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Who Decides Who Is a Citizen? Migration Control, Legal Borderlands and the Administrative Contestation of Nationality in Belgium

RESEARCH ARTICLES

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ABSTRACT

Who decides who is a citizen when the administration contesting nationality is not legally competent to determine it? This article examines an institutional conflict that emerged in Belgium from 2023 onwards, when the Immigration Office challenged the attribution of Belgian nationality under an anti-statelessness provision mainly applied to children born in Belgium to parents of Palestinian origin. Although the Immigration Office has no formal authority over nationality, its letters to municipalities unsettled nationality practice, led some municipalities to reopen or modify files, and affected residence applications lodged by parents of Belgian children. Drawing on qualitative socio-legal research, including interviews with public officials, civil registrars, prosecutors and lawyers, and six months of ethnographic observation within the Federal Ombudsman's Asylum and Migration unit, the article argues that the Immigration Office's intervention produced a legal borderland within the state, where nationality law, migration control, civil registration, prosecutorial advice, residence procedures and judicial review overlapped and conflicted. It develops the notion of relational administrative authority to capture how administration can produce effects beyond its formal competence through the dependencies, expectations, and responses of other actors. The Belgian case shows how legal borderlands may emerge inside domestic administration, how bureaucratic action beyond competence can participate in law-making, and how citizenship may be administratively weakened through adjacent legal fields.

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1. INTRODUCTION

Who decides who is a citizen? Formally, this question belongs to nationality law. In Belgium, the attribution and loss of nationality are governed by the Belgian Nationality Code (BNC) and entrusted to specific legal authorities such as civil registrars and prosecutors. The Belgian Immigration Office (*Office des étrangers/Dienst Vreemdelingenzaken*, hereafter IO), by contrast, implements migration law: entry, residence, settlement, removal and family reunification. It does not decide who is Belgian. Yet, from summer 2023 onwards, this division of authority became convoluted. Through letters addressed to municipalities, the IO challenged the attribution of Belgian nationality under Article 10 BNC, an anti-statelessness clause mainly applied to children born in Belgium to parents of Palestinian origin. An administration competent for residence thus entered a legal domain from which it was formally excluded: nationality.

This article uses the IO's intervention to examine how the boundaries of law, jurisdiction and belonging are redrawn through administrative practice. It asks how a migration administration can produce effects in the field of citizenship despite lacking formal authority to do so. The IO's letters did not amend the BNC, but they unsettled its practical operation: municipalities reopened files, some children saw their Belgian nationality withdrawn or suspended, parents' residence applications were delayed or considered devoid of purpose, and lawyers, prosecutors, courts and oversight bodies were drawn into a conflict over who had authority to apply the law and give legal status effect. This article analyses the mechanism through which the IO acquired such effects as *relational administrative authority*: the capacity of an administration to produce effects beyond its formal competence through the dependencies, expectations and responses of other actors. Administrative illegality may be fragile and contested, yet it can generate effects when embedded in files, registers, routines and inter-administrative communication.

I conceptualise this situation as the emergence of a legal borderland within the state. Socio-legal scholarship has used the notion of legal borderlands to describe zones of ambiguity and interaction between legal and non-legal norms, formal and informal orders, and overlapping jurisdictions.[1] The concept is closely connected to debates on legal pluralism, inter-legality and contested legal authority.[2] While legal borderlands are often associated with transnational governance, postcolonial legal pluralism, informal normative orders or spaces situated at the territorial and symbolic margins of the state, this article shifts the focus inward. It argues that legal borderlands may be produced inside the state when relational administrative authority allows a migration bureaucracy to reshape the effects of a legal status beyond its formal competence. In this case, the IO reframed an anti-statelessness provision as a migration-control problem, routinised action beyond competence, and sought to normalise its restrictive approach to the application of Article 10 BNC through residence decisions and possible legislative change. Counter-mobilisations by the Federal Ombudsman, lawyers, UNHCR, Nansen and courts re-legalised the conflict by reasserting the statutory allocation of competence, the evidentiary requirements for establishing the child's nationality, procedural safeguard and children's rights.

The article proceeds in five sections. After the presenting the methodology, the first section positions the argument within socio-legal and anthropological scholarship. The second situates Article 10 BNC within the politicisation of Belgian nationality law. The third reconstructs how the IO and related administrations made Article 10 into an administrative problem. The fourth examines counter-mobilisations by the Federal Ombudsman, the UNHCR, lawyers and courts. The fifth develops the article's theoretical argument on legal borderlands within the state and the relational administrative authority through which they are produced.

1 Pedro Rubim Borges Fortes and Ioannis Kampourakis, 'Exploring Legal Borderlands' (2019) 5 Journal of Institutional Studies 639.

2 Sally Falk Moore, 'Law and Social Change' (1973) 7 Law & Society Review 719; John Griffiths, 'What Is Legal Pluralism?' (1986) 18 The Journal of Legal Pluralism and Unofficial Law 1; Sally Engle Merry, 'Legal Pluralism' (1988) 22 Law & Society Review 869; Brian Z Tamanaha, 'Understanding Legal Pluralism' *Legal Theory and the Social Sciences* (Routledge 2010).

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2. METHODOLOGY

The article is based on qualitative socio-legal research, combining the analysis of legal and administrative materials with qualitative empirical methods.[3] It was conducted as part of a collective research project on migration, courts and administrations in Belgium.[4] The material draws on (a) 10 semi-structured interviews with current and former public officials, civil registrars, public prosecutors, and lawyers; (b) institutional publications and legal analyses; (c) administrative documents; (d) parliamentary exchanges; (e) and legal submissions filed before courts. Interviews focused on the interpretation and implementation of Article 10 BNC, the circulation and reception of the IO's communications, inter-administrative relations, and the handling of nationality and residence cases. They were analysed thematically, with particular attention to institutional competence, documentary practices, evidentiary standards and interactions between administrations. The material was analysed comparatively across institutional sources, reconstructing how Article 10 was framed, circulated and contested and how different actors attributed legal significance to the same cases, documents and provisions.

Access for ethnographic fieldwork was not granted by the IO, which also declined oral interviews and provided brief written answers in April 2026, mostly reiterating that Article 10 BNC falls within the competence of the Ministry of Justice and/or civil registrars. Following methodological work on limited access in refugee governance,[5] this nonaccess is treated as part of the empirical configuration. The research therefore turned towards the Federal Ombudsman,[6] an institution of administrative oversight whose work has been increasingly studied through empirical and socio-legal research.[7] Scholarship has examined how ombuds institutions process complaints, organise access to the institution and negotiate their role vis-à-vis administrations and other oversight bodies.[8] Ethnographic research has demonstrated the value of observing ombud work from within the institution itself, showing how everyday organisational practices shape the reception and processing of complaints.[9]

The Federal Ombudsman of Belgium offered a particularly useful standpoint in this case because its Asylum and Migration unit deals overwhelmingly with complaints concerning the IO. Its position at the intersection of complainants, the administration under scrutiny and other state institutions made it possible to observe how IO practices were documented, contested, translated into legal problems, and reworked by other parts of the state. I conducted six months of ethnographic observation within this unit, from August 2025 to February 2026, under a confidentiality agreement. The material from this fieldwork used here is therefore limited to information already publicly accessible, notably through online, institutional or legal publications.

