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# Statelessness in the European Union, Norway and Georgia

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## Explanatory note

This inform was updated on the basis of national contributions provided by 25 EMN NCPs of the EU Member States (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK), Norway and Georgia. The cut-off date was 17 February 2023.

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## 1. INTRODUCTION

The United Nations High Commissioner for Refugees (UNHCR)'s 'Mid-Year Trends 2022' reports data on approximately 4.3 million stateless people worldwide.<sup>1</sup> Statelessness is a global phenomenon, including within the European Union (EU). At the end of 2018, the UNHCR estimated the total number of stateless persons in the EU plus Norway at 399 283, including both stateless individuals and persons of undetermined nationality.<sup>2</sup> However, the 2021 European Migration Network (EMN) inform, 'Measuring progress to address statelessness in the EU and Georgia' concluded that there is no reliable way to estimate the number of stateless persons in the EU as there are no data on those not reflected in official statistics in EU Member States.<sup>3</sup>

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

Statelessness is a legal anomaly that can prevent those concerned from accessing fundamental human, civil, political, economic, social and cultural rights. As a result, such people often live in conditions of protracted marginalisation and discrimination, facing numerous difficulties, such as the inability to receive medical assistance, access education, acquire property, obtain legal employment, marry, or open a bank account.

While statelessness can occur in various contexts, its most common causes include state succession,<sup>4</sup> ill-defined or discriminatory nationality laws, and arbitrary deprivation of nationality. Statelessness can also be a consequence of forced displacement and forced migration and can be the result of people's difficulties in accessing the civil registration documents (e.g. birth certificates) necessary to acquire or confirm nationality.

### 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) at the aged of 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 'non-returnable' people in her situation) she realised she had lost both her previous nationalities and was stateless. As both countries refused to provide her with identity documents, she was also unable to obtain the temporary residence permit in country X. Now, more than 12 years later, she remains in the same situation, unable to (re)acquire Congolese or Rwandan nationality. As country X has no procedure to recognise or regularise stateless persons, Sarah remains unable to study, work or start a family.

Under the JHA Council Conclusions of 3 and 4 December 2015,<sup>5</sup> the EMN was entrusted with the creation of a platform to exchange information and good practices in the field of statelessness.

This 2023 EMN inform is the latest in the series of EMN Platform on Statelessness informs, with two others previously published in 2016 and 2020. It is updated with contributions from the participating EMN Member Countries and EMN Observer Countries. Information related to the United Kingdom (UK) has been removed, as the UK is no longer an EMN Member Country, but UK information remains in the earlier informs.

This EMN inform updates the 2020 Inform Statelessness in the EU, which itself updated the 2016 version via an EMN ad hoc query<sup>6</sup> jointly launched by EMN Ireland and EMN Luxembourg in March 2019 in preparation for their jointly organised technical conference in Dublin in May 2019.<sup>7</sup> The ad hoc query and conference focused on the nexus between the granting of stateless status and residence permits.

The 2020 inform also draws on the results of earlier work, including ad hoc queries launched by EMN Luxembourg in 2015<sup>8</sup> and 2016<sup>9</sup>, and the policy brief resulting from the EMN Luxembourg conference 'Tackling statelessness: Exchange of Experiences and Good Practices' organised in Luxembourg on 15 April 2016. The 2020 inform was updated with other sources of information,<sup>10</sup> which helped to fill certain gaps in the analysis.

1 UNHCR, [UNHCR - Mid-Year Trends 2022](#), 2022, last accessed on 24 March 2023.

2 UNHCR, [Global Trends - Forced Displacement in 2018](#), 2018, last accessed on 24 March 2023; "With respect to persons under UNHCR's statelessness mandate, this figure includes persons of concern covered by two separate Latvian laws. 174 persons fall under the Republic of Latvia's Law on Stateless Persons of 17 February 2004. 224 670 of the persons fall under Latvia's 25 April 1995 Law on the Status of those Former USSR Citizens who are not Citizens of Latvia or Any Other State ('non-citizens'). In the specific context of Latvia, the 'non-citizens' enjoy the right to reside in Latvia ex lege and a set of rights and obligations generally beyond the rights prescribed by the 1954 Convention relating to the Status of Stateless Persons, including protection from removal, and as such the 'non-citizens' may currently be considered persons to whom the Convention does not apply in accordance with Article 1.2(ii)."

3 A wide range of sources or categories of data on the number of stateless persons residing on the territory of the (Member) States is used, and for varying time periods. Broadly speaking, in most EU Member States, data on stateless persons are available from residence permit data, population register data or recognised stateless persons in the period 2019-2021. There were some exceptions, for example where a different category is used or it was not possible to separate data on stateless persons from unknown nationality.

4 State succession involves a change of sovereignty over territory, or "the replacement of one State by another in the responsibility for the international relations of territory"; see Article 2.1(b) of the Vienna Convention on State Succession in Respect of Treaties, [https://legal.un.org/ilc/texts/instruments/english/conventions/3\\_2\\_1978.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf), last accessed on 23 March 2023.

5 Council of the European Union, 'Council adopts conclusions on statelessness', 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>, last accessed on 23 of March 2023.

6 EMN, 'The nexus between recognition of stateless status and the right of residence', ad hoc query; replies received from 24 countries: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, IT, LV, LU, MT, NL, PL, PT, SK, SE and NO. Information for AT was updated with the assistance of UNHCR and is not for wider dissemination, thus is not reflected in the text.

7 EMN, 'Exploring the interrelationship between recognition of statelessness, residence permits and associated rights in the EU Member States and Norway', Technical conference, Dublin, 7 May 2019.

8 Replies received from 23 countries: AT, BE, CZ, EE, ES, FI, FR, DE, HR, HU, IE, LT, LU, MT, NL, PL, SE, SI, SK and NO, UK. UK information has been deleted as the UK is no longer part of the EMN.

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

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



## 2. KEY FINDINGS

This inform identifies several main findings:

- 24 EU Member States plus Norway and Georgia are party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and 20 EU Member States are party to the 1961 Convention on the Reduction of Statelessness (1961 Convention). Since the first edition of this inform in 2016, Cyprus has introduced a bill to its parliament in order to accede to the 1954 Convention. As of 1 March 2023, however, it has not been approved. Malta acceded to the 1954 Convention on 11 December 2019.<sup>11</sup> Two EU Member States have finalised their accession to the 1961 Convention – Luxembourg on 21 September 2017 and Spain on 25 September 2018.<sup>12</sup> Georgia acceded to the 1961 Convention on 1 July 2014.
- There is no harmonisation among EU Member States on the procedures they use to determine statelessness, which include:
  - dedicated administrative determination procedures;<sup>13</sup>
  - general administrative procedures or within another administrative procedure;
  - ad hoc administrative procedures;
  - judicial procedures (Belgium– in cases when the applicant is not a legal resident in the country).
- The majority of EU Member States make no direct link between the determination of statelessness and the issuing of a specific residence permit. Consequently, an individual who has been recognised as stateless does not have an automatic right to stay in the country that determined their statelessness.<sup>14</sup> Very few EU Member States<sup>15</sup> grant a residence permit to an individual on the grounds of their recognition as stateless – in most, recognised stateless persons wishing to regularise their status must apply for a residence permit on other grounds. This may be complicated if they do not fulfil the criteria (e.g. lack the financial means or cannot meet the evidence requirements).
- Access to the labour market, education and training, healthcare and social aid does not depend on the determination of statelessness but on the residence permit the stateless person can obtain. This can place stateless persons unable to obtain a residence permit in a legal vacuum in certain EU Member States.
- Most EU Member States facilitate access to nationality for children born stateless in their territory to some degree. In most, the principle of *ius soli* applies for granting nationality at birth to children born stateless in the country, under certain conditions. Some EU Member States not applying the *ius soli* principle at birth facilitate the acquisition of nationality via naturalisation at a later stage (e.g. the Netherlands). However, only half of the EU Member States have full safeguards in place against statelessness at birth, with other EU Member States' legislation containing no safeguards or only partial safeguards, resulting in children being born stateless.<sup>16</sup>
- There is no dedicated determination procedure for stateless unaccompanied minors that could take account of their specific vulnerability. Most EU Member States that have a determination procedure for adults apply it to unaccompanied minors without any adaptation. In most cases, a guardian is appointed to accompany the minor, while EU Member States with a dedicated statelessness determination procedure provide legal aid (except Latvia). However, like adult applicants, the burden of proof during the determination procedure remains with the minor.
- With the exception of several EU Member States, no provision is made for children born enroute to the EU to obtain a birth certificate or an equivalent document in the country of arrival.



## 3. 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 sets rules for the conferral and withdrawal

of citizenship, provided that certain conditions are met, aiming to prevent and reduce statelessness. Not all EU Member States are parties to these conventions.

### 3.1. ACCESSION TO THE 1954 CONVENTION

Currently, 24 EU Member States<sup>17</sup> plus Norway and Georgia<sup>18</sup> are parties to the 1954 Convention. Cyprus,

11 Malta's Instrument of Accession to the 1954 Convention Relating to the Status of Stateless Persons was signed on 8 November 2019 and deposited, with reservations, at the Office of the UN Secretary General on 11th December 2019. Accession became effective on the ninetieth day following the date of deposit of the Instrument of Accession.

12 United Nations Treaties Collection, <https://treaties.un.org>, last accessed on 23 March.

13 BG, ES, FR, HU, IT, LU, LV.

14 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', 2014, para 147-152, <http://www.refworld.org/docid/53b676aa4.html>, last accessed on 23 March.

