STATELESSNESS
INDEX

THEMATIC BRIEFING | SEPTEMBER 2021

Statelessness determination and protection in Europe: good practice, challenges, and risks

The Statelessness Index

The Statelessness Index (https://index.statelessness.eu/) is an online comparative tool developed and maintained by the European Network on Statelessness (ENS),[1] that assesses European countries' law, policy, and practice on the protection of stateless people and on the prevention and reduction of statelessness against international norms and good practice. ENS has worked with its members to research and compile comparative information on statelessness in 27 countries in Europe so far, with some further countries to be added in future annual updates. For information on the Statelessness Index methodology, including how country data is collected and analysed, see: (https://index.statelessness.eu/about/methodology).

How is statelessness determination and status assessed in the Index?

The Statelessness Index uses a set of benchmarks to assess countries' law, policy, and practice on statelessness determination and the protection status of stateless people. These benchmarks are drawn from international and regional human rights standards, soft law, relevant reports, and consultation with experts. The benchmarks and their sources can be viewed in more detail in the 'List of norms and good practices' available on the Statelessness Index website (https://index.statelessness.eu/about/methodology).

The Statelessness Index analyses whether countries have a definition of a stateless person that is aligned with the 1954 Convention relating to the Status of Stateless Persons, whether they have a dedicated statelessness determination procedure leading to a dedicated statelessness status, and whether adequate training is provided to government bodies, lawyers, and the judiciary. Different benchmarks are then assessed depending on whether the country has:

1. **A dedicated statelessness determination procedure, leading to a dedicated statelessness status;**
2. **Procedures in which statelessness can be identified or other routes through which stateless people could regularise their stay or access their rights; or**
3. **A dedicated statelessness status without a formal procedure to determine statelessness.**

This briefing presents good practice and barriers to the protection of stateless people across the 27 Statelessness Index countries. Section 3 focuses on countries that have a dedicated SDP leading to a dedicated statelessness status (Group 1 in the Statelessness Index). Other Sections draw on examples from all 27 countries. The country examples highlighted throughout this briefing are illustrative and all sources can be found in the country surveys available to download from the Index website. The Statelessness Index data is updated on an annual basis, so the overall assessment may change from year to year. This briefing was published in September 2021 based on data which is accurate as of January 2021.

1. INTRODUCTION

To be stateless is to have no nationality. For the millions of stateless people around the world, this can mean denial of basic rights most people take for granted: to go to school or work, get married or register the birth of your child, to legally 'exist'.[5] In Europe, statelessness affects both recent migrants and those who have lived in the same place for generations.[6] It can be intertwined with other root causes of displacement,[7] such as the persecution of minority groups, armed conflict, discrimination and gaps in nationality laws, and deprivation of nationality practices. Many in Europe are also stateless *in situ*, or "in their own country".[8] *In situ* statelessness is often linked to State succession and discriminatory laws or practices against certain communities trapped in intergenerational statelessness. For example, thousands of Romani people in Europe lack any identification documents to assert their nationality, and hundreds of thousands of people among Russian-speaking minority groups are excluded from citizenship in the Baltic States.[9]

The only way to resolve statelessness is to acquire a nationality. However, it is important to distinguish between the solutions required to address *in situ* statelessness and statelessness in a migratory context.[10] For people who are stateless *in situ*, who have long-established ties to the countries where they are living, the solution is not to grant a protection status that prolongs their statelessness. Instead, States should resolve *in situ* statelessness by confirming or granting nationality to those who lack it, including through targeted nationality campaigns or nationality verification efforts. States should also work to identify and eliminate discriminatory laws, policies, and practices that perpetuate intergenerational (risk of) statelessness affecting minoritized and marginalised populations.

In the case of stateless migrants or refugees, States should first identify who is stateless on their territory, formally determine their statelessness (giving primacy to any asylum claim), and then grant them an adequate protection status and rights in line with the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and international human rights law.[11] The determination of statelessness is best fulfilled through a dedicated statelessness determination procedure (SDP) that is fair, efficient, and easily accessible, in line with UNHCR guidelines.[12] Statelessness status should include a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements they cannot meet because they are stateless, and other rights protected by international law. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.

Stateless person

A stateless person is someone 'who is not considered as a national by any State under the operation of its law'.[2] This definition is part of customary international law and has been authoritatively interpreted by UNHCR as requiring 'a mixed question of fact and law'.[3]

Person at risk of statelessness

A person who is not stateless but is at risk of becoming so, a person whose statelessness has not yet been determined but there are indications that they may be stateless, or a person whose statelessness may become evident over time. Hidden statelessness can come to light in an immigration detention context, as well as at different stages in migration or international protection procedures.

In situ stateless populations

People who are stateless *in situ* are commonly in a non-migratory situation. They may be stateless in "their own country",[4] a country they have a significant attachment to (which is often the country where they were born and have always lived), and do not have significant ties to other countries. Statelessness *in situ* often occurs in the context of State succession or is perpetuated due to discriminatory laws or practices against certain communities.

Establishing a dedicated SDP helps States assess the size of the stateless population on their territory and the issues they face, as well as adequately identifying and protecting stateless migrants and refugees, thereby both fulfilling their obligations under international law and providing a comprehensive, sustainable solution for individuals who cannot return to their country of origin or former residence. Most countries in Europe are yet to introduce a dedicated SDP resulting in a failure to uphold the rights of stateless people, leaving many facing years of uncertainty, social exclusion, risks of arbitrary immigration detention, and other human rights violations. Although almost all the 27 countries in the Statelessness Index are party to the 1954 Convention,[13] there continues to be a gap between accession and implementation of these obligations in domestic law and practice.

This briefing summarises how law, policy, and practice in the 27 countries featured in the Statelessness Index perform against international norms and good practice on statelessness determination and the protection of stateless people, and recommends key actions needed to improve the protection of stateless migrants and refugees in Europe.

2. INTERNATIONAL NORMS ON DETERMINATION OF STATELESSNESS

In determining whether a person is stateless and should be entitled to protection, States must refer to the definition of a stateless person in the 1954 Convention and consider UNHCR guidance on the interpretation of this definition.[14] In 2014, UNHCR published its Handbook on Protection of Stateless Persons, intended to assist governments, policy and decision makers, international organisations and civil society in interpreting and applying the 1954 Convention.[15]

Under the 1954 Convention and international human rights law, States must ensure that stateless people on their territory have access to juridical rights, the right to work, economic and social rights including housing, education and social security, freedom of movement, identity and travel documents, facilitated naturalisation, and protection from expulsion. As States cannot meet these obligations towards stateless people without a mechanism to identify who on their territory is stateless, the obligation to identify and determine statelessness is implicit in the 1954 Convention.[16] This obligation has been reiterated by UNHCR,[17] the UN Human Rights Committee,[18] and the European Court of Human Rights.[19]

Of the 25 countries in the Index that have acceded to the 1954 Convention,[20] 15 entered reservations that impact on the rights of stateless people.[21] These most commonly impact on the right to welfare assistance,[22] and the right to identity documents.[23] Cyprus and Poland are the only two Index countries that are not yet States parties to the 1954 Convention.

Article 1, 1954 Convention relating to the Status of Stateless Persons

Definition of the term "Stateless person"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

3. STATELESSNESS DETERMINATION AND PROTECTION IN EUROPE

Only ten countries in the Statelessness Index have established dedicated procedures to identify and determine statelessness (SDPs), which lead to a statelessness status.[24] **France**, **Hungary**, **Latvia**, and **Moldova** are among the countries assessed most positively on this theme in the Statelessness Index. **Bulgaria**, **Italy**, **Spain**, **Ukraine**, and the **United Kingdom** also have SDPs leading to a statelessness status but are assessed less positively due to shortcomings in their procedures. For example, in **Bulgaria**, the protection afforded to recognised stateless people is significantly lower than the standard established by the 1954 Convention. Spain's SDP is established by Royal Decree, but procedural rules are not set out in law. **Ukraine** introduced an SDP in June 2020, and the bylaws required to operationalise the procedure were adopted in April 2021. The **United Kingdom** bars some stateless people from statelessness status due to exclusion criteria that go beyond those permitted by the 1954 Convention. In **Italy**, although there is an administrative and a judicial procedure, the parameters for determining statelessness are not clearly established in law. **Switzerland** has an administrative procedure to determine statelessness, but it is not formalised in law.

