



Mapping **STATELESSNESS** in Poland

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Executive summary

This study was commissioned in the context of the United Nations High Commissioner for Refugees (UNHCR)'s mandate for the identification, prevention, reduction of statelessness and the protection of stateless persons. It was conducted in pursuit of UNHCR's *#IBelong Campaign to end statelessness* and the *Global Action Plan to End Statelessness by 2024*. Its main aim has been to collect and analyze qualitative and quantitative data concerning statelessness in Poland, map stateless persons' profiles, identify their protection needs, and present a comprehensive picture of their situation in the country.

Poland is still not party to the 1954 and 1961 Statelessness Conventions which causes challenges both in law and in practice. The results of this study show discrepancies in the definitions of a "stateless person" applied by various government entities which may in some cases hinder the identification of stateless persons and result in their under-representation in the official statistics. Available data suggests that the stateless population in Poland is relatively small and heterogeneous. However, their exact number is unknown.

The population of stateless persons in Poland mainly consists of foreigners who arrived with passports issued by the former Union of Soviet Socialist Republics (USSR) or the Socialist Federal Republic of Yugoslavia (SFRY), and who stayed in Poland at the time of the dissolution of these states. In addition, there is a small group of stateless Palestinians who started arriving in Poland in the 1970s, some for study purposes and others to work, and stateless persons who have applied for refugee status in Poland, but who have been unable to demonstrate proof of their nationality.

Since there is no dedicated statelessness determination procedure in Poland, the assessment of nationality or statelessness arises principally in relation to immigration procedures. Thus, the "determination" of statelessness takes place when the applicants have to establish their identity and nationality as part of their application for a residence permit or international protection, rather than through a formal determination that could lead to the granting of a statelessness status *per se*. The lack of legal status constitutes an obstacle for stateless persons to obtain a residence permit and may lead to detention. Having a permit for tolerated stay is insufficient for them to access social assistance, employment opportunities and naturalization on an equal basis with Polish citizens.

The study has also revealed gaps in the area of reduction and prevention of statelessness. For instance, the Polish nationality law does not prevent statelessness for children born on the Polish territory of known parents who are unable to transmit their nationality.

Based on the findings of this study, UNHCR encourages Poland to become party to the two UN Statelessness Conventions, to consistently employ in legislation and practice the definition of a stateless person contained in the 1954 Convention, to establish a dedicated statelessness determination procedure, and to include safeguards to prevent statelessness at birth of all children born in Poland, who would otherwise be stateless. A list of recommendations may be found in the last chapter of the study.

UNHCR hopes that the findings and recommendations contained in this report will contribute to the ongoing dialogue between UNHCR, the Polish Government, civil society and other relevant actors on the steps required to bring the legal framework, institutional capacity and practice in Poland fully in line with the international and European standards in the area of identification, prevention and reduction of statelessness, and the protection of stateless persons.

1. Introduction

Statelessness remains a global problem with millions of persons living without nationality in the world today.¹ A significant number of those affected are children, unrecognized as citizens by any state and pushed into a legal limbo and a life of exclusion.

According to available data,² there are hundreds of thousands of stateless persons currently residing in Europe, their status often irregular and fragile, resulting in various forms of human rights abuses. For many years, the issue of statelessness in Poland was perceived as a matter of little relevance by state authorities, academia and Non-Governmental Organizations (NGOs). This has potentially been due to the statistical scarcity of such cases in migration procedures, the absence of in-depth analysis and public awareness of the issue. Until recently statelessness in Poland remained a hidden problem, underreported, easily dismissed in the official discourse and as a technical challenge in the proper identification of foreigners rather than a question of legal status and access to rights.

1.1 Methodology

The main aim of this study has been to collect and analyze qualitative and quantitative data regarding the situation of stateless persons in Poland in line with Action 10 of the United Nations High Commissioner for Refugees (UNHCR)³ Global Action Plan to End Statelessness (GAP),⁴ in order to illustrate the different profiles and protection needs of this group. As a result, this report focuses on providing insights into fundamental issues surrounding statelessness in Poland in order to present a comprehensive picture of the situation of stateless persons in the country. Although the issue of statelessness in Poland has been initially researched by the Halina Nieć Legal Aid

¹ For more information, please see UNHCR, *Global Trends – Forced Displacement 2016*, 19 June 2017, available at: <http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>

² *Ibid.*

³ As the organization mandated by the United Nations to protect refugees, UNHCR has been involved in statelessness issues and with stateless persons since it began operations in 1951 due to the number of refugees affected by statelessness. In this capacity, UNHCR was involved in the drafting of the 1954 Convention relating to the Status of Stateless Persons. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, namely to examine the cases of persons who claim the benefit of that Convention and to assist them in presenting their claims to the authorities under Article 11 of that Convention, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally by General Assembly Resolution 50/152 of 1995, which endorsed UNHCR Executive Committee Conclusion 78. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

⁴ UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: <https://www.refworld.org/docid/545b47d64.html>; Action 10 refers to the improvement of quantitative and qualitative data on stateless populations.

Center (HNLAC) in 2012,⁵ followed by a separate analysis on childhood statelessness⁶ and on the risk of arbitrary detention of stateless persons,⁷ no analogous mapping studies have been undertaken until now.

This study has employed both quantitative and qualitative methods. The process of gathering information has relied on desk and field research. The study has focused not only on the compatibility of national legal standards with applicable international standards but has also aimed at providing an in-depth analysis of how the law is applied and the identification of divergences between the binding legal framework and practical application of the law. Additionally, relevant case law has been assessed in order to complement the legal analysis and illustrate the modalities behind the decision-making process in statelessness cases.

The report uses the terms “stateless person” as well as person of “unknown nationality” to reflect the situation of statelessness in Poland. The definitions used by different institutions in Poland may vary as there is no unified and clear definition set out in the Polish legislation.

Throughout the study, stateless persons and persons of unknown nationality have been consulted in order to gather detailed and comprehensive data concerning problems that statelessness creates for individuals living in Poland. Individual stories have been gathered by means of a questionnaire with a particular emphasis on maintaining the confidentiality of interviewees’ sensitive personal data and with specific consideration of age, gender and diversity factors. Individual testimonies have been utilized to provide a picture of the ethnic and social profile of stateless persons residing in Poland, with a particular focus on their access to rights and their socio-economic status and the difficulties they have experienced.

In order to identify objective, reliable and comprehensive findings from the mapping, observations on a variety of data – provided, upon request, by various public authorities – were also included. Moreover, the following also forms part of this study: statistical information provided by the Office for Foreigners, the Border Guard Headquarters and the Ministry of Digital Affairs; answers from the Office for Foreigners to a questionnaire on statelessness within the framework of asylum procedures; answers from the Border Guard to a questionnaire on statelessness regarding return procedures; a response from the Ministry of Interior and Administration on registration of stateless persons in the Personal Identification Number (PESEL) database;⁸ replies from the Voivods (Provinces) to requests concerning Polish Identity Documents (comprised of both statistical information and answers to short questionnaires on the determination of statelessness). Additionally, a series of case studies of stateless persons or persons at risk of statelessness have been analyzed. Overall 23 such cases along with additional 6 detailed interviews with stateless persons are reflected in this report. Observations from relevant lawyers, NGOs and Border Guard officers working at border posts and in detention facilities have also been collected.

⁵ The Halina Niec Legal Aid Center (HNLAC), *The Invisible – Stateless Persons in Poland*, December 2013, available at: <http://www.statelessness.eu/resources/invisible-stateless-persons-poland>.

⁶ D. Pudziańska, M. Szczepaniak, *Ending Childhood Statelessness – a Study of Poland*, Working Paper 03/15, European Network on Statelessness (ENS), 2015, available at: <http://www.statelessness.eu/sites/www.statelessness.eu/files/Poland.pdf>.

⁷ ENS and HNLAC, *Protecting Stateless Persons from Arbitrary Detention in Poland*, 2015, available at: <http://www.statelessness.eu/protecting-stateless-persons-from-detention>.

⁸ PESEL (*Powszechny Elektroniczny System Ewidencji Ludności – Universal Electronic System for Registration of the Population*) is the national identification number used in Poland. It is mandatory for all permanent residents of Poland and for temporary residents living in Poland for over two months.

Finally, over 10 different requests for information on stateless cases were directed to NGOs providing legal information and legal assistance as well as other forms of assistance to migrants, undocumented migrants, victims of human trafficking, asylum-seekers and refugees. 6 answers were received and analyzed.

1.2 Statelessness across the globe

1.2.1 Defining ‘a stateless person’

According to Article 1 of the 1954 Convention Relating to the Status of Stateless Persons,⁹ a stateless person is a person who is not considered as a national by any state under the operation of its law. The definition of a stateless person as set forth in the 1954 Convention is recognized as part of customary international law.¹⁰

1.2.2 Causes of statelessness

The right to a nationality is a fundamental human right, enshrined in Article 15 of the Universal Declaration of Human Rights (UDHR) as well as other international and regional human rights instruments.¹¹ Nevertheless, statelessness exists and remains a concern of the international community. The causes of statelessness vary and include gaps in and conflicts between nationality laws, discrimination, state succession, arbitrary deprivation of nationality and administrative barriers.

STATE SUCCESSION

Dissolution of states, unification of states, states' secession and independence often resulting from international and/or internal conflicts and coupled with border changes, are significant causes of statelessness that may affect large populations. Whether statelessness occurs depends on the nationality laws of both the predecessor and the successor states and often relates to the lack of the possibility to confirm a valid link with the successor state.¹²

⁹ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>

¹⁰ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 13, available at: <http://www.refworld.org/docid/53b676aa4.html>

¹¹ See, e.g., International Covenant on Civil and Political Rights (Article 2, 3, 24), Convention on the Rights of the Child (Article 7, 8), Convention on the Elimination of All Forms of Discrimination against Women (Article 9), International Convention on the Elimination of All Forms of Racial Discrimination (Article 1, 5), International Convention on the Rights of Persons with Disabilities (Article 18), African Charter on the Rights and Welfare of the Child (Article 6), American Declaration of the Rights and Duties of Man (Article XIX), American Convention on Human Rights (Article 1, 20), Arab Charter on Human Rights (Article 29).

¹² Institute on Statelessness and Inclusion, *The World's Stateless*, December 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>

DISCRIMINATION

Nationality laws which exclude the possibility of the mother passing the nationality to her child, if the child is unable to acquire nationality from the father, directly discriminate against women and are a profound cause of statelessness. Additionally, large groups of persons have been stripped of their nationality due to their distinct religious, ethnic or racial origin. Statelessness becomes a defining characteristic of such groups and is inherited by the following generations.

CONFLICT BETWEEN NATIONALITY LAWS

Conflict between nationality laws pertains to the principle of *jus soli* and *jus sanguinis*,¹³ where the combination of place of birth (*jus soli*) and descent (*jus sanguinis*) in individual circumstances does not lead to the acquisition of nationality. This can happen in the case of a child born outside of the parents' country of origin, on the territory where *jus soli* is not in force and the parents cannot transfer nationality by descent (*jus sanguinis*) since this is not permitted by the law of their country of origin. *Jus soli* is the predominant principle applied in the Americas, and, whilst not immune from imperfections as it may also contain legal gaps, it is considered an effective way to tackle statelessness.¹⁴

OTHER LEGAL GAPS

Legislation may contain provisions which in certain circumstances lead to statelessness, for example, the absence of an obligation to obtain new nationality before the renunciation of the old one or the non-binding nature of a citizenship promise as a pre-requisite to renounce the previous citizenship.

ARBITRARY DEPRIVATION OF NATIONALITY

The question of deprivation of nationality, understood in a broad sense as the involuntary withdrawal of nationality by the state (irrespective of the will of the person concerned), rests in the sphere of the domestic jurisdiction. However, it is restricted by international human rights law, which prohibits arbitrary deprivation of nationality. The notion of arbitrariness relates, in general, to standards of justice and due process. For the deprivation of nationality not to be arbitrary it must be in conformity with domestic law, comply with procedural standards, adhere to the principle of proportionality and it cannot be based on discriminatory or forbidden grounds.¹⁵ Since the right to a nationality and the avoidance of statelessness is a general principle of international law, it is also acknowledged that deprivation of nationality leading to statelessness would, in principle, be

¹³ As explained in the UNHCR's *Handbook on Protection of Stateless Persons*, "*jus soli* and *jus sanguinis* refer to the two main principles governing acquisition of nationality in the legal systems of States, on the basis of place of birth or descent from a national, respectively" (see p. 15, fn. 24 of the Handbook, cited above).