15 ES, FR, HU, IT, LV.

16 Information provided by UNHCR.

17 AT, BE, BG, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK.

18 GE acceded on 23 December 2011.

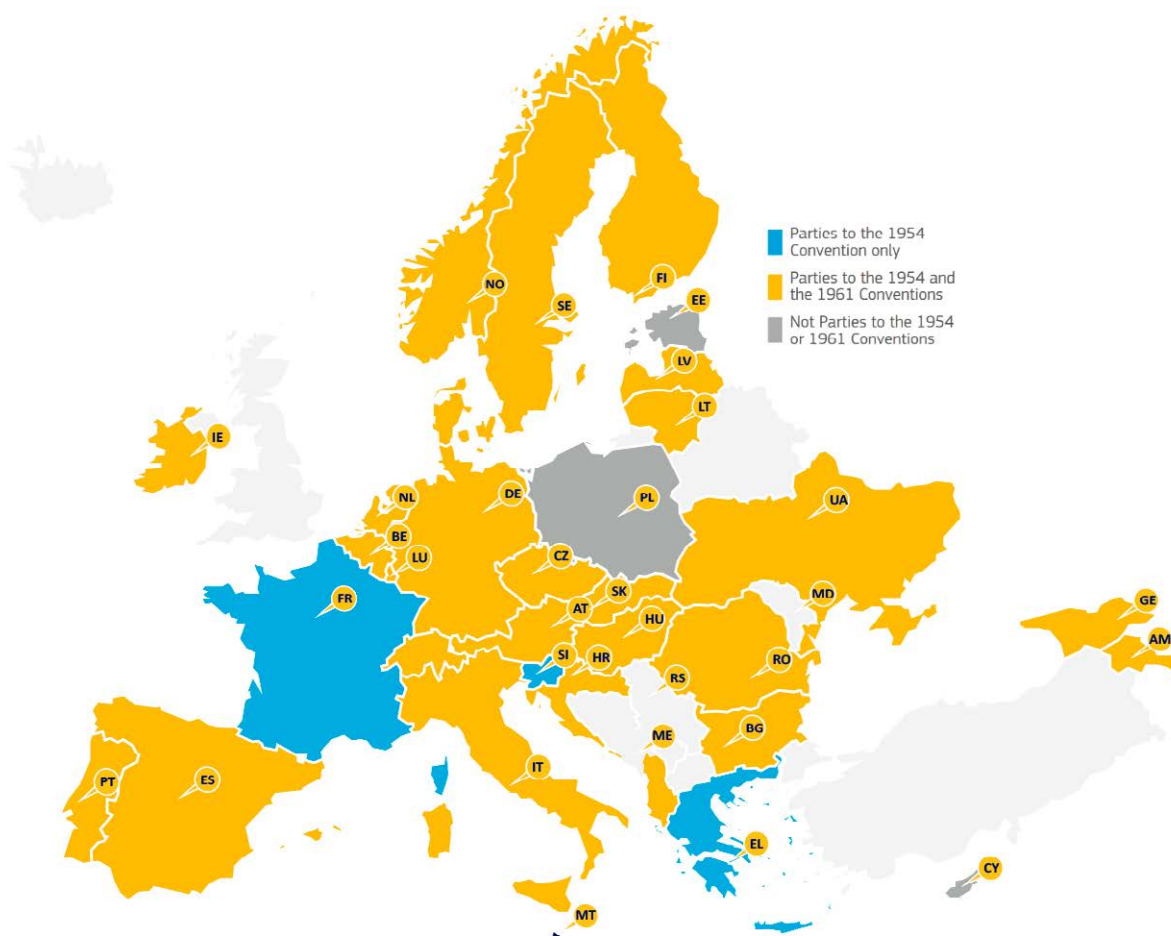
Estonia and Poland have yet to accede.<sup>19</sup> Malta acceded to the 1954 Convention on 12 December 2019. Cyprus introduced a bill relating to accession to the 1954 Convention in 2011 but the process has yet to be completed.

### 3.2. ACCESSION TO THE 1961 CONVENTION

To date, 20 EU Member States,<sup>20</sup> Norway and Georgia have acceded to the 1961 Convention. France<sup>21</sup>

signed the Convention but has not yet ratified it, and six EU Member States<sup>22</sup> have not (yet) acceded to it. Luxembourg and Spain acceded to the 1961 Convention on 21 September 2017 and 25 September 2018, respectively. Five EU Member States<sup>23</sup> do not intend to accede to the 1961 Convention.

**Figure 1: States party to the Statelessness Conventions in Europe**



Reasons given by these EU Member States for not acceding to the Convention include:

- Estonia notes that its Citizenship Law is partially in conflict with the Convention;<sup>24</sup>
- Malta considers that its legislation already incorporates some of the major provisions of the 1961 Convention; however, a decision on accession has yet to be taken;
- Poland considers that accession would put stateless persons in a privileged position compared to foreigners already legally residing in Poland;
- Slovenia has reservations about the application of Article 12 of the 1961 Convention in relation to Article 1. However, its current legislation contains most of the provisions of the Convention and under certain circumstances provides easier conditions for the acquisition of citizenship.

19 United Nations (UN), Convention on the Reduction of Statelessness, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en), last accessed on 24 March 2023.

20 AT, BE, BG, CZ, DE, DK, ES, FI, HR, HU, IE, IT, LT, LU, LV, NL, PT, RO, SE, SK.

21 The Law of 16 March 1998 on Nationality has a provision that prohibits any decision of deprivation of nationality if this implies that the person becomes stateless.

22 CY, EE, EL, MT, PL, SI.

23 EE, FR (current government does not intend to submit a proposal to the parliament for its ratification), MT, PL, SI.

24 EE considers its Citizenship Law to be based on the *ius sanguinis* principle, while the Convention foresees granting citizenship to a person born in its territory who would otherwise be stateless (*ius solis*). However, according to UNHCR the 1961 Convention does not prescribe the mode of acquisition State parties should adopt.



## 4. STATELESSNESS DETERMINATION PROCEDURES<sup>25</sup>

A statelessness determination procedure, i.e. a mechanism for determining whether an individual is stateless, is a practical prerequisite for ensuring the protection of stateless persons. The 1954 Convention establishes the international legal definition of ‘stateless person’ but does not prescribe a particular mechanism for determining statelessness. Implicitly, State Parties to the Convention must identify who qualifies as a stateless person under Article 1 for the purpose of affording them the standard of treatment set out in the Convention. The identification of stateless persons may also occur through administrative, judicial or other procedures not specifically designed for this purpose.

The majority of the EU Member States<sup>26</sup> and Norway, do not have a specific statelessness determination procedure in place. While the Slovak Republic does not have an administrative procedure, there is a legal basis to grant stateless persons permanent residence for five years.

Eight EU Member States<sup>27</sup> and Georgia have a dedicated statelessness determination procedure. Bulgaria introduced a dedicated procedure in December 2016.<sup>28</sup> In April 2019, amendments to the Law on Foreigners in the Republic of Bulgaria envisaged the possibility of issuing a continuous residence permit to recognised stateless persons, which would enable their legal stay. The amendments entered into force in October 2019. The Implementing Regulation of the Law on Foreigners in the Republic of Bulgaria will provide for the specific rules for the implementation of these changes.

In Greece, a draft Presidential Decree setting out the details of a statelessness determination procedure is currently under examination by the Ministry of Citizen Protection and the Ministry of the Interior.

In the Netherlands, a legislative proposal on the determination of statelessness was adopted by the House of Representatives on 31 May 2022 and is currently being reviewed by the Dutch Senate. Once adopted, the Act will provide for a procedure whereby a person who is not recognised as a national by any State “who has an immediate interest therein and is domiciled or habitually resident in the Netherlands” may submit an application to the District Court of The Hague to determine whether they are stateless. Simultaneously, amendments to the Netherlands Nationality Act and the Passport Act were adopted and are currently being reviewed by the Senate. These would allow stateless children without a residence permit to obtain Dutch citizenship after five years of “stable and principal residence” in the Netherlands.

There is no standardised procedure for the determination of statelessness among EU Member States. While some have a dedicated procedure, others use general

administrative procedures, a specific administrative practice, or undertake the determination procedure within other administrative procedures (i.e. citizenship, residence permit, international protection procedures, or *ex officio*).

### 4.1. DEDICATED STATELESSNESS DETERMINATION PROCEDURES

The specific statelessness determination procedures that are established in law<sup>29</sup> vary significantly from country to country.

Bulgaria has a dedicated statelessness determination procedure. The procedure is free of charge, applicants have a right to an interview and to appeal, and free legal aid is provided by non-governmental organisations (NGOs). No protection status is provided to applicants during the procedure, thus applicants have no access to basic services. If a person is recognised as stateless they may receive a right of residence.<sup>30</sup>

The procedure is initiated when a person who wants to be recognised as stateless submits a written application to the Directorate of Migration or to the Migration Sectors and Groups at the Regional Directorates of the Ministry of the Interior. When submitting the application, these authorities inform applicants of their procedural rights and obligations. In the course of the proceedings, the applicant must substantiate their claim for statelessness, in particular: a) their place of birth; b) previous residence; and c) citizenship of their parents or other family members. A birth certificate shall be attached to the application if they own one. To clarify the facts and circumstances of the statelessness determination procedure, the Directorate of Migration or Migration Sectors and Groups at the Regional Directorates of the Ministry of the Interior may, after conducting an interview, provide a copy of the documents to the Ministry of Foreign Affairs for administrative assistance. The latter then provides the requested information if received. The burden of proof is shared between the administrative authority and the applicant.

In the Czech Republic, stateless status can be determined through a special administrative procedure. The competent authority is the Department of Asylum and Migration Policy of the Ministry of the Interior. Since August 2021, an amendment to the Act on the Residence of Foreign Nationals provides for basic mechanisms for applications under the 1954 Convention.