In **Belgium** the family courts can determine statelessness, but procedural safeguards are lacking, and determination does not lead to a residence permit nor 1954 Convention rights, so this cannot be considered an SDP. In **Albania** and **Serbia**, there is a statelessness status in law but no procedure to determine this. Almost all other countries in the Statelessness Index have mechanisms through which some stateless people may be able to have their statelessness identified *ad hoc* or access a residence permit and some rights, for example through immigration, international protection, humanitarian, or nationality related procedures. However, their purpose is not to determine statelessness, resulting in significant protection gaps that are further explored in Section 3.3. In **Portugal**, some stateless people may be able to regularise their stay on the territory in specific scenarios, but not on the basis of statelessness.

Existence of a dedicated statelessness determination procedure: How Statelessness Index countries compare

++ POSITIVE

- FRANCE
- HUNGARY
- LATVIA
- MOLDOVA

+ SOMEWHAT POSITIVE

- BULGARIA
- ITALY
- SPAIN
- UKRAINE
- UNITED KINGDOM

+/- POSITIVE AND NEGATIVE

- SWITZERLAND

- SOMEWHAT NEGATIVE

- ALBANIA
- AUSTRIA
- BELGIUM
- CROATIA
- CYPRUS
- CZECH REPUBLIC
- GERMANY
- GREECE
- IRELAND
- MALTA
- NETHERLANDS
- NORTH MACEDONIA
- NORWAY
- POLAND
- SERBIA
- SLOVENIA

-- NEGATIVE

- PORTUGAL

3.1. Definition of a stateless person

Article 1(1) of the 1954 Convention, which stipulates that a person is stateless if they are *"not considered as a national by any State under the operation of its law"* is binding on all States parties and is deemed part of customary international law.[25] UNHCR has published extensive guidance on the interpretation of this definition, including that an assessment of statelessness should be a *"mixed question of fact and law".*[26] This means that the assessment should examine both the letter of the law and factual circumstances, including how the competent authorities apply the law in practice. General principles of international law establish that it is for each State to determine who are its nationals.[27] The use of the term *'de facto stateless',* to describe a person who should be considered a national in accordance with a State's law but is not in practice recognised as a national under the operation of that law, has no basis in international law and risks permitting States to avoid their obligations towards stateless people by wrongfully excluding them from the protection of the 1954 Convention. As UNHCR has clarified, *"it is the subjective position of the other State that is critical in determining whether an individual is its national for the purposes of the stateless person definition".*[28]

Good practice

France, **Greece**, **Moldova**, and **Ukraine** have incorporated a definition of a stateless person in national law that is in line with the 1954 Convention. Other countries, including **Italy**, **Belgium**, **Czech Republic**, and **Portugal** have not defined the meaning of a stateless person in law, but the 1954 Convention has direct effect so this applies in domestic law.

GOOD PRACTICE

Incorporation of the 1954 Convention definition in French law

French law explicitly refers to the 1954 Convention definition, establishing that statelessness is recognised for any person who meets the definition in Article 1 of the 1954 Convention and that the provisions of the Convention govern their treatment.[29]

Challenges relating to the definition of a stateless person

Stateless person not defined in law

Austria and **Ireland** have not fully incorporated the 1954 Convention into domestic legislation, even though the Convention does not have direct effect in national law, therefore there is no definition of a stateless person applicable in domestic law. The absence of a legal definition is a serious barrier for stateless people seeking protection. For example, Irish legislation contains various references to stateless persons, but the lack of a clear definition means that statelessness is only considered in an *ad hoc* way by the competent authorities, and there is no official guidance on how to determine or claim statelessness. **Cyprus** and **Poland** are not parties to the 1954 Convention and have not defined a stateless person in their domestic law, but there are several references to stateless persons in their legislation, which creates confusion.

Narrow definition of a stateless person

Some countries have a definition of a stateless person in law that is narrower than Article 1(1) of the 1954 Convention. For example, **Bulgaria**, the **Netherlands**, **Serbia**, **Hungary**, **Latvia**, and **Slovenia** define a stateless person as someone who is not considered as a national by any State 'according to its legislation' or 'under its laws' (or a similar formulation), rather than 'under the operation of its law', removing the vital consideration of how laws are applied in practice by the authorities of the relevant State.

Furthermore, the definition of a stateless person in the Spanish version of the 1954 Convention is more restrictive than the English and French versions, which has led to the courts in **Spain** issuing judgments stating that a stateless person is a person who does not have the right to acquire a nationality.[30]

Grounds for exclusion that go beyond the 1954 Convention

The 1954 Convention only permits States to withhold protection from people excluded under an exhaustive list of grounds.[31] However, **Bulgaria**, **Hungary**, **Switzerland**, **Latvia**, and the **United Kingdom** have established grounds to exclude people from protection as a stateless person, either explicitly in the definition of a stateless person or in other provisions, which in practice unduly exclude some stateless people from the protection of the 1954 Convention.

In **Hungary**, an applicant under the SDP is automatically excluded from statelessness status if it is deemed their stay *'violates or endangers the national security of Hungary'*.[32] Until a Constitutional Court ruling in 2015, people who were not lawfully resident in Hungary were excluded from protection as a stateless person.[33] The Court's decision was later reinforced by the European Court of Human Rights, which found that limiting access to the SDP to those lawfully staying in the country prevented vulnerable stateless people from effectively accessing the protection to which they were entitled. [34]

In **Switzerland**, the authorities only recognise people as stateless if they have lost their nationality through no fault of their own (or their parents) and have no means of reinstating it.[35] The individual must also demonstrate an interest worthy of protection (*schutzwürdiges Interesse*), which means they must show that they would be in a better position if recognised as stateless, and this is interpreted very restrictively in practice.[36]

In the **United Kingdom**, the definition of a stateless person does not align with the 1954 Convention. The grounds for exclusion go further than those in the 1954 Convention, for example, people who have equivalent rights to a national in a country of former habitual residence may be treated as not stateless, rather than as stateless persons who may be able to live elsewhere.[37]

BARRIER

Far-reaching grounds to refuse statelessness status in Bulgaria

As of March 2021, under the amended Bulgarian Law on Foreign Nationals, statelessness status is refused to people whose identity documents have expired or who have been issued a removal order for irregular stay. Other grounds for refusal include lack of means of subsistence and compulsory insurance or having been convicted of a crime punishable by a sentence of at least one year.[38]

3.2. Key elements of a statelessness determination procedure

There are five key elements that must all be in place for an effective statelessness determination procedure to be established, access to protection ensured, and statelessness in the migratory context to be reduced:[39]

1. Accession to and compliance with relevant international instruments including the 1954 Convention;
2. Availability of information about the issue of statelessness and capacity of relevant competent authorities;
3. Effective determination of statelessness;
4. Adequate protection status as a consequence of determination; and
5. Facilitated route to naturalisation resolving statelessness.

An effective SDP must be accessible to all stateless migrants and refugees on the territory, must involve a fair and non-discriminatory assessment with procedural safeguards and rights of appeal, applicants must be granted protection during the procedure, and must result in a protection status for those determined to be stateless. This section examines each of these core elements of an SDP in detail, analysing how the ten countries in the Statelessness Index that have an established SDP perform against norms and good practice. The protection and rights available to stateless migrants in countries without an SDP are analysed in Section 3.3.

3.2.1. Access to the procedure

For an SDP to be fair, efficient, and non-discriminatory, it is essential that safeguards are put in place to ensure the procedure is accessible to all, and bureaucratic hurdles do not impede access to protection.[40] The relevant competent authorities, judiciary,

and lawyers should have the right expertise, with access to training and information. Access to the procedure should be facilitated at the right level for the country context (for example, centrally or locally).