¹⁴ C. Becker, *Jus Soli: A miraculous solution to prevent statelessness*, 9 April 2015, available at: <https://bit.ly/1NVOYIF>

¹⁵ UNHCR, *Refugee Status, Arbitrary Deprivation of Nationality, and Statelessness within the Context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees*, October 2014, PPLA/2014/01, available at: <https://www.refworld.org/docid/543525834.html>; and UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, available at: <https://www.refworld.org/docid/52f8d19a4.html>.

arbitrary,¹⁶ although the 1961 Convention on the Reduction of Statelessness does allow for this to happen under a few exceptional circumstances.¹⁷

ADMINISTRATIVE BARRIERS

Another factor that may put people at risk of statelessness is the lack of documentation confirming nationality and the complex and lengthy administrative procedures to obtain such documents. The obstacles often start at the registration of birth. Indeed, the importance of birth registration cannot be overlooked as it is proof of a person's descent and place of birth. Without registration at birth, citizenship can be difficult to prove, especially in a global, mobile world.

1.2.3 Consequences of statelessness

Nationality is an important part of one's identity and provides a sense of belonging. Even more importantly, the bond that a person has with his or her citizenship is often taken for granted. However, it is also a key for the effective protection and enjoyment of basic human rights. Being stateless means not having a country of your own, a country where you can live and come back to, being considered a foreigner everywhere and living in a legal limbo.

Being treated as foreigners, stateless persons may not be able to take on legal, gainful employment or access social security and health care. They may be exposed to repeated and prolonged administrative detention. They may not be able to obtain a travel document and travel abroad.

Due to their lack of recognition by the state, stateless persons usually do not hold any identity documents which are typically required in a wide array of daily matters ranging from opening a bank account, getting married, having the right to freedom of movement and signing a lease contract to basic personal identification when contacting schools, hospitals, local government offices and the police.

All these issues and problems that stateless persons encounter, irrespective of their will, abilities or initiative, contribute to a state of vulnerability, at times leading to social exclusion and destitution.

¹⁶ T. Molnar, *The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives*, 2015, available at: <https://bit.ly/2kNd1kQ>

¹⁷ UNHCR, *Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, March 2014, para. 23, available at: <http://www.refworld.org/docid/533a754b4.html>

1.3 The international legal framework

The international legal framework relating to statelessness consists of international and regional instruments. At the international level, two Conventions specifically deal with statelessness: the 1954 Convention relating to the Status of Stateless Persons ("1954 Convention")¹⁸ and the 1961 Convention on the Reduction of Statelessness ("1961 Convention").¹⁹

The 1954 Convention guarantees to persons who are stateless the enjoyment of a minimum set of rights, while the 1961 Convention provides a set of safeguards for states to be included in their nationality laws with a view to ensuring that statelessness is avoided. The 1954 Convention entered into force in 1960 and had 91 State Parties as at 11 July 2019.²⁰ The 1961 Convention entered into force in 1975 and had 73 State Parties as at 11 July 2019.²¹

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons* ("the Handbook"),²² which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary, and others working on statelessness. The Handbook addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level. UNHCR's *Guidelines on Statelessness No. 4*²³ address the prevention of statelessness at birth under the 1961 Convention. Developed on the basis of consultations with international experts and a broad range of stakeholders, the Handbook and the Guidelines will be used in the present report to elaborate upon the obligations under the Conventions.

Other international human rights instruments contain provisions relevant to issues relating to nationality and statelessness. As mentioned above, the right to a nationality is one of the fundamental human rights guaranteed by the UDHR. According to the prevailing interpretation of international law,²⁴ while states have the prerogative to decide who their nationals are, this is not absolute. In particular, states must comply with their human rights obligations concerning the granting and loss of nationality, especially those stemming from peremptory norms of international law (*jus cogens*). Apart from the UDHR, a series of binding international treaties contain provisions on the right to a nationality, on the equal treatment of men and women, and on the prohibition of discrimination, including, but not limited to, the International Covenant on Civil and Political

¹⁸ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>

¹⁹ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

²⁰ Please see United Nations Treaty Collection, 1954 Convention relating to the Status of Stateless Persons, available at: <https://bit.ly/2JRpCOP>

²¹ Please see United Nations Treaty Collection, 1961 Convention on the Reduction of Statelessness, available at: <https://bit.ly/2MYMOZ8>

²² UNHCR, *Handbook on Protection of Stateless Persons*, cited above.

²³ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>

²⁴ See, e.g., *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, The Hague, 12 April 1930, Article 1, "It is for each State to determine under its own law who are its nationals (...)". See also: Kay Hailbronner, *Nationality in public international law and European law*, in: Bauböck, Rainer, *Acquisition and loss of nationality: Policies and trends in 15 European States*, Amsterdam, 2006.

Rights (ICCPR),²⁵ the Convention on the Rights of the Child (CRC),²⁶ the International Convention on the Elimination of All Forms of Racial Discrimination,²⁷ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁸ the Convention on the Nationality of Married Women,²⁹ the Convention on the Rights of Persons with Disabilities,³⁰ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³¹ The issue of nationality is also covered by the Convention relating to the Status of Refugees (“1951 Convention”), over which UNHCR exercises its supervisory role.³² Although an individual can be both stateless as per the 1954 Convention and a refugee as per the 1951 Convention, at a minimum, a stateless refugee must benefit from the protection of the 1951 Convention and international refugee law.

²⁵ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

²⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

²⁷ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html>

²⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>

²⁹ UN General Assembly, *Convention on the Nationality of Married Women*, 29 January 1957, available at: <https://www.refworld.org/docid/3ae6b3708.html>

³⁰ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I, available at: <https://www.refworld.org/docid/4680cd212.html>

³¹ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, available at: <https://www.refworld.org/docid/3ae6b3980.html>

³² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>

2. State of statelessness in Poland

2.1 Background

2.1.1 National legal framework at a glance

Poland is neither a party to the 1954 Convention nor to the 1961 Convention. In August 2012, the new Act on Polish Citizenship of 2009 entered into force.³³ In line with Article 32 of the 1954 Convention and Article 34 of the 1961 Convention, the law provides for the shortening of the residence requirement for naturalization for refugees and stateless persons from ten to two years.

Polish legislation is partially in line with the obligations under the 1954 and 1961 Conventions. Amendments to the legislation in force would be required to ensure full compliance with international standards. One of the major gaps, as will be further discussed below, relates to the possibility for all children born in Poland, who would otherwise be stateless, to acquire Polish citizenship, as per Article 1 of the 1961 Convention. The Law on Polish Citizenship, in Article 14(2), grants automatic nationality only to children born stateless to unknown or stateless parents, or to parents whose citizenship cannot be determined. However, the Law does not foresee a safeguard against statelessness at birth if a child is born to parents whose nationality is known, but who cannot transfer their nationality to the child. In addition, the Law on Polish Citizenship does not have a clear safeguard against statelessness for children who lose Polish nationality following their parents' renunciation of citizenship as per Articles 7 and 8, and thus is at variance with Article 6 of the 1961 Convention.

The population of stateless persons in Poland mainly consists of foreigners who came with USSR (Union of Soviet Socialist Republics) or Socialist Federal Republic of Yugoslavia passports and stayed in Poland at the time of the dissolution of their states. There is a small group of Palestinians who started arriving to Poland in the 1970s, some for study purposes and others for work. There are also those stateless persons who applied for the refugee status in Poland, coming from a range of countries but without the possibility of confirming their nationality.

³³ Act of 2 May 2009 on the Polish Citizenship, Journal of Laws 2012, Item 161.

2.2 A statistical overview of the stateless population in Poland

2.2.1 Specifics of the data used

The PESEL population register gathers data on Polish citizens and foreigners staying on the Polish territory. The register is run by the Ministry of Digital Affairs. As a rule, the data is entered into the register by the competent local municipal authorities.

Currently, the Act on the Population Register³⁴ introduces an exhaustive list of residence permits that qualify the foreigner to be included in the register. In other words, only foreigners holding such permits can be included in the register. According to Article 8(11) of the Act, the register includes data on “citizenship or status of a stateless person”. The data on “citizenship or status of a stateless person” is registered by the competent Voivod or the Ministry of Internal Affairs and Administration. The Head of the Office for Foreigners creates and runs the national collection of registers and records on foreigners as specified in the Act on Foreigners.³⁵

2.2.2 The target population and differences in definitions used

Polish law does not define a “stateless person”. Nonetheless, the term is used, mainly in the asylum and migration procedures.

For statistical purposes, the Office for Foreigners registers “stateless persons” or persons of “unknown nationality” using the Eurostat³⁶ definitions of these terms. In a written reply to an inquiry concerning the definitions employed for statistical purposes, the Office for Foreigners quoted the definition of a stateless person enshrined in the 1954 Convention.³⁷ However, it is the Border Guard service that has the statutory task of carrying out the identification of foreigners. The nationality determination made by the Border Guard service is therefore also crucial during the refugee status determination proceedings before the Office for Foreigners.

The definitions used by the Border Guard service differ from that of the Office for Foreigners. For the Border Guard service, “a stateless person” is defined as *a foreigner with no state affiliation [descriptive term that could also be translated simply as “stateless”], a foreigner stripped of citizenship or claiming to be a citizen of the so-called unrecognized state.*

³⁴ Act of 24 September 2010 on the Population Register, Journal of Laws 2017, Item 722.

³⁵ Act of 12 December 2013 on Foreigners, Journal of Laws 2013, Item 1650.

³⁶ Eurostat (European Statistical Office) is a Directorate-General of the European Commission located in Luxembourg, more information available at: <https://ec.europa.eu/eurostat/home>

³⁷ In a written reply to an inquiry about the definitions employed for statistical purposes, the Office for Foreigners explained that “stateless persons are defined as persons who are not considered as nationals by any State under the operation of its law, as set out in Article 1 of the 1954 Convention relating to the Status of Stateless Persons. The category “unknown” citizenship shall include persons for which no information on individual citizenship is available”. Eurostat provides a definition of a stateless person in its Glossary, relying on the definition set out in the 1954 Convention, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Citizenship>

The second definition used by the Border Guard service is that for persons of “unknown nationality”: *persons that are not defined as stateless, those who do not claim being citizen of any state, claim potential affiliation with many states or – even though they indicate a state affiliation, were not recognized by that state as citizens.*

The Border Guard service also employs a third definition, namely persons whose “citizenship was not confirmed”, understood as *persons with no identity documents, whose personal details (including citizenship) are accepted based on oral statements, which are subsequently verified.*

The Border Guard service reported that recognition of a person as belonging to one of the above-mentioned categories may change during the subsequent identification activities.

In comparison to the definitions applied by Eurostat (“stateless persons” and persons of “unknown nationality”), the definitions employed by the Border Guard service differ.

The definitions used by the Border Guard service include some of the key elements of the term “stateless person”, such as the notion of a “state” and whether it is universally recognized. The latter is a complex issue, especially with regard to the debate on the declaratory or constitutive nature of state recognition. Still, it is not clear for example how “state affiliation” should be interpreted and why being “stripped of citizenship” is a separate subcategory that is not included under the “no state affiliation” term.

In addition, definitions used by the Border Guard service seem to overlap, as a stateless person is a person with no state affiliation, while a person of unknown nationality is someone who is not stateless, yet not recognized by the state indicated. It can be assumed that under the 1954 Convention, those who indicate affiliation with a particular state but were not recognized by that state as citizens would be stateless, unless there is no relevant link to any other state, bearing in mind that the scope of enquiry may be limited to specific criteria, i.e. if a person has personal links to the particular state.³⁸

Therefore, if analyzed from the perspective of the 1954 Convention, these definitions may cause confusion and, in some cases, result in under-representation of stateless persons in official statistics.

It is also important to note that the Office for Foreigners relies on the facts established by the Border Guard service in the course of identification procedures (when a foreigner’s identity is unknown), for example, in assessing asylum applications. Therefore, the fact that these two entities employ different definitions may result in incoherent procedures.

Adoption of a uniform definition, in line with the definition set forth in the 1954 Convention, regarded as part of international customary law, is therefore crucial for the proper identification of stateless persons in Poland.