In France, the applicant personally files the signed application form, accompanied by two pictures, a travel document (if they have one), and civil status documents. All documents should be submitted to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which is the competent authority for determining

25 Information drawn from the 2016 EMN inform and updated from the answers to the EMN ad hoc query launched on 18 March 2019. EU Member States and GE reviewed the information at the beginning of 2023 and reported no changes.

26 AT, BE, CZ, DE, EE, FI, HR, IE, LT, MT, NL, PL, SE, SI, SK.

27 BG, CZ, ES, FR, HU, IT, LU, LV. In CZ, due to a change in the Foreigners Act (Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic), it now has a specific administrative procedure. In FR, 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 CESEDA). LU has administrative instructions rather than a dedicated procedure established in law.

28 European Network on Statelessness, Bulgaria introduces a statelessness determination procedure in national law, 2016, [Bulgaria introduces a statelessness determination procedure into national law | European Network on Statelessness](#), last accessed on 23 March 2023.

29 E.g. BG, ES, FR, HU, IT, LV and GE.

30 Article 211 para 4 of the Law of Foreigners states that a person with a stateless status in the Republic of Bulgaria who does not meet the conditions for allowing permanent or long-term residence may be allowed a prolonged residence for up to one year in accordance with the regulation for the implementation of the Law of Foreigners.

statelessness.<sup>31</sup> The OFPRA can invite the applicant to a personal interview (but it is not mandatory) where applicants can express themselves in a language of their choice, assisted by a translator if necessary. Applicants can also be accompanied by a lawyer, or a representative of an association provided the OFPRA accepts (there is no legal obligation to accept).<sup>32</sup> The burden of proof is shared but the standard of proof is higher than in asylum cases. The OFPRA can assist with collecting evidence by contacting relevant competent authorities in other countries. All types of evidence are accepted.

In Georgia, the applicant should submit an application to the Public Service Development Agency (PSDA) under the Ministry of Justice. If the applicant does not have an identity document, their identity may be verified through a written statement provided by the authorised person of the State or local self-government body, medical or educational (childcare) institution, or an international organisation or NGO, as well as notarised written information submitted by two persons of full age and capacity. The applicant can be assisted by an interpreter free of charge. The burden of proof is shared between the applicant and the PSDA. To obtain the information necessary to take the decision, the PSDA may request the assistance of Georgian diplomatic missions and consular offices abroad, other public authorities, and international organisations or NGOs. An interview with the applicant is mandatory. The length of the statelessness determination procedure is six months, which can be extended by a maximum of three months.

If international protection needs are detected at any stage of the statelessness determination procedure, the PSDA will suspend the procedure and forward the case, within three days, to the responsible authority (Ministry of Internal Affairs) to initiate the refugee or humanitarian status determination procedure. If the applicant is not granted international protection, the statelessness determination procedure will be resumed. If statelessness is determined, the applicant is granted the status, identity documents, a residence permit (an e-residence card is issued for the duration of the residence permit), and a passport of a stateless person which is valid for two years.

In Hungary, applications can be initiated in writing or verbally by the person concerned at the regional Directorates of the Office of Immigration and Nationality (OIN) in their place of residence. The applicant must make an oral statement, which is then registered. If the application is submitted verbally and the applicant cannot speak Hungarian, the competent regional authority shall provide an interpreter who speaks their native language or a language they understand. The interpreter is not required if the officer in charge of the case speaks the applicant's native language or another language they understand, and if the applicant agrees with this in writing. The submission is free of charge. The interpretation costs and legal aid costs are paid by the State. The applicant shall attend the proceedings in person and shall take part in an interview, accompanied by their legal representative if they choose. The UNHCR can participate at any stage

of the determination procedure. The burden of proof lies principally with the applicant, but the authorities should also actively contribute. *Ex officio* guardians are appointed for unaccompanied minors. After the decision of the Constitutional Court<sup>33</sup> and a Resolution from 30 September 2015, the statelessness determination procedure is open to all stateless persons, not just those lawfully resident in Hungary.

Italy has two statelessness determination procedures: one judicial and one administrative. The administrative procedure is an alternative to the judicial one: the former requires compliance with a strict burden of documentary production, while the latter is not subject to limits of proof.

In the administrative procedure, the individual files an application with the Ministry of the Interior, containing their birth certificate and a certificate proving lawful residence in their statelessness. The standard of proof is the same as in the asylum procedure, but the applicant carries the burden of proof, compared to a shared burden of proof in the judicial procedure. No legal aid is provided. Stamp duty must be paid to initiate the administrative procedure.

The possibility to allow for more flexibility when applying the above-mentioned criteria is currently being explored by the Ministry of Interior. In addition, it is being assessed by the Ministry of Interior whether to restart the inter-institutional Table on the legal status of Roma, Sinti and Caminanti (RSC) and the implementation of a Memorandum of Understanding (MoU) with the UNHCR to combine the asylum and statelessness determination procedures. The Ministry of the Interior is in charge of the administrative procedure, while in the judicial procedure, the rules of ordinary civil court proceedings are applied. In this type of procedure, the Ministry of the Interior is not strictly a counterpart but performs a control function to protect the certainty of relations.

Judicial proceedings may be activated regardless of the administrative procedure or following its unsuccessful completion. It may be initiated even if the applicant does not hold a residence permit. The applicant must be assisted by a lawyer for lodging the application before the Civil Court<sup>34</sup> and may receive free legal aid from the Italian State, according to the criteria provided by law. For legal fees and costs, the applicant should provide all of the available documents to back their claim. The condition of statelessness must be demonstrated by evidencing the facts that led to the loss or non-acquisition of nationality, in accordance with the regulations of the State of reference. Judicial verification is used where documentary evidence is lacking and the judge has a duty to make use of their investigative powers to fill the evidence gaps. Judicial proceedings are governed by the summary procedure of cognisance. With the reform introduced by Law No. 46/2017, the judicial procedure was decentralised to 26 Specialised Sections on International Protection, Migration and Statelessness of the Civil Courts. Law No. 46/2017 established that the jurisdiction of the specialised section on migration, international protection and

31 Article L. 812-2 CESEDA created by Decree No 2015-1166 of 21 September 2015.

32 Article R. 812-2 CESEDA created by Decree No 2015-1166 of 21 September 2015 and modified by Decree No 2018-1159 of 14 December 2018.

33 Resolution G/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 (RRTN) is contrary to the Fundamental Law, annulling it with effect from 30 September 2015.

34 The rule in court proceedings is that all cases must be introduced with the assistance of a lawyer (there are some exceptions, but the procedure for the determination of statelessness is not among them). The applicant must pay a unified contribution of € 259 plus legal costs. If the person is unable to bear these costs, they may apply to the Lawyers' National Order for admission to the free legal aid system.



free movement of EU citizens also extends to disputes concerning the establishment of statelessness.

In Latvia, statelessness is determined within the framework of a dedicated determination procedure available to all stateless persons, irrespective of whether or not they are residing legally in the country. The procedure is free of charge. The applicant must file a written application<sup>35</sup> and submit their personal identification document, birth certificate, and a certificate issued by a foreign competent authority that the person is not a citizen of the relevant State, or a document proving that they cannot obtain this document and any other relevant document. After filing the application, the applicant is allowed to stay in the country.

According to the Law on Stateless persons, legal residence is not a precondition for filing the application.<sup>36</sup> The burden of proof lies with the applicant, but in practice is shared with the Office of Citizenship and Migration Affairs. In case of an applicant who has been detained because they are in an irregular situation without valid travel documents, the State Border Guard may contact foreign embassies to collect the necessary documentation. 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.

In Luxembourg, a special administrative determination procedure was established in November 2016.<sup>37</sup> A foreigner who cannot claim the nationality of any State and who is resident in the Grand-Duchy of Luxembourg must file a signed application form<sup>38</sup> to the Foreigners Department of the Directorate of Immigration, including their personal information and a detailed explanation for their lack of nationality. Applicants must attach sufficient evidence to back up their claims.<sup>39</sup> The Foreigners' Department examines all of the evidence provided by the applicant and collects any other relevant information to determine 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 they do not have the nationality of any relevant country (e.g. birth country, where their family members reside or where they lived before). With the consent of the applicant, the authorities 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 and a removal order can be issued if they are in an irregular situation.<sup>40</sup> The Foreigners Department 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 before the Spanish Office for Asylum and Refuge (OAR), at an

Aliens Office or at a police station within one month of their arrival on Spanish territory. The application must explain the reasons they do not have a nationality and submit all relevant documents.

The burden of proof lies with the applicant but is shared in practice. If needed, and should an interview be required, the applicant is assisted by an interpreter. The Minister of the Interior takes a decision on the application within three months of it being filed.

## 4.2. JUDICIAL PROCEDURES USED BY EU MEMBER STATES TO DETERMINE STATELESSNESS

In the case of Belgium, only family courts established in the seat of a court of appeal (in the jurisdiction of which the applicant has their place of residence or, alternatively, where the applicant finds themselves) are competent to recognise statelessness, in accordance with Article 632bis of the Judicial Code.<sup>41</sup> The decision can be appealed to the Court of Appeal. During the procedure, applicants are not entitled to a temporary legal status and do not derive any rights from their recognition as stateless persons. The burden of proof lies with the applicant, who has to prove they never had the nationality of the countries with which they have ties, such as: 1) country of residence; 2) country of birth; or 3) country where family members have nationality. Otherwise, the applicant has to prove that they have lost that nationality and are unable to access it again.

For the judicial procedure in Italy, the applicant does not need to provide specific documents to access the procedure, but they must be assisted by a lawyer in lodging the application before the Civil Court. Hearings are scheduled by the judge taking into consideration the complexity of the case (see section 5.1).

