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7.11 Statelessness in the asylum context

7.11.1 Developments in EU+ countries

> Statelessness is a legal anomaly, which affects those who are not considered a national by any state. Lacking any state's protection means stateless persons may not be able to fully realise their fundamental rights, including access to education, health care, housing, employment, social welfare and documentation

The issue of statelessness in the field of asylum has continued to gain attention over 2019. UNHCR reported an estimated total of about 537 000 stateless persons[lvi] in Europe, as published in its Mid-Year Trends Report in June 2019. In the EU context, questions surrounding the acquisition of nationality fall within the competence of Member States and, under international law, it is up to each Member State – having due regard to EU law and within the limits set by international law – to lay down the conditions for the acquisition and loss of nationality. At the same time, the Council Conclusions of December 2015 underlined the EU's commitment to address statelessness, to prevent the emergence of statelessness and to encourage non-EU countries to take measures to address statelessness.[545] The conclusions also invited Member States to actively participate in the exchange of information and good practices through a dedicated platform on statelessness managed by EMN.

Under this initiative, EMN published an inform on statelessness in the EU and Norway in December 2019. Key findings included:[546]

- At the end of 2019, 25 EU Member States and Norway were party to the 1954 Convention Relating to the Status of Stateless Persons and 21 EU Member States were party to the 1961 Convention on the Reduction of Statelessness.
- The process through which it is determined whether a person is stateless varies considerably across countries. A stateless determination procedure is used to establish who qualifies as stateless and grant a legal status that enables the person to enjoy the rights set forth in the 1954 Convention relating to the Status of Stateless Persons,[547] including the right to residence, work, education, health care and facilitated naturalisation.[548] Some Member States have established an administrative procedure for this purpose. Others have embedded this process into more general procedures or apply ad hoc or judicial procedures.
- Most Member States that have a dedicated statelessness determination procedure do not have a child-rights adapted procedure in place for stateless children, that would take into account specific vulnerabilities of this group. However, a guardian is typically appointed in the case of unaccompanied minors.

- Only a few Member States have dedicated statelessness determination procedures in place. In the majority of Member States, stateless persons must apply for a residence permit on other grounds. This can become complex as stateless persons may not fulfil the criteria for securing a residence permit on other grounds, which may leave them in a legal vacuum in some countries.
- Most Member States have measures in place to facilitate, under certain conditions, access to nationality for children born stateless on their territory. Yet, only one-half of Member States have full safeguards in place against statelessness at birth. Absence of such legal provisions or partial safeguards results in children being born stateless.
- Very few Member States have provisions in place to protect the right to acquire a nationality for children born en route to Europe and who have no birth certificate or an equivalent document.

Stateless persons and refugees are two distinct categories in international law, but a person can be both a refugee and stateless.[549] In the context of asylum, statelessness may be relevant to the determination process for an application for protection. It is important that both claims are assessed and both statuses explicitly. In instances where refugee status ceases without the person having acquired a nationality, this may necessitate international protection as a stateless person.

The link between statelessness and asylum has gained attention among EU+ countries, especially considering that two of the top countries of origin of applicants for protection in Europe – Iraq and Syria – have historically the large stateless populations, including Kurds and Palestinians in Syria,[540] and Bidoon, Dom and Kurds in Iraq.[551] In addition, both countries retain gender discrimination in nationality laws, which has also been a source of statelessness.[552] As set forth in the recast Qualification Directive, Article 2(n), the country of origin for stateless persons means the country of former habitual residence and not the country of nationality, as is the case for other applicants for international protection.

According to Eurostat data, between 2010 and 2019, EU+ countries received approximately 84 200 applications for international protection by stateless persons (*see Figure 7.1*). In 2015, the number reached a peak of 21 100 applications in one year, followed by a decreasing trend. The share of applications by stateless persons to the total number of applications received in EU+ countries followed an increasing trend from 2010 to 2015, from approximately 1 % to 2.5 % respectively, and then a decreasing trend until 2019, when it reached approximately 0.6 %. It is worth noting that the share of positive decisions on asylum decisions at first instance, or the recognition rate,[lvii] for stateless persons in EU+ countries is generally high, but a decreasing trend has been noted since 2015, with a 90 % recognition rate in 2015 compared to 64 % in 2019.

It is also important to highlight that, while applications lodged by stateless persons may have a relatively high recognition rate, this is the case only if statelessness is properly identified during the registration of an application. Often it is not, and these individuals are registered under the nationality of their country of former habitual residence or as having ‘unknown’ nationality. Yet, for some applicants, their statelessness in the country of origin may be wholly or partially linked to their fear of being persecuted.