³⁸ UNHCR *Handbook on Protection of Stateless Persons* provides in para. 18 that “[a]lthough the definition in Article 1(1) is formulated in the negative (“not considered to be a national by any State”), an enquiry into whether someone is stateless is limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, adoption or habitual residence. In some cases this may limit the scope of investigation to only one State (or indeed to an entity which is not a State).”

2.2.2.1 GROUPS COVERED BY ADMINISTRATIVE DATA

Information provided by the Ministry of Digital Affairs indicates that there are 1,376 (2019) persons registered in the PESEL register as stateless.³⁹ The Office for Foreigners confirmed that the data as to persons of unknown nationality and stateless persons for statistical purposes is entered based on the Eurostat definitions.

Data presented by the Office for Foreigners put the total number of “stateless persons” and of persons of “unknown nationality” holding a valid residence permit as of 30 June 2016 at 510, out of which 467 persons were registered as stateless, while 43 persons are of unknown nationality. Out of this number, 151 persons (nearly 30%) originate from one of the 15 former Soviet Republics,⁴⁰ while the origin of 90 persons (nearly 18%) is unknown. Interestingly, 60 persons (nearly 12%) are of Polish origin.⁴¹ The below lists the statistics relating to stateless persons and persons of unknown nationality per year, definition applied and origin, which refers to the potential background of the individual.

Statistics for 2016⁴²

Per definition applied by the authorities

Stateless persons	Persons of unknown nationality	Total
467	43	510

Per origin

Former Soviet Republics	Poland	Unknown	Other	Total
151	60	90	209	510

As of December 2018, statistics published by the Office for Foreigners put the total number of “stateless persons” and of persons of “unknown nationality” holding a valid residence permit at 435 out of which 390 persons were registered as stateless, while 45 persons are of unknown nationality. In 2017 these numbers, respectively, were: 391 stateless persons and 41 persons of unknown nationality, making a total of 432. No information about the origin of these persons is available.

³⁹ Answer to an enquiry of Halina Nieć Legal Aid Center from 7 November 2016 (statistics: 30 June 2016).

⁴⁰ Estonia, Latvia, Lithuania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Belarus, Moldova, Ukraine, Russia, Armenia, Azerbaijan, and Georgia.

⁴¹ Polish language distinguishes between three terms: citizenship (*obywatelstwo*) – understood as a legal concept, a formal bond between a person and the State; nationality (*narodowość*) – that could be explained with reference to the Law on repatriation and the Pole's Card by descent (Polish ancestors) and cultural affiliation; and, thirdly, origin (*pochodzenie*) that may be defined with reference to a place of birth.

⁴² Information received from the Office for Foreigners.

Statistics for 2017⁴³

Stateless persons	Persons of unknown nationality	Total
391	41	432

Statistics for 2018⁴⁴

Stateless persons	Persons of unknown nationality	Total
390	45	435

The present study does not include further qualitative analysis of these groups. Based on available sources, the Polish origin of some stateless persons may be based on their historical background, such as mass deportations to the East in the aftermath of the Soviet invasion during the Second World War coupled with laws pertaining to citizenship adopted during the Polish People's Republic (PRL)⁴⁵ period. According to the 1958 Convention between Poland and the USSR,⁴⁶ persons staying at that time on the territory of one of the State parties and having double – Polish and Soviet – citizenship were obliged to choose one citizenship before 8 May 1959. Those who did not submit a statement on citizenship were deemed to be citizens based on the territory of residence. Recently, the administrative courts in Poland ruled that the 1958 Convention was a valid source of law and citizenship status is to be assessed based on its application, therefore denying Polish citizenship to persons of Polish origin residing in the USSR in the above mentioned period and with no proof of their choice of citizenship.

Another group to be mentioned are the displaced persons remaining in West Germany after the Second World War and categorized there as *heimatlose Ausländer* (“stateless foreigners”) since there are also people of Polish origin among this group. This conclusion is corroborated by the available statistics on the previous citizenship of persons acquiring Polish citizenship. According to Eurostat (the most recent data available is from 2017), the four top countries of origin for persons acquiring Polish citizenship were: Ukraine (59.3% of all acquisitions that year), Belarus (18.8%), Russia (5.4%) and Armenia (3.4%).⁴⁷ Persons originating from these three countries made up 69.36% of all persons acquiring Polish citizenship. Given their ethnic background, the majority of these applicants are likely to have indicated Polish roots.

Only a small number of persons applying for international protection were seeking protection as stateless persons,⁴⁸ yet the recognition rate among stateless persons is relatively high. During the period under study (1 January 2015 – 30 June 2016), there were 52 applications for international protection submitted by stateless persons, while 21 decisions granting refugee status to stateless persons were issued. At the same time, the total number of applicants for international protection amounted to 12,325 in 2015 and 12,319 in 2016, while the number of applicants granted refugee

⁴³ Information received from the Office for Foreigners.

⁴⁴ Information received from the Office for Foreigners.

⁴⁵ *Polska Rzeczpospolita Ludowa* – The Polish People's Republic (1947 – 1989).

⁴⁶ Convention between the Government of The Polish People's Republic and USSR on the regulation of citizenship of persons with dual citizenship signed in Warsaw on 21 January 1958 (Journal of Laws Nr 32, pos. 143, available at: <http://dziennikustaw.gov.pl/DU/1958/143/1>). Subsequently, a second Convention was signed: the Convention between the Government of the Polish People's Republic and USSR on the prevention of double citizenship signed on 31 March 1965 (Journal of Laws 1966, Nr 66, pos. 4, available at: <http://dziennikustaw.gov.pl/DU/1966/19/1>).

⁴⁷ Eurostat statistics, available at: <https://bit.ly/2qrgkO8>

⁴⁸ In 2015, 12,325 persons applied for international protection, while 6,992 persons applied in the first half of 2016. Only 55 persons among this group were recorded as stateless or of unknown nationality.

status was 360 and 128 respectively. Refugee status was granted mostly to citizens of Syria and the Russian Federation.⁴⁹ Recognized refugees include stateless Palestinians, in line with the Court of Justice of the European Union (CJEU) judgment in *El-Kott*.⁵⁰

In 2017, there were only 11 applications for international protection lodged by stateless persons and 4 by persons of unknown nationality. In the same year, 4 stateless persons received refugee status and 1 stateless person was granted subsidiary protection. Similarly, in 2018 there were 11 applications for international protection lodged by stateless persons and 2 by persons of unknown nationality. 7 stateless persons were granted refugee status while 4 received subsidiary protection.

The available data indicates that the number of stateless persons subjected to return procedures is very low. The competent authorities issued return decisions to 27,255 persons in 2018 alone. This includes return procedures relating to persons that fell into the categories of stateless persons, persons of unknown nationality, persons whose citizenship was not confirmed, and the category of those indicating origin, nationality or country of origin.⁵¹

The system of collecting the data by the Office for Foreigners (responsible for keeping records) and by the Border Guard service (conducting the identification proceedings) on stateless persons who were granted tolerated stay permits should be unified.

⁴⁹ Statistical data provided by the Head of the Office for Foreigners, available at: <https://udsc.gov.pl/statystyki/>

⁵⁰ Court of Justice of the European Union (CJEU), *Mostafa Abed El Karem El Kott and Others v. Bevándorlási És Állampolgársági Hivatal*, 19 December 2012, C-364/11, available at: <https://www.refworld.org/cases,ECJ,50d2d7b42.html>; See also Halina Niec Legal Aid Center (HNLAC), *The Invisible - Stateless Persons in Poland*, cited above.

⁵¹ Origin, nationality or country of origin are categories employed by the Border Guard service in the statistical data provided on numbers of stateless persons or persons of unknown nationality (as enumerated above).

Table 1: Stateless persons and persons of unknown nationality holding valid residence permits as of 3 December 2018⁵²

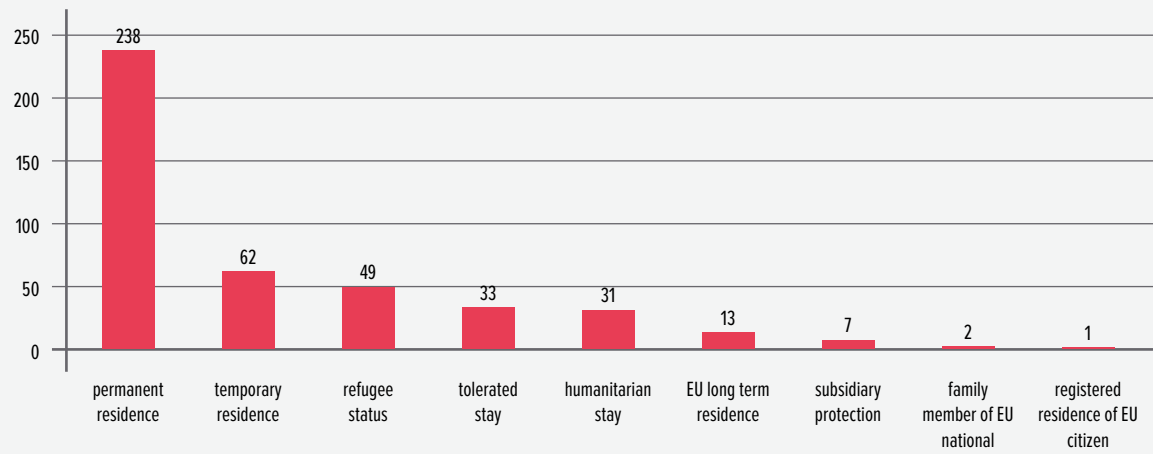


Table 2: Age of stateless persons and persons of unknown nationality holding valid residence permits as of 3 December 2018⁵³

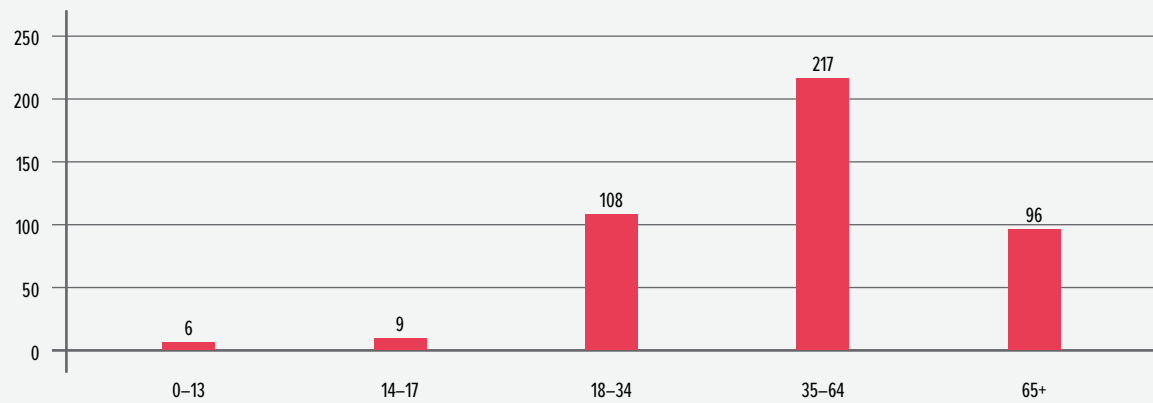
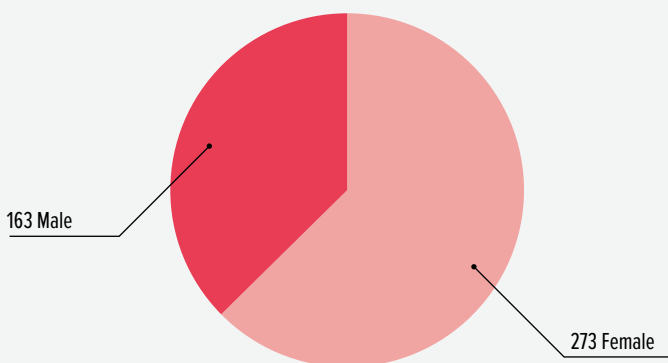


Table 3: Gender of stateless persons and persons of unknown nationality holding valid residence permits as of 3 December 2018⁵⁴



⁵² Information received from the Office for Foreigners.

⁵³ Information received from the Office for Foreigners.

⁵⁴ Information received from the Office for Foreigners.

