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4.13.1 Understanding statelessness and statelessness-related trends



The 1954 UN Convention relating to the Status of Stateless Persons defines a stateless person as someone "who is not considered as a national by any state under the operation of its law".[940] Nationality is the legal bond between a person and a state. International law establishes the right of every person to a nationality. States are free to regulate nationality, but this must be within the limits of international law (being non-discriminatory and non-arbitrary, avoiding statelessness, ensuring gender equality, etc.). Nationality is generally acquired at birth by descent (jus sanguinis) and/or place of birth (jus soli), or later in life based on residence, marriage or adoption. A stateless person does not have a nationality of any country, whether born stateless or having become stateless later in life.

The issue of statelessness in the field of asylum continued to draw attention in Europe in 2020. UNHCR reported an estimated 483,000 stateless persons[liii] in Europe, as published in its Global Appeal 2021 Update.[941] 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 the limits set by international law – to lay down the conditions for the acquisition and loss of nationality.

The Council of the European Union adopted its first Conclusions on Statelessness in December 2015, highlighting the importance of nationality as a fundamental right and drawing on international human rights law and the TFEU. The Council underlined the precarious situation of stateless persons who are often excluded from participating in economic, social and political life in their host states or in their states of birth. This commitment was also expressed in the EU's Action Plan on Human Rights and Democracy (2015-2019) to address statelessness in relation to priority countries and focus efforts on preventing the emergence of stateless populations as a result of conflict, displacement and the dissolution of states.[942] The new action plan for 2020-2024 reiterated the commitment to eliminate inequalities, discrimination and the exclusion of persons in vulnerable situations, including stateless persons.[943]

In addition, the 2015 Council Conclusions on Statelessness tasked the European Migration Network (EMN) to establish a dedicated platform to exchange information and good practices and raise awareness about statelessness. The platform brings together all relevant stakeholders in the field: representatives of Member States, the European Commission, the European Parliament, European

agencies, international organisations and NGOs.[944] Under this initiative, in January 2020, the EMN published an inform on statelessness in the EU and Norway.[liv] The EU External Action Service also supports the prevention of child statelessness outside of the EU by helping partner countries to strengthen civil registration systems and by promoting birth registration.[945]

Stateless persons and refugees are two distinct categories in international law, but a person can be both a refugee and stateless.[946] In the context of asylum, statelessness may be relevant to the determination process for an asylum application. It is important that both claims are assessed and both statuses addressed 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 is a reality across EU+ countries, especially since two of the top countries of origin of applicants in Europe – Iraq and Syria – historically have large stateless populations. They include Kurds and Palestinians in Syria,[947], [948] and Bidoon, Dom and Faili Kurds in Iraq.[949], [950] In addition, both countries retain gender discrimination in nationality laws, which can lead to statelessness.[951], [952], [953] Other countries of origin, such as Iran, Kuwait and Myanmar, also have large stateless populations.[954] 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, EU+ countries have received approximately 84,500 applications for international protection by stateless persons during the last decade, from 2011 to 2020 *(see Figure 4.20)*. On an annual basis, the highest number was received in 2015, with about 21,100 applications lodged by stateless persons. Since then, the number has decreased.

The share of applications by stateless persons in the overall total number increased in EU+ countries from 2011 to 2014, representing approximately 0.8% to 2.5% of all applications. From 2015, the trend reversed until 2020, when the share of applications by stateless persons decreased to about 0.4% of all applications.

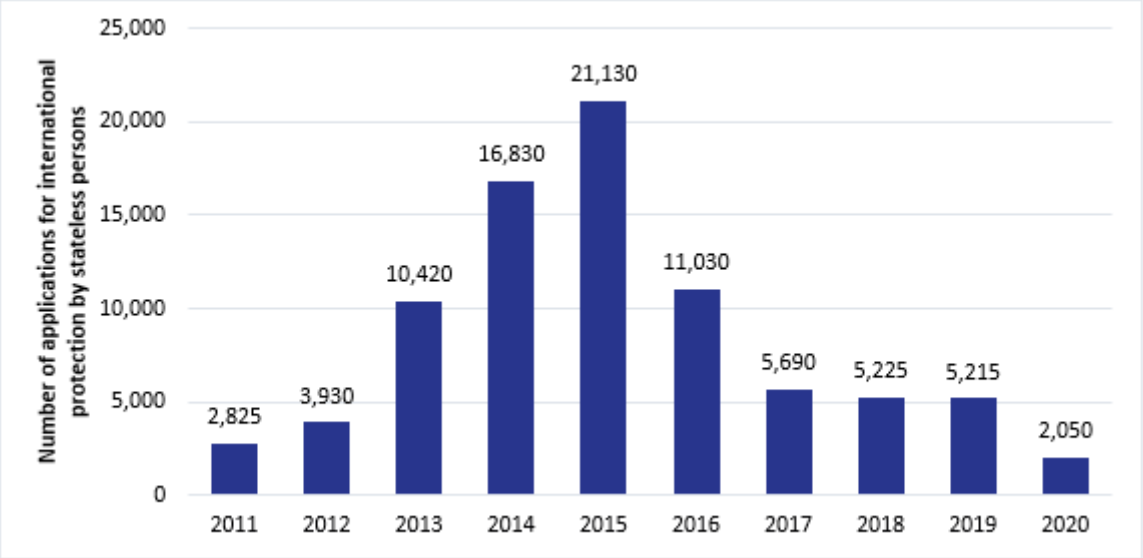
The share of positive decisions on asylum applications at first instance, or the recognition rate,[lv] for stateless persons in EU+ countries is generally high. But there has been a decreasing trend since 2015, with a 90% recognition rate in 2015 compared to 56% in 2020.

While applications lodged by stateless persons may have a relatively high recognition rate, it is important to highlight that 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. In addition, the recognition rate for applicants registered as of ‘unknown’ nationality was consistently lower than for applicants registered as ‘stateless’ from 2010 to 2019, while for 2020 it was slightly higher (62% for ‘unknown’ compared to 56% for ‘stateless’).



Approximately 84,500 applications for international protection lodged in EU+ countries by stateless persons over the last decade

Figure 4.20: Number of applications lodged by stateless persons in EU+ countries, 2011-2020



Source: Eurostat.

If not identified, statelessness and its consequences will likely not be taken into account during the asylum procedure, and the applicant's protection needs are likely not to be fully understood and adequately addressed.[955] In addition, the status which is recorded during the registration of an application (e.g. national, stateless or unknown) has an impact on the nationality rights of the applicant's children and access to processes, 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.

[liii] This category refers to persons who fall under UNCHR'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.
[liv]For a detailed presentation of the findings, see EASO Asylum Report 2020.
[lv] The recognition rate is defined as the number of positive decisions 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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