## 4.3. ADMINISTRATIVE PROCEDURES USED BY EU MEMBER STATES TO DETERMINE STATELESSNESS

EU Member States have different approaches to determine statelessness, whether through general administrative procedures or within other administrative procedures. Some EU Member States use general administrative procedures, a specific administrative procedure or practice, or make the determination within another administrative procedure (i.e. citizenship, residence or international protection applications).

In Finland, an administrative procedure is used to determine the citizenship of a person or whether the person is stateless. The Finnish Immigration Service (MIGRI), at the request of the applicant or a public authority, determines the citizenship status of an individual residing in Finland. To determine citizenship, the MIGRI relies on identification documents, information on the place of birth, place of

<sup>35</sup> Applicants receive assistance from the competent authority when filling out the application form.

<sup>36</sup> A stateless person who applies for recognition of statelessness does not have a valid travel document and cannot leave the country.

<sup>37</sup> The government of Luxembourg, Information Portal, Guichet.Lu, <https://guichet.public.lu/en/citoyens/immigration/cas-specifiques/apatrie/demande-statut-apatrie.html#:~:text=The%20application%20form%20must%20be,a%20national%20of%20any%20state>, last accessed on 30 March 2023.

<sup>38</sup> Application can be filed by a third-party with a power of attorney or by a lawyer.

<sup>39</sup> If these documents are not written in English, German or French, an official translation by a sworn translator must be attached to the application.

<sup>40</sup> The procedure modifies the jurisprudence established by the Administrative Court, No 36744C of 27 October 2015, which stated that neither regular residence nor regular presence constitute necessary conditions for applying and recognising statelessness.

<sup>41</sup> The Law on the simplification, harmonisation, computerisation and modernisation of provisions of civil law, civil procedure, law and notaryship, as well as various provisions with regard to justice (Potpourri V Law) was approved by the Chamber of Representatives on 6 July 2017, introducing Article 632bis into the Judicial Code. The law came into force on 3 August 2017.

previous residence and national legislation of the relevant countries, and compares practices on acquisition of citizenship in different States. It also takes into account the statement of the applicant and any available information on the citizenship of their family members (especially parents). The burden of proof is shared between the applicant and MIGRI. Statelessness does not constitute an independent ground for legal protection in Finland.

In Germany, there is no dedicated procedure in place, but statelessness can be identified during other administrative processes, such as refugee status determination. Outside the context of the asylum procedure, the responsible local aliens' authorities examine the application and request clarification on citizenship issues in the framework of the procedure on residence permits, the issuance of travel documents or during naturalisation procedures. In the framework of the asylum procedure, the question of citizenship/non-possession of citizenship is clarified only to the extent necessary to establish the country against which a well-founded fear of persecution is assessed. The asylum authority is not allowed to contact the authorities of the (alleged) country of origin to clarify questions of citizenship and other personal data. In cases where a stateless person is recognised as a refugee, a residence permit for refugees is issued.

In the Slovak Republic, an administrative procedure requires that the applicant demonstrates that they do not hold any citizenship of the State(s): a) in which they were born; b) in which they had previous residence or stay; and c) of the citizenship of their parents or other family members. The burden of proof lies with the applicant and the decision is taken after the competent authority assesses the documentation provided. Where necessary, the competent authorities may decide to contact consular authorities on a case-by-case basis.

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

### Luka

Luka was born in Ukraine when it was still a part of the former Union of Soviet Socialist Republics (USSR). After growing up in an orphanage, he moved to the EU (country X) in 1991 when he was 15 years old. He has never possessed any documents establishing his nationality. 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, despite having lived in country X for over 20 years, Luka is still not recognised as 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.

In Sweden, statelessness may be determined when an application for a residence permit is filed with the Swedish Migration Agency (SMA) or when a person registers with the tax authorities. In this case, the tax authorities can undertake further investigations into the statelessness of the applicant. Neither of the two institutions has a dedicated procedure to determine statelessness nor consistent administrative guidelines.<sup>42</sup> As there is no specific statelessness determination procedure in Sweden, the burden and standard of proof applied depend on the procedural standards and guidelines governing such procedures.

Norway does not have a dedicated procedure for determining statelessness. Rather, an individual's statelessness is assessed as part of the identity determination process carried out by the Norwegian Directorate of Immigration during asylum or other immigration procedures. Statelessness is assessed just as it is assessed whether a person holds a certain nationality. Statelessness is registered based on the submission of documentation of identity, e.g. a travel document for stateless persons. If the individual is not in possession of identity documents, statelessness is registered based on their statement of statelessness when first applying for a permit in Norway. For stateless persons, it is particularly important to register their place of birth and place of residence, so that immigration authorities can easily place them.

## 4.4. AD HOC ADMINISTRATIVE PROCEDURES

Several countries do not have a dedicated procedure<sup>43</sup> and instead apply ad hoc procedures.

In Croatia, statelessness is assessed on submission of an application for asylum, legal residence or citizenship. All relevant elements of the application are assessed, including the applicant's statements and all the documentation at their disposal regarding their nationality(ies). The Ministry of the Interior is the competent body (for the asylum procedure, regulating foreigners' status, and the procedure for acquiring Croatian nationality). In determining statelessness, the consular authorities of countries with which the applicant has links may be contacted. If it is determined that an applicant is stateless, they are considered a stateless person for the purposes of that procedure. A person who is undoubtedly determined to be stateless and granted a temporary or permanent residence can be issued with a travel document for a stateless person.

The largest number of persons with undetermined citizenship come from the Roma population. The Action Plan for the Implementation of the National Roma Inclusion Strategy, adopted by the government of the Republic

<sup>42</sup> The definition of 'a stateless person' as set out in Article 1(1) of the 1954 Convention is not incorporated into SE legislation. This may lead to inconsistent outcomes in registering stateless persons and contribute to the high number of persons in SE registered as having an 'unknown' nationality.

<sup>43</sup> BG, HR, IE, MT, PL.

of Croatia in July 2019, established a measure relating to the verification of the Roma citizenship status in the country of origin in order to determine whether or not they are stateless.

In Malta, where necessary, the authorities may require the applicant to provide information on their nationality, on an ad hoc basis. The decision on the stateless status is taken on the basis of the available documentation. However, Malta is currently examining the possibility of setting up a formal determination mechanism/procedure to identify statelessness.

In Poland, statelessness can be identified through alternative administrative procedures for general identity and citizenship determination procedures within the return procedure. The outcome of these procedures may result in the protection of stateless persons through tolerated stay or humanitarian stay.

In Ireland, determination of statelessness in accordance with the 1954 Convention is also on an ad hoc basis, with regard to the circumstances of each individual case.

## Boban

Boban is a stateless Roma person from North 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 EU Member State but was returned to country X under the Dublin Regulation. In 2008 he applied for regularisation as a stateless person. The stateless status 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 to apply for asylum again. When this was refused, he tried to claim asylum in two other EU Member States but on both occasions 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 North Macedonia that he was not a citizen so he could not be returned there. Although now out of detention, he remains in limbo and with no hope for the future.



## 5. DETERMINATION OF STATELESSNESS AND THE RESIDENCE PERMIT<sup>44</sup>

In most EU Member States, stateless persons will not automatically be granted an authorisation of stay or a residence permit following their recognition as stateless persons.

### 5.1. SITUATION ACROSS THE EU MEMBER STATES, GEORGIA AND NORWAY

In over one-third of the EU Member States<sup>45</sup> and Norway, a stateless person is considered a third-country national and they can apply for any type of residence permit.

Poland provides for a temporary residence permit for minors abandoned by their biological parents in Poland.<sup>46</sup> For the purpose of temporary or permanent residence permit procedures, a stateless person may present a Polish ID card for foreigners. This document may be issued to a stateless person who resides on the territory of Poland.

In Estonia, persons with undetermined citizenship<sup>47</sup> benefit from slightly preferential conditions for receiving a residence permit compared to other third-country nationals. The only conditions that apply are: a) that the person has a permanent legal income to ensure subsistence in Estonia; and b) reasons for the refusal to issue a residence permit do not apply.

In Greece, it is not possible to apply for stateless status under the 1954 Convention, pending the enactment of the Presidential Decree. However, a stateless person may apply for a residence permit on other grounds, such as an application for international protection, application for a work permit or humanitarian residence permit.

In Ireland, residence permits are open to stateless persons who fulfil the relevant criteria. In Ireland, stateless people have been issued with leave-to-remain permission,<sup>48</sup> which has led to partial or full resolution of their case. Leave-to-remain may be granted to applicants for international protection.<sup>49</sup> Such permissions are granted at the discretion of the Minister of Justice, who determines what rights to grant and for what period of time. In many cases where such a permission is granted, it is not explicitly on the basis of statelessness. Once a permission is granted, it remains at the discretion of the Minister as to whether that permission is renewed and on what terms.

Similarly, in Luxembourg, the recognition of statelessness does not imply automatic authorisation to stay. The individual is granted a biometric travel document for stateless persons and is notified of the need to apply for a residence permit, fulfilling the conditions foreseen by the Immigration Law.

In Croatia, Finland, Germany, Sweden and Norway, stateless persons can obtain a residence permit, depending

<sup>44</sup> Information drawn from the 2016 EMN inform, updated with responses to the 2019 EMN ad hoc query and by the EU Member States in 2023.

<sup>45</sup> AT (see, for example, Article 2 para 4 subpara 10 Aliens Police Act; Article 2 para 1 subpara 6 Residence and Settlement Act), EE (uses the term 'persons with undetermined citizenship'), EL, IE, LT, NL, PL, PT, SI, SK.