The article studies the IO's intervention from its institutional edges and through its effects, using complaints, recommendations and other oversight processes as empirical sites through which administrative practices can be observed as they are documented, contested and reworked.[10] Given the sensitivity of the case and the small number of actors directly involved, interviewees

3 Reza Banakar and Max Travers, *Theory and Method on Socio-Legal Research* (2005).

4 *MigrantsInCourt*, University of Liège <https://www.lasc.uliege.be/cms/c_11643590/fr/lasc-projet-migrants>

5 Lilly P Muller and Natalie Welfens, '(Not) Accessing the Castle: Grappling with Secrecy in Research on Security Practices' (2023) 3 Secrecy and Society.

6 An independent collateral body of the Belgian Chamber of Representatives which examines citizens' complaints about federal public services, conducts investigations into administrations and seeks to ensure that citizens' rights are respected.

7 Hertogh and Kirkham, *Research Handbook on the Ombudsman*; Groves, *The Ombudsman in the Modern State*.

8 Rita Passemiers, Herwig Reynaert and Kristof Steyvers, *The Impact of Ombudsmen* (Vanden Broele 2009); Julia Dahlvik, Axel Pohn-Weidinger and Martina Kollegger, 'Independence despite Political Appointment ? The Curious Case of the Austrian Ombudsman Board' (2020) 13 NISPAcee Journal of Public Administration and Policy 181; Ian Harden, 'Ombudsmen and Complaint-Handling' in Peter Cane and others (eds), *The Oxford Handbook of Comparative Administrative Law* (Oxford University Press 2020); Agustina Girardo, 'La Administración Institucional de Conflictos Públicos Por El (No) Acceso al Hábitat. El Caso de La Defensoría Del Pueblo de La Provincia de Buenos Aires' [2021] Cuadernos de la Facultad de Humanidades y Ciencias Sociales, Universidad Nacional de Jujuy 35.

9 Larry B Hill, *The Model Ombudsman: Institutionalizing New Zealand's Democratic Experiment* (Princeton University Press 1976); Sharon Gilad, 'Exchange Without Capture: The UK Financial Ombudsman Service's Struggle for Accepted Domain' (2008) 86 Public Administration 907; Julia Dahlvik and Axel Pohn-Weidinger, 'Administering Access to the Public Ombuds Institution: A Case Study on the Austrian Ombudsman Board' in Hertogh and Kirkham (n 6).

10 Dahlvik and Pohn-Weidinger, 'Administering Access to the Public Ombuds Institution'.

are anonymised and their precise institutional positions are not specified. When necessary, identifying details and directly attributable quotations have been omitted or paraphrased. The research does not include interviews with the families directly affected by nationality withdrawals, many of whom were involved in ongoing asylum, residence or nationality procedures and were in precarious situations. The article focuses instead on the institutional production, contestation and re-specification of nationality as a legal status.

3. STATE FRAGMENTATION AND RELATIONAL AUTHORITY

This section positions the argument within scholarship that analyses the state as a fragmented and relational formation. Rather than approaching the state as a cohesive actor speaking through a single legal will, this literature examines how state authority is assembled across institutions, offices, documents, routines and situated encounters.[11] It directs attention to the everyday practices through which state actors define public authority, legal competence and legitimate classification.[12] In this perspective, state power is produced through interaction, boundary work and institutional embeddedness.[13]

The state also appears as a space of competition between institutions and professional groups claiming authority to produce official categories and make rules effective. Scholars have long shown that state organisations possess uneven resources, capacities, interests and institutional legacies[14] and that public authority is shaped by coordination, friction and conflict between institutions with uneven resources, capacities, interests and obligations.[15] These tensions become particularly visible when several authorities act on the same file. Law then circulates through offices, documents and institutional exchanges, and each actor translates it through specific standards of competence, proof, responsibility and risk.[16]

Complementarily, legal anthropology, has shown that official law coexists with semi-autonomous social fields, professional routines, institutional conventions and transnational regimes.[17] This insight also applies within state institutions. Public actors located in different sites may invoke the same legal text while attaching different evidentiary standards, institutional missions and practical consequences to it.[18] Legal interpretation is embedded in organisational environments, professional habits, bureaucratic habitus and institutional accountabilities.[19] In migration administration, this interpretative work is often shaped by suspicion, documentary assessment, resource constraints, productivity demands and the need to make complex

11 Thomas Blom Hansen and Finn Stepputat, *States of Imagination* (Duke University Press 2001); Matthew S Hull, *Government of Paper* (University of California Press 2012); Akhil Gupta, *Red Tape* (Duke University Press 2012); Vincent Dubois, *The Bureaucrat and the Poor* (Jean-Yves Bart tr, Routledge 2017).

12 Alexis Spire, *Accueillir Ou Reconduire* (Raisons d'agir 2008); Thomas Bierschenk and Jean-Pierre Olivier de Sardan (eds), *States at Work* (Brill 2014); Larissa Vetters, 'Administrative Guidelines as a Source of Immigration Law?' (2019) 3 Journal of Legal Anthropology 70.

13 Tatjana Thelen, Keebet von Benda-Beckmann and Larissa Vetters (eds), *Stategraphy: Toward a Relational Anthropology of the State* (Berghahn Books 2017).

14 Michael Mann, 'The Autonomous Power of the State' (1984) 25 European Journal of Sociology 185; Peter Evans, Dietrich Rueschemeyer and Theda Skocpol, *Bringing the State Back In* (Cambridge University Press 1985); Pierre Bourdieu, 'Rethinking the State' in Craig Calhoun and others (eds), *Contemporary Sociological Theory* (John Wiley & Sons 1994).

15 Joel S Migdal, *Through the Lens of Israel* (SUNY Press 2001); Giorgio Blundo and Pierre-Yves Le Meur (eds), *The Governance of Daily Life in Africa* (Brill 2008); Jean-Marc Weller, *Fabriquer Des Actes d'Etat* (Economica, Economica 2018).

16 Colin Hoag, 'The Magic of the Populace' (2010) 33 PoLAR 6; Javier Auyero, *Patients of the State* (Duke University Press 2012); Maybritt Jill Alpes, 'Papers That Work: Migration Brokers, State/Market Boundaries, and the Place of Law' (2017) 40 PoLAR: Political and Legal Anthropology Review 262; Sophie Andreetta and Lisa Marie Borrelli (eds), *Governing Migration Through Paperwork* (2024).

17 Griffiths, 'What Is Legal Pluralism?'; Merry, 'Legal Pluralism'; Tamanaha, 'Understanding Legal Pluralism'; Moore, 'Law and Social Change.'

18 Anthony Good, *Anthropology and Expertise in the Asylum Courts* (Routledge-Cavendish 2007); Mindie Lazarus-Black, *Everyday Harm* (University of Illinois Press 2007); Maxim Bolt, '"Creature of Statute": Legal Bureaucracy and the Performance of Professionalism in Johannesburg' (2022) 42 Critique of Anthropology 419; Emma Louise Backe, Kelley Moult and Jessie Waldman, 'Dissonance, Discordance, and Disparity' [2024] International Journal for Crime, Justice and Social Democracy.

