Children v. Dominican Republic*,<sup>52</sup> which concerned the denial of nationality to children born on the territory of the Dominican Republic due to the Haitian origin of their parents. The Court held that such treatment constituted discrimination based on origin and migration status, in violation of Articles 20 (right to nationality) and 24 (equality before the law) of the American Convention on Human Rights. The Court stressed that nationality forms an essential element of a child's legal identity and that states have a positive obligation to prevent statelessness, especially with respect to vulnerable groups.

Compared with the ECtHR, the Inter-American Court provides stronger protection in matters of nationality, mainly due to the explicit enshrinement of the

<sup>51</sup> IACHR, *Case of Iucher-Bronstein v. Peru*, Judgment of 6 February 2001.

<sup>52</sup> IACHR, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

right to nationality in the American Convention. The interpretation of Articles 20 and 24 ACHR offers an important comparative contrast to the European system. While the ECtHR relies on the implicit protection of nationality under Articles 8 and 14 of the ECHR, the Inter-American Court's explicit normative framework enables stricter scrutiny of discrimination.

The Inter-American Commission's work demonstrates a consistent approach: discrimination in matters of nationality is incompatible with human dignity and legal identity. Even seemingly neutral administrative or registration procedures may lead to indirect discrimination and *de facto* statelessness, requiring strict review under the equality principle.

***African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. African Commission on Human and Peoples' Rights—Discrimination, Legal Identity, and Statelessness***

The African Commission has played a pioneering role in recognizing the discriminatory effects of nationality laws in Africa. A key decision is *The Nubian Community in Kenya v. Kenya*,<sup>53</sup> in which the Commission held that systemic denial of birth registration and the resulting barriers to acquiring nationality constituted indirect discrimination in violation of Articles 2, 3, and 5 of the African Charter.<sup>54</sup> The Commission examined discrimination in access to national identity documents and its consequences for legal status, the risk of statelessness, and access to rights. Recognition of legal status and access to documentation determine the ability to acquire nationality and, consequently, to enjoy associated rights. The Commission emphasized that although the legal framework was formally neutral, its application resulted in long-term marginalization of a specific ethnic group.

A similar approach was adopted in *Open Society Justice Initiative v. Côte d'Ivoire*,<sup>55</sup> where the Commission found that selective administrative practices regarding identity documents and nationality could lead to *de facto* statelessness and a violation of the principle of equality. The Commission explicitly stated that states have a positive obligation to ensure effective access to nationality without

---

<sup>53</sup> ACHPR, Communication 317/2006 (2015), *The Nubian Community in Kenya v. The Republic of Kenya*.

<sup>54</sup> *African Charter on Human and Peoples' Rights (Banjul Charter)*, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>55</sup> ACHPR, Communication No. 318/06 (2015), *Open Society Justice Initiative v. Côte d'Ivoire*.

discrimination, especially for vulnerable groups. The case involved discrimination against the Dioula ethnic group in access to nationality recognition and identity documents; the Commission recommended reforms to ensure non-discriminatory national legislation and practice, including effective birth registration and access to nationality documentation.

### *African Court—Nationality as Part of Human Dignity and Equality*

The jurisprudence of the African Court on Human and Peoples' Rights builds on and extends the Commission's approach. In *Anudo Ochieng Anudo v. United Republic of Tanzania*,<sup>56</sup> the Court found that the arbitrary deprivation of nationality violated the right to equality before the law, the prohibition of discrimination, and the right to human dignity. The Court emphasized that stripping an individual of nationality without due process and without the possibility of an effective defence constitutes an extreme interference with legal identity.

Another significant judgment is *Robert John Penesis v. United Republic of Tanzania*,<sup>57</sup> where the Court confirmed that deprivation or non-recognition of nationality based on origin or administrative suspicion without adequate procedural safeguards has discriminatory effects and is incompatible with the African Charter. The Court also affirmed the customary-law status of Article 15 of the Universal Declaration of Human Rights (right to nationality).

The jurisprudence of both the African Commission and the African Court reveals several common features. Both bodies reject a purely formal concept of equality and emphasize the material effects of discriminatory measures. Nationality is considered a core element of legal identity, and its denial or deprivation may trigger violations of multiple human rights. States have positive obligations to prevent statelessness and eliminate discriminatory administrative barriers. Even seemingly neutral rules on registration, evidence, or documentation may have disproportionate and discriminatory impacts on certain population groups. Discrimination in nationality matters often manifests indirectly, through procedural and administrative barriers that obstruct effective enjoyment of legal status.

---

<sup>56</sup> ACtHPR, Application No. 012/2015 (2018), *Anudo Ochieng Anudo v. United Republic of Tanzania*.

<sup>57</sup> ACtHPR, Application No. 013/2015 (2019), *Robert John Penesis v. United Republic of Tanzania*.

## Conclusions

The examined jurisprudence of international and regional judicial and quasi-judicial bodies shows that discrimination based on nationality is no longer perceived solely as a manifestation of unchecked state sovereignty, but as an area subject to intensive human rights scrutiny. The ECtHR, the Inter-American Court, the African Court, and relevant UN and regional bodies consistently affirm that differential treatment in acquiring, losing, or depriving nationality is permissible only if it pursues a legitimate aim, is objectively and reasonably justified, and satisfies proportionality requirements.

Case law identifies key criteria for distinguishing legitimate differential treatment from violations of equality. The impact of the measure on an individual's legal and personal identity is central, especially for children, stateless persons, and other vulnerable groups. Bodies assess whether discrimination is direct or indirect, whether comparable situations are treated differently without sufficient justification, and whether measures lead to *de facto* exclusion from the legal order. Procedural safeguards, individual assessment, and the absence of arbitrariness are essential.

Overall, international and regional jurisprudence demonstrates a convergence toward understanding nationality as a fundamental element of legal identity, in which the prohibition of discrimination functions as an essential corrective, limiting state discretion and strengthening a substantive concept of equality.

## References

- Brownlie, J. (2013). *Princípy medzinárodného práva verejného* (Principles of Public International Law). Bratislava: EUROKÓDEX.
- Čapek, J. (2010). *Evropská úmluva o ochraně lidských práv a základních svobod* (European Convention on the Protection of Human Rights and Fundamental Freedoms). Praha: Linde.
- Čepelka, Č., Šturma, P. (2003). *Mezinárodní právo veřejné* (International Public Law). 1 ed. Praha: Eurolex Bohemia.
- Jankuv, J., Lantajová, D., Blaškovič, K., Buchta, T., Arbet, D. (2016). *Medzinárodné právo verejné, Druhá časť* (International Public Law, Second Part). Plzeň: Aleš Čeněk.
- Strážnická, V., Erdösová, A., Hauerlandová, I., Matis, N., Strážnická, A. (2013). *Medzinárodná a európska ochrana ľudských práv* (International and European Protection of Human Rights). Bratislava: EUROKÓDEX.