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International and Regional Instruments

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
IOB.1.a	1954 Convention	Is your country party to the 1954 Statelessness Convention?	UN Convention Relating to the Status of Stateless Persons, 1954	Yes.	United Nations Treaty Collection, Convention Relating to the Status of Stateless Persons Übereinkommen über die Rechtsstellung der Staatenlosen, Bundesgesetzblatt (BGBl) [Federal Law Gazette] III No. 81/2008 as amended by BGBl III No. 213/2019 (DE)
IOB.1.b		If yes, when was ratification/accession?		8 February 2008.	
IOB.1.c		Are there reservations in place? Please list them.	Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people.	Yes, Austria made one reservation and one declaration: "Austria shall only be bound by Article 27 insofar as it applies to stateless persons lawfully staying in its territory. Austria declares that it will fulfil its obligations under Article 28 by issuing Foreigner's Passports (<i>Fremdenpass</i>) to stateless persons lawfully staying in its territory."	United Nations Treaty Collection BGBl III No. 81/2008 (DE)
IOB.1.d		Does the Convention have direct effect?	Best practice is that the Convention has direct effect, though this may depend on the legal regime.	No. For the provisions included in the 1954 Convention to have effect, they must be incorporated into domestic legislation. This was confirmed in a 2014 decision of the Supreme Administrative Court (<i>Verwaltungsgerichtshof</i>), in which the court dismissed a stateless person's application for unemployment benefits. At the time of accession (2008), some national laws already contained provisions on stateless persons, covering certain rights contained in the 1954 Convention, e.g.: a) Article 12 (personal status): contained in the Act on Private International Law; b) Article 16 (access to courts): contained in the rules governing domestic jurisdiction in matters of divorce and adoption; c) Article 25 (administrative assistance): late birth registration for stateless people contained in the Civil Status Act d) Article 23 (public relief): access to advanced payment of child support for stateless people; e) Article 28 (travel documents): access to Foreigner's Passport (<i>Fremdenpass</i>) for stateless people / persons with undetermined nationality legally residing in Austria who do not possess a valid travel document; f) Article 32 (naturalisation): several provisions contained in the Nationality Act, (see below PRS 1a-4b). The Federal Constitutional Act on Elimination of racial discrimination stipulates the rule that legislation and execution shall refrain from any discrimination on the sole ground of, i.a., descent or national origin. According to the Constitutional Court (<i>Verfassungsgerichtshof</i>), also the principle of equal treatment of different groups of non-nationals can be derived from this rule. Differentiations are only admissible if they are based on reasonable grounds. With view to Austria's obligations under international law following the ratification of the 1954 and 1961 Conventions <i>statelessness</i> is to be regarded as a reasonable ground for preferential treatment. In its 2013 country report on Austria, EUDO noted that "not one single paragraph in any law has been amended thus far in order to make the [1954] Convention a 'living instrument'." This observation is still valid as of today (August 2019).	Article 9(2) Bundesgesetz vom 15. Juni 1978 über das internationale Privatrecht (IPR-Gesetz), BGBl No. 304/1978 as amended by BGBl I No. 72/2019 (DE) Articles 76(2)(3) and 113b(1)(1) Gesetz vom 1. August 1895, über die Ausübung der Gerichtsbarkeit und die Zuständigkeit der ordentlichen Gerichte in bürgerlichen Rechtssachen (Jurisdiktionsnorm), RGBl No. 111/1895 as amended by BGBl I No. 61/2019 (DE) Article 35(2)(2) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE) Article 2(1) Bundesgesetz über die Gewährung von Vorschüssen auf den Unterhalt von Kindern (Unterhaltsvorschußgesetz 1985, BGBl No. 451/1985 as amended by BGBl I No. 61/2018 (DE)) Article 88(2) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) Articles 7(3)(2), 10(4), 14(1)(1), 20(1)(1), 24 and 33(2) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) Bundesverfassungsgesetz vom 3. Juli 1973 zur Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassistischer Diskriminierung, BGBl No. 390/1973 (DE) , Official English translation UNHCR, Mapping Statelessness in Austria , January 2017, para 102 <i>Stern, J. & G. Valchars</i> (2013), Country Report: Austria , EUDO Citizenship Observatory, 36 Case Law: VwGH 20.03.2014, 2013/08/0004 (1954 Convention has no direct effect;

					no subjective rights derived from Articles 17 and 24 of the 1954 Convention) VfGH 26.6.2019, E 2838/2018 ua (discrimination on the sole ground of, i.a., descent or national origin prohibited; principle of equal treatment of different groups of non-nationals, unless differentiation is based on reasonable grounds)
IOB.2.a	1961 Convention	Is your country party to the 1961 Statelessness Convention?	UN Convention on the Reduction of Statelessness, 1961	Yes.	United Nations Treaty Collection, Convention on the Reduction of Statelessness
IOB.2.b		If yes, when was ratification/accession?		22 September 1972	Übereinkommen zur Verminderung der Staatenlosigkeit, BGBl No. 538/1974 (DE) United Nations Treaty Collection
IOB.2.c		Are there reservations in place? Please list them.	As above	Yes, Austria made two reservations in accordance with Article 8(3)(a) relating to deprivation of nationality resulting in statelessness: "Austria declares to retain the right to deprive a person of his nationality, if he voluntarily enters the military service of a foreign State. Austria declares to retain the right to deprive a person of his nationality, if such person being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or to the prestige of Austria." Austria is the only Contracting State to the 1961 Convention that retains the right to deprive a person of their nationality if they voluntarily enter the military service of a foreign state.	BGBl No. 538/1974 (DE)
IOB.2.d		Does the Convention have direct effect?	As above	No. The Austrian Nationality Act of 1985 enacts many of the provisions of the 1961 Convention; however, as with the 1954 Convention, there are legal and/or practical barriers to the realisation of some of the rights protected under the 1961 Convention. These barriers are still in force (see below PRS 1a-4b).	Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürger-schaftsgesetz 1985), BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018)
IOB.3.a	Other conventions	State party to European Convention on Nationality 1997? Please list any reservations.	European Convention on Nationality, 1997	Yes, with 11 reservations and three declarations: Articles 6 and 7 "Austria declares that the term 'parents' used in Articles 6 and 7 does not, according to the Austrian legislation on nationality, include the father of children born out of wedlock." Articles 6 and 9 "Austria declares that the term 'lawful and habitual residence/résidence légale et habituelle' used in Articles 6 and 9 will be interpreted according to the Austrian legislation on nationality as 'Hauptwohnsitz' (main domicile) in the sense of the respective Austrian legislation." Article 6(1)(b) "Austria declares to retain the right that foundlings found on its territory are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months." Article 6(2)(b) "Austria declares to retain the right to grant nationality to a foreign national only if he: 1. was born in the territory of the Republic and has been stateless since birth; 2. has had his ordinary residence in the territory of Austria for a period of not less than ten years, of which a continuous period of not less than five years must precede the granting of nationality; 3. has not been convicted with final effect by a domestic court for certain offences, specified in the 1985 Law on Nationality; 4. has neither been sentenced with final effect by a domestic nor a foreign court to imprisonment of five or more years; 5. applies for naturalisation after completing the age of eighteen and not later than two years after attaining majority." Article 6(4) "Austria declares to retain the right not to facilitate the acquisition of its nationality for	Council of Europe, Reservations and Declarations for Treaty No. 166 - European Convention on Nationality Europäisches Übereinkommen über Staatsangehörigkeit, BGBl III No. 39/2000 (DE)

