



EMN INFORM

Statelessness in the EU



Final - 11th November 2016

1 Introduction

The European Migration Network (EMN) was entrusted by [JHA Council Conclusions of 3 and 4 December 2015](#) with the creation of a platform to exchange information and good practices in the field of statelessness.

This EMN Inform is the synthesis of the answers provided by Member States and Norway to an ad-hoc query launched by the LU EMN NCP on 12th March 2015¹ and two joint ad-hoc queries launched by the LU EMN NCP and COM on 4th May 2016.² It constitutes a follow-up and a complement to the [policy brief](#) resulting from the **LU EMN NCP conference ‘Tackling Statelessness: Exchange of Experiences and Good Practices’ organised in Luxembourg on 15 April 2016**. The Inform also drew on other sources of information³ which helped to fill certain gaps in the analysis.

2 Background

Article 1 of the 1954 [Convention Relating to the Status of Stateless Persons](#) defines a stateless person as a person who is not considered as a national by any State under the operation of its law.

Statelessness is a legal anomaly, which can prevent the persons concerned from accessing fundamental human, civil, political, economic, social and cultural rights. As a result of their legal status, these individuals often live in conditions of protracted marginalization and discrimination, facing numerous difficulties, such as the inability to receive medical assistance, enrol in educational programmes, acquire property, obtain legal employment, marry or open a bank account.

¹ This ad-hoc query was answered by 23 countries: AT, BE, CZ, EE, FI, FR, DE, HR, HU, IE, IT, LV, LT, LU, MT, NL, PL, SK, SI, ES, SE, UK and NO.

² The first ad-hoc query was an update to the ad-hoc query launched in 2015. It received replies from 25 MS: AT, BE, BG, HR, CY, CZ, EE, FI, FR, DE, HU, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, ES, SE, UK, NO. The second ad-hoc query was entitled ‘On statelessness: minors born in exile and unaccompanied minors’. It received replies from 21 MS: AT, BE, HR, CZ, EE, FI, FR, DE, HU, IT, LV, LT, LU, NL, PL, PT, SK, SI, SE, UK and NO.

³ For example, the LIBE Committee, Practices and Approaches in EU Member States to Prevent and End Statelessness, European Parliament, Study, 2015.

Even though statelessness can occur in various contexts, **it’s** most common causes include state succession, ill-defined or discriminatory nationality laws, and arbitrary deprivation of nationality, displacement and forced migration, birth to a stateless person, lack of birth registration or inability to satisfy certain requirements for the acquisition of nationality.

Statelessness is a phenomenon which is present in the European Union. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.⁴ Globally, UNHCR estimates that a baby is born stateless every 10 minutes.⁵

3 Key findings

This Inform identifies the following main findings:

- ★ 24 Member States are State Parties to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and 19 Member States are State Parties to the 1961 Convention on the Reduction of Statelessness (1961 Convention). Cyprus and Luxembourg have introduced bills to their respective parliaments in order to accede to the 1954 Convention and/or the 1961 Convention.
- ★ There is no homogeneity among Member States as regards the procedures they use to determine statelessness. The diverse ways in which States determine statelessness include:
 - Dedicated administrative determination procedures;
 - General administrative procedure or inside another administrative procedure;
 - Ad-hoc administrative procedures; and,
 - Judicial procedures (BE and IT – in cases when the applicant is not a legal resident in the country).
- ★ In the majority of MS there is no direct link between the determination of statelessness and the issuing of a

⁴ UNHCR, Global Trends: Forced Displacement in 2015, Annex Table 1; available at <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>

⁵ UNHCR, A special report: Ending Statelessness within 10 Years, November 2015, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=546217229&query=Special%20Report:%20Ending%20Statelessness%20Within%2010%20Years>

specific residence permit. So, in principle, the individual who has been recognized as stateless, does not have an automatic right to stay in the country that carried out the statelessness determination.⁶ Only a few MS grant a residence permit to an individual as a consequence of his/her recognition as a stateless person. In the large majority of MS, recognized stateless persons must apply for a residence permit on other grounds if they wish to regularise their status. In some cases, this can be complicated because recognized stateless persons may not fulfil the criteria (i.e. they do not have the financial means or cannot meet the evidence requirements).

- ★ Access to the labour market, education and training as well as health care and social aid does not depend on the determination of statelessness but on the residence permit that the stateless person can obtain. This can place stateless persons who are not able to obtain a residence permit in a legal vacuum.
- ★ Most MS facilitate to a certain extent access to nationality for children born stateless in their territory. In most MS the principle of *ius soli* applies for granting nationality at birth to children born stateless in the country, albeit under certain conditions. Most MS not applying the *ius soli* principle at birth facilitate the acquisition of nationality via naturalization at a later stage (e.g. NL). However, in most MS there are gaps in the applicable legislation which mean that some children born stateless on their territory cannot have access to nationality.

- ★ There is no specific determination procedure for stateless unaccompanied minors that would take account of the specific vulnerability of this group. Most MS that have a determination procedure for adults apply it to unaccompanied minors without adapting it in any way. Nevertheless, in most cases a guardian is appointed to accompany the minor and in those MS with a dedicated statelessness determination procedure, legal aid is provided (except in LV and UK). However, the burden of proof during the determination procedure remains with the minor, as in the case of adult applicants.
- ★ With the exception of a few MS, there is mostly no provision for children born *en route* to the EU who arrive without a birth certificate to obtain a birth certificate or an equivalent document in the country of arrival.

Sarah

Sarah was born in the Democratic Republic of Congo as a dual national, to a Congolese mother and a Rwandan father. After her parents were arrested on allegations of spying, Sarah fled to Europe (country X), aged 15. Her asylum application was rejected but the authorities were unable to remove her. While applying for a temporary residence permit (the only option for 'unreturnable' people in her situation) she realised she had lost both her previous nationalities and was stateless. Because both countries refused to provide her with identity documents, she also could not obtain the temporary residence permit in country X. Now, more than twelve years later, she remains stuck in the same situation, unable to (re)acquire Congolese or Rwandan nationality. Because country X currently has no procedure to recognise or regularise stateless persons, Sarah has no solution in sight. She is unable to study, work or start a family.