Table 4: Number of stateless persons and persons of unknown nationality who are applicants for international protection⁵⁵

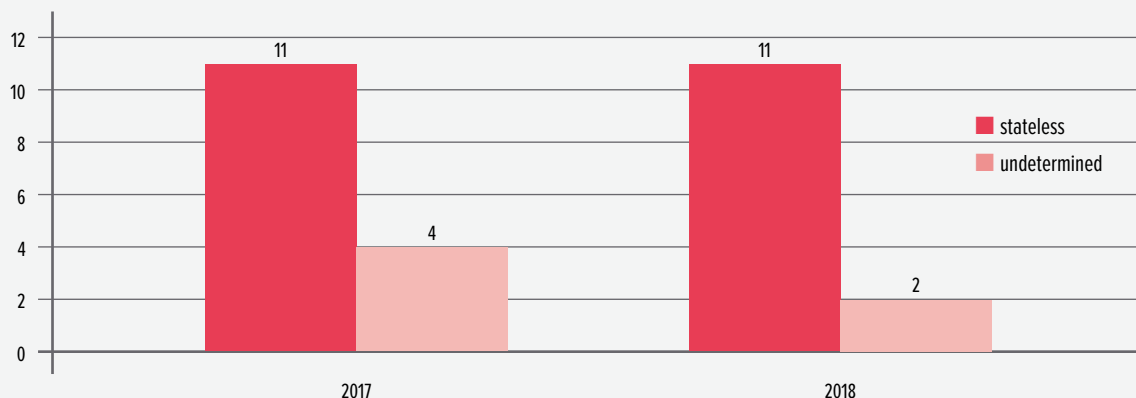


Table 5: Number of stateless persons and persons of unknown nationality who received decisions on international protection⁵⁶

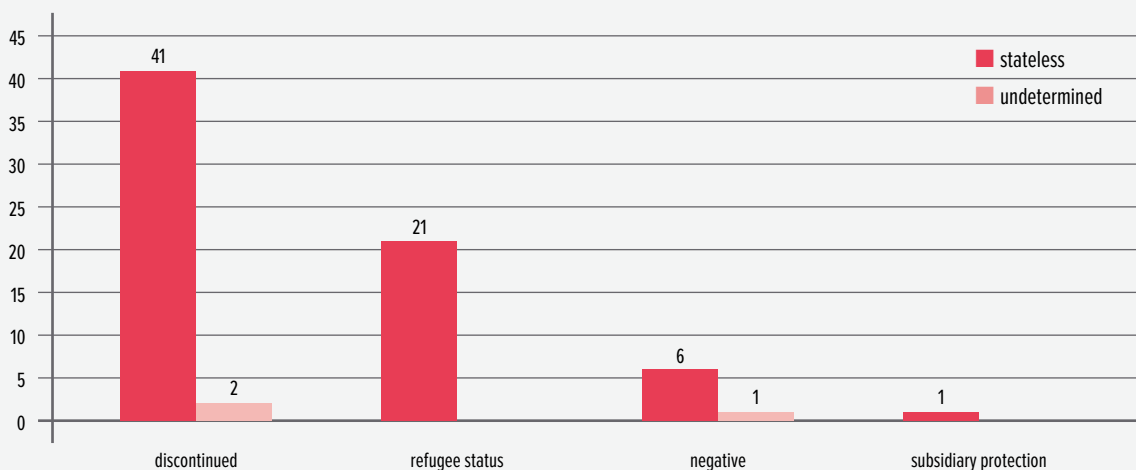
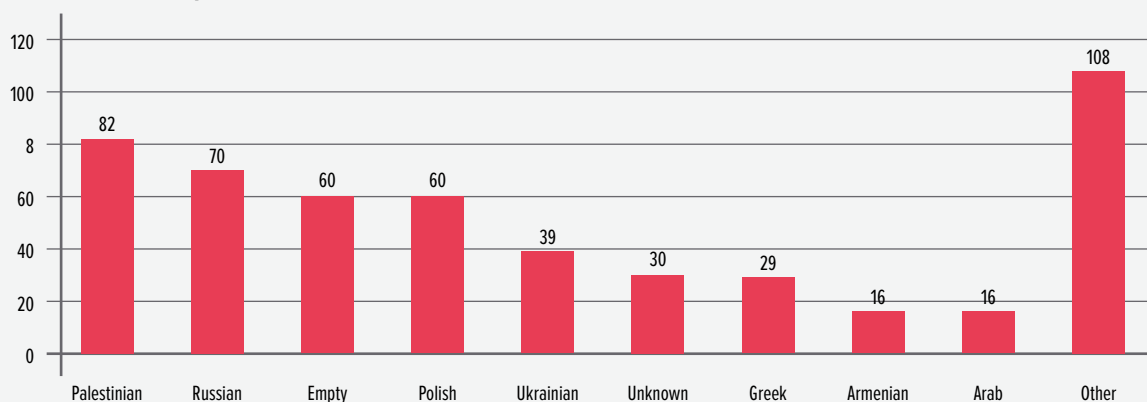


Table 6: Main ethnic origin⁵⁷ of stateless persons and persons of unknown nationality holding valid residence permits as of 30 June 2016⁵⁸



⁵⁵ Information received from the Office for Foreigners.

⁵⁶ Information received from the Office for Foreigners.

⁵⁷ Information received from the Office for Foreigners.

⁵⁸ The category denoted as “empty” indicates that the competent administrative body did not fill out the origin of the person concerned, since it was not established in the administrative procedure.

2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

The data gathered through the Population Census conducted in 2011 showed that there were more than 8,000 persons of “unknown nationality” and 2,020 stateless persons, as indicated by the respondents. At the time of drafting the report, 467 stateless persons held valid residence permits, while 1,328 stateless persons were registered in the PESEL database.⁵⁹ With no statelessness determination procedure in place, there may be a significant number of stateless persons or persons at risk of statelessness who did not contact the authorities. The reasons for this may have been due to the lack of information, fear and helplessness about resolving their irregular status. They are, therefore, not recorded in the official statistics. According to a recent study, the risk of detention was an important factor deterring stateless persons from approaching the authorities,⁶⁰ a situation that is neither beneficial for the state nor for the persons concerned.



Rustam's story:

Rustam, originating from Uzbekistan, argued in the appeal proceedings on international protection that even though he originates from Uzbekistan, he can no longer be regarded as a citizen of that country, due to his long stay abroad and loss of citizenship thereto. The Refugee Council (the administrative body hearing appeals in asylum cases in Poland) allowed the appeal and granted protection indicating that Rustam is a “citizen of Uzbekistan/stateless” (a determination made in the decision), while explaining in its reasoning that it is not clear whether Rustam still holds Uzbek nationality. According to Uzbek legislation, loss of nationality occurs in case of unregistered stay abroad, exceeding five years. Rustam stayed abroad for much longer and he was not registered during that time. When Rustam applied for a residence permit card he requested that “stateless” be indicated in the citizenship field. The Office for Foreigners, competent for issuing the card, enquired with the Refugee Council whether Rustam was determined to be stateless or a citizen of Uzbekistan, since the system does not allow for a double determination, as indicated in the Refugee Council's decision. If an unequivocal determination is not possible, the “nationality unknown” category can be employed. The Refugee Council stated that an unequivocal determination as to whether Rustam is a citizen of Uzbekistan or stateless was not possible.

⁵⁹ Answer to an enquiry of Halina Nieć Legal Aid Center from 7 November 2016 (statistics: 30 June 2016).

⁶⁰ European Network on Statelessness (ENS), *Protecting Stateless Persons from Arbitrary Detention in Poland*, cited above.

2.3 Conclusions

Limitations on available data sources were encountered during the research for this report. Similarly, identifying stateless persons for the purpose of interviewing was also a challenge. As there is no homogeneous group of stateless persons, nor a stable “in-situ population”, it is difficult to draw general conclusions from the individual cases analyzed. Every case of a stateless person is regarded as a separate occurrence rather than as part of a broader phenomenon.

Nevertheless, some conclusions can be drawn based on the information collected. Available data⁶¹ suggests that the stateless population in Poland is relatively small and heterogeneous. The exact number of stateless persons, including those who did not approach any authority remains unknown.

The introduction of a specific statelessness determination procedure would enable stateless persons whose status is not regularized to come forward and would allow the authorities to obtain an accurate picture of the size of the stateless population.

The absence of a unified definition of a stateless person may lead to confusion and an incorrect determination of nationality. The Border Guard service employs three distinct definitions for the purpose of conducting relevant procedures, while the Office for Foreigners employs another definition for statistical purposes and does not verify the assessment made by the Border Guard service. This may lead to unreliable reporting of the number of stateless persons in the official data.

A uniform definition of a stateless person, in line with the 1954 Convention, should be introduced and employed, both for statistical purposes as well as for the determination of statelessness as part of existing procedures.

There should be a common approach towards gathering the statistical data, with a clear distinction between those whose nationality status is not yet resolved (the procedures are ongoing) and those who were determined to be stateless or of unknown nationality.

⁶¹ The data available includes only those stateless persons that approached the authorities, applied for residence permits, international protection or were subject to return proceedings.

3. Determination of statelessness and the human rights of stateless persons

3.1 Introduction

The 1954 Convention provides for the following definition of a stateless person: *a person who is not considered as a national by any State under the operation of its law.*⁶² This definition identifies the persons who are entitled to the protection of the 1954 Convention, with additional Convention rights depending on the individual's residence status. While acquiring nationality is the ultimate solution to one's statelessness, in situations where this is not yet possible, it is necessary to provide for protection of stateless persons in the meantime. A dedicated statelessness determination procedure makes it possible to identify those persons who are entitled to the protection regime of the 1954 Convention.

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be in place.⁶³ The procedure must be accessible for stateless persons,⁶⁴ including "unreturnable" persons in detention, which also entails an obligation to provide information about the availability of the procedure. During the procedure, the applicants should not, in principle, be detained for reasons relating to their statelessness, and in situations where they are nevertheless detained, it must be a measure of last resort and they shall not be held with convicted criminals or individuals awaiting trial.⁶⁵ Moreover, pending the outcome of the procedure, the applicants shall not be expelled from the State where their procedure is ongoing.⁶⁶

Additionally, the vast majority of human rights apply to all persons on a State's territory or subject to its jurisdiction irrespective of nationality or immigration status, including to stateless persons. The principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status. International human rights law thus supplements the protection regime

⁶² Poland is not a party to the 1954 Convention.

⁶³ UNHCR, Handbook on Protection of Stateless Persons, cited above, paras. 144-146.

⁶⁴ *Ibid*, paras. 68-70.

⁶⁵ *Ibid*, paras. 112-115.

⁶⁶ *Ibid*, paras. 72 and 145.

set out in the 1954 Convention. Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.⁶⁷ Moreover, human rights norms are often linked to an extensive interpretative guidance by human rights judicial or quasi-judicial bodies. Examples of important human rights standards in this area can be found in the CEDAW, which provides that States Parties shall grant women equal rights with men to acquire, change or retain their nationality,⁶⁸ while the CRC and the ICCPR both provide for the right of every child to acquire a nationality.⁶⁹

3.2 National legal framework

Despite the European Union's recent pledge to the United Nations,⁷⁰ Poland is still not a party to the UN Statelessness Conventions⁷¹ and has no statelessness determination procedure in place. Polish legislation, nevertheless, states that a stateless person is considered a foreigner under Article 3(2) of the Act on Foreigners.⁷² The potential procedures involving nationality assessment are primarily those taking place in the displacement context, namely the asylum and return procedures.

Additionally, Polish legislation explicitly provides for a Polish Identity Document for stateless persons. As such, the procedure for granting a Polish Identity Document requires establishing that a person concerned is indeed stateless. Therefore, the procedures for granting such a document have been considered for the purposes of this report as well.

The Act on Foreigners provides for residence permits for foreigners. These include a temporary residence permit for the purpose of employment, entrepreneurship, study, academic research, family reunification, a residence permit issued to victims of trafficking under extraordinary circumstances, a permanent residence permit and a long-term EU residence permit. The general precondition for applying for these types of residence permits is a legal stay on the territory of Poland and a valid travel document. As there is an exemption concerning the travel document and in special circumstances foreigners may present another identity document, stateless persons may apply for a Polish Identity Document. However, the prerequisite of legal stay remains a major obstacle for stateless persons. They are treated as foreigners but have no possibility of obtaining a passport from their "country of origin" or a visa allowing their legal entry and stay. However, Poland periodically carries out so-called "amnesty" campaigns enabling those staying illegally for significant periods of time to apply for a temporary residence permit and regularize their stay. The last amnesty (or "abolition" according to the wording used by the Polish authorities) was conducted

⁶⁷ Ibid, paras. 140-141. Additionally, for an overview, see UNHCR, *Extracts relating to nationality and statelessness from selected universal and regional human rights instruments*, November 2009, available at: <http://www.refworld.org/docid/4c29aec02.html>.