				<p>stateless persons and recognised refugees lawfully and habitually resident on its territory (i.e. main domicile) for this reason alone."</p> <p>Article 7 "Austria declares to retain the right to deprive a national of its nationality if: 1. he acquired the nationality more than two years ago either through naturalisation or the extension of naturalisation under the Nationality Act of 1985 as amended; 2. neither Section 10, para 4, nor Section 16, para 2, nor Section 17, para 4, of the Nationality Act of 1985 as amended were applied; 3. on the day of naturalisation (extension of naturalisation) she/he was not a refugee as defined in the Convention of 28th July 1951 or the Protocol relating to the legal Status of Refugees of 31 January 1967, and 4. despite the acquisition of its nationality she/he has retained a foreign nationality for reasons he is accountable for. Austria declares to retain the right to deprive a national of its nationality, if such person, being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of Austria."</p> <p>Article 7(1)(c) "Austria declares to retain the right to deprive a national of its nationality, if such person voluntarily enters the military service of a foreign State."</p> <p>Article 7(1)(f) "Austria declares to retain the right to deprive a national of its nationality whenever it has been ascertained that the conditions leading to the acquisition of nationality ex lege, as defined by its internal law, are not fulfilled any more."</p> <p>Article 8(1) "Austria declares to retain the right of permitting renunciation of its nationality by a national only in the case that: 1. the national possesses a foreign nationality; 2. no criminal procedure or execution of a criminal sentence is pending in Austria for an offence punishable with more than six months of imprisonment; 3. in the case of the national, being a male person, he is not a member of the Federal Armed Forces and: a. has not yet passed the age of sixteen or has already passed the age of thirty-six; b. has fulfilled his regular military or civilian service obligations; c. has been found unfit for military service by the Recruiting Commission or has been declared permanently unfit for any kind of civilian service by the competent administrative physician; d. has been dispensed from recruitment to the Federal army for reasons of mental illness or mental disorder, or e. has fulfilled the military obligations, or in their place service obligations in another State of which he is a national and is therefore dispensed from regular military or civilian service on the basis of a bilateral agreement or an international convention. The conditions listed under sub-paragraphs 2 and 3 do not apply if the person renouncing her/his nationality has had her/his ordinary residence outside the territory of the Republic for a continuous period of not less than five years."</p> <p>Article 22(a) "Austria declares that the age referred to in Article 22(b) is considered to have been reached with completion of the age of 35."</p> <p>Articles 21 and 22 "Austria declares that the terms 'military obligations/obligations militaires' used in Articles 21 and 22 will be interpreted in a</p>	
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				manner that they only comprise the obligation of an individual to fulfil her/his compulsory military service. Other military obligations are not affected by this Convention."	
IOB.3.b		State Party to European Convention on Human Rights 1950? Please list any relevant reservations.	European Convention on Human Rights, 1950	Yes, with two reservations regarding the application of Article 5 (no interference with the measures governing the deprivation of liberty prescribed in Austrian legislation) and Article 6 (no prejudice to the principles governing public court hearings). While domestic legislation on the deprivation of liberty has rendered the reservation in respect of Article 5 irrelevant, the ECtHR found Austria's reservation in respect of Article 6 to be invalid. In 1964, the ECHR (and its Protocol No. 1) was incorporated into the Austrian Constitution.	Council of Europe, Reservations and Declarations for Treaty No. 005 - Convention for the Protection of Human Rights and Fundamental Freedoms Konvention zum Schutze der Menschenrechte und Grundfreiheiten, BGBl No. 210/1958 as amended by BGBl No. 59/ 1964 (DE) ECtHR, 3.10.2000, Eisenstecken v. Austria , no. 29477/95, para 29
IOB.3.c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations.	Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006	Yes. No reservations.	Council of Europe, Chart of signatures and ratifications of Treaty 200 - Council of Europe Convention on the avoidance of statelessness in relation to State succession: https://www.coe.int/ Übereinkommen des Europarates über die Vermeidung von Staatenlosigkeit in Zusammenhang mit Staatennachfolge, BGBl III No. 146/2010 as amended by BGBl III No. 79/2012 (DE)
IOB.3.d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive). Please list any relevant reservations.	Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)	Yes. No reservations.	Transposed into national legislation (see BGBl I No. 38/2011 (DE)).
IOB.3.e		State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations.	Convention on the Rights of the Child 1989	Yes. The reservations to Art 13, 15 and 17 as well as declarations to Art 38(2) and (3) were withdrawn in 2015. In 2011, several rights of the convention were incorporated into the Austrian Constitution.	United Nations Treaty Collection, Convention on the Rights of the Child Übereinkommen über die Rechte des Kindes, BGBl No. 7/1993 as amended by BGBl No. 437/1993 and BGBl III No. 138/2015 (DE) Bundesverfassungsgesetz über die Rechte von Kindern, BGBl I No. 4/2011 (DE), Official English translation
IOB.3.f		State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations.	International Covenant on Civil and Political Rights 1966	Yes, with reservations: "Article 12(4) will be applied provided that it will not affect the Act of April 3, 1919, State Law Gazette No. 209, concerning the Expulsion and the Transfer of Property of the House of Habsburg-Lorraine as amended by subsequent legislation. Articles 9 and 14 will be applied provided that legal regulations governing the proceedings and measures of deprivation of liberty as provided for in the Administrative Procedure Acts and in the Financial Penal Act remain permissible within the framework of the judicial review by the Federal Administrative Court or the Federal Constitutional Court as provided by the Austrian Federal Constitution. Articles 10(3) will be applied provided that legal regulations allowing for juvenile prisoners to be detained together with adults under 25 years of age who give no reason for concern as to their possible detrimental influence on the juvenile prisoner remain permissible. Article 14 will be applied provided that the principles governing the publicity of trials as set forth in article 90 of the Federal Constitutional Law as amended in 1929 are in no way prejudiced and that: (a) para 3(d) is not in conflict with legal regulations which stipulate that an accused person who disturbs the orderly conduct of the trial or whose presence would impede the questioning of another accused person, of a witness or of an expert can be excluded from participation in the trial; (b) para 5 is not in conflict with legal	United Nations Treaty Collection, International Covenant on Civil and Political Rights Internationaler Pakt über bürgerliche und zivile Rechte, BGBl No. 591/1987 (DE)