⁶ Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with dedicated statelessness determination procedures. UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, para 147-152.

4 The State of Play of the 1954 and 1961 Conventions on Statelessness

The two most important international instruments addressing statelessness are the [1954 Convention relating to the Status of Stateless Persons](#) and the [1961 Convention on the Reduction of Statelessness](#). The 1954 Convention provides the definition of a “stateless person” and constitutes the foundation of the international legal framework for addressing statelessness. The 1961 Convention is the leading international instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent statelessness. Not all the Member States of the European Union are signatories of these conventions.

4.1 ACCESSION TO THE 1954 CONVENTION

At present, 24 MS are State Parties to the 1954 Convention (AT, BE, BG, HR, CZ, DK, FI, FR, DE, GR, HU, IE, IT, LV, LT, LU, NL, PT, RO, SK, SI, ES, SE and UK). CY, EE, MT and PL have not yet acceded to it.⁷

4.2 ACCESSION TO THE 1961 CONVENTION

Only 19 MS have acceded to the 1961 Convention (AT, BE, BG, HR, CZ, DK, FI, DE, HU, IE, IT, LV, LT, NL, PT, RO, SK, SE and UK). FR signed this Convention but has not yet ratified it. Eight MS (EL, EE, CY, LU, MT, PL, SI and ES) have not yet acceded to it.⁸

Among the non-signatories, only Cyprus and Luxembourg have expressed the intention to accede to the 1961 Convention. Cyprus introduced a bill to this effect in 2011 and is currently awaiting the conclusion of an internal consultation of the Members of Parliament.⁹ The Luxembourgish Government introduced an accession bill to Parliament on 23 March 2016.¹⁰

⁷https://treaties.un.org/Pages/ViewDetailsI.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en

⁸https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en

⁹ Compilation of the joint COM & LU EMN NCP ad-hoc query on statelessness (Part 1), launched on 4th May 2016.

¹⁰ Bill n° 6974. At the moment this bill has received the positive opinion of the Consultative Commission on Human Rights (document n° 6974/01) on 19 April 2016 and of the Council of State (document n° 6974/02) on 24 March 2016.

Five MS (EE, FR¹¹, PL, SI and ES) reported that they do not intend to accede to the 1961 Convention. The reasons put forward by these MS include:

- ★ Estonia points out that their Citizenship Law is partially in conflict with the Convention.¹²
- ★ France wishes to retain the possibility of withdrawing French nationality if considered necessary.¹³
- ★ Poland considers that accession would put stateless persons in a privileged position in comparison to foreigners already legally residing in Poland.
- ★ Slovenia has reservations about the application of article 12 of the 1961 Convention in regards with article 1. However, their current legislation contains most of the provisions of the Convention and under certain circumstances provides easier conditions for the acquisition of citizenship.
- ★ Spain points out that existing Spanish law protects children born stateless in the country.¹⁴

Norway has acceded to both conventions.

Figure 1 - States Parties to the Statelessness Conventions in Europe



Source: UNHCR, 4 October 2016

¹¹ The current French government does not intend to submit a proposal for its ratification to the French Parliament

¹² EE considers that EE citizenship law is based on the *ius sanguinis* principle and the convention foresees granting citizenship to a person born in its territory who would otherwise be stateless (*ius solis*).

¹³ However, when signing this convention, France (and all signing countries) has to comply with the “aim and spirit” of this convention (in application of principle of good faith). Thus, the law of 16 March 1998 on nationality has a provision which prohibits any decision of deprivation of nationality if this implies that the person becomes stateless.

¹⁴ According to article 17 c) of the Spanish Civil Code « those born in Spain of foreign parents if both of them should be without nationality or if the legislation of neither parents should grant a nationality to the child » are Spanish by birth.

5 Statelessness Determination Procedures¹⁵

A Statelessness Determination Procedure, that is a mechanism for determining whether an individual is stateless, is a practical prerequisite for ensuring the protection of stateless persons. The 1954 Convention relating to the Status of Stateless Persons does not prescribe a particular means for determining statelessness, but State parties must identify who qualifies as a stateless person under Article 1 of the Convention for the purpose of affording them the standard of treatment set forth in the Convention. The identification of stateless persons may occur in procedures which are not specifically designed for this purpose.

Currently, a majority of MS (AT, BE, HR, CZ, EE, FI, DE, IE, LT, MT, NL, PL, SK, SI, SE) and NO, do not have a specific administrative determination procedure for stateless persons.

Belgium has indicated an intention to establish a specific determination procedure, and the Netherlands is currently drafting one.

Seven MS (FR¹⁶, HU, IT, LV, LU, ES and UK) have a dedicated determination procedure.

There is no common model of administrative procedure for the determination of statelessness amongst MS. Some MS use general administrative procedures, an administrative practice or apply the determination procedure within other administrative procedures (i.e. citizenship, residence permit, international protection procedures or *ex-officio*). In order to illustrate this divergence, a mapping of MS practices with regards to statelessness determination is provided below.

5.1 SPECIFIC STATELESSNESS DETERMINATION PROCEDURES

The specific administrative or judicial determination procedures that have been developed in FR, HU, IT, LV, LU, ES and UK vary significantly.

In France, the applicant personally files the application form duly signed. The application should be supported by two pictures, a travel document (if the applicant has one), civil status documents and a copy of the residence permit (which must be valid). All these documents should be submitted to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which is the competent authority for determining statelessness.¹⁷ The OFPRA can invite the applicant to a personal interview (but it is not mandatory). The applicant can express himself/herself in a language of his/her choosing and s/he can be assisted by a translator if necessary.¹⁸ The burden of proof lies with the applicant. The OFPRA can assist by contacting relevant competent authorities in other countries. All types of evidence are accepted.