Figure 7.1 Number of applications lodged by stateless persons in EU+ countries, 2010-2019

Number of applications lodged by stateless persons in EU+ countries, 2010-2019

Source: Eurostat.

The recognition rate for applicants registered as of 'unknown' nationality has been consistently lower from 2010 to 2019 than for applicants registered as stateless (53 % compared to 64 %, respectively, according to Eurostat data). If not identified, statelessness and its consequences will not be taken into account during the asylum process, and the applicant's protection needs are likely not to be fully understood and adequately addressed.[553] In addition, the status registered during the application for international protection (e.g. national, stateless or unknown) has an impact on the nationality rights of the applicant's children and access to procedures, such as family reunification and naturalisation. As such, identifying potential cases of statelessness and referring these cases to a statelessness determination process are of paramount importance.

7.11.2 Legislative and policy developments

A number of EU+ countries took steps toward addressing statelessness in 2019, including acceding to relevant international legal instruments, establishing dedicated statelessness determination procedures, providing access to citizenship at birth, facilitating access to naturalisation, enhancing the content of protection for stateless persons, speeding up the statelessness determination process and collecting census data on stateless persons.

In December 2019, Malta acceded to the 1954 Convention relating to the Status of Stateless Persons and is currently developing a process for statelessness determination.

Sweden has withdrawn two reservations concerning the 1954 Convention – one relating to Article 8 on exceptional measures and one on Article 24(1)b on labour legislation and social security, in addition to the corresponding reservations in the 1951 Refugee Convention. Sweden also established an Inquiry on Nationality to limit statelessness, for example by providing nationality automatically at birth to children of stateless persons, instead of using the current simplified notification process. In June 2019, the Swedish Riskdag adopted a two-year extension of the temporary law on residence permits, which includes restricted duration of residence permits for beneficiaries of international protection. Along with the extension, a provision was also adopted which, in some cases, renders a permanent residence permit to persons born in Sweden and who have been stateless since birth (SE LEG 01).[555]

In Czechia, the proposal for the amendment of the Asylum Act and Foreigners Act put forth in 2019 foresees the establishment of a dedicated statelessness determination procedure.

In the Netherlands, a legislative proposal to establish a statelessness determination procedure has been pending since 2016. Because of the delay in enacting this legislative proposal, the municipalities of Amsterdam and Utrecht developed their own policy for stateless residents.[556] Utrecht, for instance, intends to employ an expert team to assist the municipality in the

registration of stateless persons. In addition, Utrecht will actively assist stateless residents in getting proper registration. Previously, this was fully the applicant's responsibility. Other municipalities are also investigating how to support stateless persons better. In Amsterdam, the mayor and aldermen have given a positive recommendation for a similar proposal. Furthermore, the Municipality of The Hague has finished a proposal for stateless persons, and a political party in Rotterdam (the Labour Party, PvdA) is working on a similar proposal.[557]

In December 2019, Latvia introduced legislation to provide citizenship automatically to children born to non-citizens in the country, unless the parents have agreed to grant to the child citizenship of another country (LV LEG 01).

France, through Decree No. 2019-141 of 27 February 2019, provided for a multi-year residence permit stating “beneficiary of stateless person status” or “family member of a beneficiary of stateless person status” instead of a one-year residence permit (FR LEG 14).

In Bulgaria, amendments to the Law on Foreigners entered into force on 24 October 2019, enabling a stateless person who does not meet the requirements for permanent or long-term residence to obtain permission for a one-year prolonged stay.

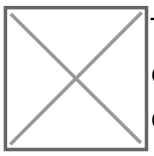
In Lithuania, the Migration Department under the Ministry of the Interior and its territorial units provided information in July 2019 to stateless persons on the requirements for naturalisation and assistance in collecting the necessary documents for those who apply for naturalisation. If necessary, a municipality covers the state fee for the examination of applications. Prior to July 2019, these functions were performed by the Police Migration Unit.

In June 2019, Slovakia adopted the *Act on Census of Population and Housing 2021*, which provides for information collection, not only on Slovak citizens, but also on other EU nationals, third country nationals and stateless persons (SK LEG 01).

In March 2019, the United Kingdom introduced changes to the stateless leave policy to clarify that, to qualify for stateless leave, applicants must show that they cannot acquire a nationality or a right to permanent residence in another country to which they could reasonably expect to be entitled. These changes are designed to better reflect the intention of the policy and to deter abuse of the system by those who deliberately renounce their citizenship or refuse to take reasonable steps to acquire a nationality or right to permanent residence to which they can expect to be entitled if they registered with the relevant national authorities.[558] Furthermore, changes were introduced to increase the initial period of leave for those who qualify from 30 months to 5 years, after which they can apply for settlement.