<sup>46</sup> Article 186(1)(2) Act on Foreigners.

<sup>47</sup> The vast majority of persons with undermined citizenship are aliens who settled in EE before 1 July 1990 and who since habitually reside in EE, and their descendants.

<sup>48</sup> Section 3 of the Immigration Act 1999. While this legislation makes no specific reference to stateless persons, it refers to humanitarian considerations or other compelling grounds. However, a leave-to-remain application can only be made when the Minister is considering issuing a deportation order.

<sup>49</sup> Section 49 of the International Protection Act 2015, which also provides for humanitarian considerations.

on the type of residence permit they are applying for, and according to the usual rules. In Finland and Sweden, statelessness does not constitute an independent ground for legal protection. In Germany, there is no specific residence permit based on the fact that a person is stateless. Outside the asylum procedure, a stateless person can obtain a residence permit, depending on the type of residence permit they are applying for, and according to the usual rules. In addition, the following rule applies: a foreign national (including a stateless person) who does not possess a residence permit and is prevented from leaving the federal territory through no fault of their own may be granted a residence permit (after at least 18 months of possessing a toleration permit). In Finland, a stateless person can be granted a residence permit on compassionate grounds,<sup>50</sup> or if the person cannot be returned to their previous country of permanent residence. A condition for this permit is that the person is not intentionally refusing or obstructing that return.<sup>51</sup>

Belgium does not grant a specific residence permit to stateless persons following the determination of their statelessness. However, once statelessness is determined, the applicant can use the humanitarian regularisation procedure,<sup>52</sup> citing the grounds that it is impossible to return to their country of origin. If granted, the stateless person receives a temporary right of residence. In 2022, the State Secretary for Asylum and Migration announced their intention of submitting a proposal to the federal government to create a specific residence right to be granted to stateless persons.

In Bulgaria, following the amendments to the Law on Foreigners that entered into force in October 2019, a continuous residence permit is issued to recognised stateless persons, providing them with legal stay in the country.

In Cyprus, a stateless person usually submits an application for international protection.

In the Czech Republic, some stateless persons apply for international protection, while others apply for stateless status under the Act on the Residence of Foreign Nationals. If a person is recognised as stateless, a long-term visa and a travel identity document are issued.

Some EU Member States grant a residence permit once the stateless status is granted: France (beneficiary of the stateless status), Hungary (humanitarian residence permit), Italy (stateless status residence permit or other type of residence permit. In accordance with Article 11(c) of Presidential Decree No 394/1999, a residence permit awaiting stateless status may be issued to a foreigner who already holds a residence permit for other reasons, for the duration of the procedure granting or recognising

stateless status), Latvia (temporary residence permit), Spain (stateless status card<sup>53</sup>) and Georgia.

France introduced a new law on 10 September 2018, which has been applied since 1 March 2019. Under this law, those granted stateless status are issued a multiannual residence permit for a maximum of four years, stating 'beneficiary of stateless status'. On expiry of this permit, a 10-year permit will be issued. Family members of recognised stateless persons are also granted a multiannual residence permit stating 'family member of a beneficiary of stateless status'.

In Georgia, a residence permit is granted within the same administrative act that recognises the applicant as a stateless person. The recognised stateless person can apply for an identification document (e-residence card) and a travel document for stateless persons. Recognised stateless persons generally have equal rights as citizens of Georgia, with the following exceptions: a) political rights (participation in election, formation of a political party); b) right to be recruited to the position of a civil servant; and c) right to obtain a State-funded educational scholarship in higher educational institutions.

## 5.2. DURATION OF VALIDITY OF THE RESIDENCE PERMIT

The duration of validity of the residence permit granted to a stateless person varies between reporting countries and depends on the kind of residence permit granted. Among the EU Member States granting a specific residence permit to stateless persons following the determination of their statelessness, the duration varies from one year in Bulgaria to up to four years in France.

Even though Belgium does not grant a specific residence permit, once stateless persons are granted that status by the court, they can use the humanitarian regularisation procedure to obtain a residence permit, which becomes unlimited after five years.<sup>54</sup>

The residence permit can also be renewed but the duration varies (10 years in France, two years in Italy, three years in Hungary, five years in Latvia and the Slovak Republic).

In Georgia, there are two types of residence permit issued to stateless persons: a) temporary residence permit issued for a three-year validity period (with the right of renewal); and b) permanent residence permit issued for stateless persons who permanently resided in Georgia before 31 March 1993, were not deemed Georgian citizens, were not deregistered in Georgia after 31 March 1993, or did not renounce Georgian citizenship.

<sup>50</sup> Section 52 of the Finnish Aliens Act.

<sup>51</sup> Section 51 of the Finnish Aliens Act.

<sup>52</sup> Article 9bis of the Immigration Act.

<sup>53</sup> *Tarjeta acreditativa del reconocimiento de apátrida*.

<sup>54</sup> In BE, once statelessness is determined, the applicant can use the humanitarian regularisation procedure on the grounds that it is impossible to return to their country of origin and if granted, the stateless person receives a certificate of temporary registration into the Register of Foreigners or the so-called temporary electronic A card. This certificate is limited in time and can be replaced by an unlimited electronic B card after five years.



## 6. SUPPORT PROVIDED TO STATELESS PERSONS APPLYING FOR RESIDENCE PERMITS<sup>55</sup>

In Latvia, the procedure to receive a travel document and apply for a residence permit is set out in the decision issued in respect of recognition of statelessness. There is a reduced fee for the temporary residence permit for a stateless person.

In Lithuania, support is available with certain State fees, including an exemption for stateless persons under the age of 16 issuing and changing their travel document.

In some other EU Member States<sup>56</sup> and Norway, no particular support is provided to stateless persons to help them to apply for residence permits (e.g. eligibility waivers, information campaigns, (free) legal assistance).



## 7. TRAVEL DOCUMENTS<sup>57</sup>

There are two types of travel documents granted to stateless persons by EU Member States, Norway and

Georgia: a) alien passports;<sup>58</sup> b) 1954 Convention travel document for stateless persons.<sup>59</sup>



## 8. RIGHTS GRANTED TO RECOGNISED STATELESS PERSONS<sup>60</sup>

The 1954 Convention sets out a range of rights for stateless persons, including in relation to employment and education. Article 32 provides that State Parties shall facilitate the naturalisation of stateless persons to the extent possible.

The rights granted to recognised stateless persons vary significantly across EU Member States.<sup>61</sup> Where there is no specific statelessness 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, nor is there a direct link between the recognition of statelessness and the granting of a residence permit that has an impact on access to rights.

A-card, or later B-card), they have access to the labour market without having to obtain a work permit.

The new multiannual permit for stateless persons in France confers the right to engage in professional activity and the option to sign the Republic Integration Contract.<sup>63</sup>

The temporary residence permits issued for humanitarian reasons and non-returnable persons in Finland also grant the right to work.

In Cyprus, rights granted to stateless persons are linked to rights associated with international protection – either those granted to asylum seekers or to persons with protection status – which includes access to employment.

### 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 cases, this access is granted under the same conditions as those applicable to third-country nationals.

In 16 EU Member States<sup>62</sup> and Norway, stateless persons enjoy the same access to the labour market as any third-country national legally residing in the country with the same residence permit.

In Belgium, if the stateless person is granted a certificate of registration on the Register of Foreigners (electronic

Hungary has no specific provisions on labour market access for stateless persons. Generally speaking, access to the labour market depends on the type of residence permit granted. Recognised stateless persons have the right to work, but the stateless status only allows limited access to the labour market, as stateless persons need to obtain a work permit, which is burdensome in practice. In most cases, this access is granted under the same conditions for third-country nationals.

In Italy and Spain, stateless persons have access to the labour market. In Latvia, stateless persons have access to the labour market if they have a residence permit.

In Bulgaria, the continuous residence permit, which, following amendments introduced in October 2019, is

55 Information drawn from the 2019 EMN ad hoc query and updated in 2023.

56 BG, BE, CY, DE, ES, FI, FR, HR, IE, LU, PT, SE.

57 Information drawn from the 2016 EMN inform, updated by EU Member States in 2020 and 2023.

58 AT, EE, FI, NL, SE (except if the person obtains refugee status), SI and NO (if relevant, will issue an alien passport or other relevant travel document). Even though PL is not part of the 1954 Convention nor the 1961 Convention, it can issue an alien passport to a stateless person on the same terms as other foreigners, under certain circumstances. This applies to those granted a permanent residence permit in Poland, residence permit for a long-term resident of the EU, subsidiary protection and residence permit for humanitarian reasons, or those who have lost their travel document or whose travel document has been destroyed or expired and it is not possible for them to obtain a new travel document (Article 252 Act of 12 December 2013 on foreigners).

59 BE, DE, ES, FR (valid for one or two years, depending on the type of residence permit issued), HR, HU, IT, LT, LU, LV, SK and GE.

60 Information drawn from the 2016 EMN inform, updated by the 2019 EMN ad hoc query and by EU Member States in 2023.

61 Although EE has not acceded to either Convention, people with undetermined citizenship are guaranteed the rights described here.

62 AT (where the stateless person does not apply for international protection), BE, CZ, DE, EE, FI, FR, HR, IE, LT, LU, NL, PL, SE, SI, SK. Although PL is not a Party to the Conventions, a stateless person legally residing in the country can access the labour market under the same conditions as third-country nationals legally residing in Poland.

