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Legislation, practices and policies vary across EU+ countries on the criteria needed to be identified as a stateless person. In many cases, these individuals may be registered under the nationality of their country of former habitual residence or as having ‘unknown’ nationality. Thus, the data available on statelessness may not be entirely representative of the reality across EU+ countries.

Failing to properly identify statelessness during the asylum procedure can have a direct impact on the outcome of the case. For example, statelessness in the country of origin may be wholly or partially linked to a fear of being persecuted. If the applicant is not identified as stateless, the need for protection may not be adequately addressed during the procedure.1043

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 the cases to a statelessness determination process are of paramount importance.

In Czechia, the Asylum Act and the Act on Stay of Foreigners were amended in August 2021. 1044 The changes stipulated that some provisions of the asylum procedure do not apply to the procedure for recognising statelessness, for example the appointment of a legal representative, having an oral hearing, and an appeal of the decision is not possible. However, the ministry will provide an interpreter free of charge and issue a decision within 6 months of submitting the application (which can be extended by another 6 months for complex cases).

Civil society organisations claimed that the legislative amendments make it more difficult for stateless people to have their status recognised and that the new legal amendments are vague and unclear.1045 According to the Organisation for Aid to Refugees, many areas are not governed by the law which result in uncertainty and arbitrariness in the procedure, for example the type of documents stateless persons should submit to prove statelessness, their rights and obligations during the procedure and the expected results of the procedure.1046 The

Consortium of NGOs Working with Migrants noted that this unconstitutional amendment results in a significant deterioration of the legal status of stateless people.1047

The Supreme Administrative Court in Czechia ruled that stateless status does not automatically include the issuance of a permanent residence card and the same rights that are granted with refugee status. The court noted that the Act on the Residence of Foreign Nationals must be followed for stateless persons, and not the Asylum Act.

A judgment in Switzerland sparked civil society organisations to criticise national procedures whereby applicants registered as having no nationality are not always promptly referred to the statelessness determination procedure.1048 In a case concerning an applicant who was recognised as a refugee in the past and registered with Western Sahara as nationality, the Federal Court registered the applicant "without nationality" as the country of Western Sahara is not recognised by Switzerland. The court noted that "without nationality" does not lead to statelessness as the country does not have the power to withdraw a nationality. As a consequence, persons registered ”without nationality” are usually granted different and provisional permits and have reduced rights.

Meanwhile, the Federal Administrative Court (FAC) in Switzerland ruled in a case concerning an applicant who was born in the al-Hasakah province of Syria as a member of the Ajanib minority and fled his country of birth in 2011 in the context of civil war. His asylum application was rejected, but he was included in the refugee status granted to his spouse. Meanwhile, he had applied for statelessness status and his application was rejected by the State Secretariat for Migration (SEM) on the ground that he could have acquired Syrian nationality before leaving the country through the presidential decree granting Syrian Arab nationality to those registered as Ajanib in the al-Hasakah province. The FAC found that the applicant did not act abusively considering the situation in Syria at the time when he did not apply for nationality before leaving the country and cannot be expected to apply for naturalisation today. Therefore, the court granted him the status of a stateless person, ruling that any applicant who appears to have no nationality must in principle be recognised as needing protection. It noted that denying access to the stateless determination procedure constitutes an unjustifiable interference with social identity and the right to private life (ECHR, Article 8).

The UN Committee on the Rights of the Child decided on a case involving a mother and her child who were returned from Switzerland to Bulgaria. The Committee found that Switzerland failed to take into account the fact that the applicant is stateless and verify if the applicant would have access to a nationality procedure in Bulgaria.

In February 2022, the Netherlands changed the requirements for the documents to be presented by Lebanese Palestinians for the registration of statelessness. Before an identifying document, a birth certificate or an UNRWA (or DPPRA) registration card were required to be registered as stateless, but now applicants can submit a family extract or an individual extract instead of a birth certificate.

In Germany, the new government plans to expand both access to and the scope of residence permits for all undocumented people living in the country, including stateless persons. The

planned amendments aim to introduce the right to employment for persons whose deportation has been suspended ("Duldung"), as well as to provide access to a temporary 1-year residence permit if the "Duldung" status has been held for 5 years, which may give them access to a longer-term residence permit.1049

In December 2021, Belgium formally pledged to introduce a residence permit for stateless persons during the UN High Level Officials Meeting event taking place under the Global Refugee Forum.1050

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