

COUNTRY BRIEFING
JULY 2020

Moldova



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 Moldova.³ This briefing summarises the findings on how Moldova's 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, Detention, Statelessness Determination and Status, and Prevention and Reduction – and makes recommendations to the Moldovan Government for reform in priority areas.

To be stateless is not to be recognised 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

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Moldova is party to all relevant international and regional instruments, including the four core statelessness instruments. It is one of very few countries to have acceded to the [Convention on the Avoidance of Statelessness in Relation to State Succession](#). Moldova therefore has obligations to protect the rights of stateless people, the right to a nationality and to prevent statelessness. Moldova does retain some reservations to the [1954 Convention](#), but these no longer have substantive effect as domestic law grants all convention rights to recognised stateless persons.

Moldova is not a member state of the European Union, but its domestic law partially implements EU Directives, including the [EU Returns Directive](#).

STATELESS POPULATION DATA

Data on the stateless population in Moldova is limited and there are problems with the way official data is collected, including that there are overlapping categories, such as 'people with USSR passports' and people with 'undetermined citizenship'. This and the fact that there is no data available for the disputed Transnistrian region, means that the stateless population is likely to be underreported. Data on stateless people

entering or leaving immigration detention is not published by the Bureau of Migration and Asylum.

The Moldovan Government should take concrete steps to improve the recording of statelessness, including by defining and harmonising the categories used, and including data from detention in official national statistics.



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 (SDP).⁴

Moldova established a dedicated SDP in law in 2011, which in many ways is an example of good practice. The procedure is accessible, with no fee or residence requirement, and can be initiated ex officio, in person, orally or in writing. The dedicated Statelessness Unit must examine claims within six months (with the possibility to extend to 12 months), and whilst free legal aid during the administrative procedure is provided for in law, in practice it is provided by NGOs. An interview is mandatory, interpreters are made available, and training is provided by UNHCR. The burden of proof is shared, and although not established in law, the standard of proof is the same as in the asylum procedure, and cross-

referral between procedures is established. Applicants are protected from expulsion and have access to some basic rights, including the right to work; and there is an automatic right to appeal. People recognised as stateless are granted permanent residence and rights (except political rights) in line with nationals.

The Moldovan Government should take concrete steps to ensure that state-funded legal aid for applicants under the statelessness determination procedure is available in practice and establish a lower standard of proof in law for the SDP to bring it in line with the standard for asylum procedures.



DETENTION

There are several gaps in detention law, policy, and practice in Moldova. Although there are some protections against the arbitrary detention of stateless people, including that powers to detain are provided for in law, detention should be a last resort, and a country of removal must be set prior to detaining; in practice, it is unclear how these principles are implemented and no alternatives to immigration detention are established in law or practice. The provision of information to detainees on their rights is not set in law and is provided by UNHCR's NGO partners at the discretion of the Government. Although judicial reviews were removed in 2016, the Supreme Court of Justice published an [advisory opinion](#) in December 2018 stating that, in the presence of sufficient conditions, detention duration should not exceed 30 days, which cumulatively should not exceed six months and 12 months respectively. This aims to ensure the exercise of judicial control on returns and removal procedures in the Republic of Moldova. People released from detention will either be transferred to the Statelessness Unit for documentation if recognised as stateless or granted 'tolerated stay' if not. Detained persons have a right to appeal against each court decision, and information is provided on how to do this in the decision, with free legal aid available.

The Moldovan Government should take further steps to protect stateless persons from arbitrary detention, by establishing alternatives to immigration detention and the provision of information to detainees on their rights in both law and practice. The Government should ensure that the Supreme Court of Justice Advisory Opinion no. 102 on the Term of Detention of Foreigners is implemented in practice to ensure judicial control over the necessity for the continuation of detention.



PREVENTION AND REDUCTION

As State party to the [1961 Convention on the Reduction of Statelessness](#) and the [European Convention on Nationality](#), Moldova has obligations to prevent and reduce statelessness on its territory. Until recently, Moldovan law contained a full safeguard for all children born on the territory who would otherwise be stateless to acquire nationality automatically at birth. However, in 2018, the law changed and now requires at least one parent to have legal residence, allowing for the possibility of some children born in Moldova to be born stateless, contrary to its international obligations. In the case of foundlings, adopted children, children born abroad to Moldovan nationals and children born in Moldova where one parent has legal residence, provisions are in place to ensure children acquire a nationality.

Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.⁵ Birth registration must be free and take place

immediately after birth without delay. Although Moldovan law provides for free birth registration and stipulates that all children must be registered, efforts to prevent statelessness are hindered by barriers to universal free birth registration. Parents must be documented to register a birth, which means that some parents face barriers to registering births, including members of the Romani community. Positively, from 2018, the authorities are now required to recognise civil status acts from the disputed Transnistrian territory, making it easier for parents of Transnistrian origin to register the births of their children in Moldova and for children born to Transnistrian parents to acquire Moldovan nationality, reducing the risk of statelessness in such cases.

The Moldovan Government should consider amending the law and taking concrete action to remove all practical barriers to birth registration with a particular focus on minority groups including Romani communities, so that all children born in Moldova can be registered immediately regardless of their parents' status.

The Moldovan Government should amend the law to reinstate the full safeguard to ensure that all children born on the territory who would otherwise be stateless acquire Moldovan nationality automatically at birth, regardless of the residence status of their parents.

SUMMARY OF RECOMMENDATIONS

The Moldovan Government should:

- Improve the recording of statelessness, including by defining and harmonising the categories used, and including data from detention in official national statistics.
- Ensure that state-funded legal aid for applicants under the statelessness determination procedure is available in practice and establish a lower standard of proof in law for the statelessness determination procedure to bring it in line with the standard for asylum procedures.
- Better protect stateless persons from arbitrary detention, by establishing alternatives to immigration detention and the provision of information to detainees on their rights in both law and practice.
- Ensure that the Supreme Court of Justice Advisory Opinion no. 102 on the Term of Detention of Foreigners is implemented in practice to ensure judicial control over the necessity for the continuation of detention.
- Consider amending the law and taking concrete action to remove all practical barriers to birth registration with a particular focus on minority groups including Romani communities, so that all children born in Moldova can be registered immediately regardless of their parents' status.
- Amend the law to reinstate the full safeguard to ensure that all children born on the territory who would otherwise be stateless acquire Moldovan nationality automatically at birth, regardless of the residence status of their parents.

ENDNOTES

¹ www.statelessness.eu

² Lead Country Researcher for the Statelessness Index in Moldova is ENS Member, Law Center of Advocates NGO

³ <https://index.statelessness.eu/country/moldova>

⁴ UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

⁵ UN Convention on the Rights of the Child, Article 7.

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