In Hungary the asylum procedure and the statelessness determination procedure can be initiated independently via application by the person concerned. The statelessness determination procedure is initiated by a written application or orally by the person concerned at the regional Directorates of the Office of Immigration and Nationality (OIN) where the applicant resides. The applicant must make an oral statement which is registered. S/he is entitled to use his/her mother tongue or any other language that s/he understands with the written application and/or the oral statement. The submission is free of charge. The interpretation costs as well as legal aid costs are paid by the State. The legal representative of the applicant can be present during the interview and should be informed of the interview at least five days in advance. UNHCR can participate at any stage of the determination procedure. The burden of proof lies with the applicant. *Ex-officio* guardians are appointed for unaccompanied minors.

After the decision of the Constitutional Court¹⁹ and a resolution from 30 September 2015, the statelessness determination procedure has become available for all stateless persons, not just for those who are lawful residents in Hungary.

¹⁵ This information is collected from the 23 answers rendered by Member States to the ad-hoc query launched on 12 March 2015.

¹⁶ The law 2015-925 of 29 July 2015 introduced a dedicated chapter in the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) for stateless persons (articles L. 812-1 to 812-8 of the CESEDA).

¹⁷ Article R. 812-1 of the CESEDA created by the Decree n° 2015-1166 of 21 September 2015.

¹⁸ Article R. 812-2 of the CESEDA created by the Decree n° 2015-1166 of 21 September 2015.

¹⁹ **Resolution 6/2015 (II.25.) that the term 'lawfully'** in Subsection (1) of Section 76 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereafter: RRTN) is contrary to the Fundamental Law and annulled it with effect from 30 September 2015.

In Italy, there are two determination procedures: one is judicial, the other administrative. In the administrative procedure, the individual files an application before the Ministry of Interior. The applicant must include his/her birth certificate, a certificate proving lawful residence in Italy, a copy of his/her residence permit and any document that proves his/her statelessness. In the judicial procedure, the rules of the ordinary civil procedure are applied, with the Ministry of Interior as the defendant. As in the administrative procedure, the applicant carries the burden of proof. However, it is not required that the applicant holds a residence permit in Italy, in other words, there are no conditions for access to this procedure. On 26 November 2015, a bill was submitted to the Senate concerning the procedure for determining the status of stateless persons in the Prefectures – Territorial Government Offices. The main changes concern a) the possibility to request the status of stateless person for anyone who is in Italy, even if they are residing irregularly; b) the issuance by Police Authorities of a residence permit "pending the outcome of the recognition procedure"; c) **the possibility for applicants with both regular and irregular status to submit self-certifications concerning their personal details and the length of their stay in Italy when making their applications.**²⁰

In Latvia, the applicant must file a written application and submit his/her personal identification document, birth certificate, certificate issued by a foreign competent authority that the person is not a citizen of the relevant State or a document proving that s/he cannot obtain this document and any other relevant document. After filing the application, the applicant is allowed to stay in the country. The burden of proof lies with the applicant, but in practice it is shared with the Office of Citizenship and Migration Affairs. The procedure is free of charge. The procedure is available to all stateless persons, not only to those who are legally resident in the country.

In case the person has been detained because s/he is an irregular migrant without valid travel documents, the State Border Guard may assist by contacting foreign embassies to retrieve the necessary documents.

A decision on granting or refusal to grant the status of a stateless person is made within three months of lodging the application. This time period may be extended up to one year.

²⁰ Compilation of the joint COM & LU EMN NCP ad-hoc query on statelessness (Part 1), launched on 4 May 2016.

In Luxembourg a special determination procedure has recently been established.²¹ A foreigner, who cannot claim the nationality of any State and is resident in the Grand-Duchy of Luxembourg, must file a specific application form duly signed²² to the Foreigners Service of the Directorate of Immigration, including his/her personal information and a detailed explanation of the reasons why he/she does not have a nationality. The applicant must attach all sufficient and serious evidence to back up his/her claims.²³ The Foreigners Service examines all the evidence provided by the applicant, and collects any other relevant information to allow the determination of which countries (if any) could confer citizenship on the applicant. If required, the applicant may be invited to an interview or to present additional evidence or supplementary information. The burden of proof lies with the applicant, but it is limited to determining that s/he does not have the nationality of any relevant country e.g. the country in which he/she was born, in which his/her family members reside, where he/she lived before. The authorities, with the consent of the applicant, can request supplementary information from different countries to which the applicant may be linked. During the examination of the application, the applicant does not have the right to reside in the country. A removal order can be issued if his/her immigration status is irregular.²⁴ The Foreigners Service may take a decision within three months of the application being filed. This deadline can be extended if the case is complex.

In Spain the applicant must submit an application at the Spanish Office for Asylum and Refuge (OAR), at an Aliens Office or at a police station within one month of his/her arrival on Spanish territory. The applicant's application must explain the reasons why he/she does not have a nationality, and submit all the documents that are relevant to the case. The burden of proof lies with the applicant. If needed, and should an interview be required, the applicant is assisted by an interpreter. The

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<http://www.guichet.public.lu/citoyens/fr/immigration/cas-specifiques/apatrie/demande-statut-apatrie/index.html>

²² The application can be filed by a third-party with a power of attorney or by a lawyer.

²³ If these documents are not written in English, German or French an official translation by a sworn translator must be attached to the application.

²⁴ The procedure modifies the jurisprudence established by the Administrative Court, n° 36744C of 27 October 2015 that said that neither regular residence, nor regular presence, constitute necessary conditions for applying and recognizing statelessness.

Minister of Interior takes the decision on the application within three months of it being filed.