19 Jill Alpes and Alexis Spire, 'Dealing with Law in Migration Control' (2014) 23 Social & Legal Studies 261; Jonathan Miaz, 'From the Law to the Decision: The Social and Legal Conditions of Asylum Adjudication in Switzerland' (2017) 3 European Policy Analysis 372; Federica Infantino, *Schengen Visa Implementation and Transnational Policymaking* (Springer 2019); Laura Affolter, *Asylum Matters* (Palgrave Macmillan 2021).

cases manageable.[20] Legal subjectivity is produced through documents, classifications and administrative operations as much as through legislative categories.[21]

Courts and legal counterweights must also be understood relationally. Socio-legal work on judicial review shows that courts shape administrative practice through annulments, doctrinal guidance, anticipated reactions and the circulation of legal standards inside bureaucracies.[22] In migration law, legal mobilisation by lawyers, associations, courts and oversight bodies may reshape administrative categories and practices, while administrations may resist, absorb or redirect judicial constraints.[23] Migration governance therefore involves state and quasi-state arrangements in which administrations, municipalities, courts, lawyers, oversight bodies and other intermediaries mobilise different norms and evidentiary standards while acting on the same persons and files.[24] This relational perspective is central to the argument developed below.

4. CASE ANALYSIS

4.1 ARTICLE 10 BNC: FROM ANTI-STATELESSNESS CLAUSE TO MIGRATION-CONTROL SUSPICION

The institutional conflict examined in this article must be situated within a longer history in which Belgian nationality law has been redefined at the intersection of citizenship, integration, migration control and statelessness prevention. Formally, Article 10 of the BNC is an anti-statelessness clause: it ensures that a child born in Belgium is not left without a nationality. Yet its application became contested in a legal field already marked by suspicion towards nationality as a possible migration route.

The reform of the BNC adopted in 2000 under the 'rainbow' federal government, a coalition of liberal, socialist and Green parties, marked a liberalising moment. It simplified access to Belgian nationality and reflected a more inclusive conception of citizenship, in a context shaped by debates on European citizenship and the political participation of non-EU foreign residents.[25] Nationality was then approached less as the final stage of a completed integration trajectory than as a possible instrument of integration itself.

This liberalisation quickly became politically contested, especially in Flemish nationalist circles. The expression *snel-Belgwet*, the 'fast-Belgian law,' became a shorthand for the criticism that Belgian nationality had become too easy to acquire. The 2012 reform institutionalised this restrictive point of view. Its stated objective was to make acquisition of Belgian nationality 'neutral from the point of view of immigration.'[26] It tightened residence requirements and made acquisition increasingly conditional upon proof of social integration, economic participation and linguistic knowledge. Nationality was no longer primarily conceived as a tool facilitating

20 Julia Dahlvik, *Inside Asylum Bureaucracy* (Springer International 2018); Tobias G Eule and others, *Migrants Before the Law* (Springer International 2019); Carla Mascia, 'How Bureaucracies Shape Access to Rights: The Implementation of Family Reunification in Belgium' (2021) 47 Journal of Ethnic and Migration Studies 2127.

21 Lisa Marie Borrelli and Annika Lindberg, 'Paperwork Performances: Legitimating State Violence in the Swedish Deportation Regime' (2019) 3 Journal of Legal Anthropology 50; Alpes (n 10); Andreetta and Borrelli (n 10).

22 Marc Hertogh, 'Coercion, Cooperation, and Control: Understanding the Policy Impact of Administrative Courts and the Ombudsman in the Netherlands' (2001) 23 Law & Policy 47; Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart Pub 2004); Lucinda Platt, Maurice Sunkin and Kerman Calvo, 'Judicial Review Litigation as an Incentive to Change in Local Authority Public Services in England and Wales' (2010) 20 Journal of Public Administration Research and Theory i243; Mascia (n 14); Jonathan Miaz and Christin Achermann, 'Bureaucracies Under Judicial Control? Relational Discretion in the Implementation of Immigration Detention in Swiss Cantons' (2022) 54 Administration & Society 629.

23 Leila Kawar, *Contesting Immigration Policy in Court* (Cambridge University Press 2016); Jonathan Miaz, 'La co-production conflictuelle du droit. Le rôle des intermédiaires du droit dans la judiciarisation de la politique suisse d'asile' (2021) 107 Droit et société 51; Carla Mascia, 'To Comply or Not to Comply, That Is the Question: The Street-Level Implementation of Jurisprudence by Migration Officers' (2025) Social Policy & Administration.

24 Tobias Eule et al., *Migrants Before the Law*; Lisa Marie Borrelli and Annika Lindberg, 'Paperwork Performances'; Miaz and Achermann, 'Bureaucracies Under Judicial Control?'

25 Frank Caestecker and others, *Devenir belge* (Kluwer België 2016).

26 Loi du 4 décembre 2012 modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, *Moniteur belge,* December 14 2012.

integration, but as a status whose acquisition was conditioned on prior integration and several years of legal residence.

Article 10 BNC followed a distinct protective logic. In its current formulation, it provides that a child born in Belgium is Belgian if, at any time before reaching the age of eighteen or before earlier emancipation, the child does not possess any other nationality. This rationale has nevertheless long coexisted with concern about the provision's migration effects. In the early 2000s, Article 10 was reportedly applied to children born in Belgium to parents originating from Latin American states whose nationality law did not automatically transmit nationality to children born abroad. Where the parents did not take the steps required by their country of origin, the child could acquire Belgian nationality.

The legislature responded in 2006 by adding what is now the second paragraph of Article 10 BNC. Under this exception, Belgian nationality is not attributed if the child can obtain another nationality through an administrative formality completed by one or both legal representatives before the diplomatic or consular authorities of the country of one of the parents. The preparatory works presented the amendment as a response to situations in which foreign nationals arrived in Belgium for a limited stay, gave birth to a child in Belgium and did not present the child to their diplomatic authorities. The Constitutional Court later confirmed that this paragraph constitutes an exception to Article 10 and must be interpreted restrictively.[27] The 2006 amendment shows that concerns about migration effects had already been addressed through formal law; Article 10 remained protective, but narrowed where another nationality could be obtained through the specific steps contemplated by the BNC.

After this amendment, Article 10 BNC remained particularly relevant for children born in Belgium to parents of Palestinian origin. Its application was characterised by divergent local practices: some municipalities required parents themselves to have been recognised as stateless; others sought advice from the prosecutor, although this was not then clearly provided for; others refused to apply the provision and suggested that a statelessness application be introduced for the child.[28] Consequently, a reform adopted on 31 December 2022 modified the institutional architecture of Article 10. The term 'stateless' was replaced by 'does not possess any other nationality,'[29] clarifying that the child does not need prior judicial recognition as stateless.[30] The reform also designated the civil registrar of the child's place of birth, rather than residence, as the competent authority. In case of doubt, the civil registrar may request the prosecutor's advice, but that opinion is neither mandatory nor binding. The reform was justified as a way to ensure greater uniformity and foster expertise in municipalities with maternity services, but practitioners warned that channelling advice through local prosecutors could produce regional differences and undermine legal certainty.[31]

The reform also displaced interpretative authority. Before 2022, municipalities could turn to the nationality service of the Ministry of Justice, which had developed a relatively clear position on children born in Belgium to parents of Palestinian origin. After the reform, that service was no longer competent. Some lawyers have read the reform politically as a way of removing statelessness-related questions from the Ministry of Justice, whose position was perceived as comparatively protective, or 'too progressive.'[32] The reform thus clarified formal competence while making divergent local applications more consequential.

