

COUNTRY BRIEFING
OCTOBER 2020

Belgium



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 \(ENS\)](#),¹ 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 members² to research and compile comparative information on statelessness in Belgium. This briefing summarises the findings on how Belgian 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 Belgian Government for reform.

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

Belgium has international obligations to protect the right to a nationality and to prevent statelessness, as it has ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as most other relevant international and regional human rights instruments. Both the 1954 and 1961 conventions have direct effect in the Belgian legal system.

However, Belgium retains two important reservations to the 1961 Convention. These have the effect of limiting the safeguard for foundlings to acquire Belgian nationality to those who are believed to be new-born (Article 2); and reserving the right to deprive a person of their Belgian nationality in certain circumstances (Article 8(3)).

Belgium is not party to the Council of Europe conventions on statelessness, the European Convention on Nationality, and the Convention on the Avoidance of Statelessness in Relation to State Succession. Belgium has also not acceded to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

The Belgian Government should consider withdrawing its reservations to the 1961 Convention and amending the Belgian Nationality Code to fully align with the Convention.

The Belgian Government should consider acceding to other relevant international and regional instruments, including the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession.



STATELESS POPULATION DATA

Identification of stateless persons is the first step to protecting their rights, and the availability of reliable data is linked to whether procedures to identify and determine statelessness exist. States should therefore collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless people on their territory.³

The stateless population has never been comprehensively mapped in Belgium. Available data is fragmented and only indicative of the population of concern.

Belgian authorities acknowledge that identification of nationality may pose an acute problem in some cases.⁴ According to the statistics of the Immigration Office, on 1 January 2019, there were 926 people registered as “stateless” and holding a residence permit. However, this figure does not accurately represent the total stateless population in Belgium. At least three categories of stateless people are not appropriately included in the registration system: people awaiting statelessness determination without a valid residence permit (or with a permit valid for less than three months), people recognised as stateless without a valid residence

permit, and other stateless people who are not in any procedure and do not hold a residence permit.

At the same time, 19,644 people who hold a residence permit have been registered with “undetermined nationality”. This includes people whose nationality cannot be determined at birth, people without identity documents from their country of origin and people of Palestinian origin. The figure may also include applicants under the statelessness determination procedure who obtained a residence permit on other grounds. 2,134 persons are officially registered as nationals of the “Palestinian Authority”, while the issue of statelessness among people with Palestinian origin is an ongoing debate in the courts.

Finally, figures for the number of asylum seekers registered as “stateless” are recorded, published and available monthly in line with Eurostat requirements. To the contrary, data on stateless people held in immigration detention is not routinely collected or published.

The Belgian Government should take concrete steps to improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and ensuring that the statistical categories cover the entire stateless population in Belgium, including stateless people in immigration detention and removal procedures.

The Belgian Government should consider carrying out a comprehensive exercise to accurately map the stateless population in Belgium.

The Ministry of Justice should publish annual statistics of judicial decisions on stateless status determination at first instance and appeal. The Immigration Office should publish annual statistics on the number of applications for residence for humanitarian reasons by stateless persons recognised by the judiciary, as well as the number of positive decisions and types of residence permits granted.



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.⁵

In Belgium, the judiciary is competent to determine statelessness. Since 2017, a person can be recognised as stateless by the family courts. However, the procedure falls short of standards set out in the UNHCR Handbook on Protection of Stateless Persons in several areas, so it cannot be considered a formal statelessness determination procedure. Applicants for stateless status may be at risk of removal and detention. As applicants are considered undocumented migrants, they have only limited rights. In the judicial procedure, the burden of proof lies almost entirely with the applicant, and the standard of proof and documents required from the applicant are unclear. Delays in decision-making vary between courts but can be up to 12 to 18 months. If the application is rejected, an appeal can be filed. Legal aid is available both at first instance and appeal.

Recognition as stateless does not result in an automatic residence permit and the law does not provide for a procedure or any procedural safeguards for a stateless person to acquire a residence permit. An application must be made to the Immigration Office for regularisation on humanitarian grounds. There is no right to temporary residence while

the application is pending, the applicant may only access urgent healthcare and is not permitted to work, access housing or social security. An appeal against refusal of a residence permit can be filed before the ‘Council for Alien Law Litigation (CALL)’. Control by the CALL is however limited to examining the lawfulness of the decision. Stateless people can apply for naturalisation through Parliament after two years of legal residence if their right of residence is of unlimited duration. However, most stateless people initially hold a limited duration humanitarian residence permit or no residence permit at all, so the facilitated regime is hardly ever applied in practice.

In the facilitated parliamentary procedure, residence is the only requirement, but in practice, language and integration requirements are applied at the discretion of the competent parliamentary commission. In the regular procedure (after five years' residence), there are no exemptions for stateless people and there is a fee of 150 EUR per application that applies to all adults and children. Access to nationality can be refused on account of ‘reprehensible behaviour’, which is an ill-defined concept and is applied broadly in practice.

In 2019, a legislative proposal was introduced in Parliament to establish criteria and a procedure for granting residence to a person recognised as stateless. The new government has put the issue of residence permits for stateless persons on the agenda. It is unclear when these discussions will resume.

The Belgian Government should introduce a dedicated statelessness determination procedure and protection status in line with UNHCR guidance and good practice. In the meantime, applicants in the existing judicial procedure and recognised stateless persons should be granted a residence permit, effective remedies, and all rights protected under the 1954 Convention.