				<p>regulations which stipulate that after an acquittal or a lighter sentence passed by a court of the first instance, a higher tribunal may pronounce conviction or a heavier sentence for the same offence, while they exclude the convicted person's right to have such conviction or heavier sentence reviewed by a still higher tribunal;</p> <p>(c) para 7 is not in conflict with legal regulations which allow proceedings that led up to a person's final conviction or acquittal to be reopened.</p> <p>Articles 19, 21 and 22 in connection with Article 2(1) will be applied provided that they are not in conflict with legal restrictions as provided for in Article 16 ECHR.</p> <p>Article 26 is understood to mean that it does not exclude different treatment of Austrian nationals and foreigners, as is also permissible under Article 1(2) of the International Convention on the Elimination of All Forms of Racial Discrimination."</p>	
IOB.3.g		State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations.	International Covenant on Economic, Social and Cultural Rights 1966	Yes. There are no reservations.	<p>United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights</p> <p>Internationaler Pakt über wirtschaftliche, kulturelle und soziale Rechte, BGBl No. 591/1987 (DE)</p>
IOB.3.h		State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations.	Convention on the Elimination of all Forms of Discrimination Against Women 1979 Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness.	Yes. There are currently no reservations (the reservations to Articles 7(b) and 11 were withdrawn in 2000, 2006 and 2015).	<p>United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Konvention zur Beseitigung jeder Form von Diskriminierung der Frau, BGBl No. 443/1982 (DE)</p>
IOB.3.i		State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Yes. There are currently no reservations (the reservation to Article 5 was withdrawn in 2018).	<p>United Nations Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p> <p>Übereinkommen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe, BGBl No. 492/1987 (DE)</p>
IOB.3.j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations.	International Convention on the Elimination of All Forms of Racial Discrimination 1965	<p>Yes, there is one reservation:</p> <p>"Article 4 provides that the measures specifically described in sub-paras (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. The Republic of Austria therefore considers that through such measures the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association may not be jeopardized."</p> <p>In 1973, the prohibition of all forms of racial discrimination as well as the general rule that the legislature and the executive shall refrain from any distinction on the sole ground of race, colour, or national or ethnic origin were incorporated into the Austrian Constitution.</p>	<p>United Nations Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Internationales Übereinkommen über die Beseitigung aller Formen rassistischer Diskriminierung, BGBl No. 377/1972 (DE)</p> <p>Bundesverfassungsgesetz vom 3. Juli 1973 zur Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassistischer Diskriminierung, BGBl No. 390/1973 (DE), Official English translation</p>
IOB.3.k		State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations.	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990	No.	United Nations Treaty Collection, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IOB.3.l		State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations.	Convention on the Rights of Persons with Disabilities 2006	Yes. There are no reservations.	Übereinkommen über die Rechte von Menschen mit Behinderungen sowie das Fakultativprotokoll zum Übereinkommen über die Rechte von Menschen mit Behinderungen, BGBl III No. 155/2008 as amended by BGBl III No. 101/2019 (DE)

Stateless Population Data

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
POP.1.a	Availability and sources	Does the Government have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence).	<p>Gen. Rec. 32, CEDAW: States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>Institute on Statelessness and Inclusion (2014): States should strengthen measures to count stateless persons on their territory.</p>	<p>Yes.</p> <p><i>Census</i>: During the last census (self-reporting) in 2011, 5,289 people were recorded as "stateless", of "undetermined nationality" or with "unknown nationality".</p> <p><i>Central Register of Residents</i>: According to Statistik Austria, 4,255 stateless people, 745 individuals of unknown nationality and 12,025 persons of undetermined nationality (in total: 17,025) were registered in the Austrian Central Register of Residents as of 1 January 2020. Children until the age of 14 constitute over 70% of persons recorded across all the three categories of potentially stateless people. Of the altogether 17,025 persons potentially at risk of statelessness, 46% are female and over 70% reside in Vienna.</p> <p><i>Naturalisation</i>: From 2008 - (April) 2018, 426 stateless people, 49 individuals of undetermined nationality and 17 persons with unknown nationality (in total 492) acquired Austrian nationality. Among them, 232 individuals were born in Austria. In 2019, 82 stateless people and 10 individuals of undetermined nationality were naturalised.</p> <p><i>Residence permits</i>: According to information provided to UNHCR, 1,132 stateless persons were residing in Austria based on a residence permit by the end of 2019.</p> <p><i>Vital statistics</i>: Between 2002 and 2012 the births of 171 stateless children, 20 children of unknown nationality and 1,257 children of undetermined nationality were recorded in Austria (total: 1,448). Statistik Austria recorded another 541 children born in Austria being stateless, of undetermined or unknown nationality between 2013 and 2018. Between 2012 and 2018 the deaths of 583 stateless people, persons of undetermined nationality and individuals with unknown nationality were recorded.</p>	<p>Statistik Austria, Volkszählungen 1951 bis 2001, Registerzählung 2011, Bevölkerung nach Staatsangehörigkeit und Geschlecht 1951 bis 2011</p> <p>Statistik Austria, Statistik des Bevölkerungsstandes, a) Bevölkerung am 1.1.2020 nach detaillierter Staatsangehörigkeit und Geschlecht bzw. Altersgruppen b) Bevölkerung am 1.1.2020 nach detaillierter Staatsangehörigkeit und Bundesland</p> <p>Statistik Austria, Statistik der Einbürgerungen, Eingebürgerte Personen seit 2008 nach bisheriger Staatsangehörigkeit</p> <p>STATcube – Statistical Database of Statistik Austria, 'Naturalisations, Children born stateless, with undetermined or unknown nationality in Austria, Time Section: 2008-2018' (DE, registration fee required)</p> <p>UNHCR, Refugee Data Finder, Population Statistics, Totals, Stateless persons, Year 2019, Country of Origin: All countries, Country of Asylum: Austria</p> <p>UNHCR, Mapping Statelessness in Austria, January 2017, paras 65 (residence permits) and 69 (birth statistics)</p> <p>STATcube – Statistical Database of Statistik Austria, 'Children born stateless, with undetermined or unknown nationality in Austria, Time Section: 2002-2018' (DE, registration fee required)</p> <p>STATcube – Statistical Database of Statistik Austria, 'Death statistics, stateless persons, persons with undetermined or unknown nationality, Time Section: 2012-2018' (DE, registration fee required)</p>
POP.1.b		Do government authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures.	As above	Domestic law or administrative guidelines do not define the different categories "stateless" and nationality "undetermined" or "unknown". Categorisation is thus often inconsistent and may vary from one government authority to another. Due to the lack of a Statelessness Determination Procedure one authority's classification of a person as stateless is not binding on other authorities. See also POP 1f.	UNHCR, Mapping Statelessness in Austria , January 2017, Chapter 3. <i>A Demography of Statelessness in Austria</i>
POP.1.c		What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate?	As above	UNHCR estimates that all people classified under the three categories ("stateless", "undetermined" or "unknown" nationality) might be at risk of statelessness. UNHCR relies on the above-mentioned statistics of Statistik Austria and the Austrian Ministry of the Interior but notes that these figures should only be seen as an indication of the number of stateless persons whereas the exact scope of statelessness in Austria would be unknown.	UNHCR, Mapping Statelessness in Austria , January 2017, paras 3, 12, 17, 18, 298 and Chapter 3. <i>A Demography of Statelessness in Austria</i>
POP.1.d		Have there been any surveys or mapping studies to estimate the stateless population in the country?	As above	Yes.	UNHCR, Mapping Statelessness in Austria , January 2017