Information about the procedure must be available to potential applicants in a language they understand, and this should be widely disseminated (for example online, through information campaigns, and/or individual counselling). There should be cooperation between agencies that may have contact with stateless people so potential applicants can be referred to the procedure. Safeguards in law permitting State authorities to initiate the procedure *ex officio* (on their own initiative) are also recommended.[41]

To prevent discrimination, application procedures should be flexible and allow for both written and oral submissions. If required, application forms should be simplified. Applications should be permitted in any language and/or free translation and interpretation provided to address language barriers. There should be no time limit to submit an application and no condition of lawful stay, as stateless migrants often lack the documentation required to apply for entry or residence permits.[42]

Good practice

Most countries, including **Hungary**, **Moldova**, **Spain**, **Bulgaria**, **France**, **Latvia**, **Switzerland**, **Ukraine**, and the **United Kingdom**, do not impose time limits, fees, or lawful residence requirements on SDP applicants. Applications can be made in writing and orally in any language in **Hungary** and **Moldova**. In **Bulgaria**, **France**, **Moldova**, **Spain**, **Ukraine**, and the **United Kingdom**, applications are reviewed by a centralised decision-making body, with at least some training being provided to the authorities responsible for examining statelessness claims. In **Spain**, applications can be submitted to the Asylum and Refugee Office in Madrid, as well as at police stations and immigration offices elsewhere in the country.

Barriers to access

GOOD PRACTICE

Flexible access to the SDP in Moldova

Applications to Moldova's SDP are assessed by the dedicated Statelessness and Documentation Unit under the Bureau of Migration and Asylum. The procedure can be initiated orally or in writing, by the applicant or *ex officio*. Interpreters are made available if required. There is no specific application form, but the application must contain a clear and detailed description of relevant facts and evidence. There is no application fee, applicants are not required to be lawfully staying in the territory, and there is no time limit to submit an application. There is cooperation between relevant authorities and any State authority receiving an application must refer it to the Statelessness and Documentation Unit for examination.[43]

Documentation requirements

Some countries impose documentation requirements on applicants that significantly hinder access to the SDP and protection. In **Latvia**, applicants must provide an identity document and proof of inability to acquire another nationality (although there

is a safeguard in the law permitting a decision to be made based on available documentation). In **Bulgaria**, the competent authority is reported to discontinue the SDP if applicants do not provide certain documents within a very short timeframe (usually three days). In **France**, applicants must submit a specific written form in French accompanied by two recent photographs and sometimes other documentation. Such requirements hinder access to SDPs and could prevent people accessing the protection they are entitled to due to the nature of their statelessness, which can mean they cannot access certain documents or forms of identity.

Lack of information, language barriers and complex procedures

Language barriers are an issue in most of the countries analysed. In **Bulgaria**, **France**, **Italy**, **Latvia**, **Spain**, **Switzerland**, **Ukraine**, and the **United Kingdom**, applications must be made in an official language. In **Bulgaria** and **Switzerland**, the application can also be made in another language accompanied by a certified translation, but may result in significant cost to the applicant.

Another common challenge is a lack of information about how to access and apply for statelessness status. In **Bulgaria** and **Switzerland**, the authorities do not provide information about how to apply under the SDP, although UNHCR and civil society have published resources to assist stateless people or their lawyers in submitting an application. In **France**, information is only available online and detailed guidance is only in French. Similarly, in **Latvia** information is only provided in Latvian, although it can be accessed both online and by phone. In the **United Kingdom**, the SDP application form is long and complex and only available in English. Similarly, in **Spain**, the application form is only available in Spanish and contains complex legal questions with limited space provided for answers.[44]

Ex officio initiation and cooperation between agencies

In most countries, it is left to affected individuals to initiate the SDP on their own behalf, which is particularly problematic considering the lack of information about procedures and how to apply. Many stateless people are unaware of the existence of an SDP or may fear approaching public authorities. Stateless women, children, people with disabilities, older people, marginalised and minoritized groups are particularly disadvantaged in such circumstances if State authorities do not put measures in place to guarantee substantive equality of access to procedures and protection.

In **Bulgaria**, **France**, **Hungary**, **Italy**, **Latvia**, **Switzerland**, and **Ukraine**, the SDP cannot be initiated *ex officio* by the authorities, and in **Spain** and the **United Kingdom** *ex officio* initiation is possible but is rarely used in practice. Few countries have formal mechanisms for referral or cooperation between agencies.

BARRIER

Barriers to accessing the SDP in the UK

In the United Kingdom, applications must be made in English in writing, via a complicated online form, and cannot be made orally to a public official. The only guidance on how the application will be considered is in the form of instructions to the decision-maker, not to the applicant, and these are only available in English. The form itself is unclear and repetitive in parts. There are significant barriers to legal representation, making the application process very challenging for many. The competent authority is obliged to consider all applications, but there is no general obligation to initiate the procedure *ex officio*. State authorities may refer people to the SDP, but rarely do so and there is no evidence of routine referrals to the SDP from immigration detention, for example. A lack of coordination and cooperation between government agencies coming into contact with stateless people has been reported.[45]

3.2.2. Assessment of applications

The assessment of SDP applications must be fair and non-discriminatory. This means ensuring fair evidentiary requirements, implementing measures to prevent discrimination against disadvantaged groups, and providing clear guidance to support high-quality decision-making.

As statelessness determination requires a mixed assessment of fact and law, all available evidence should be considered, including about the applicant's personal history, the nationality laws of relevant countries, and their implementation in practice.[46] Evidence can be both oral or written and could include testimonies from the applicant or members of the community, responses from foreign authorities about the nationality status of the applicant, country of origin information, information provided by UNHCR, identity and travel documents (even if expired), documents relating to nationality applications, school and medical certificates, or identity documents from family members.[47] Enquiries should be limited to States with which the applicant has a relevant link, especially through birth on the territory, descent, marriage, adoption, or habitual residence.[48] States must take into account the primacy of any asylum claim and should never contact the authorities of a State where an applicant alleges a well-founded fear of persecution, until any asylum claim is fully resolved.[49]

The assessment must take into consideration that determining statelessness requires proving a negative – that the applicant is not considered a national by any State under the operation of its law. It is generally much easier for State authorities to establish a positive - that a person is a national – than it is for a stateless person to prove a negative - that they are not a national. This power imbalance should be considered when assessing the available evidence. Due to the nature of their status, stateless people already face significant challenges to acquire documentary evidence, which are often exacerbated by their circumstances, such as lack of financial means, lack of legal representation and/or support, personal histories of persecution and/or exclusion, and language barriers.

The burden of proof in the assessment should therefore be shared, so that the applicant and the authority cooperate to obtain evidence and establish the facts. It is also recommended that the standard of proof is the same as in refugee status determination procedures due to the detrimental impact of statelessness and grave consequences of an application being incorrectly rejected. This means that if it is established *'to a reasonable degree'* that the applicant is not considered a national by any State under the operation of its law, they should be determined to be stateless.[50] Under the 1954 Convention, every person is either a national of a State or stateless, so every effort should be made to prevent anyone being left in limbo and deprived of the protection of any State.[51]

States should also implement measures to prevent discrimination and guarantee substantive equality for women, children, people with disabilities, and other groups at risk of being disadvantaged in the procedure (including potentially due to multiple aspects of their identity or circumstances).[52] This should include measures to address difficulties providing testimony and documentary evidence, assuming a greater share of the burden of proof, adhering to the best interests of the child principle, and putting additional safeguards in place such as prioritising the processing of claims by children and other vulnerable groups, providing appropriately trained legal representatives, interviewers, and interpreters, for example, in child-rights-based or gender-based interviewing techniques and aware of any cultural sensitivities or relevant personal facts about the applicant, and are of the same sex as the applicant. States should also consider that nationality laws may discriminate directly or indirectly against women and other groups, and that legislative provisions which appear gender neutral may have a disproportionately negative impact on the enjoyment of the right to nationality by women and girls.

