

COUNTRY BRIEFING  
JULY 2020

# Austria



## INTRODUCTION

The [Statelessness Index](https://index.statelessness.eu/) (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),<sup>1</sup> a civil society alliance of over 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members<sup>2</sup> to research and compile comparative information on statelessness in [Austria](#).<sup>3</sup> This briefing summarises the findings on how Austrian law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Austrian Government for reform in priority areas.

To be stateless is not to be considered as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women, and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural, and social rights.

## INTERNATIONAL AND REGIONAL INSTRUMENTS

Positively, Austria is state party to all relevant international and regional instruments, including the four statelessness-specific conventions ([1954 Convention Relating to the Status of Stateless Persons](#); [1961 Convention on the Reduction of Statelessness](#); [European Convention on Nationality](#); [2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession](#)). This means Austria has obligations to protect the rights of stateless people, the right to a nationality and to prevent statelessness. However, significant reservations to these Conventions impact substantially on the rights they guarantee. Austria's 11 reservations to the European Convention on Nationality are particularly far-reaching. They allow for gender discrimination in the acquisition of nationality by descent; a six-month age limit on the acquisition of nationality by foundlings; no facilitation of naturalisation for stateless people; and deprivation of nationality resulting in statelessness in some cases. Austria also maintains a reservation to Article 27 of the 1954 Convention, stipulating that it shall be bound only insofar as it applies to stateless persons lawfully staying in its territory. Furthermore, international law does not have direct effect in Austria, and several important international standards have yet to be implemented in domestic law.

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The Austrian Government should consider withdrawing its reservations to the European Convention on Nationality and the Convention Relating to the Status of Stateless Persons to fully protect children from statelessness and ensure that stateless people on its territory can access their rights effectively.



## STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.<sup>4</sup> The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. Identification of stateless people remains the first step to protecting their rights, but also leads to a better understanding of the challenges that need to be addressed. There are several sources of disaggregated data on the stateless population in Austria, including the 2011 census, the Central Register of Residents, and data on naturalisations, births, deaths, and residence permits. The Ministry of Interior also reports how many people under the category of 'unknown nationality' applied for asylum (283 in 2019<sup>5</sup>). As of 1 January 2020, the Central Register of Residents reports a total of 17,025 persons in the categories of 'stateless' (4,255), 'unknown nationality' (745) and 'undetermined nationality' (12,025).<sup>6</sup>

However, there is no dedicated statelessness determination procedure in Austria, no legal definition of statelessness, nor any guidance on how to apply the different nationality status categories. They are therefore applied inconsistently and vary from one authority to another, which means that data on the stateless population remains unreliable.

The Austrian Government should take concrete steps to improve the recording of statelessness across all government agencies, including by harmonising and defining the statistical categories used by different agencies ('stateless', 'undetermined' or 'unknown' nationality) and at different administrative levels (Federal State, Länder, Municipality). The Government should ensure that registration officials are trained to accurately identify and record statelessness.



## STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.<sup>7</sup> There is no definition of a stateless person in Austrian law nor a dedicated statelessness determination procedure. Statelessness may be determined through certain administrative procedures including through applications for international protection, a residence permit, a foreigners' passport (*Fremdenpass*), or 'tolerated stay' (*Duldung*). However, stateless people are not entitled to any legal status or rights only by virtue of their statelessness. Different authorities are responsible for different procedures and there is no public information nor instructions for authorities on how to identify or assess statelessness. Jurisprudence gives some guidance and has determined that the standard of proof should not be too high. Procedural safeguards such as access to legal aid, interviews and interpreting also vary depending on the procedure. Without legal residence on another basis, stateless people have access only to emergency medical care and primary education.

The Austrian Government should introduce a legal definition of a stateless person into Austrian legislation in accordance with Article 1 of the 1954 Convention, establish in law a dedicated statelessness determination procedure in line with UNHCR Guidance and good practice, and fulfil its obligations to stateless people under the 1954 Convention, including to grant them a residence permit, right to work, right to study and facilitated naturalisation.



## DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>8</sup> Austria is bound by the EU Returns Directive, which requires particular attention to be paid to the situation of vulnerable persons; and the revised EU Returns Handbook<sup>9</sup> requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal prior to detaining or prolonging a person's detention. There are gaps when it comes to preventing the arbitrary detention of stateless people in Austrian law and practice. Statelessness is not considered juridically relevant in decisions to detain, and more than one proposed country of removal (or indeed none if the detained person cannot identify one) may be identified prior to detention. Detention should only

be used as a measure of last resort, but lawyers report that this is not always the case and available alternatives are rarely applied in practice. Law and policy establish procedural safeguards including a time limit, legal aid, decisions in writing, automatic periodic review, and remedies, but practical barriers to accessing these have been reported. There is little protection on release as identification documents are not routinely provided. Since 2018, coercive detention (*Beugehaft*) may be imposed for up to four weeks if the person does not cooperate with their removal. There is no right to free legal aid nor an effective remedy against coercive detention.