This institutional reconfiguration is central to the IO's later intervention. The IO could not decide on nationality or provide the legal opinion reserved to the prosecutor. Yet it possessed information about families, passports, asylum claims and residence applications, and it decided whether parents could obtain residence as the parents of a Belgian child. The reform maintained a sharp legal boundary between nationality and migration competences, while families' administrative files continued to connect the two. When the IO intervened in 2023,

27 Wolsey, 'Edito - Palestine.'

28 Crokart, 'Le Statut d'apatride En Belgique' 491.

29 Loi du 6 décembre 2022 visant à rendre la justice plus humaine, plus rapide et plus ferme IIbis, arts. 45–18, *Moniteur belge*, 21/12/2022.

30 Vreemdelingenrecht, *Oprichting*.

31 Vreemdelingenrecht, *Zijn in België geboren kinderen van Palestijnse origine Belg?*

32 Wolsey, 'L'application de l'article 10 §3 CNB' 12.

Article 10 BNC therefore stood at the intersection of a protective anti-statelessness clause, a politicised history of nationality as a migration route, and an institutional architecture in which formal competence had been clarified while responsibility for its practical application remained fragmented.

4.2 MAKING AND ACTING UPON THE 'PROBLEM': THE IO'S ADMINISTRATIVE PRODUCTION OF ILLEGALITY

Before the IO's intervention generated an institutional conflict over competence, nationality and children's rights, Article 10 BNC was constituted within the administration as a practical problem. This section examines how scattered observations, field reports and residence files were assembled into a problem-frame that made intervention appear necessary, and how that framing was translated into letters, telephone contacts and working groups with municipalities.

The issue first became visible outside nationality law. The Federal Agency for the Reception of Asylum Seekers (FEDASIL) encountered Article 10 BNC through reception management: allocation of places, movements between centres and requests to be transferred to municipalities perceived as applying Article 10 favourably. According to a former cabinet member, from 2020–2021 onwards, FEDASIL reported cases involving pregnant Palestinian women who allegedly sought to move within the reception network shortly before giving birth. These situations were presented as creating risks for women and children and as revealing the strategic use of divergent municipal practices.[33] A frontline worker similarly recalled how, in 2022–2023:

> 'They would make scenes, demanding and shouting, bringing evidence–supposedly–that there were places available in such and such a centre and that they therefore wanted to go there. There were also Facebook groups where people exchanged information, photos of empty or supposedly unoccupied beds in certain centres, and so on.'[34]

The Immigration Office encountered the same issue from another angle: residence files allegedly showing people travelling within the European Union to Belgium–sometimes despite already holding a residence permit in another Member State, or having children with another EU nationality–in order to give birth in Belgium, obtain Belgian nationality for the child and subsequently apply for family reunification. For the IO, Article 10 BNC became evidence of an 'attraction effect' produced by the combination of nationality and residence law. A former public official involved in the policy discussions recalled that the IO was particularly concerned by cases in which people were perceived as moving between EU Member States in search of more favourable circumstances, including with a view to obtaining Belgian nationality and subsequently securing residence rights. From the IO's perspective, 'Belgian nationality is still the highest form of rights,' and the administration sought to correct what it perceived as the resulting gap between nationality and migration control.[35]

FEDASIL and the IO thus encountered Article 10 from different institutional locations. FEDASIL saw it through reception management; the IO saw it through residence consequences. From the IO's perspective, the child's nationality was therefore directly connected to decisions within its own remit: Belgian nationality could provide the basis for parents' residence and family reunification, while a nationality attribution it considered erroneous could undermine the subsequent residence assessment. The move into nationality law was consequently anticipatory: the IO sought to act on a legal status upstream of the migration decisions it was responsible for implementing. In both cases, a provision designed to prevent childhood statelessness was read through its effects in migration administration. The child's nationality became sensitive because it appeared as the first link in a chain of consequences extending into reception, residence and family reunification.

This administrative problematisation produced political salience. Article 10 BNC reached the political level because FEDASIL and the IO gathered cases, reported anomalies, wrote

33 Interview, April 29 2026.

34 Interview, March 3 2026.

35 Interview, April 29 2026.

notes and asked the Migration cabinet to intervene as early as 2020–2021, even though the phenomenon was acknowledged to be limited in scale.[36] A former cabinet member explained that the Migration cabinet, alerted to divergent municipal practices, had already asked the Justice cabinet to consider reforming Article 10 to make the prosecutor's opinion mandatory and binding, with the stated aim of ensuring consistent application throughout Belgium.[37] The IO's later intervention therefore emerged from a prior process in which administrations identified frictions in their own fields, translated them into patterns, and asked political and legal actors to respond.

From summer 2023 onwards, this problem frame was translated into direct administrative action. The IO began sending letters to municipalities concerning children born in Belgium to parents of Palestinian origin.[38] The genesis of the initiative is difficult to reconstruct, but the material collected suggests that the first impulse may have come from within the Dutch-speaking family reunification unit dealing with residence applications by parents of Belgian children.[39] In line with the ordinary bureaucratic culture of the IO, shaped by control and suspicion towards foreign nationals[40], some caseworkers appear to have read these files as an abuse to be countered[41] and to have used the practical latitude available to them when communicating with municipalities.[42] The IO did not formally withdraw nationality itself; it mobilised its ordinary channels of communication with municipalities to induce civil registrars to act.

The first version of the letters was direct. The IO informed the municipality that, in light of documents contained in the administrative file, including Palestinian passports and attestations, the child should not be regarded as Belgian but as Palestinian. It therefore requested that the municipality 'correct' the nationality code in the National Register from Belgian to Palestinian.[43] A contested question of nationality was thereby reframed as the correction of an erroneous registration.

These first letters quickly raised concerns and public criticism,[44] prompting an intervention from the Migration cabinet. A former cabinet member recalled that the cabinet subsequently contacted the IO to clarify that it had neither authorised nor instructed the practice, which fell outside its own competence.[45] This shows that the IO, after repeatedly raising the issue internally, moved from problem identification to unilateral action. It acted through its own bureaucratic channels and forced the issue back onto the agenda of its supervising authority who, by December 2023, publicly assumed responsibility for the letters in the press[46] and in parliamentary debates.[47]

Following the cabinet's intervention, the tone of the letters changed. They no longer appeared as direct instructions to correct the National Register, but as a transmission of 'specific

36 Ibid.

37 Ibid.

38 "Municipalities ordered to strip Palestinian children of Belgian nationality," *The Brussels Times* (11 December 2023) <https://www.brusselstimes.com/829066/municipalities-ordered-to-strip-palestinian-children-of-belgian-nationality> accessed 13/06/2026.