Finally, the United Kingdom has a determination procedure for stateless persons who are in the UK. This procedure is totally independent from the asylum procedure and any asylum claim takes priority over a statelessness application. Consideration under the statelessness determination procedure will only occur after the asylum claim has been determined or withdrawn. For the statelessness determination procedure, the applicant must submit a pre-printed form and any supporting documents which may be relevant in supporting a claim of statelessness such as: birth certificate, marriage certificate, etc. The application must be sent by post to the Home Office. The burden of proof is on the applicant. The evidence is assessed with regard to the **individual's personal circumstances obtained at** the interview and in writing, and takes into consideration the law and practice in the country in question, both with regard to the individual concerned, and also to the group (or groups) of individuals to which the applicant belongs. Since February 2016, an amendment to the procedure has been in place which allows authorities not to conduct an interview in every case, allowing the authorities to decide on the evidence which has already been obtained (e.g. via written procedure or contact with national or consular authorities). Caseworkers should be ready to undertake research or make relevant

Luka

Luka was born in Ukraine when it was still a part of the former USSR. After growing up in an orphanage, he moved to the EU (country X) in 1991 when he was only 15 years old. He has never possessed any documents establishing a nationality. As a result, since becoming an adult, Luka has been repeatedly detained in country X. Attempts to remove him have proved fruitless because Ukraine refuses to accept him as a national. On the last occasion Luka was detained for 14 months and released in 2010. When ordering his release the court found that his expulsion from country X was not possible and Luka was finally granted tolerated stay. However, his problems are far from over. Despite having lived in country X for over 20 years, Luka is still not recognised as being stateless and his tolerated stay does not allow him to work or to have health insurance. He cannot marry his partner or be registered officially as the father of his son. Recently his application to renew his tolerated stay was refused due to his inability to submit new documents from the Ukrainian embassy. He was subsequently fined for his unlawful stay. This cycle shows no sign of ending.

inquiries with other national authorities from which the applicant has been unable to obtain relevant information. A caseworker may contact consular authorities of countries with which the applicant has had links if this is deemed necessary in order to provide evidence of whether the applicant is stateless. They will only do this with the **applicant's consent**.

5.2 JUDICIAL PROCEDURES USED BY THE MEMBER STATES FOR THE DETERMINATION OF STATELESSNESS

In the case of Belgium, the first instance courts are the competent authority for the recognition of statelessness. The decision can be appealed to the Court of Appeal. During the procedure, the applicant is not entitled to a temporary legal status. The burden of proof lies with the applicant, who has to prove that s/he has never had a nationality or has lost it and is unable to access it again.

For the judicial procedure in Italy, please see section 2.a.

5.3 GENERAL ADMINISTRATIVE PROCEDURE OR A DETERMINATION WITHIN ANOTHER ADMINISTRATIVE PROCEDURE

There is no common approach to how Member States determine statelessness through a general administrative procedure or as a determination within another administrative procedure. Some Member States use general administrative procedures, an administrative practice or make the determination within another administrative procedure (i.e. citizenship, residence or international protection applications).

In Czech Republic, the applicant requesting the status of stateless person can use the general administrative procedure or ask for international protection. The competent authority is the Department of Asylum and Migration Policy of the Ministry of Interior. Since 18 December 2015, an amendment to the Asylum Act was introduced, which allows for the Asylum Act mechanisms for refugee status determination to be applicable also to applications under the 1954 Convention.

In Finland, an administrative procedure is used to determine the citizenship of a person or whether the person is stateless. The Finnish Immigration Service (FIS), acting at the request of the applicant or a public authority, determines the citizenship status of an individual who resides in FI. In order to determine citizenship, the FIS uses identification documents, place of birth, place of previous residence, the national legislation of the countries, and compares practices on acquisition of citizenship in different States.

In Germany there is no special administrative procedure to determine statelessness. The responsible authority examines the application and requests clarification regarding citizenship issues during the procedure on residence status or during the naturalisation procedure of the applicant.

In Slovak Republic, an administrative procedure requires that the applicant demonstrates that s/he does not hold any citizenship of the state: a) in which s/he was born; b) in which s/he has had previous residence or stay; and c) whose citizenship his/her parents and other family members have. The burden of proof lies with the applicant, and the decision is taken after the competent authority assesses the documentation which has been provided. The authorities may decide to contact consular authorities on a case-by-case basis.

In Slovenia, statelessness may be identified in the course of the application for citizenship, residence permit or status for international protection.

In Sweden statelessness may be determined when an application for a residence permit is filed with the Swedish Migration Authority or when a person registers with the tax authorities. In this case, the tax authorities have the possibility to make further investigations regarding the statelessness of the applicant.

Statelessness may also be determined when a stateless person applies for Swedish nationality, in cases where the authorities have doubts regarding the identity of the applicant.

In the case of Norway, **an individual's claim** to be stateless is examined as part of the identity determination process, according to the documentation requirements, procedures and criteria used to determine a claim to establishing nationality.

5.4 AD-HOC ADMINISTRATIVE PROCEDURES

In Croatia, upon a submission of an application for asylum, legal residence or citizenship, all relevant elements of the application will be assessed in each case, including the **applicant's** statements and all the documentation at the **applicant's disposal regarding his/her** nationality(ies). The Ministry of Interior (MOI) is the competent body (i.e. for the asylum procedure, regulating foreigner's status, and the procedure for acquiring the Croatian nationality). For the determination of statelessness, the consular authorities of countries with which the applicant has links may be contacted. If it is determined during a procedure that an applicant is stateless, s/he

will be considered a stateless person for the purposes of that procedure. Furthermore, a person who is undoubtedly determined to be stateless, if granted a temporary or permanent residence, can be issued with a travel document for a stateless person.

In Malta there is no determination procedure. However, when necessary, the authorities may require from the applicant, on an ad-hoc basis, **information regarding the individual's** nationality status. The decision on the stateless status is taken on the basis of the documentation available.

In Poland there are some identity and citizenship determination procedures. However, the outcome of these procedures may result in the protection of stateless persons.

In Ireland statelessness determination in accordance with the 1954 Convention has been made on an *ad hoc* basis, with regards to the circumstances of each individual case.

Boban

Boban is a stateless Roma from the former Yugoslav Republic of Macedonia. Having faced discrimination his whole life - denied access to secondary school education, the right to work, the right to marry or to access social security - he decided to travel to claim asylum in the EU (country X) in 2005. His claim was rejected so he tried to claim asylum in another member state but was returned to country X under the Dublin Regulation. In 2008 he applied for regularisation as a stateless person. His application was granted in 2009. However, his new status still gave him no right to stay in country X. It granted him no permission to work and no entitlement to housing or social assistance. Living destitute, his only option was again to apply for asylum. When this was refused he tried to claim asylum in two other EU member states but on both occasions he was sent back to country X. On his return he claimed asylum a sixth time. After this was rejected he was detained for three weeks even though the authorities of country X already had confirmation from Macedonia that he was not a citizen so he could not be removed there. Although now out of detention, he remains in limbo and with no hope for the future.