POP.1.e		Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures.	As above	No. For figures on potentially stateless asylum-seekers/refugees see POP 1g.	
POP.1.f		Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe.	As above	Yes. As noted by UNHCR in its mapping study, it is not possible to establish an accurate statistical overview of Austria's stateless population. The reasons, besides the lack of a dedicated SDP in Austria, are: official statistics only include stateless people legally resident in Austria and persons who registered their residence. Stateless persons living in Austria who did not register their residence therefore remain invisible in the data. Since there is no dedicated statelessness determination procedure in place and domestic legislation does not contain legal definitions of the categories "stateless", "undetermined" or "unknown" nationality, there is a risk of mis-categorisation and inconsistent categorisation.	UNHCR, Mapping Statelessness in Austria , January 2017, paras 3, 12, 17, 18, 298 and Chapter 3. <i>A Demography of Statelessness in Austria</i>
POP.1.g		Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the Government also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting).	As above	Until 2015, data of the Ministry of the Interior showed the number of stateless people and persons with unknown nationality who applied for asylum and were granted asylum, subsidiary protection or humanitarian status. Since then, these two categories were merged into one (unknown nationality). According to estimates by UNHCR, 2,467 stateless refugees and beneficiaries of subsidiary protection were living in Austria at the end of 2015 (3% of Austria's refugee population). 267 persons with unknown nationality applied for asylum in Austria in 2019 (making the 7th largest 'nationality group'). 377 people with unknown nationality received protection in 2019 (asylum: 311, subsidiary protection: 32 and humanitarian status: 34). The Central Register of Residents does not distinguish between stateless asylum-seekers and refugees or other groups of potentially stateless persons. All are counted in above-mentioned figures.	Bundesministerium für Inneres, Asyl, Statistiken, Asylwesen 2018 and Asylwesen 2019 UNHCR, Mapping Statelessness in Austria , January 2017, paras 45-47 and 65-68
POP.2.a	Stateless in detention data	Does the Government record and publish figures on stateless people held in immigration detention? If yes, please provide.	As above and see also norms in Detention section.	The Federal Ministry of the Interior (MOI) does not publish statistics on people held in immigration detention. All figures known are from parliamentary inquiries. In a recent response to a request on figures and other data regarding immigration detention, the Ministry of the Interior noted that, in the year 2019, 14 stateless people were held in immigration detention (including one minor). (see DET.1.e and DET.3.a) The average duration of pre-removal detention continues to increase (2018: 25 days, 2019: 28.3 days) and peaked in the first half of 2020 (36.5 days) in spite of the COVID 19-pandemic, when most removals came to a stop due to medical reasons. Stateless people are particularly concerned by this trend since the average duration of their detention, from January to June 2020, was 58.6 days.	Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (3049/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Abschiebungen und Schubhaft von unbegleiteten minderjährigen Geflüchteten, 6 Octobre 2020, 3 Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (2504/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Aktuelle Zahlen zu Schubhaft und Abschiebungen während der COVID-19-Pandemie, 24 August 2020, 4 Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (671/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Daten zu Schubhaft und Abschiebungen im Jahr 2019, 30 March 2020, 4 and 30
POP.2.b		Does the Government record and publish figures on people released from immigration detention due to un-removability? If yes, please provide.	As above	No.	

Statelessness Determination and Status

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
SDS.1.a	Definition of a stateless person	Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details.	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 1(1) & 1(2).	No.	
SDS.1.b	Training	Is there training to inform different government bodies about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?)	UNHCR Executive Committee (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons.	No information is available on any specific training on statelessness for government bodies.	
SDS.1.c		Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency).	UNHCR (2016) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels. UNHCR (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations.	No information available on any specific training for judges. UNHCR Austria gave several lectures on statelessness at NGO and lawyers' gatherings in recent years, in particular in the follow-up to its mapping study. UNHCR recommended that targeted training on statelessness be provided for: 1) civil registrars of Austrian municipalities; 2) officials responsible for determining statelessness (in case an SDP is introduced) and 3) organisations or persons entrusted with the provision of free legal aid.	UNHCR, Mapping Statelessness in Austria , January 2017, paras 83, 126, 311 and 312
SDS.1.d	Existence of a dedicated SDP	Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated stateless status (proceed to Question 2a). 2. There is no dedicated SDP leading to a dedicated stateless status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights (proceed to Question 10a). 3. There is a dedicated stateless status but no formal procedure for determining this (proceed to Question 16a).	UNHCR (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR (2016) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.	Group 2. There is no dedicated SDP, but statelessness may be identified in the context of other administrative procedures. At a 2011 ministerial meeting to, i.a., commemorate the 50th anniversary of the 1961 Convention, Austria pledged its readiness to review the implementation of the 1954 Convention with regard to procedures for the determination of statelessness on the basis of UNHCR guidelines which were at the time being elaborated and have since been issued. Up until now the government has not committed itself to concrete legislative action nor produced any draft legislation for an SDP.	UNHCR, Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011 Geneva: 7-8 December 2011 , October 2012, 51
SDS.10.a	Procedures in which statelessness can be identified and other routes to	If there is no dedicated SDP leading to a stateless status , are there any procedures in which statelessness can be identified (e.g. partial SDPs with no	ENS (2013) : For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. Hoti v. Croatia ECtHR (2018) : [the State has a] positive obligation to provide an	Possibilities for stateless people to regularise their stay are: 1) application for international protection; 2) application for naturalisation (under the specific rules for children born stateless in Austria or under the regimes of discretionary naturalisation and naturalisation upon legal	Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005), BGBl I No. 100/2005 as amended by BGBl I No. 69/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