63 The *Contrat d'integration républicaine* is between the State and a foreigner intending to settle in FR permanently. As a foreigner setting up life in FR, they agree to adopt the values and principles of the Republic and French society. By signing this contract, the foreigner will be given civics training classes and language classes to help with the integration process, <https://abuckeyeinparis.com/what-is-a-contrat-dintegration-republicaine/#:~:text=The%20Contrat%20d%E2%80%99integration%20r%C3%A9publicaine%20%28the%20Republican%20Integration%20Contract%29,and%20principles%20of%20the%20Republic%20and%20French%20society>, last accessed on 23 March 2023.

granted upon recognition of a person as stateless, does not grant a right to work, only a right to legal stay. If a stateless person has other grounds on the basis of which they can be granted a long-term or permanent residence permit, they could have access to a larger set of rights.

In Norway, stateless persons who have been granted a residence permit with the right to work, for example, because they are recognised as refugees or on humanitarian grounds, have access to the labour market on the same basis as Norwegian citizens, except for certain positions in the public sector that require Norwegian citizenship.

In Georgia, recognised stateless persons have access to the labour market on the same basis as Georgian citizens, with the exception of recruitment as public servants.

## 8.2. ACCESS TO EDUCATION AND TRAINING

In most EU Member States, as well as in Norway and Georgia, recognised stateless persons have access to education and training. That access is mainly guaranteed under the same conditions as those applicable to third-country nationals staying legally in the EU Member States and/or depending on the type of residence permit they obtain.<sup>64</sup>

In Austria, if the stateless person has been granted international protection, they have access to education and vocational training under the same conditions as any other beneficiary of international protection.

In Belgium, adults can benefit from vocational training if they are authorised to reside in the country.

In the Czech Republic, compulsory school attendance generally applies to minors, including foreigners residing in the Czech Republic (even those in an irregular situation).

In Finland they will enjoy the same access to education as any other foreigner legally residing in the country.

In Germany, Lithuania,<sup>65</sup> and Slovenia,<sup>66</sup> stateless persons have the right to attend school and to access vocational training under the same conditions as third-country nationals.

Hungary guarantees access to education (primary and secondary level) to stateless children. Italy allows access to all levels of education (including higher education) and training courses. Luxembourg allows access to education and vocational training, depending on the type of residence permit the stateless person obtains. Recognition of a person as stateless does not imply automatic access to education or vocational training. In the Slovak Republic, they have the same access to education as Slovak citizens, provided they are legally staying in the territory. In Norway, they will also enjoy the same access as any other foreigner legally residing in the country. However, all

children living in Norway have the right to education, even without legal stay.

## 8.3 ACCESS TO HEALTHCARE AND SOCIAL AID

Belgium, France, Italy,<sup>67</sup> Slovenia<sup>68</sup> and Norway grant access to healthcare and social aid to recognised stateless persons who legally reside in the country. In France, beneficiaries of the stateless status have access under the same conditions as French nationals and legally residing third-country nationals.

In the Czech Republic, there is access to free health insurance if the person has no means to pay for commercial health insurance, while access to certain minimum social benefits is also possible.

In Austria, if the stateless person is a beneficiary of international protection, they have access to social security services under the same conditions as any other beneficiary of international protection. If the stateless person is not a beneficiary of international protection, they are treated as a third-country national and access will depend on the type of residence permit they obtained.

Estonia,<sup>69</sup> Finland, Lithuania, the Netherlands, Spain and Sweden allow access to these services for stateless persons with lawful residence under the same conditions as for any third-country national. In Georgia, they have access under the same conditions as nationals.

In Belgium, recognised stateless persons who did not receive a residence permit can obtain social aid if allowed by a Labour Court and if the impossibility to return to a third country is established.

In Hungary, entitlement to social security services (including healthcare) is usually linked to employment or other income-generating activities. If the stateless person does not have employment, they do not have access to healthcare or social aid, with the exception of basic public healthcare services.

Six EU Member States<sup>70</sup> allow access to healthcare and social aid depending on the type of residence permit granted. For example, in Latvia, access to social security system services is determined by the type of residence permit and the person's employment status. Medical assistance is provided against payment from insurance companies, employers or directly by the patient. Only those with a permanent residence permit have the right to healthcare granted by the State.

In Norway, asylum seekers and stateless persons with a residence permit have access to healthcare on the same grounds as Norwegian citizens, provided their stay in Norway is intended to last 12 months or more. Adults without a legal stay only have the right to emergency healthcare.

64 AT (if they have a residence permit, according to the Settlement and Residence Act), CZ, DE, EE, EL, ES, FI, FR (access to education is not subject to any valid residence permit), IE, LT, LU, LV, NL, PL, SE, SI, SK and GE, NO. Even though PL is not party to the Conventions, access to education for non-Polish citizens is regulated by Article 165 of the Act of 14 December 2016 on education. In GE, they do not have the right to obtain State-funded scholarships in higher educational institutions.

65 In LT, stateless persons with a residence permit have the right to attend school and access vocational training under the same conditions as third-country nationals.

66 There are limitations on the right to education for stateless children, especially for those who are not in possession of a residence permit. Stateless children with only permission to stay (issued by the police to individuals who cannot be removed from the country) have access to primary education.

67 Same conditions apply as to Italian nationals.

68 SI allows access to emergency healthcare and financial assistance for stateless persons with permission to stay. The range of rights broadens if the person is granted a residence permit (temporary residence/permanent residence).

69 EE allows access to healthcare and social aid for persons with undetermined citizenship and with lawful residence, under the same conditions as any third-country national.

70 DE, EL, IE, LU, SE, SK.

All children have the right to necessary healthcare, regardless of their legal status.

#### 8.4. ACCESS TO CITIZENSHIP

Access to citizenship is facilitated for stateless person through simplified procedures in 14 EU Member States.<sup>71</sup> For example, Belgium allows recognised stateless persons to use the exceptional naturalisation procedure, according to which the House of Representatives grants Belgian nationality to recognised stateless persons as a favour.

In Bulgaria, a stateless person may acquire Bulgarian citizenship<sup>72</sup> if they fulfil the conditions<sup>73</sup> established in the Law of Bulgarian citizenship and have a long-term/permanent residence permit in Bulgaria of at least three years from the date of submission of their application for naturalisation. In Croatia, access to citizenship for stateless persons is facilitated, as no guarantee of admission to Croatian citizenship is issued to them in the procedure. In the Czech Republic, the law allows certain exceptions for stateless persons in relation to the conditions that must be fulfilled in order to obtain citizenship, notably the required length of stay and participation in the social security system due to insufficient income.

Eight EU Member States<sup>74</sup> and Norway facilitate access to citizenship for stateless persons by easing conditions. For instance, the Nationality Code in Greece provides for a preferential pathway to naturalisation for stateless persons, including a reduced residence period (three years instead of seven), and a reduced deposit fee. In Hungary, stateless persons can apply for naturalisation in the most preferential category after three years of registered domicile in the country. However, they can establish a domicile only (i) a minimum of three years after recognition of their status, and (ii) after acquiring a permanent residence permit.

Italy reduced the length of stay required for the naturalisation of a recognised stateless person to five years (instead of 10). In the Netherlands, this term is three years. Also, stateless persons do not have to submit a valid travel document and they pay a reduced fee for naturalisation. The Slovak Republic requires that stateless

persons have resided in the country for three years (eight years for other third-country nationals). In Slovenia, the length of stay is five years. In Sweden, the length of stay required for stateless persons to acquire Swedish citizenship is four years (five years for other third-country nationals).

In Norway, the length of stay required to acquire Norwegian citizenship is reduced to three years, instead of eight years. However, an additional requirement for citizenship is that the applicant either has obtained permanent residency or meets the requirements to do so.

However, in the case of recognised refugees, the length of legal stay required to acquire permanent residency is five years, which means that adult stateless refugees in Norway must live in Norway for at least five years to obtain citizenship. Adult stateless person applying for citizenship only need to prove that they can speak Norwegian at level A2, instead of B1.

In Georgia, naturalisation is facilitated only for minors. Stateless children can obtain Georgian citizenship after five years residing in Georgia, and are exempt from proving their legal residence and/or birth in Georgia. The naturalisation procedure for stateless persons is free of charge.

Seven EU Member States<sup>75</sup> do not foresee simplified access to nationality for stateless persons.

While preferential conditions for naturalisation exist in many EU Member States, stateless persons still face difficulties in proving their status in the absence of a dedicated determination procedure. In Ireland, for example, the applicant must prove that they are stateless in order to benefit from discretionary waivers.<sup>76</sup> In Greece, stateless persons must show a permit or travel document attesting that they are stateless in order to benefit from facilitated naturalisation under the Greek Nationality Code. However, situations where an individual is registered by a civil service of the Hellenic Republic as stateless without being in possession of the necessary documents (e.g. asylum applicants registered by the Asylum Service) are examined on an ad hoc basis when the individual claims the favourable treatment reserved for stateless persons under the legislation.

71 BE, CZ, EE, EL, DE, HR, HU, IE, IT, LT, NL, SE, SI, SK.

72 Article 14 Law on Bulgarian Citizenship.

73 These conditions are laid out in Article 12 para 1, items 1, 3, 4 and 5 Law on Bulgarian Citizenship.

74 DE, EL, HU, IT, NL, SE, SI, SK.

75 CY, ES, FI, FR, LU, LV, PL. In LV, a stateless person can be naturalised under general conditions, similar to any other foreigner. These conditions include five years of permanent residence (from the date of obtaining their permanent residence permit), fluency in Latvian language and knowledge of the Constitution, legal source of income, etc.

76 The waiver applies to applications for certificates of naturalisation (see Section 16 of the Irish Nationality and Citizenship Act 1956). In practice, this section generally operates as a waiver in relation to the length of reckonable residence required. In the case of a stateless person, the Minister will normally waive two of the five years' reckonable residence requirement. The administrative fee associated with certificates of naturalisation (in most cases € 950) are also normally waived for stateless people under Regulation 13(2)(a) of the Irish Nationality and Citizenship Regulations 2011 (S.I. 569 of 2011).