6 Determination of Statelessness and the Residence Permit

Stateless persons will not be granted immediately or automatically an authorisation of stay or a residence permit in most of the Member States.

In AT²⁵, EE²⁶, LT, NL, PL, PT, SI SK and NO a stateless person is considered as a third-country national (TCN), and s/he can apply for any type of residence permit. In Ireland, residence permits in general are open to stateless persons if they fulfil the relevant criteria. Also in Finland, Germany and Sweden, a stateless person can obtain a residence permit depending on the type of residence permit s/he is applying for according to usual rules for granting this residence permit. The same happens in Luxembourg where the recognition of statelessness does not imply the automatic authorisation to stay.

The individual shall apply for a residence permit fulfilling the conditions foreseen by the Immigration Law.

In Belgium, once statelessness is determined the applicant can use the humanitarian regularisation procedure²⁷ on the grounds that it is impossible to return to his or her country of origin and if granted, the stateless person receives a certificate of registration into the Register of Foreigners.

In Cyprus a stateless person is encouraged to submit an application for international protection. In the Czech Republic the large majority of stateless persons apply for international protection.²⁸

The only Member States that automatically grant a residence permit once the statelessness status is granted are: France (family and private reasons), Hungary (humanitarian residence permit), Italy, Latvia (temporary residence permit), Spain (statelessness status card²⁹), Croatia (temporary or permanent residence permit) and the United Kingdom (a limited leave to remain may be granted). In cases where Ireland has granted a

determination of statelessness under the 1954 Convention, the person has been granted leave to remain.

6.1 THE DURATION OF VALIDITY OF THE RESIDENCE PERMIT GRANTED TO STATELESS PERSONS

The duration of validity of the residence permit granted to a stateless person varies between Member States and depends on the kind of residence permit that will be granted. Among the MS which grant a specific residence permit to stateless persons following the determination of their statelessness, the duration varies from 1 year to a residence permit that can be renewed for an unlimited number of years (1 year in FR, 2 years in IT, 2.5 years in the UK, 3 years in HU, 5 years in LV and unlimited in BE).

In Slovak Republic recognized stateless persons are also entitled to apply for a permanent residence permit for an unlimited period of time.

7 Travel Documents

There are two types of travel documents granted to stateless persons by Member States:

- ★ Alien passport: AT, CZ (inside of the document the 1954 Convention is mentioned), EE, FI, NL, SI, and SE (except if the person obtains refugee status).
- ★ A 1954 Convention travel document for stateless persons: BE, DE, FR³⁰, HU, IT, LV, LT, LU, SK³¹, ES, UK and HR.

8 Rights Granted to Recognized Stateless Persons

The 1954 Convention sets out a range of rights for stateless persons, including in relation to employment and education. Its article 32 provides that State Parties are to facilitate as much as possible the naturalization of stateless persons. The rights granted to a recognized stateless person vary between Member States.³² As mentioned before, where there is no specific determination procedure, the recognition of a person as stateless does not automatically lead to the granting of a residence permit in most EU Member States. There is no direct link between the status and

²⁵ See e.g. Art. 2 para 4 subparagraph 1 Aliens Police Act; Art. 2 para 1 subparagraph 1 Residence and Settlement Act (Niederlassungs- und Aufenthaltsgesetz).

²⁶ In EE the term in use is « persons with undetermined citizenship ».

²⁷ Article 9bis of the Immigration Act.

²⁸ Those who would like to regularise their stay by other means can use standard procedure for aliens foreseen in the Foreigners Act; those whose removal is not possible may ask for special long term tolerance visa.

²⁹ Tarjeta acreditativa del reconocimiento de apátrida.

³⁰ Valid for one or two years depending on the type of residence permit issued.

³¹ Only in case the stateless person is granted a permanent residence permit for unlimited period of time.

³² Although EE has not acceded the conventions, people with undetermined citizenship are guaranteed the rights mentioned in the following chapters.

the residence permit in most EU Member States and as a consequence, this influences the rights that stateless persons can have in each Member State.

8.1 ACCESS TO THE LABOUR MARKET

Generally, access to the labour market depends on the type of residence permit which the stateless person has been granted. In most of the cases, this access is granted under the same conditions as those which apply to TCNs.

In Belgium if the stateless person is granted a certificate of registration into the Register of Foreigners, s/he has access to the labour market without having to obtain a work permit.

In 12 Member States (AT³³, DE, EE, FI, FR, IE, LT, LU, NL, SK, SE and SI) recognized stateless persons will enjoy the same access to the labour market as any TCN legally residing in the country, which will depend on the type of residence permit s/he is granted.

In Hungary, there are no specific provisions regarding labour market access for stateless persons. Normally access to the labour market depends on the type of residence permit which the stateless person has been granted.

In most of the cases, this access is granted under the same conditions for TCNs.

In Italy, Spain and United Kingdom stateless persons have access to the labour market.

In Latvia stateless persons have access to the labour market if they have obtained a residence permit.

8.2 ACCESS TO EDUCATION AND TRAINING

In most MS recognised stateless persons have access to education and training. Access to education and training is mainly guaranteed under the same conditions as those which apply to TCNs staying legally in the MS and/or depending on the type of residence permit they obtain (AT³⁴, EE, FI, FR, DE, LT, LV, LU, NL, SI and SE).

In the United Kingdom stateless persons have access to education and vocational training.

In Austria if the stateless person has been granted international protection s/he has access to education and vocational training under the same conditions as a beneficiary of international protection.

In Belgium stateless children have the right to attend school. Adults can benefit from vocational training if they have been authorised to reside in the country. In Finland they will enjoy the same access as any other foreigner legally residing in the country.

In Germany, Lithuania and Slovenia stateless persons have the right to attend school and they have the right to access vocational training under the same conditions as TCNs.