	<p>regularisation (Group 2)</p>	<p>status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.)? If yes, please state the relevant procedures and then proceed to question 11a. If no, proceed to question 10b.</p>	<p>effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of [their] further stay and status determined.</p>	<p>entitlement for migrants, see PRS 1a and 1e and SDS 15a) 3) application for a residence permit under the Residence and Settlement Act (in general, application to be filed from outside of Austria)</p> <p>Possibilities for stateless people to be identified are: 1) application for a Foreigner’s Passport (<i>Fremdenpass</i>) for stateless persons or persons of undetermined nationality legally residing in Austria, who do not possess a valid travel document (see SDS 14c); 2) application for or issuance ex officio of a Tolerated Stay Card (<i>Duldungskarte</i>) in cases of non-removability; (tolerated stay is not regarded as legal residence, after one year of tolerated stay, the person concerned might be eligible for a residence permit (see SDS 11a); 3) identification by civil registration offices in the context of birth registration, marriage or any other civil status case.</p> <p>None of the above-mentioned procedures contain a legal or residence simply by virtue of being stateless. The enjoyment of rights by stateless persons is subject to the same requirements as with other foreigners, including conditions relating to residence status. Stateless people can only be exempted from the requirement to produce documents that are normally required but are not available to them, such as passports and birth certificates.</p>	<p>Articles 8 and 10-14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 19(8)(3) Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz), BGBl I No. 100/2004 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 46a and 88(2) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 35(2)(2) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p><i>Stiller, M.</i> (2019), Pathways to Citizenship for Foreigners in Austria, IOM/EMN National Report</p> <p>UNHCR, Mapping Statelessness in Austria, January 2017, para 139</p> <p>Case Law: VfGH 29.9.2011, G 154/10 = VfSlg. 19.516/2011 (requirement to submit travel documents when applying for residence permit can be waived in cases of stateless people)</p> <p>VwGH 30.8.2018, Ra 2018/21/0029 and 31.8.2017, Ra 2017/21/0024 (Stateless Yazidi from Armenia, born in former USSR; (1) no violation of applicant's duty to cooperate in obtaining a replacement travel document, if authority/court does not provide sufficient evidence for concluding that the applicant is a national of a particular State; (2) the lack of further investigations by a lower instance can never be held against the applicant; (3) application of Tolerated Stay Card not to be rejected if court's investigations indicate statelessness) VwGH 20.12.2013, 2013/21/0111 (application for a Foreigner’s Passport on grounds of statelessness; embassy's refusal to issue return certificate could be an indication of statelessness)</p>
<p>SDS.11.a</p>	<p>Access to procedures (Group 2)</p>	<p>Please provide details on how statelessness may be identified in other procedures.</p>	<p>UNHCR (2016): Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p>	<p>Establishing a person’s nationality status is a central question for both the asylum and the return procedure. Asylum and return procedures are particularly relevant since, according to official statistics, stateless persons living in Austria in a migratory context are likely to apply for international protection (which may lead to a return decision if the application is rejected).</p> <p>In the context of the asylum procedure, statelessness is a relevant fact, and may lead to the granting of asylum status <i>ipso facto</i>, in the cases of stateless Palestinian refugees for whom protection or assistance by UNRWA has ceased for any reason beyond their control.</p> <p>In the context of return procedures, statelessness is relevant insofar as it may lead to the non-removability of a person. If the removal is impossible for practical reasons not attributable to the individual, they are eligible for a Tolerated Stay Card</p>	<p>Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSC zu der schriftlichen Anfrage (3663/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Auswertung von Datenträgern im Asylverfahren, Duldung und Aufenthaltstitel in berücksichtigungswürdigen Fällen, 4 December 2020, 4</p> <p>Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSC zu der schriftlichen Anfrage (671/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Daten zu Schubhaft und Abschiebungen im Jahr 2019, 30 March 2020, 42</p> <p>Case Law</p>

				<p>(<i>Duldungskarte</i>), which serves as proof of identity for procedures before the Federal Office for Immigration and Asylum (<i>BFA</i>) and controls by police. In 2019, eight stateless people were issued a Tolerated Stay Card. From January to September 2020 the BFA issued 11 Tolerated Stay Cards to stateless people (they are among the top three 'nationality groups' who received these cards, together with Afghan and Russian nationals).</p> <p>According to the Immigration ('Aliens') Police Act, reasons attributable to the individual shall in all cases exist if: 1) they conceal their identity; 2) they fail to comply with a summons for the purpose of clarifying their identity or procuring a replacement travel document or 3) they do not cooperate in the steps necessary to obtain a replacement travel document or frustrate the taking of such steps.</p> <p>Tolerated stay is valid upon the issue of the respective card or a final administrative or court ruling and terminates if the practical obstacles hindering removal cease to exist. Tolerated stay is not considered a lawful stay or residence and does not entail any of the rights associated with lawful residence. Persons with tolerated stay should have access to basic welfare support, but they are not permitted to engage in wage-earning employment.</p> <p>An individual who is granted a Tolerated Stay Card can apply for a specific residence permit under the Asylum Act (<i>Aufenthaltsberechtigung besonderer Schutz</i>) after one year. After another year the person concerned might be eligible for a residence permit (<i>Rot Weiß Rot-Karte Plus</i>) under the Settlement and Residence Act.</p> <p>In its mapping study, UNHCR noted that, according to reports of legal counsellors, procedures regarding tolerated stay are usually lengthy and a high threshold of substantiation is required to prove that a person was not removable for no fault of their own. UNHCR thus concluded that stateless people who do not have the legal possibility to return to their country of origin or receive protection from another State may be trapped in a legal limbo.</p>	<p>VwGH 30.8.2018, Ra 2018/21/0029 and 31.8.2017, Ra 2017/21/0024 (Stateless Yazidi from Armenia, born in former USSR; (1) no violation of applicant's duty to cooperate in obtaining a replacement travel document, if authority/court does not provide sufficient evidence for concluding that the applicant is a national of a particular State; (2) the lack of further investigations by a lower instance can never be held against the applicant; (3) application of 'tolerated stay' card not to be rejected if court's investigations indicate statelessness)</p>
SDS.11.b		Are there obligations in law on authorities to consider a claim of statelessness made within another procedure?	UNHCR (2016) : Access to the procedure must be guaranteed.	No.	
SDS.11.c		Are there clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention and/or be identified as stateless?	<p>UNHCR (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR (2016): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p> <p>UN Convention Relating to the Status of Stateless Persons, 1954</p>	No.	
SDS.11.d		Is the examination and/or identification of statelessness conducted by a centralised body with relevant expertise? Please note the competent authority and evaluate appropriateness to national context.	<p>UNHCR (2014) : States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise.</p> <p>UNHCR (2016): It is important that examiners develop expertise while ensuring that the procedures are accessible.</p>	<p>In the absence of a dedicated SDP and specific legal criteria for the determination of statelessness, various state bodies competent to decide on different legal issues relevant to stateless persons (see SDS 10a) must determine if a person is stateless. The identification of a person's statelessness by one state body is not binding on other authorities or courts.</p> <p>While asylum and return procedures as well as applications for Foreigner's Passports are conducted by a centralised authority, the Federal Office for Immigration and Asylum (<i>BFA</i>), the provincial governments and the respective offices at the local level are</p>	<p>UNHCR, Mapping Statelessness in Austria, January 2017, paras 109-111</p> <p><i>Thienel, R. (1990), 'Österreichische Staatsbürgerschaft. Verfassungsrechtliche Grundlagen und materielles Staatsbürgerschaftsrecht', Band II, pp. 19 and 105</i></p>