⁶⁸ Article 9 of the CEDAW.

⁶⁹ Article 7 of the CRC and Article 24 of the ICCPR.

⁷⁰ The pledge was made by the European Union on 24 September 2012 at the High-level Meeting on the Rule of Law: "The EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness".

⁷¹ Poland is one of only four EU Members States that are not party to the 1954 Convention and seven that are not party to the 1961 Convention (as at 15 July 2019).

⁷² Available at: <https://bit.ly/2knnun7>.

in 2012 when 19 stateless persons and 3 persons of unknown nationality obtained a temporary residence permit.

3.3 Lack of statelessness determination procedure and the identification of stateless persons in other existing procedures

As explained above, there is no formal statelessness determination procedure in Poland. Rather, the assessment of nationality or statelessness comes to light principally in relation to immigration procedures. Registration of statelessness appears to be a part of the overall evaluation that takes place when a person applies for a visa, residence permit, or international protection in Poland. The “determination” is, thus, in reality an evaluation that takes place when the applicant has to establish his or her identity and nationality as part of his or her application for a residence permit or international protection, rather than a determination that could lead to establishing of a statelessness status per se. No determination of the status of statelessness takes place with respect to persons who are, for example, rejected asylum-seekers but who are later found to be “unreturnable,” potentially as a result of their statelessness.

3.3.1 Identifying stateless persons in protection proceedings

Stateless individuals may be among those who apply for international protection. The nationality or statelessness of the applicant is taken into account within the overall assessment of the application for asylum, as the country of origin is an important factor in establishing a well-founded fear of persecution or risk of serious harm. Statelessness is not in itself a ground for granting refugee status or subsidiary protection. Even if statelessness may be seen as a form of persecution (for example, in cases of arbitrary deprivation of citizenship), jurisprudence concerning this issue remains scarce.⁷³ In Poland, the Office for Foreigners took into account statelessness when dealing with the application for asylum of a stateless Rohingya.⁷⁴ Yet, according to Polish jurisprudence, statelessness does not, as a rule, lead to the granting of refugee status.

3.3.1.1 INITIATING THE PROCEDURE

The application for international protection has to be lodged in person through the Commanding Officer of the nearest Border Guard Post who forwards the application to the competent authority (Head of the Office for Foreigners). The application is lodged using a standard form. The required data is entered by the Border Guard Officer, based on the information provided orally by the applicant and submitted documents. The form includes a section on the country of origin, ethnic origin and citizenship of the applicant. If the applicant has no identity documents, the data on nationality is initially entered in the form based on the applicant’s oral statements.

⁷³ M. Fullerton, *Comparative Perspectives on Statelessness and Persecution*, 2015, available at: <https://bit.ly/2kzBbzi>

⁷⁴ Halina Niec Legal Aid Center (HNLAC), *The Invisible – Stateless Persons in Poland*, cited above.

3.3.1.2 QUESTIONS OF PROOF

Pursuant to Article 30(1) of the Act on Protection,⁷⁵ the obligation to establish the identity of the applicant rests with the competent Border Guard Post. In practice, the responsibility to establish the identity (including nationality) of the applicant is shared between the Border Guard service and the Office for Foreigners.

The Office for Foreigners⁷⁶ has no internal guidelines on how to conduct identity verification. The Office enquires with the competent Border Guard Unit about the progress of identification procedures and can carry out its own investigation in parallel. Identity is initially verified based on the EURODAC and national databases (AFIS,⁷⁷ Pobyt⁷⁸) checks, as well as documents provided by the applicant. If the authenticity of the documents provided is not questioned (by the Border Guard Officer), identity is established based on them. It is also possible to establish the identity based on the copies of documents if they are not questioned and are consistent with other information since applicants may have difficulties providing originals.⁷⁹

Subsequently, the authenticity of the documents is verified by the Country of Origin Unit⁸⁰ or directly with foreign diplomatic posts⁸¹ based in countries of origin. The fact that the person concerned applied for international protection is not disclosed.

If an applicant has no identity documents, information on countries of origin and visas or residence permits is verified in close cooperation with the Division of Consular Systems of the Ministry of Foreign Affairs which has access to all visa applications lodged with the Polish Consular Offices since the year 2000.

The applicant may also be interviewed regarding his or her identity and knowledge about his or her country of origin. During the interview, the interpreter who is a native speaker of the language concerned, may conduct a linguistic analysis to determine the origin of the applicant. Additionally, the Office for Foreigners employs external units conducting specialized linguistic analyses.⁸²

Generally, Polish law requires that facts established in the case be substantiated. In exceptional cases it is sufficient that certain facts be found probable, which is a lower standard of proof. The Act on Protection contains specific provisions regarding evidential issues and circumstances that can be taken into account if the applicant has no evidence substantiating his or her claim for protection (there are certain indicators of credibility mentioned in the law such as cohesion and credibility of the facts presented and a detailed explanation of the lack of documentary evidence). The lack of citizenship needs to be substantiated in the course of the procedure for granting international protection. In this regard, the Office for Foreigners takes into account the law of the potential

⁷⁵ Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, Journal of Laws 2016, Item 1836, further referred to as the "Act on Protection".

⁷⁶ The information provided below concerning the identification procedures in the course of international protection procedures was provided by the Office for Foreigners.

⁷⁷ Automated Finger-print Identification System, more information available at: <https://bit.ly/2mjTrgD>

⁷⁸ The national collection of registers, records and lists, more information available at: <https://bit.ly/2IT4E7C>

⁷⁹ Identity Document cards, passports, school certificates, employment documents, birth certificates, documents concerning judicial or administrative proceedings, other documents provided by the applicant.

⁸⁰ Unit operating within the Office for Foreigners.

⁸¹ Embassies or other types of diplomatic missions.

⁸² Swedish company Verified AB (<http://verified.se/index.html>), Dutch COI (The COI unit of the Dutch Immigration and Naturalization Service – Office for Country Information and Language Analysis).

country of origin, in particular relating to the renunciation or loss of nationality and analyzes the situation in the country of origin.

If neither the Border Guard service nor the Office for Foreigners can unequivocally establish the nationality or determine definitively that the applicant is stateless, it is established that the country of nationality is unknown.

In this context, the Office for Foreigners has underlined that *foreigners tend to provide the authorities with misleading information concerning personal details, including country of origin, in order to get the “right” result of the proceedings.*⁸³ However, when asked about the number of “accelerated procedures”⁸⁴ that are conducted where the applicant provided misleading information through omission or provided false information or documents concerning identity or citizenship of vital importance to granting protection,⁸⁵ the Office for Foreigners replied that there were only four such cases in the period analyzed.⁸⁶ The overall number of applicants recorded as stateless or of unknown nationality for that period⁸⁷ amounted to 55, while the total number of applicants for that period was 19,323.

The Office for Foreigners also highlighted that *difficulties with establishing identity concern mainly applicants coming from Africa, the Middle East and Asia* (especially those speaking Arabic, Persian, Tajik, Dari, Pashto and African languages). This group was therefore described in very wide terms.⁸⁸ The biggest challenge identified was the lack of a specialized unit dealing with language analyses.

3.3.2 Identifying stateless persons in return proceedings

3.3.2.1 INITIATING THE PROCEDURE

The fact that a person is stateless may also be established within the return proceedings applied to foreigners staying irregularly in Poland. The return proceedings are conducted within the framework of an administrative procedure. Therefore, as a general rule, the Code of Administrative Procedure applies. Commanding Officers of the Border Guards Posts and Units are the competent authority for conducting return proceedings. The procedure is decentralized (as a rule, the actual Post or Unit is chosen based on the place of stay or apprehension of the person concerned).

The outcome of return proceedings may either be a return decision or a decision on granting tolerated stay to an “unreturnable” migrant. Depending on the interpretation of the law, this can be the result of a return proceeding from the onset or the result of a two-fold procedure.⁸⁹

⁸³ Information provided by the Office for Foreigners.

⁸⁴ Proceedings in case the claim is manifestly unfounded.

⁸⁵ Article 39(1)(2) of the Act on Protection.

⁸⁶ There have been four cases since January until June 2016, concerning citizens of Armenia, Ukraine and the Republic of Moldova. There were no such cases in 2015.

⁸⁷ 1 January 2015 – 30 June 2016.

⁸⁸ No precise information was provided as to their exact origin.

⁸⁹ As explained below, the wording of the law leaves space for interpretation in relation to the outcome of return proceedings. The interpretation of the legal provisions may be two-fold. According to the first reading of the law, once the return proceedings are initiated the possibility of return should be verified from the outset. No prospect of removal should result in granting the tolerated stay permit. According to the second interpretation, the law requires that first a return decision has to be issued. Once it is in force, the competent authorities should undertake efforts to enforce it. Only when it is not enforceable, a second procedure is initiated with a view of granting the tolerated stay permit (it is based on the assumption that only the existing decision can be unenforceable).

According to Article 351(2) of the Act on Foreigners, a tolerated stay permit is granted to a foreigner if return to the country of origin is unenforceable for reasons that cannot be attributed either to the authorities or to the foreigner concerned. Therefore, a stateless person may be granted this form of status if return to the country of origin is not possible. This is the only “practical solution” offered to stateless persons.

3.3.2.2 QUESTIONS OF PROOF

The Border Guard service confirmed to UNHCR that there are no internal guidelines on determining nationality, including statelessness, but there are a set of methods that are typically used by the Border Guard service for determining the identity of foreigners. These include contacting diplomatic posts of the state indicated by the foreigner, contacting the Polish diplomatic posts in the state indicated by the foreigner, database checks (Integrated Information System ZSE VI,⁹⁰ Interpol, EURODAC, Visa Information System, Pobyt), a linguistic analysis, a personal interview and other methods such as an initial identification questionnaire for foreigners that have indicated Iraq, Syria or Yemen as their countries of origin.

In the course of identification procedures, the Border Guard service gathers the following data: information on previous places of residence, place of birth, knowledge of the language, documents (including copies) issued by the authorities of the country of origin that may confirm identity and full personal data, including the previous address in the state indicated by the foreigner. Persons concerned are required to participate in the identification procedures by filling out questionnaires and other documents, contacting family members or other persons in the country of origin to assist with providing documentary evidence of nationality, being interviewed by consular services or experts on countries of origin, giving fingerprints, cooperating with the competent Border Guard Unit, and being interviewed by the Border Guard service.

The foreigner concerned is informed about the results of the identification procedure and upon request he or she may be informed about the types of identification activities undertaken by the Border Guard service. The individual concerned is entitled to question the facts determined, in writing or orally, with the return officer or social case officer in the Guarded Centre for Foreigners.

However, one person interviewed for the purposes of this mapping study requested such information upon being detained in the Guarded Centre for Foreigners and was asked to fill in questionnaires for the consular services. The person concerned, belonging to the Rohingya minority, filed a written request to the Identification and Return Unit asking for information about the identification activities undertaken so far and their results. He was informed in writing that the identification procedure is undertaken based on Article 325(1) of the Act on Foreigners and that determining identity is outside of the scope of the Code of Administrative Procedure and is not a part of the administrative procedure resulting in the issuance of an administrative decision. Therefore, the Border Guard replied that they are not obliged to provide such information and, indeed, no such information was provided.

Additionally, questioning the facts established in the identification procedures with the assistance of a case manager in a Guarded Centre for Foreigners does not seem to be a remedy that is in any way formally recognized. Therefore, the only formal remedy remaining would be an appeal against

⁹⁰ Zintegrowany System Ewidencji 6 (Integrated System of Evidence 6), more information available at: <https://bit.ly/2IHssLB>

the existing return decision in case of an incorrect determination of nationality made therein which is allowed under Article 127 of the Code of Administrative Procedures.

In respect of the facts that are to be established in order to determine that a person is stateless or of unknown nationality, the Border Guard service stated that every case is assessed individually. If a person claims that he or she is stateless and can provide documentary evidence of that fact, or if that fact is established in cooperation with foreign diplomatic posts, such a person is determined to be stateless. If the identity cannot be confirmed for reasons attributable to the person concerned, such as non-cooperation or when no information is provided by the diplomatic post or when the person cannot comply with requirements of the diplomatic post, it is determined that a person's nationality is unknown.