Good practice

In many countries, the assessment of statelessness falls short of international standards as clear evidentiary rules are lacking or these do not take account of the difficulty of proving statelessness. However, there is some good practice, including in **Hungary**, **Italy**, **Latvia**, and **Moldova**, where the standard of proof is the same or sometimes lower than the standard applied in refugee status determination procedures.[53] In **Latvia**, **Moldova**, **Spain**, **Ukraine**, **France**, and the judicial procedure in **Italy**, the burden of proof is explicitly shared between the applicant and the competent authority.

In **Hungary**, the standard of proof requires the applicant to 'substantiate' their statelessness and, although the burden of proof officially lies with the applicant, procedural rules require the authorities to actively contribute to establishing the facts. In **Ukraine**, the burden of proof is shared between the applicant and the competent authority, which has a duty to gather information about the applicant and can request information from other agencies. In the absence of documentary evidence, the applicant's testimony can be confirmed by third parties, and free translation and interpreting is provided if required. In **Spain**, the courts have played an important role in developing evidentiary rules for statelessness determination. The Supreme Court has stated that there is an *'obvious obligation of cooperation on the*

part of the Administration' and that it is enough for applicants to *'manifest their lack of nationality'*.[54]

Some countries have introduced measures to prevent discrimination against children and people with disabilities, but there is little or no evidence of effective measures to guarantee substantive equality for women and other groups at risk of (multiple) disadvantage(s) in SDPs. **Ukrainian** law recognises the additional support needs of unaccompanied minors, people with disabilities, and people with language, literacy, or health-related barriers. For example, draft bylaws (yet to be adopted) provide for the possibility of the competent authority to carry out a home visit or visit to a medical institution to interview the applicant. In **Moldova**, minors may be assisted by a representative, parent, or guardian, and people with disabilities can be accompanied by a carer.

GOOD PRACTICE

Flexible evidentiary requirements in Latvia

The standard of proof in the Latvian SDP is the same or lower than in the asylum procedure. The burden of proof is shared between the applicant and the competent authority (the Office of Citizenship & Migration Affairs (OCMA)). The law also provides that the relevant OCMA decision-maker may decide to grant statelessness status even if the applicant is unable to submit any of the required documents due to reasons beyond their control.[55]

Barriers

Burden of proof on the applicant

Despite the international norms and good practice recommending a shared burden of proof when determining statelessness, several countries, including **Switzerland**, the **United Kingdom**, and **Italy** place the burden of proof on the applicant. In **Italy**, the burden of proof is shared in the judicial procedure but lies with the applicant in the administrative procedure. In the **United Kingdom**, guidance requires the authorities to assist vulnerable applicants, such as children, to gather evidence, but this is not implemented consistently. In **Italy** and **Switzerland**, there are no measures to address the potential evidentiary challenges in proving their statelessness faced by (multiply) disadvantaged groups, resulting in a significant risk of discrimination.

High standard of proof

In **Switzerland**, the **United Kingdom**, and **France**, the standard of proof is higher in the SDP assessment than in refugee status determination procedures. In the **United Kingdom**, applicants are required to *"establish that they are not considered a national of any State to the standard of the balance of probabilities (that is more likely than not)"*. This approach is highly problematic and creates significant obstacles for stateless people to access protection.[56] In **Switzerland**, the standard of proof in the SDP assessment is *'full proof'*, rather than the lower standard applied in refugee status determination.

BARRIER

High standard of proof in Switzerland

By default, the standard of proof applied to the determination of statelessness in Switzerland is *'full proof'*. Unlike in the asylum procedure, where a lower standard of proof is applied, there is no provision in law to acknowledge the challenges faced by applicants to evidence their statelessness. The Swiss courts have endorsed this higher standard of proof in recent judgments.

Lack of child rights-based statelessness determination procedures

SDPs are also essential to identify stateless children among migrant populations and ensure that the rights they are entitled to are upheld until they acquire a nationality. However, procedures are usually applied to children without adaptation from the general SDP, and the burden of proof remains with the child. It is often unclear whether unaccompanied children are provided with a guardian or granted legal aid in any of the countries that have a dedicated SDP (except **France**, **Hungary**, and **Moldova**).[57]

3.2.3. Procedural safeguards

There are several minimum procedural safeguards that must be provided for in an SDP. Applicants should be offered free legal aid, interpreting, and translation services on the same basis as asylum applicants. They should have the right to an individual interview and necessary assistance to ensure they can present their situation and clarify any questions material to their application.[58] In particular, for child applicants, there should be child-rights-based adaptations and procedural safeguards in place, including *ex officio* initiation of the SDP, prioritisation in the processing of claims and provision of adequately trained legal representatives, interviewers, guardians and interpreters (where appropriate).[59] The determination should be carried out expeditiously and decisions issued in writing within an established, reasonable time limit of no longer than six months (or twelve months in exceptional circumstances).[60] There should be a mechanism for cross-referral between the SDP and asylum procedures (giving primacy to the asylum claim), and procedures to recognise or grant nationality, should an entitlement to nationality become apparent during the procedure. The SDP should be subject to regular quality-assurance audits and UNHCR should be guaranteed access to the procedure as an additional safeguard.

Good practice

In **Hungary** and **Ukraine**, free legal aid is available to all applicants at all stages of the procedure. In Hungary, interviews are mandatory, interpreters are provided if required, and legal aid representatives are permitted to attend and comment. Interviews are also mandatory in **Ukraine**, **Moldova**, and **Bulgaria**, and interpretation is available in most countries during the interview (except in **Bulgaria**, **Italy**, and **Switzerland**). In **Ukraine** and **Moldova**, the authorities must examine an application within six months, although this can be extended with reasoning. In **Latvia**, there is a time limit of three months, but it is unclear whether this is adhered to in practice. In **Hungary**, the limit is 45 days, but this can be extended where there is a delay on the part of a foreign authority, which can result in lengthy delays.

In **Ukraine**, there is no referral mechanism from refugee status determination procedures to the SDP, but there is a mechanism to refer an applicant for statelessness status to the asylum procedure if grounds for asylum are identified during the SDP. There is also a mechanism to refer to a procedure to determine Ukrainian nationality if a possible entitlement emerges during the SDP. In **Bulgaria** and **Moldova**, there is no formal referral mechanism, but the asylum and SDP procedures are linked in law to protect stateless applicants from contact with the authorities of the country of origin if an asylum procedure is initiated. This is also the case in **France**, where the law establishes the primacy of asylum claims. If refugee status is granted to a stateless person in **France**, they are formally granted 'stateless-refugee' status so there is no need to initiate a separate SDP. However, if refused asylum, the SDP is not automatically initiated even if there are indications that the person could be stateless (although the authorities should inform the person about the possibility of applying to the SDP).

In **Bulgaria**, **Hungary**, **Moldova**, and the **United Kingdom**, UNHCR has a role in the procedure. In the **United Kingdom**, an internal quality assurance system requires at least one decision per examiner to be reviewed each month and UNHCR has recently undertaken and published a detailed audit of the SDP.[61]

GOOD PRACTICE

Procedural safeguards in Hungary

In Hungary, free legal aid is available to all SDP applicants with no need to meet financial eligibility requirements. Legal representatives can be present and comment in interviews, which are mandatory in all cases. Interviews are conducted with interpreters provided by the State if required. Documents can be submitted in any language and there is no requirement for a certified translation. Decisions must be given in writing with reasons within 45 days unless there is a delay on the part of a foreign authority (although in practice there can be significant delays). Quality assurance audits are conducted annually in cooperation with UNHCR.[62]

Barriers

Lack of access to legal aid

Access to legal aid varies greatly between countries with SDPs. Some offer no legal aid at all for an SDP application, while others make it subject to a strict eligibility test. In **Spain**, SDP applicants are not generally eligible for legal aid but may be able to access legal assistance if they are admitted to an asylum reception centre. In parts of the **United Kingdom** (England and Wales), SDP applicants only qualify for legal aid if they are unaccompanied minors or victims of trafficking or qualify for Exceptional Cases Funding.[63] In **Italy** and **Latvia**, legal aid is deemed unnecessary for administrative procedures. In **Bulgaria**, legal assistance is provided by NGOs, but access is hindered by language barriers, lack of awareness, and cumbersome procedures. In **Switzerland** and **Italy** (judicial procedure), legal aid is only available to those who meet low-income requirements, and in **Switzerland**, the applicant must additionally show they have some prospect of success.