				<p>competent for conducting naturalisation procedures.</p> <p>Since the <i>BFA</i> and the Federal Administrative Court (<i>BVwG</i>) are competent for deciding in asylum and return procedures, these bodies have gained considerable experience in assessing a person's nationality status or statelessness.</p>	
SDS.11.e		Is there cooperation between agencies that may have contact with stateless people?	<p>UNHCR (2016): Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.</p>	<p>Yes. Civil registration offices generally cooperate with the Federal Agency for Immigration and Asylum (<i>BFA</i>) regarding civil status cases of persons who applied for international protection or who are in a return procedure.</p> <p>Civil registrars deciding on registration cases of stateless people usually seek advice at the legal units of the respective provincial governments in cases of stateless persons.</p>	<p>Article 64 Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p><i>Kutscher, N. & T. Wildpert (2019)</i>, Personenstandsrecht², Personenstandsgesetz 2013 – ZPR DA</p>
SDS.12.a	Assessment (Group2)	Who has the burden of proof when determining or identifying statelessness (in law and practice)?	<p>UNHCR (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). UNHCR (2016): SDPs must take into consideration the difficulties inherent in proving statelessness. UNHCR Expert Meeting (2010): Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. Hoti v. Croatia ECtHR (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.</p>	<p>The burden of proof when determining statelessness is not established in law. In the context of applications for a Tolerated Stay Card or a Foreigner's Passport the burden of proof lies on the applicant in practice. Individuals are obliged to co-operate and are often required to provide evidence, documenting their statelessness. In its 2017 mapping report, UNHCR noted that the burden of proof placed on persons claiming to be stateless seems to be high, irrespective of which state body examines a person's nationality status.</p>	<p>UNHCR, Mapping Statelessness in Austria, January 2017, para 118</p>
SDS.12.b		What is the standard of proof to evidence statelessness?	<p>UNHCR (2014): States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). Inter-Parliamentary Union (2018) The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence. Hoti v. Croatia ECtHR (2018): If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p>	<p>The standard of proof regarding applications for a Tolerated Stay Card or a Foreigner's Passport is not established in law. The Supreme Administrative Court (<i>Verwaltungsgerichtshof, VwGH</i>) clarified that the threshold of substantiation should not be too high, in particular if statelessness is indicated by previous investigations. Nonetheless, the burden of proof primarily lies on applicants in practice. Furthermore, <i>VwGH</i> stressed the need to conduct a personal hearing in cases of possible statelessness.</p>	<p><i>Szymanski, W. (2015)</i>, '§ 88 FPG 2005, Ausstellung von Fremdenpässen', in: <i>SchreflerKönig/Szymanski, Fremdenpolizei- und Asylrecht</i>, Manz, Wien</p> <p>Case Law: <i>VwGH</i> 30.8.2018, Ra 2018/21/0029 and 31.8.2017, Ra 2017/21/0024 (Stateless Yazidi from Armenia, born in former USSR; (1) no violation of applicant's duty to cooperate in obtaining a replacement travel document, if authority/court does not provide sufficient evidence for concluding that the applicant is a national of a particular State; (2) the lack of further investigations by a lower instance can never be held against the applicant; (3) application of Tolerated Stay Card not to be rejected if court's investigations indicate statelessness) <i>VwGH</i> 15.9.2016, Ra 2016/21/0104 (application for a Foreigner's Passport on grounds of statelessness; right to oral hearing and summons of witness in appeal procedure; Court obliged to conduct investigations) <i>VwGH</i> 20.12.2013, 2013/21/0111 (application for a Foreigner's Passport on grounds of statelessness; embassy's refusal to issue return certificate could be an indication of statelessness) <i>VwGH</i> 3.12.1997, 96/01/0511 (conduct of a personal hearing in cases of possible statelessness)</p>
SDS.12.c		Is there clear guidance for decision makers on how to identify or determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)?	<p>ENS (2013): Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.</p>	<p>No. The only guidance at hand is established by jurisprudence.</p>	<p>As above.</p>
SDS.13.a	Procedural safeguards (Group 2)	Is free legal aid available to stateless people?	<p>UNHCR (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should</p>	<p>Access to free legal aid depends on the procedure. Free legal aid is available during: 1) application for international protection;</p>	<p>Articles 51(1)(1), 52(1) and (2) BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020</p>

			<p>be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p>	<p>2) return procedures; and 3) detention procedures.</p> <p>There is no access to free legal aid for applications for a Tolerated Stay Card or a Foreigner's Passport.</p>	<p>(DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 8a Bundesgesetz über das Verfahren der Verwaltungsgerichte, BGBl I No. 33/2013 as amended by BGBl I No. 57/2018 (DE)</p>
SDS.13.b		<p>Do stateless people always have an opportunity to claim their statelessness in an interview (whether the purpose of the interview is to identify statelessness or not?)</p>	<p>UNHCR (2014): The right to an individual interview [is] essential.</p>	<p>It depends on the procedure. During asylum and return procedures interviews are generally offered at first instance or appeal level, except for cases where all facts are established and undisputed. Civil registrars usually also conduct interviews during civil status cases, although practices among registry offices differ.</p>	<p>Articles 19 and 20 Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005), BGBl I No. 100/2005 as amended by BGBl I No. 69/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 40-44 Allgemeines Verwaltungsverfahrensgesetz 1991, BGBl No. 51/1991 as amended by BGBl I No. 58/2018 (DE)</p> <p><i>Kutscher, N. & T. Wildpert</i> (2019), Personenstandsrecht², Personenstandsrecht 2013 – ZPR DA</p> <p>Case Law: VwGH 15.9.2016, Ra 2016/21/0104 (application for a Foreigner's Passport on grounds of statelessness; right to oral hearing and summons of witness in appeal procedure; Court obliged to conduct investigations) VwGH 3.12.1997, 96/01/0511 (conduct of a personal interview in cases of possible statelessness)</p>
SDS.13.c		<p>Is free interpreting available to stateless people?</p>	<p>UNHCR (2014): The right to assistance with interpretation/translation [is] essential.</p> <p>ENS (2013): Assistance should be available for translation and interpretation.</p>	<p>Yes, during asylum and return procedures but not during civil status cases.</p>	<p>Article 39a Allgemeines Verwaltungsverfahrensgesetz 1991, BGBl No. 51/1991 as amended by BGBl I No. 58/2018 (DE)</p> <p>Article 38a Bundesgesetz über das Verfahren der Verwaltungsgerichte (Verwaltungsgerichtsverfahrensgesetz, BGBl I No. 33/2013 as amended by BGBl I No. 57/2018 (DE)</p> <p>Article 12a BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p>
SDS.13.d		<p>Are decisions (refusals and grants) given in writing with reasons?</p>	<p>UNHCR (2014): States are encouraged to incorporate the safeguard that decisions are made in writing with reasons.</p>	<p>Yes.</p>	<p>Article 12 BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p>
SDS.14.a	Protection (Group 2)	<p>Are there any rights granted to stateless people on the basis of their statelessness? If yes, please provide details.</p>	<p>UNHCR (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.</p>	<p>The identification of a person's statelessness by a federal or provincial authority does not grant any rights <i>per se</i>. The legal status of a person and their rights are usually dependent on their residence status.</p> <p>Every child permanently living in Austria, irrespective of legal status and nationality, is obliged to and has the right to attend schooling for a period of nine years beginning with the first of September following the child's sixth birthday. Children not permanently living in Austria also have the right to attend schooling (but are not obliged to do so). According to a decree by the Ministry of Education, applying for asylum in Austria contains the intent of permanently living in Austria. The Ministry of the Interior generally does not support attendance at regular schools for asylum-seeking children who have been living in Austria for less than six months, or, for those whose application for asylum have been finally rejected and who reside in federal reception centres. Public schools are, in principle, free of charge.</p> <p>Stateless persons with tolerated stay should have access to basic welfare support, but they are not permitted to engage in wage-earning employment. According to reports of legal counsellors and the findings of UNHCR,</p>	<p>Article 46a Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 14(7a) Bundes-Verfassungsgesetz, BGBl No. 1/1930 as amended by BGBl I No. 24/2020 (DE)</p> <p>Article 1-3 and 17 Bundesgesetz über die Schulpflicht, BGBl No. 76/1985 as amended by BGBl I No. 186/2019 (DE)</p> <p>Article 2(1) Bundesgesetz über die Gewährung von Vorschüssen auf den Unterhalt von Kindern, BGBl No. 451/1985 as amended by BGBl I No. 61/2018 (DE)</p> <p>Article 35(2) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p>UNHCR, Mapping Statelessness in Austria, January 2017, paras 186-207</p> <p>Bundesministerium für Bildung, Flüchtlingskinder und -jugendliche an</p>