## 9. STATELESS MINORS

### 9.1. CHILDREN BORN STATELESS IN EU MEMBER STATES, NORWAY<sup>77</sup> AND GEORGIA<sup>78</sup>

Some EU Member States facilitate access to their nationality for children born stateless in their territory. The large majority facilitate access to nationality through the application of the principle of *ius soli*,<sup>79</sup> which is applied automatically at birth, or subject to certain conditions and modalities. Other EU Member States facilitate access to nationality under different procedures. However, in most EU Member States, there are gaps in the legal framework that mean some children born stateless on their territory cannot access nationality. In 20 EU Member States,<sup>80</sup> as well as in Norway and Georgia, a child born stateless may obtain the nationality of that country under different circumstances and conditions.

#### Maia

Maia is 15 years old and was born in Russia. Her mother died after the family moved to Georgia. Due to the unregistered marriage of her parents, Maia did not have any identity documents and could not prove her relationship with her father or use his surname. Nor could she benefit from State services, which made her childhood and life difficult. Due to lack of documentation, she attended classes but could not get a certificate of secondary education. She was very upset to learn that she was the only one in the class who was not given a computer within the government-funded programme. Maia's family, having insufficient income, found it difficult to buy the books, pay for medical services, etc. Maia's father was in despair, not knowing what to do. Within the state implemented a 'door to door' campaign of identification and documentation of stateless persons, Maia was assisted to obtain the necessary documentation: paternity was established, she got a new birth certificate, indicating her father's data and determining her Georgian citizenship. Maia has always been dreaming of becoming a doctor. Now her dream can come true.

For example, in the Netherlands, a stateless child can obtain citizenship after three years of legal residence. However, due to amendments to the Netherlands Nationality Act and the Passport Act under review by the Senate,

this requirement could change to five years of 'stable and principle residence' in the country.

Several EU Member States require the child to be born on their territory to parents legally residing in that EU Member State. In Hungary, until proven otherwise, children born in Hungary to stateless parents residing in Hungary shall be regarded as Hungarian citizens and granted citizenship. In the Czech Republic, a stateless child born in the country obtains Czech citizenship, provided both parents are stateless and at least one of the parents has legal residence longer than 90 days.

In Spain, according to the Civil Code, any child born to foreign parents in the country is considered a Spanish citizen by birth if neither parent has nationality or if none of their countries of nationality would grant nationality to the child.

Greece applies the *ius soli* principle only for stateless children born in the country. More specifically, according to the Greek Nationality Code, "a person born on Greek territory shall acquire the Greek nationality by birth, provided that: a) they do not acquire any foreign nationality by birth, nor can they acquire such nationality by declaration of their parents to the relevant foreign authorities, if the law of their parents' nationality requires such a declaration to be submitted, or b) there are of unknown nationality, on condition that the failure to establish any foreign nationality acquired by birth is not due to their parents' refusal to cooperate".

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 their parent(s) is granted Estonian citizenship by naturalisation as of the moment of their birth, provided that their parents – whom no State recognises as its citizen – had lawfully resided in Estonia for at least five years at the moment of the child's birth. In order to renounce Estonian citizenship, the parents must submit an application before the child turns one; otherwise, the child is granted Estonian citizenship by naturalisation automatically.

In Lithuania, the child of stateless parents who legally reside in Lithuania on a permanent basis obtains citizenship independently of where they were born. The child can also obtain citizenship if they are of unknown parentage.

<sup>77</sup> Information drawn from the 2016 EMN inform, updated in 2020 and 2023.

<sup>78</sup> Information provided by GE in 2023.

<sup>79</sup> The principle that the nationality of a person is determined on the basis of their country of birth (see: European Commission, Migration and Home Affairs, Glossary, [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/ius-soli\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/ius-soli_en), last accessed on 24 March 2023).

<sup>80</sup> AT, BE, CZ, DE, EL, EE, FI, FR, HR, HU, IE, IT, LT, LU, NL, MT, PL, PT, SE, SK. In BE, according to Article 10 of the Belgian Nationality Code, a child born in Belgium obtains Belgian nationality by attribution, which under the Belgian Nationality Code gives the child access to nationality by operation of the law (also known as *ex lege* acquisition), if they would otherwise have no other nationality at any time before the age of 18 (or on the 'emancipation' of the child before that age). The provision thus applies not only to children who are stateless at birth but also to (rarer) situations where they may become stateless before they reach the age of 18 or are emancipated. Unlike other provisions in the Belgian Nationality Code, there is no requirement to have a residence permit to be granted nationality in these cases. The provision applies even if the whole family is residing unlawfully in Belgium. With the new wording of Article 10 of the Belgian Nationality Code, it is clear that the Family Court (responsible for granting stateless status) must not first recognise the child as a stateless person in order for the civil registrar to apply Article 10. In EE, this is subject to conditions stipulated in Article 13 of the Citizenship Act. In FR, it applies to children born in France to stateless parents or parents who cannot pass on their nationality. In HR, this happens only if the parents are unknown, of unknown citizenship, or stateless. In IE, a person born on the island of Ireland is an Irish citizen from birth if they are 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 newborn infants, unless the contrary is proved (Section 10). In IT, the law grants the recognition of citizenship to those born in Italy who cannot acquire foreign citizenship from either parent (Article 1, Law No 91/1992). According to the Italian law, a citizen is anyone born in Italy whose parents are both stateless, or who are unable to follow their parents' nationality according to the law of the State to which they belong or who are foundlings where it is impossible to prove their possession of another nationality. In LU, this happens even when the parents are stateless or cannot transfer their nationality to the child. In MT, in accordance with the Maltese Citizenship Act, a person shall be entitled, on making application to the minister in the prescribed manner, to be granted a certificate of naturalisation as a citizen of Malta if they satisfy the minister that they are and always have been stateless, and that they were born in Malta. They shall not be so entitled if they have not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or have either been convicted in any country of an offence against the security of the State or sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.



In Latvia, the parent who registers a newborn is required to have lawful residence in Latvia. The newborn child can be registered as a 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 they were registered as a stateless person and afterwards claimed 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 has been resident for at least five years before the birth.

In Slovenia, the administrative unit responsible for citizenship application may, under the UN Convention on the Rights of the Child, grant Slovenian citizenship to a child born in Slovenia if citizenship is not acquired through their parents and where such decision is in the best interests of the child.

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

Austria in general does not apply the principle of *ius soli*, with the exception of foundlings up to the age of six months. A stateless child born in Austria can apply for citizenship upon turning 18 under simplified requirements, but only if several other criteria are met and within a three-year-window.

In Norway, stateless children born in Norway who apply for citizenship prior to turning one year old, have an immediate right to Norwegian citizenship, as long as the child's parents have applied and meet the conditions for a permanent residence permit or Norwegian nationality. The same rule applies if, during the previous three years, the child's parents had the right to residence under European Economic Area (EEA) regulations. Finally, stateless applicants born in Norway, who are residents in Norway at the time of their citizenship application and who have had permanent residence in Norway for three years, have a right to Norwegian citizenship. An actual residence permit is not required for this period, but the applicant cannot have been outside the country for more than seven months in the previous three years. Stateless applicants born in Norway who have reached 18 years old also have less strict waiting period rules (quarantine time) for applying for citizenship than other immigrants after criminal offences. Other requirements cannot be set out for stateless persons born in Norway. Stateless children who are born outside of Norway are exempt from the residence period requirement for the citizenship application but must either have a permanent residence permit or meet the requirements, which may require legal stay in Norway for as long as five years. Stateless children born outside Norway are exempt from the requirement that they must be over 12 years old to apply for citizenship on independent grounds.

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 they: a) have a permanent residence permit, right of residence or residence

card in Sweden; b) have lived two years in Sweden; and c) have not yet turned 18.

In Georgia, a child shall obtain Georgian citizenship based on the principle of *ius solis*, if: a) they are born through extracorporeal fertilisation (surrogacy) in Georgia and neither country of citizenship of their parents recognises them as citizens; b) they are born in the territory of Georgia and their parents have been recognised as stateless in Georgia; c) they are born in the territory of Georgia and one of the parents is stateless and the other parent is unknown; d) a minor who is living in Georgia and both of whose parents are unknown is deemed a Georgian citizen unless proved otherwise.<sup>81</sup>

## 9.2. CHILDREN BORN IN EXILE

One of the major problems that the EU is facing as a result of the latest mass inflows due to different migration crises is the large numbers of children who are born during the journey from their parents' countries of origin/residence to the EU. Most of these children do not have travel documents or even birth certificates. Additionally, a high number of children arrive in the EU without documentation. Despite the relevance of the issue, there is little information on how countries deal with these undocumented children.

Practices to address these issues vary across the EU Member States, Norway and Georgia.

Hungary, Lithuania, Luxembourg and Slovenia reported 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 recognised as refugees or in case of statelessness or unclear citizenship status (after evaluation). All children born in Austria, irrespective of their migration status, are issued a birth certificate. Stateless persons will be issued documents in the asylum procedure, such as a temporary residence permit for the duration of the procedure, a travel document where status has been granted, or a document regarding tolerated stay. However, the latter will only be issued to persons not removable through no fault of their own and a high threshold of substantiation is applied in this respect.<sup>82</sup>

In Belgium, children arriving without documents will be issued a birth certificate if they are recognised as refugees or stateless.

In the 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. If they successfully apply for stateless status, they get a long-term visa and a travel identity document. Even if they do not request international protection, they can be granted a travel identity document under certain conditions.

In Greece, all children born in the country, irrespective of their migration status, are issued a birth certificate.