The Austrian Government should take further steps to protect stateless people from arbitrary detention and prolonged periods of 'tolerated stay' by introducing a statelessness determination procedure and protection status and ensuring clear referral routes from returns proceedings, as well as embedding consideration of statelessness as a juridically relevant fact in all decisions to detain.



## PREVENTION AND REDUCTION

As State party to the 1961 Convention and the European Convention on Nationality, Austria has obligations to prevent and reduce statelessness on its territory. While Austrian law contains some safeguards for the prevention and reduction of statelessness, there are several gaps. Children born stateless in Austria must meet requirements that go beyond the 1961 Convention before acquiring Austrian nationality, such as ten years' legal stay and application in a too-short timeframe (18-20 years old<sup>10</sup>). Foundlings are considered Austrian nationals until proven to the contrary, but the provision applies only to infants up to six months old. As highlighted by the UN Committee on the Elimination of Discrimination against Women and the UN Committee on the Rights of the Child in their latest concluding observations on Austria, the provisions for the acquisition of Austrian nationality by children born out of wedlock to Austrian nationals abroad are gender-discriminatory.<sup>11</sup> There are also several barriers to naturalisation for stateless adults including a lengthy residence requirement (ten years) and high fees, although stateless people may be exempted from providing certain documents in the naturalisation process.

Birth registration law and practice is generally good and thus do not create a risk of statelessness. There is facilitation for parents unable to present key documents, specifically in the asylum context. However, practical barriers exist for stateless people to access late birth registration, in particular due to the lack of identification of statelessness. There are also gaps in safeguards to prevent statelessness in some instances of loss and deprivation of Austrian nationality.

The Austrian Government should consider amending the law to ensure that all children born on its territory who would otherwise be stateless automatically acquire a nationality at birth without conditions. The Government should also remove gender discrimination in the provisions governing the acquisition of Austrian nationality by descent and improve identification of stateless people by civil registration offices to facilitate access to late birth registration.

## SUMMARY OF RECOMMENDATIONS

The Austrian Government should:

- Consider withdrawing all reservations to the European Convention on Nationality and to the 1954 Convention Relating to the Status of Stateless Persons.
- Improve the identification and recording of statelessness across government agencies at all administrative levels, by harmonising and defining statistical categories and by ensuring that all relevant officials are trained to accurately identify and record statelessness.
- Introduce a legal definition of a stateless person in Austrian legislation in accordance with Article 1 of the 1954 Convention.
- Establish a statelessness determination procedure and protection status in law and in line with UNHCR guidelines to give full effect to the rights enshrined in the 1954 Convention to stateless people living in Austria.
- Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to a procedure to determine statelessness and residence rights for those released from detention to protect against re-detention.
- Ensure that decision-makers embed consideration of statelessness as a juridically relevant fact in all decisions to detain.
- Ensure full implementation of and compliance with the EU Returns Directive in line with the EU Returns Handbook, including the requirement to pay attention to the specific circumstances of stateless persons.
- Amend the Austrian Nationality Act to ensure that all otherwise stateless children born in Austria acquire a nationality at birth without conditions.
- Remove gender discrimination in the provisions governing the acquisition of Austrian nationality by descent.
- Remove practical barriers to late birth registration, in particular by improving the identification of stateless people by civil registration offices.

## ENDNOTES

<sup>1</sup> <https://www.statelessness.eu>

<sup>2</sup> Lead Country Researcher for the Statelessness Index in Austria is ENS Individual Member Leonhard Call

<sup>3</sup> <https://index.statelessness.eu/country/austria>

<sup>4</sup> Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

<sup>5</sup> Bundesministerium für Inneres, Asylstatistik 2019, [https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asyl-Jahresstatistik\\_2019.pdf](https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asyl-Jahresstatistik_2019.pdf)

<sup>6</sup> Statistik Austria, Bevölkerung zu Jahresbeginn 2002-2020 nach detailliertem Geburtsland, [http://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_staatsangehoerigkeit\\_geburtsland/index.html](http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_staatsangehoerigkeit_geburtsland/index.html)

<sup>7</sup> UNHCR (2014), Handbook on Protection of Stateless Persons, [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf)

<sup>8</sup> ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf)

<sup>9</sup> European Commission (2017) Annex to the Commission recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927\\_recommendation\\_on\\_establishing\\_a\\_common\\_return\\_handbook\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf)

<sup>10</sup> Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the ninth periodic report of Austria, 30 July 2019, paras 28 and 29, <https://undocs.org/en/CEDAW/C/AUT/CO/9> and Committee on the Rights of the Child (CRC), Concluding Observations on the combined fifth and sixth periodic reports of Austria, 6 March 2020, para 21, <https://undocs.org/CRC/C/AUT/CO/5-6>

<sup>11</sup> *ibid*

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