				<p>persons who were (probably) stateless were routinely dismissed from basic welfare support following a final negative asylum decision and subsequently living in destitution for periods of several weeks or months and in exceptional cases up to a year. After dismissal from basic welfare support only access to emergency medical care is guaranteed.</p> <p>Stateless persons with habitual residence in Austria are eligible to receive alimony advance.</p> <p>Persons who have been identified by civil registration authorities to be stateless or with undetermined nationality have access to late birth registration (see PRS 5g).</p>	<p>österreichischen Schulen, Beilage zum Rundschreiben Nr. 15/2016,12</p> <p><i>Hinterberger, K. F. & St. Klammer</i> (2015), 'Das Rechtsinstitut der fremdenpolizeilichen Duldung', in: <i>migraLex</i> 3/2015, 81</p> <p><i>Mayerhofer, M.</i> (2015), Minderjährige Asylsuchende und Flüchtlinge: das Recht auf Bildung in Österreich, in: ÖGFE Policy Brief 28/2015</p> <p>Case Law: VwGH 20.3.2014, 2013/08/0004 (1954 Convention has no direct effect; no subjective rights derived from Articles 17 and 24; incorrect interpretation of UNHCR Guidelines on Statelessness No. 2, para 17)</p> <p>LVwG Tirol 22.1.2019, LVwG-2018/14/1219-1 (subjective right to late birth registration in case of statelessness/undetermined nationality; burden of proof)</p>
SDS.14.b		<p>Are stateless people otherwise able to access their rights under the 1954 Convention? (e.g. right to reside, travel document, work, healthcare, social security, education, housing, family reunification, right to vote, etc.)? Please provide details.</p>	<p>UN Convention Relating to the Status of Stateless Persons, 1954 UNHCR (2014): The status granted to a stateless person in a State Party must reflect international standards. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable.</p>	<p>Persons legally residing in Austria, who were identified by the Federal Agency for Immigration and Asylum (BFA) in the context of an asylum or an immigration procedure to be stateless or of undetermined nationality can apply for a Foreigner's Passport (<i>Fremdenpass</i>). Such a passport is only granted if the person concerned does not possess a valid travel document and if the BFA finds the issuance of the passport to be in the interests of the Republic. Besides its function as a travel and identity document, a Foreigner's Passport does not entail access to any other right under the 1954 Convention. The only way to access the right to vote is through naturalisation (see boxes below).</p>	<p>Article 46a and 88(2) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p><i>Szymanski, W.</i> (2015), '§ 88 FPG 2005, Ausstellung von Fremdenpässen', in: <i>SchreflerKönig/Szymanski, Fremdenpolizei- und Asylrecht</i>, Manz, Wien</p>
SDS.15.a	Access to nationality (Group 2)	<p>In what timeframe do stateless people acquire the right to apply for naturalisation and how does this compare to others with a foreign nationality? Please describe the procedure and note whether this is facilitated for stateless people (e.g. exemption from nationality/language tests, fee waiver).</p>	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 32 UNHCR (2016): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. Council of Europe Committee of Ministers (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. ENS (2013): The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.</p>	<p>Children born stateless in Austria are entitled to naturalisation with reduced requirements if they:</p> <ul style="list-style-type: none"> a) were born on Austrian territory (including ships and aircrafts under Austrian flag); b) have been stateless from birth until the application for naturalisation; c) have lived lawfully in Austria for at least ten years (five years of continuous residence preceding the application required); d) are between 18 and 20 years of age; e) have not been convicted with final effect by a domestic court for certain offences / by a domestic or a foreign court to imprisonment of five or more years. <p>Since 1981, only one person born stateless in Austria acquired Austrian nationality under the above-mentioned provision. Besides the above-mentioned provision, domestic law does not provide for facilitated naturalisation of stateless people. In a policy paper published in advance of parliamentary elections in September 2019, UNHCR called on decision makers to amend the Nationality Act in order to ensure rapid and nonbureaucratic naturalisation of children born in Austria who would otherwise be stateless.</p> <p>Victims of Nazi persecution, including stateless people, who had their residence in Austria before 15 May 1955 and were forced to leave, can acquire Austrian nationality by means of a declaration and without having to renounce their current nationality. Since 1 September 2020, this rule was extended to descendants in direct descending line (children, grandchildren etc.) of the persecuted person, including children who were adopted as minors.</p>	<p>Articles 8, 10-11, 11a(4)(3), 19(8)(3) and 58c Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p><i>Stern, J. & Valchars, G.</i>, Country Report: Austria, EUDO Citizenship Observatory, revised and updated September 2013, 22-32</p> <p><i>Stiller, M.</i> (2019), Pathways to Citizenship for Foreigners in Austria, IOM/EMN National Report</p> <p>UNHCR, UNHCR-Empfehlungen zu den Themen Flucht und Asyl in Österreich, August 2019, 20</p> <p>UNHCR, Mapping Statelessness in Austria, January 2017, paras 230 and 294-300</p> <p>CEDAW, Concluding observations on the ninth periodic report of Austria (Adopted by the Committee at its seventy-third session, 1–19 July 2019), paras 28 and 29</p> <p>CRC, Concluding Observations on the combined fifth and sixth periodic reports of Austria (March 2020), para 21</p> <p>Federal Ministry on European and International Affairs, Citizenship for Victims of the National Socialist Regime and their Direct Descendants</p> <p>Case Law:</p>