39 Wolsey, 'L'application de l'article 10 §3 CNB' 8.

40 Mascia, 'How Bureaucracies Shape Access to Rights'; Crosby, 'Autonomie des migrations, industrie migratoire, et le rôle de l'Etat'.

41 Interview with a lawyer, February 11 2026.

42 Discussion with a former caseworker, June 5 2026.

43 Example of anonymised letter, 19 September 2023 <https://www.adde.be/images/2025/M.%20Doutrepont%20-%20Nationalit%C3%A9%2018.12.2025.pdf> accessed June 13 2026.

44 « Des communes multiplient les retraits de nationalité belge d'enfants nés de parents palestiniens », *L'Echo*, 07 December 2023 <https://www.lecho.be/dossier/migrants/des-communes-multiplient-les-retraits-de-nationalite-belge-d-enfants-nes-de-parents-palestiniens/10511075.html> accessed June 13 2026; « 18 Antwerpse kinderen van Palestijnse ouders verliezen Belgische nationaliteit », *GVA*, 15 December 2023 <https://www.gva.be/regio/antwerpen/regio-antwerpen/antwerpen/18-antwerpse-kinderen-van-palestijnse-ouders-verliezen-belgische-nationaliteit/36850339.html> accessed 13/06/2026.

45 Interview, April 29 2026.

46 *L'Echo* (n 38).

47 Chambre des Représentants de Belgique, *Compte-rendu intégral avec compte-rendu analytique traduit*, 07 February 2024, 5 <https://www.lachambre.be/doc/CCRI/pdf/55/ic1267.pdf> accessed June 13 2026.

information' based on the administrative file held by the IO.[48] The underlying logic remained largely unchanged: the IO continued to provide municipalities with an analysis of Article 10 BNC and of Palestinian nationality, although such legal analysis did not fall within its competence, in order to prompt municipalities to revisit the attribution of Belgian nationality.

The effectiveness of these communications rested on everyday relations between federal and local administrations. The IO is the central administration for migration matters. Its correspondence resembles the standard format of instructions sent to municipalities, and many local officials rely on federal administrations for templates, guidance and practical indications on how to apply relevant rules. One civil registrar from a small municipality described such letters as 'reassuring,' in a context where they must 'deal with the rehabilitation of a cemetery, follow the legislation, civil status, the National Register, the Immigration Office, driving licences, and so on' daily.[49] Another civil registrar, legally trained and having worked in two different municipalities, analysed the situation as such:

> What the Immigration Office does really well is communication [...]. We have the impression that there is a big safety net, because we receive newsletters, they give us information, they are fairly easy to reach, and so on. [...]. So municipalities have this habit of saying: 'Okay, what the Immigration Office tells us, we can rely on.' Whereas, with the Ministry of Justice, there is not much communication.[50]

These excerpts show that the IO's authority was practical, communicative and documentary. Its letters had operational force because they entered an administrative ecology marked by unequal expertise and habitual reliance on IO communication.

The IO's position on the application of Article 10 BNC also circulated through telephone exchanges and working groups with municipal representatives and civil registrars. One civil registrar recalled meetings where videos allegedly demonstrated 'shopping between municipalities' to identify where it was preferable to give birth.[51] This administrative approach was therefore performed and reiterated across several settings. It points to a structured organisation of non-compliance: the IO embedded an intervention in ordinary administrative relations and maintained it, albeit in reformulated terms, across different channels.

The consequences were immediate and uneven.[52] Some municipalities reopened files on a case-by-case basis. Others withdrew Belgian nationality and replaced it by 'Palestinian' or 'undetermined,' or suspended recognition. Others sought the prosecutor's advice while maintaining Belgian nationality, thereby shifting legal risk to another state actor before taking further step. Where the prosecutor advised against Article 10 BNC and when the statutory period for correcting civil status records had expired, some civil registrars left it to the prosecutor to initiate court proceedings.[53] These variations show that municipalities navigated between the IO's pressure, prosecutorial authority, statutory time limits and their own responsibility for civil status records. Where municipalities ignored the IO's letters and maintained the Belgian nationality, the IO wrote directly to the prosecutor, asking them to 'verify that the civil registrar had correctly applied the law.' Article 10 provides for the prosecutor's intervention only at the request of the civil registrar; here, the IO invited the prosecutor to take the initiative, contrary to the statutory sequence and with the effect of exerting pressure on the civil registrar's decision.[54] Between summer 2023 and July 2024, at least 130 letters were sent concerning children of Palestinian origin born in Belgium, and 44 children lost Belgian nationality 'from one day to the next' through a simple modification of the National Register following IO letters.[55] The result

48 Example of anonymised letter, cited by Wolsey 'L'application de l'article 10 §3 CNB' 4.

49 Interview, April 12 2026.

50 Interview, April 13 2026.

51 Ibid.

52 Federal Ombudsman, 'Recommandations 2024/04 et 2024/05 à l'Office des étrangers et au Ministre de la Justice - Les droits des enfants nés en Belgique sans nationalité' (Federal Ombudsman 2025) 2024/04 2; KRC, Myria and DGDE, 'Les Enfants Nés En Belgique de Parents d'origine Palestinienne Risquent de Perdre Leur Nationalité Belge' (2025) Avis 5.

53 Interview with a prosecutor, June 3 2026.

54 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*, 9.

55 Myria, *La Migration En Chiffres et En Droits 2024 - Nationalité*.

DOI: 10.5334/tilr.489

was uncertainty rather than harmonisation, and in some files the displacement of the dispute from municipal registration to prosecutorial or judicial intervention.

The IO's intervention also crossed another boundary: it claimed authority to interpret the nationality law of another state, even against the position expressed by that state's own diplomatic authority. The issue was therefore not confined to questions regarding the determination of Palestinian nationality: it also concerned children connected to other countries, including Roma communities, Somalia and some Latin American states.[56] In one documented file concerning a child of Paraguayan origin, the parents had submitted an attestation from the Paraguayan embassy stating that, 'under Paraguay law, [the child born in Belgium] did not possess Paraguayan nationality.' The civil registrar therefore maintained Belgian nationality under Article 10 BNC. The IO disagreed and argued that the child might acquire Paraguayan nationality through steps taken before the Paraguayan Ombudsman for Children and Adolescents. The civil registrar did not respond, and the child remained Belgian.[57] The boundary being crossed was thus double: internally, the IO intervened in a matter reserved to Belgian nationality authorities; externally, it substituted its administrative assessment for the legal position of foreign authorities normally best placed to state whether their nationality law applies.

The letters must finally be read alongside internal requests to give the IO a more direct role in nationality-related matters.[58] In August 2023, an internal note from the Migration cabinet indicates that the IO requested the possibility of correcting the National Register when an allegedly erroneous nationality had been recorded, and of initiating family court proceedings as an interested party when Belgian nationality had been granted. The note described both options as seemingly unfeasible and difficult to justify from the ministry's point of view. These proposals nevertheless show that the letters formed part of a broader institutional aspiration to acquire leverage over nationality decisions that affected migration files.