It was also indicated by the Border Guard that they are able to make a successful determination on statelessness regarding persons originating from the former USSR who did not register their citizenship after the dissolution of the USSR, as well as Palestinians and persons of Tibetan origin.

According to the Border Guard service, the most common difficulties regarding identity verification concern foreigners not willing to cooperate with the competent bodies, purposefully providing false or incomplete data in order to disrupt the removal process, as well as foreign diplomatic posts not cooperating or not conducting procedures within reasonable time limits, e.g. setting requirements that are difficult to meet. The Border Guard service also stated that difficulties concerning identity determination in cooperation with foreign diplomatic posts occur mainly with regard to the following countries of origin: Iran, Eritrea, Guinea, Ethiopia, Liberia, Togo, Bangladesh, Nepal, and Cuba.

3.3.3 Other relevant types of proceedings

According to Article 260 of the Act on Foreigners, a Polish Identity Document may be issued to a foreigner who is staying on the Polish territory, who is a stateless person and has no identity document, if obtaining such a document is not otherwise possible and if it is in the interest of the state. Therefore, the issuance of such a document is conditional upon prior identification of the applicant as stateless. The document confirms that a person is stateless but does not confer a statelessness "status" to its holder and the rights attached thereto. Obtaining the Polish Identity Document does not allow a person to travel abroad and does not exempt its holder from the obligation to obtain a visa, a temporary residence permit, a permanent residence permit or a long-term EU resident permit to be able to stay legally on the territory of Poland.

3.4 Rights of applicants and recognized stateless persons

3.4.1 Right to liberty

It is of particular importance to stateless persons, whose residence in their respective countries may often be deemed undocumented or irregular, that legal safeguards pertaining to the right of liberty provide protection from arbitrary detention. Although there is no unified definition of arbitrary detention in international law, extensive case law⁹¹ provides helpful guidance, referring to general principles that should be observed when depriving an individual of their liberty:

- Detention must always serve a legitimate purpose and must be prescribed by law;
- Detention is a measure of last resort, permissible only when other, less intrusive measures would not satisfy the desired purpose;
- The primary requisite of fairness in the process of applying detention calls for addressing the specific circumstances of the individual. Any automatic decision-making process in this regard would render detention arbitrary and unlawful;⁹²
- UNHCR's Handbook on Protection of Stateless Persons points out that statelessness, by its very nature, severely restricts access to basic identity and travel documents that those with a nationality normally possess. Moreover, stateless persons are often without legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons.⁹³

Under the current Polish legal framework statelessness is usually tantamount to irregular status. As stateless persons in Poland typically have arrived from third countries or, in some cases, from a second generation of migrant families, the lack of valid identification documentation coupled with expiration of their original residence titles effectively prevents them from regularizing their stay through the standard legal pathways. These ramifications expose stateless persons to a risk of detention in Poland.

It is often the prospect of detention that appears to be the main factor deterring stateless persons with an irregular status from disclosing themselves and approaching state authorities to initiate legal proceedings with a view to regularizing their status. The lack of a tailored statelessness determination procedure and absence of a dedicated legal pathway discourages such persons from undertaking any official actions regarding their status, thus forcing them into a precarious state of legal limbo.

⁹¹ Examples of case law available at: <https://www.easo.europa.eu/sites/default/files/Detention-JA-EN-PDF.pdf>

⁹² UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (Detention Guidelines)*, 2012, Guideline 4, available at: <https://www.refworld.org/docid/503489533b8.html>

⁹³ UNHCR, *Handbook on Protection of Stateless Persons*, cited above, para. 112.

It may often be the case that a foreign individual irregularly staying in Poland is placed in detention for the very purpose of establishing identity and nationality. In such a situation, it is crucial that detention is subject to regular review and that the decision on prolongation of this measure is only taken upon a careful assessment of the grounds and necessity of detention.

For the purposes of this study, an analysis of data concerning migration detention was carried out with a view to providing an answer to the question whether stateless persons with irregular status are typically detained and whether there are any identifiable statistical differences between stateless persons and third country nationals in this respect. An analysis of statistical sources provides insufficient data to fully support the assumption that stateless persons are more likely to be detained than other irregular migrants. However, some other observations can be made. Various categorizations are used in relation to the group of foreigners whose nationality is in some way disputed. These different terms may overlap and, in fact, describe the same situations, creating a non-exclusive set of subgroups, which is both confusing and unhelpful in understanding the nature and scope of statelessness. In many cases, the status of those persons often leads to those persons being detained, due to the lack of documentation certifying their personal data. Some of the categories listed by the statistics provided by the Border Guard service include the following:

- persons lacking identity documents;
- persons determined to be stateless;
- stateless persons claiming to be citizens of a given state;
- persons not claiming to have any nationality;
- persons whose nationality and origin has not been confirmed;
- persons whose nationality is unknown;
- persons whose identity has not been confirmed, but who are claiming to be citizens of a given state.

These multiple categories may lead to confusion. It is difficult to argue that there is an added value in separating the category of persons lacking identity documents from the category of persons whose identity/nationality has not been confirmed, since a foreigner without identity documents will often – as follows from observations from research and legal practice – be seen *prima facie* as a person without a proper confirmation of his or her identity. It is also self-explanatory that when there is a lack of documents, the authorities will need to determine the identity and nationality of the individual by other means. Thus, at a certain point, some persons from this category will also be “claiming a certain nationality” or “claiming to be stateless” which makes this distinction redundant. On the other hand, persons for whom the country of origin does not take any position in relation to their nationality after a certain reasonable deadline should, depending on the circumstances, be recorded as stateless or “at risk of statelessness” at the very least.⁹⁴ Once a positive decision on the nationality is issued, this categorization would be subject to change.

This statistical categorization shows that the very core characteristic of statelessness as a non-permanent status is not taken into consideration. It is also crucial to stress that the process of establishing nationality in a situation where there is a risk of statelessness usually bears immediate, negative consequences for the individual, as it may prolong one’s detention.

⁹⁴ See UNHCR, *Handbook on Protection of Stateless Persons*, cited above, para. 41.

Another interesting statistical categorization in the information provided by the Border Guard service is the group of persons “whose nationality is unknown”. It is not clear why this category is separate from the categories of “stateless” and “persons not claiming any nationality”.⁹⁵ The interpretation applied by Eurostat may be instructive in this regard as it considers that the category “unknown” shall include persons for which no information on individual citizenship is available. This understanding is, thus, based on a technical inability to make a determination of citizenship which may reflect a temporary or a permanent situation. When interviewed, the Border Guard service highlighted that sometimes the inability to make a conclusive determination of nationality may be attributed to the non-cooperation of the foreigner in the process, driven by the fear of removal and the aim to prevent possible deportation. On the other hand, there may be cases where although the foreigner is not at fault, the determination cannot take place due to a disability, the person’s age or other special circumstances influencing the person’s status. Such circumstances should be taken into account during the determination of citizenship process.

3.4.2 Other rights of applicants and recognized stateless persons

3.4.2.1 THE RIGHT OF RESIDENCE

The current Polish legal framework severely limits possibilities for the regularization of stay for which stateless persons would be eligible. Due to the link between statelessness and irregular status in Poland, often the only procedure for regularization that could be applicable in such cases is initiating return proceedings with a view to receiving tolerated stay based on the unenforceability of the return order or permit for humanitarian stay where applicable.⁹⁶ It should be underlined, however, that return proceedings are not adapted to carrying out a proper statelessness determination as this process is driven by different objectives and primarily aims to enable removal to a given country. In most, if not all, cases, there is no country to remove stateless persons to.

The main obstacle to obtaining a residence permit is not only the obligation to submit a valid travel document – obtaining an exemption from this condition in practice, although permitted by law, is extremely difficult – but also the requirement of continuous legal stay in Poland until the day of filing the application.⁹⁷ In the overwhelming majority of cases, these conditions cannot be met by stateless persons in Poland.

3.4.2.2 PERMANENT RESIDENCE AND NATURALIZATION

Pursuant to Article 195(1)(6) of the Act on Foreigners, permission to settle is afforded *inter alia* to a foreigner who has been living in Poland based on the tolerated stay permit continuously for a minimum of 10 years. However, the wording of this provision explicitly excludes foreigners who received tolerated stay due to the unenforceability of the removal order. As a result, such stateless persons who received a permit for tolerated stay according to the above circumstances would not

⁹⁵ Analysis of the context and available case law leads to a conclusion that most of these categorizations focus on different stages of the process of identification. Thus, a person who is under a “stateless” category is a person in relation to whom statelessness has been established. “Person not claiming any nationality” is a person in relation to whom such a conclusive determination has not been made, but the procedure is not completed, so the person in question could be, at a later stage, considered as stateless.

⁹⁶ Article 351(9) of the Act on Foreigners.

⁹⁷ This requirement stems from the wording of Article 100(1)(9) of the Act on Foreigners.

be eligible for a permanent residence permit and, as such, would not be able to fulfill the criteria for naturalization as Polish citizens.⁹⁸

3.4.2.3 THE RIGHT TO SELF-EMPLOYMENT

The 2004 Act on Freedom of Business Activity stipulates that self-employment can be taken up by foreign nationals in possession of all types of residence permits which grant access to labour market. Careful analysis of the applicable provisions leads to the conclusion that stateless persons are excluded from this possibility since the wording of Article 13(2) of the above-mentioned Act refers only to “citizens of other states”.

3.4.2.4 THE RIGHT TO WORK

Stateless persons staying irregularly on the territory of Poland cannot take up legal employment. The inability to work has a negative impact on everyday life and life plans. Stateless persons interviewed for this study emphasized their will and need to work and obtain an income and support themselves and their families, which were regarded as more important than obtaining social benefits. They underlined that only by signing a legal employment contract would their labor rights be secured and their tax obligations fulfilled. Moreover, by signing a contract of employment the chances of becoming a victim of exploitation and discrimination would be limited.

Stateless persons who received tolerated stay are entitled to work in Poland without the need to apply for a work permit.

3.4.2.5 THE RIGHT TO SOCIAL ASSISTANCE

The 2004 Act on Social Assistance stipulates that foreigners with tolerated stay are only eligible for certain forms of assistance including meals and shelter, necessary clothing and designated benefits for vital livelihood needs, including medicine and others. Relevant jurisprudence suggests that there is no possibility to interpret these regulations in a way that broadens the scope of accessible forms of social assistance.⁹⁹ Therefore, stateless persons with tolerated stay would only be entitled to limited social assistance. Some additional assistance is available for those stateless who were granted a permit to stay based on humanitarian grounds (among others, monthly allowance 500 PLN per child)

3.4.2.6 THE RIGHT TO HEALTH CARE

Article 68 of the Polish Constitution provides for the right to have one’s health protected, regardless of status (thus not exclusively applicable to Polish citizens). Generally, legal stay and a valid residence permit are considered to be a pre-requisite for a foreigner to be entitled to state funded health care (with some exceptions regarding, for example, asylum-seekers or foreigners placed in detention centers whose legal status is not resolved – in such cases state funded health care is provided based on separate regulations). There is also a narrow scope of health care provided irrespective of the status of the person concerned and is, therefore, available to

⁹⁸ Article 30 of the Act on Polish Citizenship.

⁹⁹ See, for example, judgment of the Regional Administrative Court (WSA) in Szczecin of 17 November 2010 (II SA/Sz 817/10) and judgment of the Supreme Administrative Court of 5 October 2011 (I OSK 803/11).

irregularly staying foreigners, including stateless persons. Amongst such care is medical rescue in emergency situations.

Stateless persons who received tolerated and humanitarian stay have access to public health care under the same conditions and scope as Polish citizens.

3.4.2.7 TRAVEL AND IDENTITY DOCUMENTS

The Polish Act on Foreigners provides for two distinct types of travel documents that may be issued to foreigners: a Polish travel document for a foreigner (Article 252) and a temporary Polish travel document for a foreigner (Article 267). A Polish travel document is issued, as a rule, to foreigners with permanent residence permits, while a temporary Polish travel document is issued, as a rule, to foreigners with residence permits issued by the Polish consular authorities. Neither can be issued to a person with a permit for tolerated stay.