In line with Article 32 of the 1954 Convention and UNHCR recommendations, the Belgian Government should provide for stateless people to acquire Belgian nationality through a facilitated naturalisation procedure.



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.⁶

In Belgium, there is no dedicated mechanism in place to identify stateless persons or persons at risk of statelessness during the decision to detain or in detention. There is systematic detention of people seeking international protection at the border, including on grounds of statelessness. There is no mechanism in place to assess vulnerability prior to the detention decision and statelessness is not mentioned in the Immigration Law as a factor increasing vulnerability. As such, stateless people in Belgium may face prolonged periods of (repeated) detention. In practice, no alternatives are considered prior to detention. There is no automatic review of detention, but the individual can initiate a procedure before the court to challenge detention and has access to legal aid. However, the court can only examine the lawfulness of the detention and not whether it is an appropriate measure. If released from detention, stateless people will likely receive an order to leave the territory and will not be granted a temporary residence permit nor any protection, except for access to urgent healthcare.

The Belgian Government should take steps to protect stateless people from arbitrary detention, including introducing a mechanism to identify (risk of) statelessness during the decision to detain and implementing a thorough assessment of vulnerability and appropriateness of alternative measures in each individual case.

The Belgian authorities should improve the identification of people at risk of statelessness in removal procedures and detention centres, including through staff training, and ensure access to the statelessness determination procedure.



PREVENTION AND REDUCTION

As a State party to the 1961 Convention, Belgium has obligations to prevent and reduce statelessness on its territory. According to Belgian nationality law, a child born in Belgium is Belgian if they would otherwise be stateless at any moment before they reach the age of 18 or are emancipated. However, the law states that the child will not be Belgian if they can obtain another nationality through administrative measures before the authorities of their parents' country of nationality, initiated by their parent(s) or legal guardian(s). There is a safeguard for the children of refugees in such cases.

Belgian nationality law contains safeguards to prevent statelessness in the case of foundlings, adopted children, and children born abroad to

Belgian nationals. However, the foundlings provision only applies to new-borns, and there may be a risk of statelessness in the adoption process due to rules on loss and acquisition of Belgian nationality. For a child born to Belgian parents abroad to acquire Belgian nationality automatically, at least one parent must also have been born in Belgium, otherwise the parents must take further action before the child turns five. All births must be registered in Belgium regardless of the parents' status, but civil registrars must report undocumented people to the immigration authorities, and subsequent registration in the National Registry (a precondition for access to other rights) is only possible if at least one parent (or the child) has legal residence. There are safeguards to prevent statelessness in all provisions of Belgian law related to loss and deprivation of nationality, except in the case of fraud.

The Belgian Government should ensure that its policies and practices relating to birth registration and the identification of stateless children take into account UNHCR guidelines and good practice to ensure that the Belgian Nationality Code is implemented in line with international standards and that all children are correctly registered.

The Belgian Government should amend the Belgian Nationality Code to ensure that all children born abroad to Belgian nationals acquire nationality automatically at birth, remove any risk of statelessness arising in adoption procedures, and to bring provisions on foundlings and deprivation of nationality in line with the 1961 Convention.

SUMMARY OF RECOMMENDATIONS

The Belgian Government should:

- Consider withdrawing its reservations to the 1961 Convention and amending the Belgian Nationality Code to fully align with the Convention.
- Consider acceding to the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession.
- Take concrete steps to improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and ensuring that the statistical categories cover the entire stateless population in Belgium, including stateless people in immigration detention and removal procedures.
- Consider carrying out a comprehensive exercise to accurately map the stateless population in Belgium.
- Publish annual statistics of judicial decisions on stateless status determination.
- Publish annual statistics on the number of applications for leave to remain made by recognised stateless people, as well as the number of decisions and types of residence permits granted by the Immigration Office.
- Introduce a dedicated statelessness determination procedure and protection status in line with UNHCR guidance and good practice. In the meantime, applicants in the existing judicial procedure and recognised stateless persons should be granted a residence permit, effective remedies, and all rights protected under the 1954 Convention.
- Take concrete steps to protect stateless people from arbitrary detention, including introducing a mechanism to identify (risk of) statelessness during the decision to detain and implementing a thorough assessment of vulnerability and appropriateness of alternative measures in each individual case.
- Improve the identification of persons at risk of statelessness in removal procedures and detention centres, including through staff training, and ensure access to the statelessness determination procedure.
- Facilitate access to Belgian nationality by naturalisation to stateless people.
- Ensure that its policies and practices relating to birth registration and the identification of stateless children take into account UNHCR guidelines and good practice.
- Amend the Belgian Nationality Code to ensure that all children born abroad to Belgian nationals acquire nationality automatically at birth, remove any risk of statelessness arising in adoption procedures, and to bring provisions on foundlings and deprivation of nationality in line with the 1961 Convention.

ENDNOTES

¹ <https://www.statelessness.eu/>.

² NANSEN is an independent expertise centre in refugee law based in Brussels and prepared this briefing. In addition, together with Wout Van Doren, ENS individual member, NANSEN led the research for the Statelessness Index 2019.

³ Conclusions of the Council of the European Union and Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

⁴ Office des Étrangers, Statistiques annuelles 2018, p. 51,

<https://dofi.ibz.be/sites/dvzoe/FR/Documents/Statistiques/Statistiques%20sur%20les%20cartes%20et%20documents%202018%20v3%20FR.pdf>

⁵ 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

⁶ 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

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