The IO therefore did more than misapplying Article 10 BNC. It transformed scattered cases into an administrative problem, produced that problem as politically salient, and acted upon it through migration-administrative channels. The child's nationality became not only a safeguard against statelessness or a source of residence effects, but an object of administrative correction.

4.3 COUNTER-MOBILISATIONS: RE-LEGALISING NATIONALITY

The IO's intervention generated a series of counter-mobilisations through which the conflict was brought back into law. These took three main forms: handling of individual complaints and the issuance of 'recommendations' by the Federal Ombudsman; mobilisations by independent institutions and civil society actors around statelessness, children's rights and evidence; and legal action by lawyers and courts around competence, motivation, proportionality and the legality of nationality corrections. Together, these actors displaced the conflict. What the IO had framed as administrative coherence, municipal inconsistency and migration-control risk was rearticulated as a question of competence, evidence, procedure and fundamental rights.

The first move restored competence. In autumn 2023, the Federal Ombudsman began receiving complaints concerning the consequences of the IO's letters in ongoing residence cases. As these complaints were processed, a broader administrative problem emerged. Their subject nonetheless remained within the Ombudsman's remit. The complaints concerned the IO's handling of residence applications, within which the IO had challenged the nationality attributed by municipalities under Article 10 BNC. The Ombudsman's investigation therefore addressed the IO's conduct in residence matters while examining its effects on nationality. After a few months of investigation, in early 2024, the Ombudsman issued a first recommendation—a public instrument through which the institution calls on an administration to amend a contestable practice and, where relevant, draw Parliament's attention to the need to change rules or end contestable practices. The recommendation sought to interrupt the spread of the

56 Interview with a civil servant, November 17 2025.

57 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*, 6.

58 Kuzniak, 'Edito - Apatridie : Un Projet de Loi Qui Déçoit.'

IO's practice and gave municipalities legal grounds for resisting it.[59] Although addressed to the IO, it had broader effects. By publicly stating that the IO had no competence to instruct municipalities on Article 10 BNC, it strengthened the position of civil registrars confronted with federal letters.

The Ombudsman's core intervention was institutional. Rather than deciding whether children born in Belgium to Palestinian parents possessed Palestinian nationality, it recalled the legal regime governing Belgian nationality and stressed that the IO is not competent to provide instructions or legal opinions on Article 10.[60] The question therefore shifted from the substantive plausibility of the IO's reading to the authority from which that reading was issued. The Ombudsman also reintroduced legal certainty and the best interests of the child. While the IO justified its intervention by invoking uneven municipal practices, the Ombudsman stressed that the letters had produced 'confusion among municipalities' and 'a chaotic situation across the country.'[61] Nationality was thereby reasserted as a legal status attached to a child, whose alteration requires competence, reasons and safeguards.

As the practice continued in 2024, a second recommendation widened the issue to residence procedures.[62] It examined cases in which parents applying for residence as the authors of a Belgian child were left without a decision, or saw their applications treated as devoid of purpose, because the IO refused to give effect to the civil registrar's decision attributing Belgian nationality under Article 10 BNC. The IO was therefore intervening in nationality through municipal correspondence and, within its own field, refusing to recognise the legal effects of decisions taken by another state authority. The Ombudsman considered that this 'manifestly exceed[ing] the limits of the normal, reasonable and proportionate exercise of its powers.'[63]

The second recommendation also addressed the IO's tendency to substitute its own reading of foreign nationality law for that of the authorities of the state concerned. Relying on Article 1 of the Hague Convention of 12 April 1930, the Ombudsman recalled that 'it is for each State to determine under its own law who are its nationals' and that this competency is exclusive: 'only Belgium can determine who is Belgian, or Switzerland who is Swiss'; 'no Belgian authority can therefore determine a foreign person's nationality in place of that person's national authorities.'[64] The Ombudsman also addressed the Minister of Justice as 'guardian of nationality law,' stressing that any reform of Article 10 BNC—then politically discussed following the IO's intervention and promoted by the Immigration Office as a way of resolving the difficulties identified—should follow a legislative evaluation taking the best interests of the child as a primary consideration.[65] Its intervention thus reordered the conflict by reallocating each state actor to its legally defined role.

A second line of counter-mobilisation restored evidence. The IO's reasoning rested on a documentary inference: Palestinian documents held by the parents were treated as proof that the child possessed Palestinian nationality. Several institutions, including the Federal Centre on Migration,[66] the European Network on Statelessness[67] and Nansen,[68] challenged this logic. The UNHCR[69] ruled that Article 10 BNC gives effect in Belgian law to the 1961 Convention on the Reduction of Statelessness, that the best interests of the child must be a primary consideration, and that the threshold for withdrawing nationality must be solid rather than inferred from a passport alone. These interventions reframed the relevant question: the issue was whether the specific child was legally considered a national under an existing and effective nationality law,

59 Discussion with a civil servant, December 2025.

60 Federal Ombudsman, *Recommandation 2023/06*, 5.

61 Federal Ombudsman, *Recommandation 2023/06*, 4.

62 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*.

63 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*, 7.

64 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*, 3.

65 Federal Ombudsman, *Recommandations 2024/04 et 2024/05*, 12.

66 Myria, *La Migration En Chiffres et En Droits 2024 - Nationalité*, 13–20.

67 European Network on Statelessness, 'Briefing on the Right to a Nationality of Children Born to Palestinian Parents in Belgium' (2024) Briefing.

68 Ouhnaoui, *Palestinian Origin or Nationality?*

69 UNHCR, *Observations*.

or determined by the parents' Palestinian documents (or whether Palestine should even be treated as a state in abstract terms).

A third set of counter-mobilisation restored procedure and rights. From late 2023 onwards, lawyers representing families or advising municipalities challenged withdrawals of nationality and delays or refusals in residence procedures. Some first wrote to municipalities, arguing that deleting Belgian nationality from the National Register after IO letters contradicted the 2022 reform and exposed municipalities to legal risk. In some cases, municipalities reversed their position and reactivated children's identity cards, referring the matter back to the civil registrar of the place of birth.[70] Other municipalities sought external legal advice from lawyers specialised in nationality and statelessness.[71] These opinions transformed the conflict by translating an administrative dilemma into a legal risk assessment. They reaffirmed the exclusive competence of civil registrars under Article 10 BNC, described the IO's intervention as an encroachment on that competence, and presented withdrawal as the riskier course, where no competent authority had established that the child possessed another nationality. In addition to defending families, counter-mobilisation therefore provided municipalities with legal grounds to resist the IO's line.

Litigation then transformed the administrative conflict into a structured judicial dispute. In family court proceedings, lawyers challenged the form of administrative action itself: lack of reasoning, absence of proportionality, failure to consider the child's best interests, disregard of fundamental rights, legality of nationality corrections in the National Register. One family court judgment from Antwerp illustrates the shift.[72] The court annulled the withdrawal of Belgian nationality from a child who had acquired it under Article 10 BNC, holding that such withdrawal could not be treated as a mere administrative correction. It required proof that the child possessed another nationality and an assessment of the consequences of nationality loss for the child. The relevant point is the legal frame: the court treated nationality loss as a rights-affecting decision requiring proof, motivation and proportionality, rather than as an administrative correction following a federal letter.