Hungary guarantees access to education (primary and secondary education) to stateless children. Italy allows access to all levels of education (including higher education) and training courses. Latvia allows access if the person holds a residence permit and travel document.

Luxembourg allows access to education and vocational training depending on the residence permit the stateless person obtains. Recognition of a person as stateless does not imply granting automatic access to education or vocational training.

In Slovak Republic, Luxembourg and Latvia minors are subject to compulsory education. There is no national scheme for adult education for stateless persons.³⁵

However, in Slovak Republic they have the same access to education as Slovak citizens provided they are legally staying in the territory.

8.3 ACCESS TO HEALTH CARE AND SOCIAL AID

Access to health care and social aid exists:

France, Italy³⁶, Slovenia and the United Kingdom allow access to health care and social aid to recognized stateless persons who legally reside in the country. In France, they have access under the same conditions as legally residing TCNs.

In Austria if the stateless person is a beneficiary of international protection (BIP), s/he has access to social security services. If the stateless person is not a beneficiary of international protection, s/he is treated as a TCN and the access will depend on the type of residence permit that the person had obtained.

Estonia, Finland, Lithuania and the Netherlands allow access to these services for stateless persons with lawful residence under

³³ In case the stateless person does not apply for international protection.

³⁴ This applies under the condition that they receive a permit of residence according to the Settlement and Residence Act.

³⁵ Free language courses and courses of socio-cultural orientation are usually available at the local level provided for free mainly by non-governmental or intergovernmental organizations (IOM).

³⁶ Same conditions as for Italian nationals apply.

the same conditions as for any TCN. In SE, if the person has been legally residing in the country for over a year, access to national registration is granted which gives the person access to the social benefit package.

In Belgium some labour courts allow recognized stateless persons to obtain social aid. In Hungary entitlement to social security services (including health care) is usually linked to employment or other lucrative activities. If the stateless person does not have employment, s/he does not have access to health care or social aid with the exception of basic public health care services.

Four Member States (DE, LU, SE and SK) allow access to health care and social aid depending on the type of residence permit they are granted.

In Latvia, access to social security system services is determined by the type of the residence permit obtained by the stateless person and his/ her employment status. Medical assistance shall be provided against payment from insurance companies, employers or directly by the patients.

8.4 ACCESS TO CITIZENSHIP

Access to citizenship is simplified for stateless persons in 13 Member States (BE, HR, CZ, EE, DE, HU, IT, LT, NL, SK, SI, SE, UK).

Belgium allows a recognized stateless person to use the exceptional naturalization procedure, granted by the Federal Parliament, only on the basis of statelessness as a discretionary measure (favour/concession).

In Czech Republic the law allows certain exceptions for stateless persons concerning conditions that have to be fulfilled in order to obtain citizenship. These exceptions concern the required length of stay and the participation in the social security system due to insufficient income.

Seven Member States (DE, HU, IT, NL, SK, SI, SE) and Norway facilitate access to citizenship for stateless persons by easing the required conditions.

In Hungary stateless persons can be naturalized after 5 years of registered domicile in the country of which 3 years must be of continuous residence.³⁷

Italy reduces the length of stay required for the naturalization of a recognized stateless

person to 5 years (instead of 10) and in the Netherlands this term is reduced to 3 years instead of 5 years. In the Netherlands stateless persons do not have to submit a valid travel document to naturalize and they pay a reduced fee for naturalization. Slovak Republic requires that the stateless persons have resided in the country 3 years instead of 8 years for other TCNs. In Slovenia the length of stay is 5 years. In Sweden the length of stay required is 4 years instead of 5 years for other TCNs.

In Norway the length of stay required is reduced to 3 years, instead of 7 years.

Eight Member States (AT, CY, FI, FR, LV, LU, PL and ES) do not foresee simplified access to nationality for stateless persons.

A significant number of Member States (including AT, HR, CY, FI, FR, LT, LU, LV, MT, PT, RO and ES) require that stateless persons meet the same general conditions as other persons applying for citizenship.

In the United Kingdom recognized stateless persons can obtain indefinite leave to remain after 5 years of continuous residence and 12 months after that they can apply for citizenship.

In Ireland, recognized stateless persons may have, at the absolute discretion of the Minister for Justice and Equality, the conditions for naturalization waived.³⁸

In addition, recognized stateless persons, to whom this concession has been applied, do not have to pay the naturalization certification fee.³⁹

9 The situation of stateless minors

9.1 CHILDREN BORN STATELESS IN THE MEMBER STATES

Some Member States facilitate access to their nationality for children born stateless on their territory. The large majority facilitate access to nationality through the application of the principle *ius soli*, which is applied automatically at birth or is subject to certain conditions and modalities. Other Member States facilitate access to nationality under different procedures. However, in most Member States, there are gaps in the legal framework which mean that some children born stateless on their territory cannot have access to nationality.

³⁷ http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=new_globalModesAcquisition&search=1&modeby=country&country=Hungary&year=2016&idmode=A23

³⁸ Section 16(1)(g) of the Irish Nationality and Citizenship Act 1956 (as amended).

³⁹ Regulation 13(2)(a) of the Irish Nationality and Citizenship Regulations 2011.

In 18 Member States (AT, BE, HR⁴⁰, EE⁴¹, FI, FR⁴², DE, HU, IE⁴³, IT, LU⁴⁴, NL, LT, CZ, PL, PT, SE, UK) and NO a child born stateless in the country may obtain the nationality of that country, in different ways and under different conditions.

In the Netherlands the child can obtain citizenship after 3 years of legal residence.

In several MS, it is required that the child born in the MS and his/her parents fulfil the condition of having a lawful residence. In Hungary, until proven otherwise the children born in Hungary from stateless persons residing in Hungary, shall be regarded as Hungarian citizens.

In Czech Republic a stateless child born in the country obtains CZ citizenship, if both parents are stateless and one of the parents has to have a legal residence longer than 90 days.

In Estonia a minor under 15 years of age who was born in Estonia or who immediately after birth takes up permanent residence in Estonia together with his or her parent(s) is granted Estonian citizenship by naturalisation as of the moment of his or her birth, in case his or her parents whom no state recognises as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. In order to renounce the Estonian citizenship granted, the parents are entitled to submit an application before the child turns one; otherwise the child is granted Estonian citizenship by naturalisation automatically.