Language barriers

In **Bulgaria**, the applicant bears the cost of interpretation if required in the SDP. In **Italy**, interpreters are not provided for hearings in the judicial procedure. In the **United Kingdom**, interpreting services are available for interviews (which only take place if the decision-maker cannot decide based on the written application), but no translation or interpreting is provided for other stages of the application process or for communication with legal representatives representatives unless the applicant has qualified for legal aid.

Lack of access to an interview

In **Italy**, in the judicial procedure, hearings will take place, but there is no provision ensuring interpreters are provided, although they may be present on request. In **Latvia**, **France**, and the **United Kingdom**, interviews are permitted but only take place in certain circumstances, usually where the decision-maker requires further information. In the **United Kingdom**, there are examples of applications being refused where an interview could have been sought, as well as applicants being unable to attend interviews due to travel costs.[64]

Delays and errors in decision-making

In many countries, long delays are reported, which often exceed established time limits. In **Bulgaria**, cases of 'silent rejection' have been reported whereby the six-month time limit expires without a decision being communicated. In Italy, despite the very long 895-day time limit in the administrative procedure, cases are known to last much longer than this, with the longest reported to have lasted 13 years. In **France**, there is no time limit for decisions resulting in long delays up to two or three years. In the **United Kingdom**, initial decisions are reported to take up to two years, although guidance requires a new decision following administrative review to be made within three months.

There are also reports of errors in decision-making, including in the **United Kingdom**, **Spain**, **Bulgaria**, and **Hungary**. In **Spain**, some decisions have failed to implement judicial decisions, and in the **United Kingdom**, errors reported include a failure to examine relevant evidence or to determine statelessness prior to excluding applicants on grounds of criminality. A common error in several countries relates to the treatment of stateless Palestinians. In **Bulgaria**, applications from Palestinians are reportedly automatically rejected without a thorough individual examination on grounds that the Bulgarian Government recognises the State of Palestine. Similarly, in **Hungary**, the competent authority previously rejected applications by stateless Palestinians, referring to the recognition of the State of Palestine by the United Nations. This approach was successfully challenged through litigation in Hungary on grounds that there is no nationality law governing Palestinian nationality, so Palestinians cannot be considered nationals under the operation of the law of the State of Palestine. Across Europe, case law has been emerging from domestic and regional courts regarding the ability of UNRWA to fulfil its mission to provide protection or assistance in Gaza and Lebanon, and regarding its scope of operations, which could impact on stateless Palestinians' eligibility for protection under the 1954 Convention and the 1951 Convention Relating to the Status of Refugees.[65]

Lack of quality assurance

Generally, there is a lack of quality assurance mechanisms in SDPs, and the role of UNHCR in procedures is often limited. In **Switzerland**, there is no quality assurance mechanism and UNHCR does not participate or have access to applicants' files. In **France**, although UNHCR carries out quality assurance audits of the work of the competent authority responsible for both asylum and statelessness decisions, these audits do not include SDP decisions.

BARRIER

Lack of procedural safeguards in Spain

Several procedural safeguards are lacking in the Spanish SDP. Spanish law does not provide for free legal aid for statelessness applications unless applicants are (exceptionally) admitted to asylum reception centres where they may access legal assistance. SDP applicants do not have the right to an interview and decision-makers rarely consider an interview to be essential. There is a three-month time limit for decisions, but this is rarely complied with. It is unclear if quality assurance audits are undertaken. UNHCR does not have a designated role in the SDP, although they may request access to files and monitor cases at the request of applicants. There is no referral mechanism between asylum and statelessness procedures. If asylum is refused, the competent authority can initiate the SDP *ex officio*, but this rarely happens in practice.[66]

3.2.4. Appeal rights

There should be an effective right of appeal to an independent body against a negative first instance decision in an SDP. Applicants should have access to free legal aid and to legal counsel for the appeal. The appeal procedure should be free of charge or, where there are fees, these should be covered by legal aid for applicants who lack financial means.

Good practice

There is a right of appeal to an independent body in all countries with an SDP, except for the **United Kingdom**. In general, legal aid is available for appeals, but this may depend on financial and other eligibility criteria. In **Moldova**, the right of appeal is automatic, there are no fees and free legal aid is provided. In **Ukraine**, applicants have the right to appeal to the administrative court within 20 days of receiving a written refusal and free legal aid is available, although there is a court fee. In some countries, including **Switzerland**, court fees can be waived if the applicant meets certain eligibility requirements (usually based on income).

Barriers

Lack of an automatic right of appeal

There is no automatic right of appeal to an independent body in the **United Kingdom**. Applicants refused under the SDP may request an administrative review by the competent authority, or a judicial review.

BARRIER

No statutory right of appeal in the United Kingdom

In the United Kingdom, applicants who are refused a residence permit on the grounds of statelessness do not have an automatic right of appeal against that decision, although they may apply for administrative and judicial reviews. Under the judicial review, applicants can only challenge the lawfulness of the decision and not the facts of the case. This significantly restricts their right of appeal, particularly considering that statelessness cases are usually complex, and the assessment of evidence is key in establishing the facts of the case. Judicial reviews are also subject to court fees, but fee waivers may be available, and fees may be covered by legal aid (with some restrictions). The courts have found errors at judicial review, including failure to examine relevant evidence and failure to follow the Home Office's own policies. UNHCR has recommended the UK establish a full statutory appeal against a refusal under the SDP.[67]

High fees and short deadlines

In several countries, high fees can hinder access to an appeal. In the **United Kingdom**, court fees are charged for judicial reviews if not covered by legal aid. The cost differs between jurisdictions ranging from the equivalent of 600 EUR to over 1000 EUR. If the applicant for judicial review loses, they may be liable for the legal costs of the Home Office, and they cannot obtain permanent residence until those are paid. In **Bulgaria**, the cost of an appeal increased significantly in 2019 from the equivalent of 3 EUR to 36 EUR for a court judgment and 15 EUR for a court ruling, although fee waivers are possible in certain circumstances. In **Latvia**, there is a court fee of 60 EUR. In **Spain** and **Switzerland**, appellants can become liable for costs if their appeal is rejected.

In some countries, the deadline for applicants to submit an appeal against a negative decision to grant them statelessness status is very short, and applicants may not have sufficient time to review the decision, appoint a representative and prepare their appeal. For example, applicants in **Bulgaria** and **Hungary** must submit an appeal or judicial review within 15 days, and in Ukraine the deadline is 20 days.

Access to legal aid

In some countries, access to legal aid is restricted based on eligibility criteria that can impact on access to an appeal. In **Switzerland**, legal aid is subject to a means- and merits-based test. In **Italy**, access to free legal aid to appeal a refusal under the judicial procedure is based on income and applicants who do not meet the eligibility criteria are required to pay for legal representation as well as an appeal fee. In the **United Kingdom**, legal aid is subject to means- and merits-based tests and the provision of legal aid differs between England and Wales, Scotland, and Northern Ireland, with access being more restricted and only exceptional in England and Wales.

3.2.5. Protection during the procedure

During an SDP, applicants should be considered to be *'lawfully in'* the State for the purposes of the 1954 Convention.[68] They are therefore entitled to all rights based on jurisdiction, presence in the territory and lawful stay, including access to identity

documents, the right to engage in wage-earning employment and self-employment, access healthcare, education, shelter and social security, freedom of movement, and protection from expulsion and detention. As this is similar to the protection granted to asylum-seekers under the 1951 Convention Relating to the Status of Refugees, it is recommended that applicants under an SDP are granted the same rights as asylum-seekers.