A similar movement occurred before the Council for Alien Law Litigation. In proceedings concerning residence applications lodged by parents as authors of a Belgian child, the Belgian State argued that the civil registrar had wrongly attributed Belgian nationality to the child and that the residence application therefore had no object.[73] The annulment pronounced by the Council[74] reasserted the separation of competences: while the IO could communicate information to the competent authorities, it could not itself refuse to recognise the child's Belgian nationality after the civil registrar had decided to maintain it. A challenge to nationality had to follow the procedures assigned by nationality law; it could not be resolved through an administrative refusal of residence.

These counter-mobilisations reveal a conflict between two ways of governing legal status. The IO sought to govern through administrative communications, documentary shortcuts and residence consequences. Counter-actors re-legalised the matter by restoring the applicable legal rule, its statutory allocation of competence, and the requirements of evidence, procedure and rights. This does not imply that formal legal authority necessarily produces better substantive outcomes, or that legal borderlands should generally be resolved by stricter formalism. In this case, however, the reassertion of formal competence mattered because the IO's intervention sought to produce effects in a domain from which it was legally excluded and through channels not authorised by the applicable legal framework. Re-legalisation therefore describes an empirical process of bringing the conflict back within the institutional and procedural constraints governing nationality law, rather than a general normative preference for formalism.

70 Wolsey, 'Edito - Palestine' 6.

71 Internal document (unpublished), March 2024.

72 Tribunal de la famille d'Anvers, 27 février 2026, RG No 24/1443/A <https://adde.be/wp-content/uploads/2026/03/A-anonymiser-Trib.-fam.-Anvers-27.02.2026-art.-10-CNB-parents-palestiniens.pdf> accessed June 13 2026.

73 Wolsey, 'L'application de l'article 10 §3 CNB'.

74 Council for Alien Law Litigation, judgment no 329,120, 1 July 2025, RvV X/II <https://www.vreemdelingenrecht.be/sites/default/files/media/files/2026-05/RvV_329120.pdf> accessed 22 June 2026.

5. DISCUSSION: LEGAL BORDERLANDS WITHIN THE STATE

The empirical sections have traced how a protective anti-statelessness clause was reframed by the Immigration Office as a migration-control problem, operationalised through letters and residence decisions, and then contested through competence, evidence, procedure and children's rights. This sequence shows how a legal borderland can be produced within the state when action beyond competence becomes relationally embedded. The IO's intervention produced effects because it circulated through an administrative environment in which municipalities, civil registrars, prosecutors, lawyers, courts and oversight bodies were connected through files, registers, legal opinions, residence applications and routine communication.

5.1 RELATIONAL ADMINISTRATIVE AUTHORITY

The effects of IO's intervention depended on a chain of administrative and legal relations. The IO possessed information contained in asylum and residence files; municipalities were accustomed to relying on it in matters concerning foreign nationals; civil registrars faced legal risks in either maintaining or withdrawing nationality; prosecutors could be consulted or mobilised; and parents' residence applications depended on whether the child's Belgian nationality would be recognised as effective. The letters had force because they entered a field already structured by administrative dependence, habitual communication, and unequal expertise.

This extends relational approaches to administrative decision-making. Miaz and Achermann showed how bureaucratic discretion is shaped by relations between migration officials, police, case managers and judges.[75] The present article shifts the focus from discretion to authority exercised beyond formal competence. It shows how formal competence and practical authority can diverge when an institution occupies a position from which other actors are expected to take its intervention into account. This resonates with Bourdieu's analysis of juridical authority as a form of symbolic power produced within a structured field of unequal positions and competencies.[76] It also draws on his conception of the state as a bureaucratic field, in which the capacity of state institutions to produce authoritative effects is linked to the resources and positions they occupy.[77] The IO's access to information, its position within the migration-control apparatus and municipalities' reliance on federal guidance gave its communications practical weight exceeding their formal legal status. This authority was also activated by an anticipatory logic of migration control: because nationality could generate residence rights that the IO would later have to assess, the conditions of nationality attribution became relevant to the administration before those rights were claimed. I describe this mechanism as relational administrative authority: the capacity of an administration to produce effects beyond its formal competence through the dependencies, expectations, and responses of other actors. Authority here is neither simply possessed by the IO nor produced by it alone: it emerges through relations with actors whose responses can amplify, redirect or constrain its intervention.

This also clarifies the role of counter-mobilisations. The Federal Ombudsman, lawyers, Myria, the UNHCR, Nansen and courts acted within the same relational configuration and altered the range of actions that municipalities, prosecutors, and the IO could sustain within the legal framework. Ombudsman recommendations equipped municipalities with reasons to resist the IO's letters, lawyers translated uncertainty into legal risk, and courts recalled that civil status decisions could not be disregarded in residence procedures while they remained valid. Relational administrative authority therefore operates in both directions: the same relations that enable an administration to extend its practical reach also provide channels through which other actors can constrain or redirect it. Counter-mobilisations did not simply oppose the IO from outside; they altered the relations through which its intervention could acquire practical effects.

The case suggests that administrative expansion is especially likely where a status governed by another legal field is perceived as an upstream condition of decisions within an administration's own remit. Relational administrative authority can thus be activated not only through

75 'Bureaucracies Under Judicial Control?'

76 Bourdieu, 'The Force of Law.'

77 Bourdieu, 'Rethinking the State: Genesis and Structure of the Bureaucratic Field.'

bureaucratic discretion or institutional confidence, but also through anticipatory attempts to control the legal conditions on which downstream administrative decisions depend.

5.2 LEGAL BORDERLANDS WITHIN THE STATE

The Belgian case also shows how conflicting law is produced before, during and beyond litigation.[78] Courts mattered, but they entered a field already structured by inter-administrative correspondence, municipal registration practices, prosecutorial opinions, Ombudsman recommendations and residence decisions. The state appeared as a field of (legal) disagreement over which institution could make its version of Article 10 BNC effective. The IO approached the provision through residence consequences and perceived abuse. Civil registrars approached it through statutory competence and civil status registration. Prosecutors, courts and oversight bodies returned the dispute to the applicable legal rule and its statutory allocation of competence, while reintroducing requirements of proof, procedure, proportionality and children's rights.

The notion of legal borderlands helps name the legal space produced by these disagreements. As set out earlier, legal borderlands designate zones in which the boundaries between law and non-law, legality and illegality, formal authority and informal practice, or jurisdiction and extra-jurisdiction become unstable. The Article 10 case shifts the focus inward, as the relevant borderland is located within the state itself, where an administration responsible for migration uses its de facto authority to affect nationality, and where other (quasi) state actors seek to reassign each institution to its legally defined role. Where relational administrative authority explains how the IO's intervention acquired practical force, legal borderlands capture the resulting configuration: a space in which the boundaries authorised action and administrative overreach became practically unsettled. Here, the borderland was produced by competing institutional claims over how law should be activated, by whom, and with what effects.