In Germany, the authorities issue the required permission to remain pending the asylum decision, or a residence permit for the child in line with the respective stage of the procedure, in accordance with German refugee and residence law.

<sup>81</sup> The Organic Law on Citizenship of Georgia defines an 'unknown parent' as "a parent whose identity and/or citizenship is unknown".

<sup>82</sup> Information provided by the UNHCR on 13 December 2019.

Finland uses the information that the parents provide in the course of their immigration procedure. This personal information cannot be confirmed by the authorities. However, in Finland, citizenship can be acquired on the basis of the *ius soli* principle in certain cases: if the child is unable to acquire citizenship through their parents, or the citizenship of the child or the child's parents is unknown.<sup>83</sup>

France reported that such situations rarely occur, although it is not possible to determine the number of cases. For those under OFPRA protection, children who entered France without documents will be issued a birth certificate. In other cases, French courts can declare a birth or determine a child's civil status.

In Italy, the legal status of minors follows that of their parents, thus the possibility of granting any type of document to children born during the journey to the EU depends on the legal status given to their parents. In the absence of parents, Law No 47 of 7 April 2017 provides specific protection for unaccompanied minors, allowing the documentation concerning the minor's residence to be granted by the Youth Court.

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

### 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. Although 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 in 2014.

Latvia can register the birth of a child born outside of Latvia if a medical certificate issued by a medical institution or a physician is drafted and the birth of the child is not registered in their country of birth. The Netherlands only allows for children born outside the Netherlands who do not have a birth certificate to apply for a judicial declaration that states the particulars of the birth. This judicial declaration substitutes for a birth certificate. Sweden only issues documents if the child is granted a residence permit in Sweden. In the Slovak Republic, the minor is entitled to obtain tolerated stay or the same status as their parents. In a landmark case in May 2022, a Spanish judge granted Spanish nationality to a child born en route from Morocco to Spain to prevent her from becoming stateless.<sup>84</sup> This was done in view of the best interests of the child and to ensure her access to fundamental rights like education, healthcare, privacy and family life.

Norway does not grant a Norwegian birth certificate to people born outside of Norway, but grants documentation if the child is recognised as a refugee (refugee travel document) or obtains a residence permit based on humanitarian grounds. In these cases, an aliens' passport will be issued. Portugal reported that it has never been confronted with this situation.

In Georgia, the birth of a child whose parents are not citizens of Georgia but who is born in the territory of Georgia is registered without indicating their citizenship. The birth certificate is issued at the request of a parent.

## 9.3. STATELESSNESS DETERMINATION PROCEDURE FOR CHILDREN BORN IN EXILE OR STATELESS CHILDREN ARRIVING IN THE TERRITORY OF EU MEMBER STATES

None of the reporting countries have any specific statelessness determination procedures tailored to these types of circumstances.

Belgium, the Czech Republic, Finland, France, Hungary, Latvia, Lithuania, Luxembourg, Slovenia, Sweden, Georgia and Norway use the same determination procedure as for adults. Germany makes the determination as part of another type of administrative procedure (i.e. asylum application, residence application, citizenship).

In Italy, the determination of a child's statelessness may be carried out in a court of law. In Croatia, the determination takes place in an ad hoc procedure. In Finland, the authorities are obliged to determine the citizenship of each child born in the country. The Digital and Population Data Service Agency or the State Agency of Åland must request the Finnish Immigration Service to determine the citizenship status of a child born in Finland and registered in the population information system no later than three months after it has received information about the child's birth, when: a) the mother of a child born out of wedlock is not a Finnish citizen; and b) paternity has not been established or the father is confirmed to be a citizen of a foreign country; c) neither of the parents of a child born in marriage is a Finnish citizen and they do not have the citizenship of the same foreign country; d) neither of the parents of a child born in wedlock is a Finnish citizen and they have the citizenship of the same foreign country, but according to the legislation of the parents' country of citizenship, the citizenship of the parents is not transferred directly to the child by law. The request of statelessness determination is not necessary if the child's citizenship status has been reliably verified otherwise.

## 9.4. LEGAL REPRESENTATION FOR CHILDREN

Most EU Member States guarantee the legal representation of unaccompanied minors during administrative proceedings.

<sup>83</sup> Section 9 and Section 12 of the Nationality Act.

<sup>84</sup> Court Ruling 341/2022, 11 May of the Provincial Court of Gipuzkoa, see: <https://www.poderjudicial.es/stfs/TRIBUNALES%20SUPERIORES%20DE%20JUSTICIA/TSJ%20Pais%20Vasco/JURISPRUDENCIA/AP:%20Guip%20C3%BAzcoa%2011%20mayo%202022.pdf> (in Spanish only), last accessed on 28 March 2023.

In seven EU Member States,<sup>85</sup> Georgia and Norway, a representative (guardian or ad hoc administrator) is appointed when an unaccompanied minor enters the country, but not only for the determination procedure. Legal representation is also provided.

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

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

In Germany, unaccompanied minors are placed into the official custody of the Youth Welfare Office (*Jugendamt*) and a guardian is appointed to guarantee their legal representation. If necessary, the Youth Welfare Office appoints a lawyer.

### 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 Andreea's birth could not be registered. 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 is 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".

Hungary appoints an ad hoc guardian to represent the unaccompanied minor during the statelessness determination procedure. The unaccompanied minor is also entitled to consult a legal representative.

In Italy, Legislative Decree No 220/2017 (subsequent to Law No 47/2017 on unaccompanied minors) has assigned competence to the Juvenile Court of Justice to open the guardianship and appoint the guardian, so as to bring together all procedural steps courts relating to unaccompanied foreign minors before the same court.<sup>86</sup>

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

In Georgia, *ex officio* guardianship is provided during the procedure, appointed by the Social Service Agency. A minor enjoys free legal aid and representation during the citizenship determination procedure, provided by the Legal Aid Service (a State agency that provides free legal assistance for socially vulnerable groups). Croatia, Poland and Norway appoint a legal representative in cases of application for international protection.

## 9.5. BURDEN OF PROOF IN THE STATELESSNESS DETERMINATION PROCEDURE

Germany is the only country whose authorities have discretionary power to make the determination. In the framework of the discretionary decision to identify statelessness, the competent authority will take into account an assumed lack of evidence with regard to the concerned minor. This is done in the best interests of the child.

In Latvia, the burden of proof is shared. The Office of Citizenship and Migration Affairs works in close cooperation with the applicant and supports them to gather all necessary documentation.

In Georgia, the burden of proof is shared between the applicant and the PSDA. In practice the Citizenship and Migration Division of the PSDA works in close cooperation with the applicant and supports them to collect the necessary documentation. For example, to obtain the information necessary to make a decision on determining stateless status, the PSDA may use the assistance of Georgian diplomatic missions and consular offices abroad, other public authorities, and international organisations or NGOs.

<sup>85</sup> FI, IT, LT, LU, LV, SE, SI. In IT, in all administrative or judicial proceedings. More specifically, in Law No 47/2017 the procedural and procedural guarantees to protect a foreign child are implemented through the guarantee of effective and psychological assistance of unaccompanied foreign minors in every stage and degree of the proceedings (Article 15) and recognition of the right of the minor to be informed of the opportunity to appoint a trusted legal counsel, including through the appointed guardian or legal representatives of the host communities, and to avail themselves of legal aid in every stage and degree of the proceedings (Article 16).

<sup>86</sup> Article 16 of Law 47/2017 adds para 4quater to Article 76 of Presidential Decree 115/2002 and provides expressly: "Unaccompanied foreign minors involved in any capacity whatsoever in judicial proceedings have the right to be informed of the desirability of appointing a trusted lawyer (...), and to avail oneself, in accordance with the legislation in force, of legal aid at any stage and level of the proceedings".



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Croatia <https://emn.gov.hr/>

Cyprus [www.moi.gov.cy/moi/crmd/emnncpc.nsf/home/home?opendocument](http://www.moi.gov.cy/moi/crmd/emnncpc.nsf/home/home?opendocument)

Czechia [www.emncz.eu](http://www.emncz.eu)

Denmark [www.justitsministeriet.dk/](http://www.justitsministeriet.dk/)

Estonia [www.emn.ee/](http://www.emn.ee/)

Finland [www.emn.fi/in\\_english](http://www.emn.fi/in_english)

France [www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM2](http://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM2)

Germany <https://www.bamf.de/EN/Themen/EMN/emn-node.html>

Greece <http://emn.immigration.gov.gr/en/>

Hungary [www.emnhungary.hu/en](http://www.emnhungary.hu/en)

Ireland [www.emn.ie/](http://www.emn.ie/)

Italy [www.emnitalyncp.it/](http://www.emnitalyncp.it/)

Latvia [www.emn.lv/en/home/](http://www.emn.lv/en/home/)

Lithuania [www.emn.lt/en/](http://www.emn.lt/en/)

Luxembourg <https://emnluxembourg.uni.lu/>

Malta <https://emn.gov.mt/>

The Netherlands <https://www.emnnetherlands.nl/>

Poland <https://www.gov.pl/web/europejska-siec-migracyjna>

Portugal <https://rem.sef.pt/>

Romania <https://www.mai.gov.ro/>

Spain <https://extranjeros.inclusion.gob.es/emn-Spain/>

Slovak Republic <https://emn.sk/en/>

Slovenia <https://emm.si/en/>

Sweden <http://www.emnsweden.se/>

Norway <https://www.udi.no/en/statistics-and-analysis/european-migration-network---norway>

Georgia [https://migration.commission.ge/index.php?article\\_id=1&clang=1](https://migration.commission.ge/index.php?article_id=1&clang=1)

Republic of Moldova <http://bma.gov.md/en>