Good practice

Few countries adhere to these norms on protection during the SDP. **Moldova** is the only Index country to be assessed positively in this area. Some countries provide for some basic rights during the procedure, but the protection afforded is rarely in line with international norms and good practice. In **Italy**, the courts have recently established that no one should be detained while awaiting a decision on determination of statelessness, although this is yet to be reflected in the law.

GOOD PRACTICE

Protection for stateless applicants in Moldova

In Moldova, applicants for statelessness status are considered to be lawfully staying in the country, will not be detained after submitting an application, and cannot be expelled during the assessment. They are informed of their rights in writing in a language they understand (with access to interpreters if necessary) and are issued with a temporary identity document, the right to work, and to housing (although in practice social housing is rarely available). Applicants in employment have access to social security entitlements. If a person applies for statelessness status whilst detained in immigration detention, the authorities may carry out the assessment of statelessness while the individual is detained but will release them if statelessness is recognised or the time limit for detention expires.[69]

Barriers

Inconsistent approach to residence rights

Residence rights for applicants during SDPs vary considerably between countries. In some cases, applicants are not granted any residence rights, in others these are discretionary. In the **United Kingdom** and **Switzerland**, SDP applicants do not have an automatic right to reside. In **Switzerland**, residence and free movement rights depend on whether the applicant holds another form of residence permit, for example, if they are an asylum-seeker or have been 'provisionally admitted' to the country, they are assigned to live and must remain in a specific Canton. In **Spain**, temporary residence may be granted to SDP applicants, but only if they are not already subject to deportation proceedings. In **France**, applicants have no automatic right to residence and expulsion and detention are possible during the procedure, although prefectures may grant a discretionary temporary residence permit.

BARRIER

Lack of protection for SDP applicants in France

SDP applicants in France have no legal right to residence or work. Prefectures may admit applicants for temporary stay, but this is a discretionary power, so practice varies across the country. If a temporary residence permit is granted, or if the applicant has also applied for asylum, they can access universal healthcare coverage if they can prove they have lived in France for three months (although certain treatments are subject to prior authorisation). They may also be accommodated in an emergency shelter for up to 21 days or in accommodation and rehabilitation centres for some months. If not granted temporary residence, SDP applicants are considered to be residing irregularly and can access only limited (if they can prove they have lived in France for three months) or urgent healthcare. SDP applicants may also be detained for removal and cases have been reported of people being issued with orders to leave France while awaiting a statelessness determination decision.[70]

Risk of detention and expulsion

SDP applicants are at risk of expulsion and/or detention in several countries, including **Ukraine**, **Switzerland**, **Bulgaria**, **France**, **Spain**, **Hungary**, and the **United Kingdom**. **Spain** and **Hungary** treat a pending order for expulsion as a reason not to grant residence to an applicant for statelessness status. In **Spain**, any SDP applications submitted by people subject to removal proceedings are considered manifestly unfounded. Similarly, in **Hungary**, SDP applicants in detention or subject to removal proceedings are not issued with a temporary residence certificate, despite being entitled to one in law.

Access to social and economic rights

Few countries grant socio-economic rights to applicants for statelessness status. In the **United Kingdom**, **Switzerland**, **Hungary**, **Italy**, and **France**, SDP applicants do not generally have the right to work. In **Ukraine**, although applicants have the right to work, there are practical barriers to accessing employment including minimum salary requirements, and employers being required to obtain permission to employ SDP applicants. Some form of very basic welfare or healthcare assistance is available to SDP applicants in most countries, but this is often subject to conditions and/or very restricted. In **Hungary**, only basic emergency healthcare is available to SDP applicants. In the **United Kingdom** and **Switzerland**, SDP applicants may have a right to minimum social assistance by virtue of having previously been refused asylum, or if they are destitute. In **Bulgaria**, not only are SDP applicants not entitled to socio-economic rights but lacking any means of subsistence constitutes a legal ground for refusing their application.

3.2.6. Statelessness status

Recognition of a person as stateless must lead to the granting of statelessness status. This must include a renewable right to reside on the territory for a minimum of two years, and preferably up to five years, to enable stateless people to access all the rights protected by the 1954 Convention. These rights include a travel document, identity documents, family reunification, permission to work, primary, secondary and higher education, social security and healthcare, and the right to vote. Any revocation

or cessation of statelessness status should be subject to a proportionality test under international human rights law.

Good practice

In almost all countries with an SDP in place, the procedure leads to statelessness status including the ability to acquire a residence permit and at least some 1954 Convention rights. In **Spain** and **Moldova**, stateless people recognised under the SDP are automatically granted indefinite leave to remain along with access to education, healthcare, housing, and social security on the same basis as nationals, as well as a route to naturalisation (although this is lengthy in both cases).

GOOD PRACTICE

Statelessness protection status in Spain

Recognition of statelessness in Spain results in automatic permission to stay and an indefinite right to reside. Identity and travel documents are issued. Identity cards are renewable every five years, and stateless persons' travel documents are valid for two years. Stateless people have the right to family reunification, work, education up to tertiary education, social security, and healthcare. The law also sets out specific situations in which a stateless person can be expelled, such as absence from the territory for six years.[71]

Barriers

Access to and duration of residence permits

In several countries, recognised stateless people are not automatically granted residence permits, and/or these are valid only for a short period of time. In **Bulgaria** and **Switzerland**, the renewable residence permit, for which individuals must apply following recognition, is valid for just one year. In **Bulgaria**, stateless people can only acquire a residence permit if they can meet strict conditions, including proof of subsistence, accommodation, and medical insurance, and pay a fee the equivalent of 250 EUR. In **Ukraine**, stateless people must apply for a temporary residence permit within the short timeframe of 10 days following recognition. In **Italy**, the duration of the residence permit granted to stateless people varies between one and five years. In the **United Kingdom**, even once a person is recognised as stateless, there are stringent tests for obtaining a residence permit, including that a person not be able to secure the right of admission to any other country, and general grounds for refusal which apply to all migrants.

Access to socio-economic rights

In some countries, access to certain socio-economic rights is restricted for recognised stateless people until they acquire permanent residence. In **Bulgaria**, temporary residence permits provide protection from detention but do not grant other socio-economic rights such as the right to work or healthcare. In **Ukraine**, the right to work and a travel document are granted upon acquiring a temporary residence permit, but other rights, such as family reunification, social security, and free healthcare, are only granted once permanent residence is acquired. In the **United Kingdom**, access to higher education for recognised stateless people varies across the country.

Family reunification

In several countries, including **Italy** and **Bulgaria**, there are no provisions regulating the right to family reunification for stateless persons. In **Hungary**, family reunification is subject to conditions such as proof of means of subsistence. In **Switzerland**, family reunification is discretionary for holders of a temporary residence permit, but non-discretionary for permanent residents. In the **United Kingdom**, there is a simple and fair procedure for family reunion for the individual's spouse and minor children.

Right to vote

In most countries, recognised stateless people have no or very limited political rights. The right to vote tends to be reserved to nationals and/or EU citizens in the case of EU Member States. Stateless people are usually excluded from voting in national elections. However, recognised stateless people have the right to vote in Cantonal and local elections in **Switzerland** and devolved national elections in parts of the **United Kingdom** (Scotland and Wales only). In **Hungary**, recognised stateless people have the right to vote in municipal elections, but only if they hold permanent residence, refugee status, or subsidiary protection.