The borderland was also documentary and procedural. Letters, register entries, birth certificates, passports, embassy attestations, residence files, legal opinions and court applications all participated in the conflict. The IO's letters transformed a disputed question of nationality into a possible correction of the National Register. Municipal reactions translated the letters into withdrawal, suspension, referral to the prosecutor or resistance. Ombudsman recommendations and legal submissions returned the dispute to the applicable legal rule, its statutory allocation of competence, and the requirements of proof, procedure and children's rights. Legal uncertainty thus arose despite relatively clear formal rules because the IO sought to shape the application of Article 10 through channels not authorised by nationality law, while other actors insisted on the statutory rule, and its allocation of competence. The borderland therefore lay partly in the unstable boundary between lawful application of the rule and administrative action beyond it.

5.3 FROM BUREAUCRATIC NON-COMPLIANCE TO THE ADMINISTRATIVE DE-CITIZENISATION

The Belgian case also contributes to work on bureaucratic legality and administrative non-compliance. The IO mobilised legal categories constantly—nationality, statelessness, passports, residence, family reunification—but through a control-oriented understanding of legality, in which legal categories become tools for preventing anticipated abuse and preserving the coherence of migration control. Analysing the use of law by IO officers, Mascia[79] showed that non-compliance may operate as a deliberate strategy to influence jurisprudence and to have administrative practices legally recognised. She analyses such non-compliance as a form of 'legal activism,' defined as a specific mode of action aimed at influencing immigration policy-making.

The Article 10 BNC case extends this insight to action beyond competence. The IO moved upstream into nationality law to prevent residence rights before they crystallised. This amounted to bureaucratic law-making beyond competence: the IO reframed a protective legal

78 Miaz, 'La co-production conflictuelle du droit. Le rôle des intermédiaires du droit dans la judiciarisation de la politique suisse d'asile.'

79 Mascia, 'To Comply or Not to Comply, That Is the Question'.

norm as a migration-control problem, routinised intervention through letters and municipal communication, defended its approach in residence procedures, and explored or supported changes that would have increased its leverage over nationality-related matters.

This anticipatory logic turned nationality into a risk-bearing status. The child's nationality became something to be doubted, corrected, suspended or deprived of effect because of what it could produce in another legal field. Drawing on work that analyses de-citizenisation as a form of dispossession and precarity of citizenship,[80] I describe this process as administrative de-citizenisation: the weakening, suspension or neutralisation of citizenship's practical effects through adjacent administrative procedures. In some cases, Belgian nationality was formally withdrawn or modified in the National Register. In others, the child remained legally Belgian before the municipality or civil courts, while the residence rights attached to that nationality were delayed, treated as devoid of purpose or contested by the IO. Citizenship's legal existence and administrative effects could therefore become misaligned.

Counter-mobilisations altered the practical conditions under which the IO's position could circulate. Ombudsman recommendations, legal submissions and judicial decisions gave municipalities, lawyers and other state actors grounds to resist or redirect the administrative treatment of Article 10 BNC. The Belgian case therefore shows how citizenship can be made effective, weakened or re-stabilised through conflicts between state actors over which version of law becomes operational.

6. CONCLUSION

This article asked how a migration administration can produce effects in the field of citizenship while lacking formal authority over nationality. The Article 10 BNC shows that such effects can arise when an administration's position acquires relational administrative authority through ordinary institutional relations. Its intervention acquired practical force because it travelled through files, letters, municipal routines, residence procedures, register entries, prosecutorial pathways and litigation. The legal borderland analysed in this article was therefore produced through the interaction between formal competence and relational administrative authority.

This finding refines the notion of legal borderlands by shifting the focus inward, towards the state itself. The borderland at stake was situated at the intersection of nationality law, migration control, civil registration, prosecutorial advice, residence procedures, legal mobilisation and judicial review. It was sustained by documents, registers, letters and files, and narrowed by recommendations, litigation and judgments that reasserted the statutory allocation of competence and the procedural and evidentiary requirements attached to it. The case demonstrates that legal borderlands can be actively produced inside state institutions, even where the formal allocation of legal authority remains identifiable.

The article also contributes to debates on legal pluralism, state fragmentation and the anthropology of the state. The case reveals the state as a field of (legal) disagreement in which several actors invoke legality while attaching different institutional priorities and practical consequences to it. The IO, civil registrars, prosecutors, courts and counterweights acted on the same files, the same children and the same status, yet mobilised distinct legal rationalities. Their dispute makes visible a pluralism internal to the state: conflict becomes a mode of state production through which legal authority is negotiated between state actors, counterweights re-channel administrative practice through authorised legal forms, and the relations that make law effective are themselves reorganised.

Relational administrative authority captures the mechanism through which the IO's intervention acquired practical effects. Building on work on relational discretion and the conflictual co-production of migration law,[81] the article shows how an administrative position can become consequential beyond formal competence when other actors are positioned to anticipate, relay, contest or give effect to it. In the Article 10 case, municipalities, civil registrars, prosecutors, lawyers, courts and oversight bodies could each respond to the IO's position in

80 Kalpana Kannabiran, 'The Shifting Sands of Citizenship' (2020) 69 Sociological Bulletin 331.

81 Miaz, 'La co-production conflictuelle du droit. Le rôle des intermédiaires du droit dans la judiciarisation de la politique suisse d'asile'; Miaz and Achermann, 'Bureaucracies Under Judicial Control?'

ways that amplified, redirected or constrained its effects. Authority thus emerged through a relational field that the IO could activate without fully controlling.

The case further contributes to scholarship on bureaucratic law-making and administrative non-compliance. The IO's conduct formed a sustained line of action: it reframed a protective anti-statelessness provision as a migration-control problem, routinised letters to municipalities, defended its position in residence procedures, and supported or explored institutional changes that would have increased its leverage over nationality-related matters. This amounted to bureaucratic law-making beyond competence. The administration attempted to make its restrictive approach to the application of Article 10 BNC administratively effective before securing formal legal recognition. Its strategy was anticipatory: it acted on the legal condition from which residence rights could arise, rather than waiting to assess those rights once claimed.

The case also clarifies how citizenship can be administratively weakened through adjacent legal fields. Article 10 BNC formally attributes Belgian nationality to children born in Belgium who possess no other nationality. Yet the practical effects of that nationality depend on recognition across connected administrative domains. A child's Belgian status may be entered in the National Register, maintained by a municipality or restored by a court, while residence rights attached to that status remain delayed, questioned or neutralised by the migration administration. I have described this process as administrative de-citizenisation: the weakening, suspension or neutralisation of citizenship's effects through administrative procedures that do not necessarily amount to formal loss of nationality. The concept captures a form of dispossession in which citizenship remains legally present while becoming practically uncertain.

The persistence of the issue confirms the importance of analysing legal borderlands as processes rather than episodes. In its latest annual report, published in April 2026, the Federal Ombudsman stated that it had opened seven new complaints concerning delays in residence applications lodged by parents of Belgian children whose nationality had been attributed under Article 10 BNC. The Ombudsman further noted that, despite repeated requests, the IO had 'still not provided any response on this point.'[82] This suggests that counter-mobilisations and first-instance judgments can narrow a legal borderland without fully closing it: restrictive approaches to the application of Article 10 may continue to operate through delay, non-response and refusal to give effect, even after their legality has been publicly challenged.

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82 Federal Ombudsman, *Rapport d'activités 2025*, 56.

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