In LT, the child of stateless persons who legally reside in Lithuania on a permanent basis obtains citizenship independently of where s/he was born. The child can also obtain citizenship if s/he is of unknown parents.

In Latvia, a permanent place of residence is required from both the child and his or her parents. In case of a new born child there is no requirement for lawful residence in Latvia. The new born child can be registered as citizen of Latvia simultaneously with registration of the fact of birth (based on the request of one parent). The child shall have lawful residence in Latvia if she/he was registered as a stateless person and afterwards claimed a citizenship. If the child was registered as stateless (parents did not claim citizenship when the birth of the child was registered) and they claim citizenship after the birth was registered, there is a requirement that the parent, who claims citizenship for the child, has been resident for at least five years. If one of the parents requires citizenship simultaneously with registration of the fact of birth, there is a requirement for residence in the country for this parent (not for 5 years).

In Slovenia any child born or found in the territory shall be granted Slovenian citizenship if their parents are unknown, of unknown citizenship or stateless. If parents cannot transfer their citizenship to their child, the child also shall be granted Slovenian citizenship.

A child born in Slovak Republic obtains nationality provided that the parents are stateless or they cannot transfer their nationality to the child.

AT in general does not apply the principle of *ius soli*, with the exception of foundlings. However, a stateless child born in Austria can naturalize under simplified requirements for obtaining citizenship.

In Sweden a stateless child cannot obtain nationality based on the principle of *ius soli*. For this reason, a stateless child who is born in Sweden can become a Swedish citizen by submitting a notification if s/he: a) has a permanent residence permit, right of residence or residence card in Sweden b) has lived two years in Sweden and c) has not turned 18.

A child born stateless in the United Kingdom may have an entitlement to British citizenship if:

- ★ Either parent becomes a British citizen or settled in the UK before the child reaches the age of eighteen; or
- ★ He or she lives in the UK for the first ten years of his or her life.
- ★ He or she is and has always been stateless, is under the age of 22 and has lived in the UK for a continuous period of five years.

⁴⁰ Also if the parents are unknown of unknown citizenship or stateless.

⁴¹ Subject to conditions stipulated in Article 13 of the Citizenship Act

⁴² For FR, it applies to children born in France of stateless parents or of parents who cannot transmit their nationality.

⁴³ A person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country (Section 6(3) of the Irish Nationality and Citizenship Act 1956). There is also a presumption of Irish citizenship from birth for deserted new born infants, unless the contrary is proved (Section 10).

⁴⁴ In LU this happens even when the parents are stateless or that they cannot transfer their nationality to the child. The same happens in FR.

9.2 CHILDREN BORN IN EXILE

One of the major problems that the EU is facing as a result of the migration crisis is the large numbers of children who were born during the **journey from their parents' countries of origin** or residence to the EU. Most of these children do not have travel documents or even birth certificates. To these children we have to add the minors who have arrived without papers. However, there is little information on how states deal with these children who physically exist but not legally.

In Belgium the number of asylum seekers arriving with birth certificates in the country is negligible. So for the authorities it makes no difference whether these children were born in the country of origin or on the way to Belgium.

HU, LT, LU and SI confirmed that they cannot issue a birth certificate to these children.

In Austria, children arriving without documents will be issued a birth certificate if they are recognized as refugees or in case of statelessness or unclear citizenship status, if their habitual residence is in Austria.

All children born in Austria, irrespective of their migration status, are issued a birth certificate.

Furthermore, stateless persons will be issued documents in the asylum procedure such as a residence permit for the duration of the procedure, a travel document in case a status has been granted or a document regarding tolerated stay.

Stera

Stera and Mohamed were born in 2005 and 2008 in the EU in country X to Kurdish parents from Syria. Their father has always been stateless. Though their mother is a Syrian national, she cannot pass on her nationality to her children. The nationality law of country X contains a little known provision allowing children born stateless in the country to apply for nationality after five years of ordinary residence. **Stera and Mohamed's parents were made aware of this provision only in 2014.**

In Czech Republic, children who arrive without a birth certificate do not get a birth certificate but if they are granted international protection they obtain a residence permit and a travel document. Even if they do not request international protection they can be granted a travel identity card.

In Germany, the authorities initially only issue the required certificate and/or residence permit for the child which is relevant for the respective stage of the procedure in accordance with the German refugee law and/or the child's status in

accordance with the German residence law. This document, if required, mentions a note that the personal data are based on information given by the parents of the child.

Finland uses the information that the parents provide in the course of their immigration procedure. The personal information is unconfirmed in that case.

In Italy, the possibility of granting any type of document to children born during the travel to Europe depends on the legal status given to their parents.

In Lithuania, if an alien's child is born during the travel to Europe, the parents must contact their country's embassy for issuing a travel document. If the parents are stateless persons, they must contact the embassy of the country of their permanent place of residence.

Latvia can register the birth of a child who is born outside of Latvia, if a medical certificated issued by a medical institution or a physician is drafted and the birth of the child is not registered in the country of birth.

The Netherlands only permits for children born outside the Netherlands who do not have a birth certificate to apply for a judicial declaration that states the particular of the birth. This judicial declaration substitutes the birth certificate.

Sweden only issues documents if the child is granted a residence permit in Sweden. In Slovak Republic, the minor is entitled to obtain tolerated stay.

The United Kingdom grants the child, who is recognized as stateless and meets the **requirements for "stateless leave", a "leave to remain" and in consequence the child will receive a biometric residence permit.**

Norway also grants documents if the child is recognized as a refugee (refugee travel document) or if the child obtains a residence permit based on humanitarian grounds, an Aliens passport will be issued.

France and Portugal expressed that they have not been confronted with this situation.

9.3 DETERMINATION PROCEDURE OF CHILDREN BORN IN EXILE OR STATELESS CHILDREN ARRIVING IN THE TERRITORY OF MEMBER STATES

In all MS there is no specific statelessness determination procedure adapted for these minors.