BARRIER

Gaps in protection for recognised stateless people in Hungary

Access to 1954 Convention rights for people recognised as stateless in Hungary are limited in practice. Although stateless people have the right to work, they must obtain a work permit before accessing employment, which is very burdensome in practice. Social security entitlements are linked to employment contributions, so barriers to employment restrict the ability to access social security. The only assistance to which stateless people have an automatic right is emergency public healthcare, which does not include some essential services such as maternity care. Although stateless people are entitled to family reunification, the conditions are restrictive, requiring the family to demonstrate sufficient subsistence, accommodation, and health insurance. Stateless people do not have the automatic right to vote in any elections unless they hold a permanent residence permit (or refugee or subsidiary protection) which entitles the holder to vote in municipal elections. Holders of statelessness status in Hungary are not considered to have a 'domicile' (*lakóhely* - a specific legal status in Hungary), unless they obtain a permanent residence permit, which is only accessible after at least three years of residence as a recognised stateless person. This restricts their access to facilitated naturalisation, and children born to stateless parents without 'domicile' are unable to acquire Hungarian nationality at birth, therefore they will be born stateless even if the parents are lawfully and habitually residing in Hungary at the time of the birth.[72]

3.2.7. Routes to naturalisation

The only way to resolve statelessness is to acquire a nationality. To reduce statelessness in the migratory context, the 1954 Convention requires State Parties to facilitate naturalisation for stateless people on their territory as far as possible.[73] States should expedite naturalisation procedures for stateless people, providing preferential treatment compared to the general rules for foreign nationals.[74] This could include, exempting stateless people from requirements such as citizenship or integration tests,

language testing, application fees, or minimum income requirements. Previous criminal convictions or 'good character' requirements should also not unreasonably prevent stateless people from acquiring nationality.[75]

No countries in the Statelessness Index with an SDP are assessed positively in this area. Stateless people face significant barriers to naturalisation in all countries. In the **United Kingdom**, naturalisation fees are prohibitively high with each adult application costing the equivalent of over 1500 EUR. Additionally, there is a discretionary 'good character' requirement as well as citizenship and language tests, with no exemptions on grounds of statelessness. In **Hungary**, naturalisation is facilitated for stateless people with 'domiciled' residence, but this can only be requested after a minimum of three years residence and then only if discretionary permanent residence is granted by the Government if considered to be 'in the national interest'. In practice, the procedure is extremely lengthy, discretionary, and non-transparent.

Residence requirements for naturalisation vary significantly between countries, from ten years in **Spain**, to eight in **Moldova**, five in **France**, **Italy**, **Latvia**, and **Ukraine**,[76] and three in **Bulgaria**, although in some cases only permanent residence counts towards the qualifying period, so it may be longer in practice. Many countries also impose discretionary 'good character' requirements and stateless people are very rarely exempted from language, citizenship, or integration tests. In some countries, such as **France** and the **United Kingdom**, stateless people benefit from a reduced residence requirement in line with refugees, but in others there are no favourable provisions for stateless people even where there are for other groups, such as in **Spain**.

BARRIER

Barriers to naturalisation for stateless people in Spain

The process to apply for naturalisation in Spain can be lengthy (up to three years in some cases) and costly. To be eligible to apply, stateless people must meet the general residence requirement of ten years' continuous legal residence unless they fall within any of the groups eligible for a reduction in the residence requirements. Reductions are provided for refugees (five years) and people with historic links to Spain (two years), for example, nationals of Latin American countries, the Philippines, Equatorial Guinea, Andorra, Portugal, and Sephardic Jews. Naturalisation can be refused for reasons relating to public order or national interest and the applicant must justify *'good civic conduct'* and a sufficient level of integration into Spanish society. An integration exam and language test are required, and fees include approximately 85 EUR for the integration exam, 137 EUR for the language text, and 103 EUR for the application itself.[77]

3.3 Trends in countries without a statelessness determination procedure

17 of the 27 countries in the Statelessness Index do not have a SDP leading to a statelessness status.[78] 15 of these countries have acceded to the 1954 Convention (in some cases many years ago) but have not yet fulfilled their obligations to introduce

effective mechanisms to identify and protect stateless people.

(i) Statelessness determination procedures that do not lead to a protection status

In **Belgium**, there is a judicial procedure through which statelessness can be determined by the family courts, but recognition does not lead to automatic residence or 1954 Convention rights. Recognised stateless people must apply for permission to stay on humanitarian grounds and there are no established criteria for this. The length of any residence permit granted is at the discretion of the Immigration Office, but generally a renewable one-year permit is granted. Applicants who do not have a residence permit on any other basis face a risk of detention and expulsion, are not entitled to work and are entitled only to urgent medical assistance.

(ii) Toleration status

In **Germany**, **Poland**, and **Slovenia**, people recognised as stateless who cannot be returned to another country may be issued with a 'tolerated stay' permit, which is usually of short duration (six months to two years) and renewable. Some rights may be granted, for example, to work or basic social assistance, education, and healthcare, but rights are generally restricted and not in line with the treatment afforded to stateless people under the 1954 Convention and international human rights law.

(iii) Other routes to regularisation

In most countries, there are *ad hoc* or established routes through which some stateless people may be able to regularise their stay in the country and access some rights, for example, in the context of applications for asylum, residence permits, or acquisition of nationality. In **Austria**, **Croatia**, **Cyprus**, **Greece**, **Ireland**, and **Norway**, there is no dedicated SDP, but statelessness may be identified in the context of other administrative procedures. However, statelessness determination is not the specific objective of these mechanisms and regularisation rarely leads to any rights linked to statelessness per se. The protection available to stateless migrants therefore depends on the rights attached to the type of residence or protection status they can acquire and is usually not in line with the 1954 Convention and international human rights law. In **Malta** and **North Macedonia**, there are other routes to regularisation for some stateless people, but there are no mechanisms to identify statelessness beyond the *ad hoc* possibility of recording someone as stateless during international protection procedures.

In **Czech Republic**, national law designates the Ministry of Interior as the competent authority to decide on applications under the 1954 Convention, but no further detail is provided on how a determination should be carried out, and no status or rights are granted to the person recognised as stateless.

In the **Netherlands**, people with a residence permit who can evidence their statelessness may be registered as stateless in the population register. This gives rise to some additional rights including a travel document, and an accelerated route to naturalisation. However, this does not entail a thorough

assessment of statelessness and provides no route to regularisation and protection for those without a residence permit. The UN Human Rights Committee recently found that the Dutch Government's failure to identify and assess a child's statelessness led to a violation of their right to a nationality.[79]

(iv) Statelessness status without an SDP

In **Albania** and **Serbia**, a statelessness status is established in law, granting some specific rights to stateless people. However, there is no procedure to determine or regulate this status or statelessness determination is only done in *ad hoc* and time-specific procedures, so stateless people on the territory face significant barriers to accessing the rights they are due under national and international law.

There has been some tentative recent progress towards introducing SDPs in some Index countries. In the **Netherlands**, draft legislative proposals have been pending for several years, and were revised and laid before Parliament in **December** 2020, but the legislative proposal still does not provide for a statelessness status nor residence rights as a consequence of statelessness determination. In **Albania**, a draft law establishing an SDP was laid before Parliament in early 2021. In **Malta**, following accession to the 1954 Convention in 2019, discussions are ongoing between the Government, UNHCR and civil society towards establishing an SDP. During the Global Refugee Forum in December 2019, **Portugal** pledged to 'establish mechanisms to identify, protect, prevent and reduce statelessness in Portugal' and to 'provide for the issuance of Convention travel documents for refugees and stateless persons according to international standards'.[80]

4. RISKS AND CHALLENGES IN IMPLEMENTING SDPs

4.1. Determining statelessness and refugee status

Statelessness can be both a cause and a consequence of forced migration.[81] Many refugees come from countries where discrimination in nationality laws, state succession, or deprivation of nationality practices, can mean they or their children are stateless or at risk of statelessness.[82] Statelessness can be critical at different stages of the asylum process, affecting the assessment of a claim for international protection as well as access to family reunification, resettlement, and inclusion measures (as well as the possibility of return), because stateless people are unlikely to have documentary proof of their identity and family links.[83] It also affects the nationality rights of children born to refugees. Stateless people are at risk of discrimination and rights violations if their statelessness is not identified and acted upon within international protection procedures.