The lack of identity and travel documents is often mentioned by stateless persons as an obstacle to enjoying their basic rights such as access to public health care and social benefits along with the possibility to get married. The absence of such documents is also perceived as an impediment in respect of applying for a residence permit. Those lacking identity documents also complain that they are unable to travel, open a bank account or obtain a driving license. These concerns were also echoed by the stateless persons interviewed for the purposes of this study, some of whom also reported they had come to Poland with a valid travel document which was later stolen or had expired and the consular authorities subsequently refusing to issue a new document.

3.4.3 Amnesty

During the discussions about the status of stateless persons in Poland, state authorities have repeatedly pointed out that the 2012 so called “abolition” (or amnesty) allowed for legalization of long-term irregular residents in Poland, including those without nationality. Still, out of over 9,500 applicants only 21 were recorded as stateless. The chances of receiving a positive decision in the case of stateless persons were significantly undermined by the statutory requirement to submit a valid travel document. Even though the 2011 Act regulating the abolition process provided for a possibility of waiving this obligation in justified cases, in practice it was extremely difficult to achieve.¹⁰⁰ The problematic issue of requiring a valid travel document was also highlighted in a study based on interviews with regional administration workers who complained about cooperation difficulties with consulates and the partially unclear legal framework.¹⁰¹ Cases have been recorded where a stateless person managed to regularize his or her stay during the abolition process but later refrained from submitting an application for a new residence permit fearing that without a travel document he or she would not be successful and would be detained. Similar observations were made in another study which points out that Voivods¹⁰² only very rarely make use of the possibility to apply a waiver from the requirement to submit a valid travel document.

¹⁰⁰ This strict approach was also taken by the Regional Administrative Court. See also M. Fagasiński, M. Górczyńska, M. Szczepanik, *Wychodząc z cienia. Badanie prawnych, politycznych i społecznych konsekwencji programu regularizacyjnego 2012*, Helsińska Fundacja Praw Człowieka, 2015, available in Polish only.

¹⁰¹ W. Goszczyński, *Abolicja 2012, Perspektywa instytucji wdrażającej. Raport z badania jakościowego przygotowanego dla Polskiej Akcji Humanitarnej w ramach projektu: „Kampania informacyjna na temat zasad abolicji, adresowana do cudzoziemców nielegalnie przebywających w Polsce, oraz badanie przebiegu abolicji w roku 2012”* finansowanego z grantu Fundacji im. Stefana Batorego, available in Polish only.

¹⁰² D. Pudzianowska, M. Szczepanik *Ending Childhood Statelessness – a Study on Poland*, cited above.

3.5 Conclusions

The above observations lead to the conclusion that the normative framework currently in force in Poland may severely limit or prevent access of stateless persons to their fundamental human rights, thereby rendering them in an extremely vulnerable situation. Without the possibility to legalize their stay, they cannot benefit from social assistance, work legally, study or get married. Importantly, even stateless persons with tolerated stay do not have access to certain fundamental rights, including the right to social assistance and to a travel document. Even if stateless persons manage to regularize their stay through a tolerated stay permit, they will remain unable to receive a permission to settle in Poland and naturalize. Situation of those who were granted a permit for stay based on humanitarian grounds is somehow better.

Additionally, during the pending proceedings for tolerated stay, the applicant's stay in Poland is perceived as irregular and, in this period, no specific rights are granted. Most stateless persons attempting to regularize their stay via this process will also be faced with detention for the duration of the proceedings.

UNHCR's Handbook lists a set of rights that are dependent on the type of connection between stateless persons and the host country. It is, therefore, important to not only introduce a statelessness determination procedure in Poland but to also ensure that the latter provides for a legal status for stateless persons on the basis of their statelessness. Moreover, the Handbook underlines the need to interpret the 1954 Convention in accordance with the 1951 Convention (especially vis-à-vis the status of asylum-seekers), due to the close relation between the two treaties.¹⁰³

¹⁰³ UNHCR, *Handbook on Protection of Stateless Persons*, cited above, para. 125.

4. Reduction and prevention of statelessness

4.1 Introduction

The 1961 Convention is the main international instrument that provides for rules for the conferral and withdrawal of citizenship to prevent cases of statelessness. By setting out rules to limit the occurrence of statelessness, the Convention also echoes Article 15(2) UDHR, which states that *no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality*.

By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness in the world. The Convention seeks to balance the rights of individuals with the interests of States by establishing general rules for the prevention of statelessness, while simultaneously allowing some exceptions to those rules.

A central focus of the 1961 Convention is the prevention of statelessness at birth by requiring States to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. States must also ensure that foundlings and persons born stateless on a ship or aircraft acquire a nationality. The UNHCR Guidelines provide interpretative legal guidance on the application of these Articles contained in the 1961 Convention.¹⁰⁴

The 1961 Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from a State's nationals – either through loss, renunciation, or deprivation of nationality – when doing so would result in statelessness. Only under a few limited exceptional circumstances does the Convention allow for the withdrawal of nationality resulting in statelessness. The 1961 Convention further seeks to prevent statelessness upon a change in civil status. This is complemented by Article 9 of the CEDAW, which grants women equal rights with men to acquire, change, or retain nationality, in particular in the context of marriage.

The safeguards of the 1961 Convention only apply where statelessness would otherwise arise and for individuals who have a link with the Contracting State. The provisions of the 1961 Convention must be read and interpreted in light of developments in international law, in particular international human rights law. Relevant instruments include the ICCPR, CEDAW, and the CRC, which is of paramount importance in determining the scope of the obligations under the 1961 Convention to prevent statelessness among children. Article 7 of the CRC provides that every

¹⁰⁴ UNHCR, *Guidelines on Statelessness No. 4*, cited above.

child has the right to acquire a nationality. The drafters of the CRC saw a clear link between this right and the 1961 Convention and therefore specified in Article 7(2) of the CRC that *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*¹⁰⁵

In addition to the 1961 Convention, the 1954 Convention includes provisions relating to the reduction of statelessness, based on the understanding that the ultimate solution for stateless persons is the acquisition of a nationality. Namely, Article 32 of the 1954 Convention provides that *the Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.* Article 34 of the 1951 Convention similarly obliges States Parties to facilitate the naturalization of refugees, including those who are stateless; *in particular, costs should be reduced and the naturalization procedures expedited.*

Article 34 of the 1951 Convention and Article 32 of the 1954 Convention together encourage other, non-specified measures to facilitate naturalization. These might include easing the conditions for naturalization, for example, by reducing the period of residence required or by not requiring proof of release from a former nationality.¹⁰⁶

4.2 Acquisition and loss of nationality under the national legal framework and compatibility with international standards

4.2.1 Avoidance of statelessness at birth

4.2.1.1 Children born on the Polish territory and foundlings

In Poland, *jus soli* is treated as an auxiliary principle to attribute citizenship in certain cases of children born or found on the Polish territory. According to Article 14 of the Act on Polish Citizenship, a child shall acquire Polish citizenship at birth when the child is born on the territory of the Republic of Poland of parents who are unknown, stateless or whose citizenship cannot be determined. According to Article 15 of the same Act, a child of unknown parents shall acquire Polish citizenship when found on the territory of the Republic of Poland.

The child has to be born on the territory of Poland to benefit from a safeguard against statelessness at birth accorded by Articles 14 and 15 of the Law on Polish Citizenship. This Act does not include a provision about access to nationality for children born on a ship or a plane registered with the state.

¹⁰⁵ UNHCR *Guidelines on Statelessness* No. 4, cited above, para. 10.

¹⁰⁶ Council of Europe, *Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence*, 30 September 1969, 564 (1969), available at: <https://bit.ly/2lXiGFu>

Yet, according to the Aviation Law Act of 2002¹⁰⁷ and the Maritime Code of 2001,¹⁰⁸ such a ship or plane is considered Polish territory. This is in compliance with Article 3 of the 1961 Convention which stipulates that birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the state whose flag the ship flies or in the territory of the state in which the aircraft is registered.

Acquisition of nationality is automatic for children born on the Polish territory, when their parents are unknown, stateless or their citizenship cannot be established or if they are foundlings. It is not conditional upon any additional criteria, such as registration. However, Polish nationality law does not fully comply with the obligations stemming from Article 1(1) of the 1961 Convention because not all children born on the Polish territory who would otherwise be stateless acquire Polish nationality. The law does not prevent statelessness of children who are born on the Polish territory of parents who are known and who have their nationality determined, but who are unable to transmit their nationality. This problem is illustrated by Marialina's story below.

Marialina's story:



Marialina was born in Kutno, Poland, in 2010. Her parents are emigrants from Cuba. However, she did not acquire Cuban nationality by birth, nor was she able to acquire Polish citizenship. Marialina could not acquire Polish citizenship because her parents were known and held a nationality of a foreign country. She did not acquire Cuban nationality either because according to Cuban law, in order for a child to become a Cuban citizen, at least one of the parents needs to be present in Cuba and take part in an administrative proceeding which lasts at least 3 months. These conditions were impossible to fulfill for Marialina's parents who are emigrants, and, as such, are entitled to stay in Cuba for a maximum period of 60 days only. As a result, the girl was stateless for a period of 3 years (2010-2013).

This was a difficult time for the family: *"Our daughter had no passport and we could not travel anywhere. She could only talk with her grandparents in Cuba over the phone,"* her parents say. Marialina's parents prepared an application to the President of Poland for conferment of nationality, which is a discretionary procedure. Lawyers assisted by the Helsinki Foundation for Human Rights (HFHR) prepared a letter to the President supporting her case. Marialina was conferred Polish nationality by the Polish President in October 2013. Her parents say that they were not intending to obtain any privileges based on the particular situation of their daughter: *"At no time did we intend to gain anything through this situation as we know we have not been here long enough (...). Our objective has always been to obtain a legal status for our daughter."*

¹⁰⁷ Act of 3 July 2012 on Aviation, Journal of Laws 2018, Item 1183.

¹⁰⁸ Act of 18 September 2001, the Maritime Code, Journal of Laws 2001, Item 1545.

The practical implementation of the provisions concerning acquisition of nationality at birth by children of parents who are “unknown” is also sometimes problematic. Two cases have come to the attention of the Helsinki Foundation for Human Rights (HFHR) in which the mother abandoned a new born child in a hospital after giving her name and place of birth to the hospital personnel.¹⁰⁹ In this case, the mother was not considered “unknown” by the public officials in later proceedings to confirm Polish nationality, even though the information within the hospital documentation was not verified on the basis of any official document given by the mother. It is noteworthy that administrative personnel in hospitals insist on recording the identity of mothers upon admission to the hospital since it is necessary in order to receive a refund of services from the National Health Fund. Therefore, even unverified data is, at times, included in documentation, which later results in problems for stateless children attempting to obtain Polish nationality.

4.3.1.2 CHILDREN BORN OUTSIDE THE POLISH TERRITORY

Even though under the Act on Polish Citizenship, nationality at birth is acquired *ex lege*, meaning that registration is not a condition for a child to acquire Polish nationality at birth, in practice, registration in Poland (or transcription of the birth certificate) is sometimes required to obtain a passport or a Polish Identity Document at the Polish Embassy. It follows that in order for a child to practically avail him or herself of nationality documents, registration in Poland is required in some cases.

Recent cases of children raised by homosexual couples abroad, of which at least one of the partners is Polish, shows that obtaining a passport can be problematic. Poland does not regulate homosexual partnerships. Nevertheless, Polish citizens enter into such unions abroad and children are also sometimes raised by such couples. One example is a couple of two women (one is a Polish national) living in the UK who have been raising a child together and who are both included in the British birth certificate as parents. When they asked the Polish Embassy in London for a temporary passport for their child, this was refused. They were told that the birth certificate lists two women as parents, which is not allowed under Polish law. Officials at the Embassy told the couple that the Polish Constitution allows only for a woman and a man to be parents. The two women requested a written refusal. The justification they received stated only that they have to make a transcription of their British birth certificate in Poland. The case concerning this problem is now pending before the European Court of Human Rights¹¹⁰.

¹⁰⁹ See Marysia's story below.