In Spain, the pace for conducting and concluding statelessness determination increased with the objective to clear the backlog of pending cases rapidly. Similarly, in Sweden the number of stateless persons being granted Swedish nationality increased. From 2014-2019, more than 22 000 stateless persons were granted Swedish nationality.

Existing challenges reported by civil society organisations



The ENS, an alliance of civil society organisations with presence in 41 countries, conducts systematic research on statelessness and supports legal and policy development, awareness-raising and capacity building. The ENS' Statelessness Index offers comparative data on national legislation, policy and practice related to statelessness for 24 European countries. The indicators cover five key areas:

> Acceding to international and regional legal instruments on statelessness;
> Data on the stateless population;
> Procedures or mechanisms by which statelessness can be identified and a legal status determined;
> Detention of stateless persons; and
> Measures to prevent and reduce statelessness.[559]

Focusing specifically on asylum, the ENS – in cooperation with the Open Society Foundation and the Institute on Statelessness and Inclusion – launched the "Stateless Journeys" initiative in 2017 to examine the relationship between statelessness and forced migration in Europe. Their research has revealed a number of challenges faced by stateless persons in the asylum procedure. Key findings include:[560]



Difficulties in accessing the asylum procedure. This could be in part due to distrust toward authorities based on previous negative experiences in their country of origin. A lack of documentation and information about administrative procedures can also play a role. A compounding factor may include a lack of awareness about statelessness among officials involved in the initial registration.



Prolonged periods in reception centres. This can be a result of delays in determining the stateless person's status or identity, or uncertainty about nationality status.



Lack of proper identification. Without official documents and a lack of awareness, among applicants and officials alike, about the relevance of statelessness and the need for referral to status determination procedures (where available), the protection needs of the applicants may not be adequately addressed during the assessment of the application. It can result in stateless persons being registered with imputed nationality or as nationality 'unknown'.



Denied family reunification and complementary pathways to protection. A lack of civil documentation and proof of family links for stateless persons may block access to provisions, such as family reunification, resettlement or other complementary pathways to protection. These barriers may be exacerbated by inflexible procedures and strict eligibility requirements.



Birth registration and children's rights. Migrants and refugees may face barriers in registering and/or certifying the birth of a child in Europe, or in transit, which can lead to a risk of statelessness, as a birth certificate is key to establishing a child's nationality. Legal safeguards in EU Member States' laws on nationality are not sufficient to prevent children from being born stateless in their territory.



Denied integration prospects. Stateless persons who have not been granted a stateless status or any form of protection status run the risk of being denied certain rights under the 1954 Convention relating to the Status of Stateless Persons. These rights facilitate integration in the host country and include access to education, employment, social security and facilitated naturalisation.



Obstacles to naturalisation. This can result from a lack of required documentation and the inflexibility of naturalisation procedures to accommodate specificities related to statelessness. (e.g. in some countries a passport or birth certificate is required for naturalisation).



Detention and return. Stateless persons who have not been granted a protection status or found a route to legal residence in Europe may have no country to which they can return. Thus, they may be subject to repeated unsuccessful removal attempts and prolonged periods of detention, which may be unlawful.

Similar concerns were reported by civil society organisations. For example, Fundación Cepaim reported that, in Spain, stateless persons may face difficulties in accessing the country's territory. Stateless persons who applied for the recognition of their status in the country may encounter problems when, upon leaving the country for a short stay abroad, they return to Spain with the applicant identification card. With regard to reception conditions, stateless applicants may not be granted a work permit. Stateless applicants may also not receive the same safeguards as other applicants for protection, such as the right to an interview or legal assistance at first instance and are not protected against removal.[561]

In addition, in April 2020, the ENS published a report on the effects of statelessness on migrant children in Europe. The report identifies existing protection gaps and proposes key actions to prevent child statelessness. In addition, to raise awareness on how statelessness emerges in a countries of origin, the Stateless Journeys initiative produced a number of country position papers for Kuwait,[562] Iran,[563] Iraq,[564] Myanmar[565] and Syria.[566] The papers provide information on the profiles of stateless individuals and persons who may be at risk of statelessness in these countries due to gaps or discrimination in nationality laws or issues with civil documentation.

[lvi] The estimate comprises persons who are not considered to be nationals under the operation of the law in any state. This category refers to persons who fall under the agency's statelessness mandate because they are stateless according to the international definition. Data for some countries may include undetermined nationality in the total number of stateless persons.

[lvii] The recognition rate is defined as the number of positive outcomes relative to the total number of decisions issued. The recognition rate is calculated by considering refugee status, subsidiary protection and national protection schemes as positive decisions.

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