If a stateless person applies for asylum, it is important to determine both their claim for international protection and their claim of statelessness. Each application should be assessed and both types of status should be explicitly recognised so that even if international protection ceases, the person remains entitled to protection as a stateless person.[84] This also helps to prevent arbitrary or unlawful detention, which can occur if a stateless person, who has no country to which they can return, is refused international protection (or their protection status ceases), and their statelessness has not been identified and determined.[85] It also enables States to comply with their international obligations to prevent and reduce statelessness, including to ensure all children born on the territory who would otherwise be stateless acquire a nationality,[86] and to facilitate the naturalisation of stateless people on their territory.[87]

Statelessness determination should be conducted either in parallel with or following the refugee status determination, with due regard to the primacy of the asylum claim and the principle of confidentiality for refugees in statelessness determination procedures.[88] In practice, this means that all SDP applicants should be informed of the importance of raising potential refugee-related concerns, and States must not disclose the identity of a refugee or asylum-seeker to the authorities of countries with which they have a link. If enquiries with authorities that could compromise confidentiality are required to determine an applicant's statelessness, the statelessness claim should be suspended until the refugee status determination is concluded.[89]

4.2. Improving awareness and identification of statelessness

To improve the identification of statelessness and referral to SDPs to enable States to comply with their international obligations, frontline officials must be trained to identify and record statelessness and make appropriate referrals to relevant procedures.[90] Asylum, immigration, civil registry, and other public officials often lack the awareness, information, and capacity needed to identify statelessness and take appropriate action. If statelessness is missed or nationality is mis-recorded, it can present obstacles and barriers that later lead to human rights violations. States are therefore recommended to cooperate with UNHCR,[91] civil society, and stateless activists and community representatives to provide adequate training and resources

on statelessness, ensure country of origin information contains information about statelessness and risks of statelessness as well as nationality laws and civil registration law, policy, and practice, and international standards for relevant officials and wider dissemination.

4.3. Addressing the 'pull factor' myth

Evidence from countries with SDPs shows no correlation between the number of people entering the country and the introduction of an SDP, and the numbers of people applying to SDPs in Europe remains relatively low.[92] Where no SDP is in place, stateless people are often stuck in limbo, subject to detention and failed removal attempts, with no way to regularise their stay and nowhere to go. Consequently, many face grave violations of their rights, and public authorities are faced with significant costs and wasted resources. The introduction of an SDP provides a framework for States to determine a person's nationality status with two possible outcomes: either the person is recognised as stateless and granted the protection they are entitled to under international law, or they are recognised to be a national of another State, issued documentation and may then leave the country. Either way, introducing an SDP not only ensures stateless people can access their rights and contribute to the societies in which they live, but assists States to find solutions for people who would otherwise remain irregularly on the margins of society, unable to either contribute or leave the country. It is also important to note that SDPs require the cooperation of the applicant, who must submit information about their circumstances, seek information from the authorities of countries with which they have links, and potentially attend interviews with consular authorities. It is therefore very unlikely that a person who does not have a genuine reason to believe they are stateless would apply for statelessness status.

4.4. Reducing statelessness *in situ*

As noted in the Introduction, SDPs are not an appropriate solution to resolve situations of *in situ* statelessness where the stateless individual (or group) is a long-term resident or was born in the country and has no substantive links to another country.[93] To reduce situations of *in situ* statelessness, States must endeavour to implement measures such as restoring or granting nationality to affected individuals or groups, revising legal frameworks to remove any discriminatory provisions or practices that may lead to new cases of statelessness, and other targeted measures to ensure compliance with international norms and good practice.[94] To ensure that stateless people who may have an entitlement to nationality are identified and appropriately referred, SDPs should include a mechanism to refer people who may in fact be stateless *in situ* to a procedure to confirm their nationality.[95]

5. CONCLUSIONS AND KEY ACTIONS

This briefing provides an overview of current law, policy, and practice on statelessness determination and protection of stateless people in Europe. It explains the rationale and importance of establishing dedicated statelessness determination procedures (SDPs) to comply with international law and good practice. Drawing on data from the Statelessness Index, the briefing highlights good practice examples and challenges in different countries, as well as some of the risks that arise when procedures and the protection available to stateless migrants and refugees fall short of international standards.

Key action areas

There are four key areas where urgent action is needed by Governments, legislators, and decision-makers to ensure that stateless migrants and refugees in Europe can access the rights and protection they are due under international law and resolve their statelessness.

1 Introduce fair and accessible SDPs in line with norms and good practice

- Put in place measures to ensure equal access to SDPs regardless of residence or documentation status, language, gender, ability, age, or any other aspect of identity or circumstances.
- Introduce adequate procedural safeguards including the right to an interview, shared burden of proof, standard of proof in line with asylum procedures, access to legal aid, and statutory right to an independent appeal.
- Introduce specific measures to guarantee substantive equality in SDPs for women, children, people with disabilities, and other groups at risk of (multiple) discrimination, such as flexibility in evidential requirements, specialist training for interviewers and interpreters, consideration of the best interests of the child, etc.
- Grant applicants for statelessness status a temporary right to stay as well as the right to work, healthcare, accommodation, education, basic social security, and protection from detention and expulsion while their application is being processed.

2 Ensure that SDPs lead to a dedicated protection status for people recognised as stateless

- Grant a renewable residence permit to people determined to be stateless that is valid for at least two years and preferably five years.

- Issue identity and travel documents to all stateless people and guarantee the right to work, education, family reunification, healthcare, accommodation, and social security in line with nationals, as well as the right to vote.

- States must ensure that procedures for renunciation of nationality are in line with international law and best practice, including guaranteeing that renunciation is only accepted after receiving a written assurance from the relevant State that the person has another nationality and facilitating reacquisition of nationality if statelessness arises after renunciation.

3 Provide specialised training on statelessness and nationality rights and ensure cooperation between relevant public authorities

- Ensure that relevant competent authorities have the necessary expertise, guidance, and resources to effectively identify and assess statelessness and nationality issues.

- Facilitate and evaluate regular training on statelessness and nationality rights for public authorities and others who may encounter stateless people, including government bodies, lawyers, and the judiciary.

- Facilitate cooperation between public authorities who may encounter stateless people and introduce cross-referral mechanisms between asylum, detention, and statelessness determination procedures.

4 Ensure that stateless migrants and refugees have an accessible route to naturalisation to resolve their statelessness

- Expedite naturalisation procedures for stateless people, providing preferential treatment compared to the general rules for foreign nationals.

- Exempt stateless people from requirements such as citizenship or integration tests, language testing, application fees, or minimum income or documentation requirements, particularly those they cannot meet due to the nature of their statelessness.

- Ensure that previous criminal convictions or 'good character' requirements do not unreasonably prevent stateless people from acquiring a nationality.

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22. Bulgaria, Czech Republic, Germany, Moldova, Latvia, and the United Kingdom all entered reservations to provisions under Chapter IV (Welfare) of the 1954 Convention.
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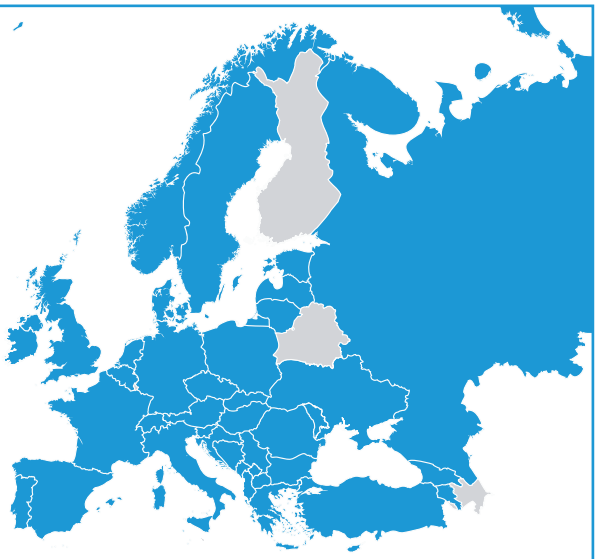

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