¹¹⁰ Application no. 30806/15, A.D.-K. and Others v. Poland

Marysia's story:



Marysia was born in Poland in 1998 to a Romanian Roma mother who abandoned her in the hospital shortly after giving birth. Since she was 2 years old, Marysia has been living with her foster family in Tarnobrzeg. Marysia's birth certificate stated that she was born of a Romanian mother, even though no one could verify this information at the time. This made it impossible for Marysia to claim Polish nationality and her foster parents were not able to obtain Romanian identity documents for her either. They could not adopt her or give her their last name, with which they intended to make her life easier. They were told by various officials that it was better not to pursue this case as it might lead to Marysia's expulsion to Romania.

Growing up in Poland, Marysia was stateless for over 16 years. She attended a Polish school, spoke perfect Polish, felt Polish and had no ties to Romania whatsoever. Following the advice they had received, her foster parents did not try to regulate her situation until she was a bit older and started asking questions: "Why can't I go on a summer camp abroad? Why can't I visit my [foster] father [who temporarily worked in Germany and in Cyprus]?" She had no identity card and no passport. In 2009, Marysia's foster parents began an administrative struggle for her citizenship. Their request was first denied by the Voivod which stated that Marysia could not receive a confirmation of Polish nationality, because her mother was Romanian.

The family sought help from a legal NGO which set the procedure in motion. First, attempts to receive Romanian documents for Marysia via its Bucharest office were made, but the Romanian authorities refused to issue her identity documents. Ultimately, after a long struggle, Marysia received a Polish permanent residence permit which was a necessary step towards conferment of Polish citizenship. Finally, Marysia's application for Polish citizenship was sent to the Polish President via a Voivod. She was conferred Polish nationality in August 2014. Marysia and her foster parents feel happy that she has finally received documents confirming her national belonging and that she no longer feels different than her peers in this regard. However, they resent the lack of support from the Polish authorities. They could not understand the attitude of civil servants: "They haven't done a thing, nobody wanted to tell us what to do, how to fight it, where to go (...). Public offices should take care of the best interests of the child (...). Instead, for them a child is a piece of paper moved between the 'pending' and 'resolved' piles. When it comes to Marysia's case, I am ashamed of this country's law and officials who deal with such matters" – Marysia's foster father says.

Another case which the HFHR has been engaged with is that of a same-sex family, legally constituted abroad through surrogacy with one parent being a Polish national, who encountered problems when confirming the Polish nationality of their four children (born via surrogacy in the US) in a procedure before a Voivod. The couple are inscribed as parents in birth certificates of these children. The Voivod, instead of confirming Polish nationality of the children by applying the provision that a child acquires Polish citizenship (irrespective of the place of birth) when at least one parent is a Polish citizen, requested details of the children's biological mother's identity.¹¹¹ The refusals of the Voivod to confirm Polish nationality were upheld by the Regional Administrative

¹¹¹ Case files no. DOI-R-I-6270-182/2015/AK; DOI-R-I-6270-184/2015/AK; DOI-R-I-6270-185/2015/AK; DOI-R-I-6270-183/2015/AK (not published).

Court¹¹². The issue was further considered by the Supreme Administrative Court which decided that the nationality of the children should be confirmed¹¹³.

4.3.2 Avoidance of statelessness in the context of deprivation and loss of nationality

Polish law does not allow for the deprivation of Polish nationality.¹¹⁴ There are certain situations, however, which can result in a loss of nationality, leading to a risk of statelessness. Article 34(2) of the Polish Constitution states that the only way of losing Polish nationality is by an act of renunciation. The procedure of renunciation is described in the Act on Polish Citizenship. According to this Act, a person willing to renounce Polish nationality must submit an appropriate declaration which takes effect only after the President of the Republic of Poland gives his consent to this renunciation. The relevant provisions do not include an explicit guarantee that would prohibit nationality loss in case it would result in statelessness. However, such a guarantee can be interpreted from the requirement of submitting a document proving possession of another nationality or a promise of such nationality together with the application to the President. If the person willing to renounce Polish nationality cannot provide such documents, his or her motion will not be processed. Interestingly, however, there is no explicit requirement to include such documentation in relation to children included in the application. Therefore, there may be cases where the parent renounces Polish nationality to acquire a nationality of another state and his or her children's Polish nationality is lost but the new state does not grant its nationality to those children. Furthermore, a promise of nationality is not a guarantee that one will not end up stateless. Polish law, therefore, does not fully comply with Article 6 of the 1961 Convention according to which, in case the loss of nationality of a parent results in the loss of nationality of the child, such loss should be conditional upon the child's possession or acquisition of another nationality. The Act on Polish Citizenship should, thus, be amended to include a specific guarantee regarding children in the renunciation procedure.

There are also other ways in which Polish nationality can be lost. In the case of foreigners who were recognized as Polish nationals by a decision of a Voivod, such a decision can be invalidated if, for example, fraud was committed at the time of the application. The general rules of administrative procedure apply (for example, Article 156(1)(2) of the Code of Administrative Procedure, which stipulates that a decision can be invalidated if it was issued without the legal basis and in flagrant violation of the law) and there is no special guarantee against statelessness. These provisions are in compliance with the 1961 Convention according to which a Contracting State may deprive a person of its nationality, even if such deprivation would render him or her stateless, if the nationality has been obtained by misrepresentation or fraud.¹¹⁵ There have been cases in which decisions confirming Polish nationality were invalidated on the basis of Article 156(1)(2) of the Code of Administrative Procedure. The decision confirming Polish nationality is a declaratory act and its invalidation has serious practical consequences for a person. It also puts a person at risk of statelessness because there is no special guarantee in the Code of Administrative Procedure against statelessness.

¹¹² Case files no. IV SA/Wa 3680/15; IV SA/Wa 3681/15; IV SA/Wa 3682/15; IV SA/Wa 3683/15.

¹¹³ Case files no. II OSK 1868/16, II OSK 1869/16, II OSK 1870/16, II OSK 1871/16

¹¹⁴ See Art. 34(2) of the Polish Constitution and Art. 46 of the Law on Citizenship.

¹¹⁵ Art. 8(2)(b) of the 1961 Convention.

Victoria's story:



Victoria was born in 1991 in Lugansk, Ukraine, as a Ukrainian citizen. She later moved to Yalta, Crimea, and lived there with her family until she was 8. She came to Poland together with her mother in 1999 (on a visa) and for 17 years she lived in Poland on the basis of a temporary stay permit. She graduated from Polish schools and started her studies at a Polish university.

In 2010, Victoria and her mother filed a motion to the Polish President (via the Mazowiecki Voivod) for conferment of Polish nationality. In February 2011, Victoria was informed by the Ministry of Interior and Administration that her motion was submitted to the President. In April 2012, Victoria and her mother were issued the so-called 'promise' from the President of Poland to receive Polish nationality on the condition that within a period of two years they provide proof of loss of their Ukrainian nationality. They initiated the procedure aimed at renouncing Ukrainian nationality. This procedure turned out to be extremely complicated. The Ukrainian Embassy in Warsaw demanded documents they had to retrieve from Ukraine before they submitted the motion to renounce Ukrainian citizenship. They had to sell their property in Yalta. When they returned with proof of the sale of their property, the authorities demanded proof of deregistration with Crimean residence and tax authorities which could only be issued by the authorities in Crimea. They travelled to Crimea and when they returned to the consulate it turned out that other documents were needed. Victoria was worried and asked the Chancellery of the President of Poland to give her nationality without fulfilling this condition but she was refused. At the end of 2013, Victoria went to Ukraine to obtain the remaining documents needed in the procedure. Her Ukrainian identity card was taken away from her. In December 2013, the Embassy finally accepted their motion to renounce Ukrainian nationality. In 2015, she was refused a temporary stay permit by the Polish authorities. She had to go back to Ukraine to get a visa. Before going back she went to the Embassy to learn about her motion to renounce Ukrainian nationality. She then received the decision confirming that she had lost her Ukrainian nationality in September 2014. She was not informed earlier about this decision. When she was handed this decision her passport was taken. As a result, she could not travel to Ukraine in order to get a visa and to legalize her stay in Poland. She thus became a stateless person staying illegally in Poland – without documents, insurance, without the possibility of continuing her studies. Victoria asked the President to confer her nationality due to the difficult situation in which she found herself in. The Chancellery replied that it is not possible as her 'promise' to get Polish nationality was no longer valid and that she could apply for Polish nationality in the procedure before the Voivod. She was not eligible because her stay in Poland was not legal. An NGO successfully helped Victoria to regularize her stay in Poland and to obtain Polish nationality (she was conferred Polish nationality in June 2017).

"I think both Ukrainian and Polish authorities are to blame for the situation. The unfortunate turn of events has made me very afraid. I was scared because I had no social security; I had to face up to the fact that I would have nothing but my private means in the event I had health problems or an accident. I was afraid whenever I saw a police car and policemen. I was scared I would be placed in a detention centre even though I had lived legally in Poland for over 18 years. I lived in constant stress. I had to endure the fact that all members of my family were subject to the same pressure. I was put on the margins of the society because I had no identity documents."

4.3.3 Reduction of statelessness

4.3.3.1 NATURALIZATION

A stateless person may acquire nationality through the procedure for granting nationality by the President of Poland or through the recognition by a Voivod. The procedure before the President is discretionary and there is no formal condition that a person has to be born on the Polish territory. The provisions of the Act on Polish Citizenship are very general and merely indicate that the President can confer Polish citizenship on foreigners.

Another possibility for a stateless person is to use the procedure before the Voivod, which is not discretionary. The Voivod shall recognize as a Polish citizen a foreigner who has resided in the territory of Poland over a period of at least two years, with an uninterrupted legal residence and with one of the permanent residence permits (a permanent residence permit, a long-term EU residence permit, or a right of permanent residence), and who is a stateless person.

In both procedures the stateless applicant's residence in Poland must be legal and confirmed by appropriate documents (a residence permit, Identity Document) which is often a serious obstacle for stateless persons in making use of these procedures. In the procedure before the President, the pre-condition of legality of residence is not formulated in the Act on Polish Citizenship but the sub-statutory regulations¹¹⁶ require a residence permit to be presented together with the application for conferment of nationality. In the procedure before the Voivod, the required length of stay is shorter than for a regular foreigner (three years), but it has to take place on the basis of the permanent residence permit which is a more stringent condition. Moreover, this procedure also requires the applicant to submit official confirmation of knowledge of the Polish language. Lastly, the person cannot be a threat to national security.

¹¹⁶ These sub-statutory acts specify the forms used in different naturalization procedures, for example: *Regulation of the President of the Republic of Poland of 7 August 2012 on the specification of the form template of the application for consent to the abandonment of Polish nationality, requirements concerning photograph enclosed to the application and template of the notice of the content of decision on giving the consent to abandon Polish nationality* (Journal of Laws of 2012, item 928).

5. Recommendations

Accession to the Statelessness Conventions and adherence to relevant international human rights standards

- It is recommended that Poland becomes party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- It is recommended that Poland fulfills its existing obligations under international human rights law, including obligations not to discriminate against and not to arbitrarily detain stateless persons.

Identification and protection of stateless persons

- It is recommended that the definition of a stateless person set out in Article 1(1) of the 1954 Convention is introduced into national legislation and consistently employed, both for statistical purposes as well as for the determination of statelessness, including in the course of existing procedures.
- It is recommended that a common approach towards gathering statistical data on statelessness should be adopted, including through introducing a clear distinction between those whose nationality status is not yet resolved (where the procedures are ongoing) and those who were previously determined to be stateless or of unknown nationality.

Determination of statelessness and the rights attached to the status

- It is recommended that a dedicated, unified and effective statelessness determination procedure be established recognizing statelessness as a protection ground, offering stateless persons rights enshrined in the 1954 Convention, including the right to residence and proper documentation (both national Identity Document for stateless persons and a travel document).
- It is recommended that special attention is paid to vulnerable stateless persons who should be identified at the earliest possibility. In this regard, relevant guidelines should be drafted in cooperation with UNHCR and NGOs, and effectively implemented. It is recommended that the responsibility of such identification is assigned to Border Guards at entry points, detention facilities' staff members, medical and psychological staff, refugee centers' social workers and officials of the Office for Foreigners. Vulnerable stateless persons should be provided with adequate assistance and treatment.
- Stateless children should be provided with a speedy, simplified procedure of regularization of their status and ultimately, naturalization.

Prevention of statelessness

- It is recommended that the Act on Polish Citizenship be amended and aligned with the requirements in the 1961 Convention and the Convention on the Rights of the Child, to prevent children from being born into statelessness.

STATELESSNESS



UNHCR, September 2019