BE, CZ, FI, FR, HU, IT, LV, LT, LU, SI, SE and UK⁴⁵ use the same determination procedure as for adults. Germany makes the determination as part of another type of procedure (i.e. asylum application, residence application of citizenship).

In Croatia the determination takes place in an ad-hoc procedure.

9.4 LEGAL REPRESENTATION FOR CHILDREN

Most MS using the administrative procedure used for adults guarantee the legal representation of the minor during the administrative proceedings if s/he is an unaccompanied minor (UAM).

In FI, IT⁴⁶, LV, LT, LU, SI, SE and NO a representative (guardian or ad-hoc administrator is appointed) when an UAM enters the country, not only for the determination procedure. Also legal representation is provided.

In Belgium the Guardianship Service has the responsibility to ensure judicial protection for unaccompanied minors (UAM) (not only in determination procedures). In the case of a stateless child, the guardian represents the minor during the proceedings to determine nationality and ensures that the child has suitable legal representation during the judicial proceedings.

In Czech Republic, NGOs visit most facilities where UAMs are placed and can represent a child together with a guardian. However, it is the guardian who represents the interests of the minor and can ask for a legal representative if needed.

In Germany, UAMs are placed under the official custody of the Youth Welfare Office (*Jugendamt*) and a guardian is regularly appointed in order to guarantee their legal representation. If necessary, the Youth Welfare Office appoints a lawyer.

Hungary appoints an ad-hoc guardian to represent the UAM during the statelessness determination procedure and the UAM is entitled to consult a legal representative.

⁴⁵ The UK applies the same determination procedure than adults but apply the principle of the best interest of the child.

⁴⁶ In all administrative or judicial proceedings.

In Italy, the Guardianship Judge, appoints a guardian. Even though there are no legal provisions that grant legal aid, in these type of cases in practice the UAM obtains legal aid during the proceedings.

Andreea

Andreea is eight years old. She was born and lives with her father and siblings in country X within the EU. At the time Andreea was born her mother had lost her **ID documents and so Andreea's birth could not be registered** because both parents need to prove their identity through legal documents. When her mother acquired a new identity document, more than a year **had passed since Andreea's birth and her parents did not know how to file for late birth registration. Andreea's mother left to work in the capital and the family has not heard from her since.** As a result of **Andreea's lack of documentation she cannot go to school, does not receive any state allowances and cannot visit a doctor free of charge. Her father says: "She had a bad flu recently so we went to a clinic to get a prescription for medication, but to get the check-up and medication we used the certificate of her younger sister. It's good they have no ID yet, the birth certificate has no picture on it, and she is quite thin and small so she can pass as being younger".**

In Latvia, legal aid can only be obtained at the **applicants' own expense or through a NGO.** Nevertheless, the Office of Citizenship and Migration Affairs works in close cooperation with the person and provides all the necessary information and helps the person to get the necessary information and documents.

The United Kingdom appoints a guardian but legal aid is not available for citizenship applications.

Croatia, Poland and Norway appoint a legal representative in cases of application for international protection.

9.5 BURDEN OF PROOF IN THE DETERMINATION PROCEDURE

In the countries applying the determination procedure for adults to unaccompanied minors the burden of proof lies with the applicant.

Only in Germany there is a discretionary power of the authorities to make the determination. In the framework of the discretionary decision in order to identify statelessness, the competent authority will take into account an assumed lack of evidence (*anzunehmender Beweisnotstand*) with regard to the concerned minor. This is done in his/her benefit (best interest of the child).

In Czech Republic, as the tools to verify the nationality or the statelessness are usually very insufficient, hence the administrative authority mainly accepts the status claimed by the child.

Annex 1: Best practice Model on Statelessness Determination Procedure (UNHCR, Handbook for the Protection of Stateless Persons, 2014)

CONSIDERATIONS WHEN ESTABLISHING A STATELESSNESS DETERMINATION PROCEDURE⁴⁷

Statelessness determination procedures assist States in meeting their commitments under the 1954 Convention relating to the status of stateless persons. States have broad discretion in the design and operation of such procedures as the 1954 Convention is silent on such **matters. Current Member States' practice** varied in regards to the type of statelessness determination procedure and the responsible competent authority. States may choose between a centralized procedure or one that is conducted by local authorities.

Determining whether a person is stateless can be complex and challenging but it is in the best interest of both States and stateless persons that determination procedures be as simple, fair and efficient as possible. To this end, States may consider adapting existing administrative procedures to include statelessness determination. Factors to consider include administrative capacity, existing expertise on statelessness matters, as well as expected size and profile of the stateless population the State.

Procedural safeguards: In any combined procedure it is essential that the definition of a stateless person is clearly understood and properly applied and that procedural safeguards and evidentiary standards are respected.

Competent authorities: Some States might elect to integrate statelessness determination procedures within the competence of immigration authorities. Other States may place statelessness determination within the body responsible for nationality issues (i.e. Ministry of Justice), for example naturalization applications or verification of nationality requests. As some stateless persons

may also be refugees, States may consider combining statelessness and refugee determination in the same procedure.

Confidentiality requirements for applications by asylum seekers and refugees must be respected regardless of the type or location of the statelessness determination procedure in a State.

Simplified procedure and access: Ensuring easy access for applicants located in different parts of a State can be facilitated through various measures: permitting written applications/printed form to be submitted to local offices for onward transmission to the central determination body, which can coordinate and guide the appropriate examination of relevant facts at the local level, including the personal interview with the applicant; oral applications with a translator, etc.

Resource considerations, both financial and human, will be significant in the planning of statelessness determination procedures. The costs involved can be balanced against savings made from freeing up other administrative mechanisms to which stateless persons may otherwise resort (i.e. residence permit, naturalization, etc.)

The following flowchart describes the steps of a standard statelessness determination procedure, including the procedural safeguards and matters of burden and standard of proof which may be used as a best practice where deemed relevant and appropriate by EU Member States.

⁴⁷ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>
See for more information about existing statelessness determination procedures: UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>

Annex 2: Flowchart for a standard determination procedure