				<p>Domestic laws governing discretionary naturalisation are considered as one of the strictest in the world. Like other foreign nationals, stateless persons may qualify for discretionary naturalisation after ten years of legal residence, or, at the earliest, six years of legal residence in case of additional integration requirements. Stateless people born in Austria may, under the same conditions as other foreign nationals born in Austria, qualify for naturalisation through legal entitlement after six years of legal residence. The requirement of legal residence is at variance with the 1954 Convention.</p> <p>In order to qualify for discretionary naturalisation, the following requirements, in addition to residence, must be met:</p> <ul style="list-style-type: none"> a) regular income; b) no dependency on social assistance benefits during a specified period preceding the application unless they are permanently unable to secure their livelihood for reasons beyond their control (in particular due to disability or chronic and severe diseases as certified by a medical expert), c) clean criminal record; d) no violation of immigration rules; e) affirmative attitude towards the Republic of Austria and being no danger to public law, order and security including any other public interest; f) nationality test: knowledge of German language and basic knowledge of the democratic system and the history of Austria and of the province in which they are applying (some exemptions from the last two requirements are foreseen, notably for children below 14 years). <p>The Supreme Administrative Court (<i>Verwaltungsgerichtshof, VwGH</i>) held that statelessness alone is not a sufficient condition for facilitated naturalisation (through entitlement). <i>VwGH</i> also found that statelessness is not an indicator of “advanced assimilation” that would justify the reduction of the general residence requirement of ten years.</p> <p>Stateless persons can only be exempted from the requirement to produce documents that are normally required for naturalisation but are not available to them, such as passports and birth certificates. There is no fee waiver for stateless people. The fees for naturalisation are among the highest in Europe and amount to approx. 1200-2500 EUR, depending on the Austrian province conducting the procedure and the legal ground for naturalisation. Discretionary naturalisation is generally more costly than naturalisation upon legal entitlement. In all provinces the fees for children are reduced. The high income requirements for naturalisation upon application were criticised by CEDAW in its recent Concluding observations on Austria.</p>	<p>VfGH 13. 3. 2019, E 4081/2018 = VfSlg 20322 = ecolex 2019, 641 (revocation of guarantee of grant of Austrian nationality only admissible if there exist 'serious grounds')</p> <p>VfGH 29.9.2011, G 154/10 = VfSlg. 19.516/2011 (revocation of naturalisation inadmissible, if a person has renounced her former nationality and does not fulfil income requirement any more for reasons not attributable to her; requirement to submit travel documents when applying for residence permit can be waived in cases of stateless people)</p> <p>VwGH 29.1.1997, 94/01/0744 and 19.3.1997, 95/01/0620 (statelessness per se is neither a sufficient condition for facilitated naturalisation nor an indicator of “advanced assimilation” that would justify for less than ten years of legal residence)</p> <p>Naturalisation fees: Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna, Vorarlberg</p>
<p>SDS.15.b</p>		<p>Are there requirements relating to ‘good character’ or previous criminal convictions that could prevent some stateless people from accessing nationality? If yes, please describe. [Section complete, proceed to DET]</p>	<p>Council of Europe Committee of Ministers (1999): States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.</p>	<p>Yes, like specified above, both under the rules regarding (1) facilitated naturalisation for people born stateless in Austria and (2) discretionary naturalisation previous criminal convictions can be barriers to acquire Austrian nationality. Furthermore, discretionary naturalisation is only possible, if the applicant shows an affirmative attitude towards the Republic of Austria, meaning she/he does not pose a danger to public law, order and security including any other public interest.</p>	<p>Article 10(1)(6) Staatsbürgerschaftsgesetz 1985, BGBI No. 311/1985 as amended by BGBI I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBI I No. 56/2018)</p> <p><i>Stiller, M.</i> (2019), Pathways to Citizenship for Foreigners in Austria, IOM/EMN National Report</p> <p>Case Law: VwGH 20.9.2011, 2009/01/0034 (discretionary naturalisation finally rejected because of severe administrative offenses, e.g. speeding while driving with a probationary driving license and under influence)</p>

Detention

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
DET.1.a	Detention screening	Are immigration detention powers provided for in law? Please provide the legal source(s).	<p>ICCPR Article 9(1) ECHR Article 5 (1)</p>	<p>Yes. ECHR 5(1)(f) and Article 2(1) and (7) Personal Liberty Act (<i>Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit</i>) provide the constitutional framework for pre-removal detention. On the level of simple law, immigration detention is governed by Articles 39 and 76-81 Immigration ('Aliens') Police Act (<i>Fremden-polizeigesetz</i>) and Article 22a and 40 Federal Office Procedure Act (<i>BFA-Verfahrensgesetz</i>).</p> <p>Immigration detention is ordered by officials of the Federal Office for Immigration and Asylum (<i>BFA</i>) and reviewed by the Federal Administrative Court (<i>Bundesverwaltungsgericht</i>), either upon appeal or automatic review. In addition, the police can also, <i>ex officio</i> or upon order by the BFA, <i>de facto</i> arrest non-nationals, for a maximum period of 72 hours in cases of violation of immigration control.</p> <p>Under domestic legislation, pre-removal detention can be imposed if it is necessary to secure a return procedure (including transfer under Dublin III) and/or a removal from the country. Pre-removal detention is only admissible, if</p> <ol style="list-style-type: none"> less restrictive alternatives are not suitable; there exists a risk of absconding (objective criteria laid down in Article 76(3) Immigration Police Act); and the measure is proportionate. <p>Asylum-seekers can only be held in detention if it can be argued that the individual's stay endangers public order or security. Minors under the age of 14 years may not be detained but can accompany their parents/legal representatives and stay with them during immigration detention. In practice, families with children below the age of 14 are usually not formally detained but rather held in police custody up to 72 hours before removal takes place. For maximum duration of pre-removal detention see DET 3a.</p> <p>Jurisprudence clarified that:</p> <ol style="list-style-type: none"> pre-removal detention is only admissible as a matter of last resort, considering all relevant facts of the case; detention is inadmissible if it is evident from the beginning that there is no reasonable expectation of removal; removals shall be organised in a way that detention can be avoided at best; the period of detention shall be as short as possible; if the individual is subject to a procedure under the Dublin III Regulation, detention is only permitted when there is a <i>significant</i> risk of absconding (like stipulate in the Dublin III Regulation); pre-removal detention may not be ordered by default or as a punitive measure. 	<p>Article 2(1) and (7) Bundesverfassungsgesetz vom 29. November 1988 über den Schutz der persönlichen Freiheit, BGBl I No. 684/1988 as amended by BGBl I No. 2/2008 (DE), Official English translation</p> <p>Articles 39-40 and 76-81 Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 22a and 40-41 BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 28(2) Dublin III-Regulation: https://eur-lex.europa.eu/</p> <p>Asylum Information Database, Austria, Detention of Asylum-Seekers</p> <p>OHCHR, Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return, 15-18 October 2018</p> <p>Case Law: VwGH 20.10.2016, Ra 2016/21/0243 VwGH 2.8.2013, 2013/21/0008 VwGH 30.8.2007, 2007/21/0043= VwSlg 17259 A/2007 (last resort)</p> <p>VwGH 19.05.2011, 2008/21/0527 VwGH 19.05.2015, Ro 2015/21/0008 (detention avoided at best; time period as short as possible)</p> <p>VwGH 11.05.2017, Ra 2015/21/0188 BVwG 11.12.2018, W137 2109541-1 (detention inadmissible in case of lacking prospect of removal; e.g. real risk of violation of ECHR 3)</p> <p>VwGH 30.9.2007, 2007/21/0043= VwSlg 17259 A/2007, 28.02.2008, 2007/21/0391 and VwGH 27.01.2011, 2008/21/0595 (detention may not be ordered by default or as a punitive measure)</p>
DET.1.b		Does domestic law allow immigration detention for purposes other than those listed under ECHR 5(1)(f)?	<p>ECHR Article 5(1)(f)</p>	<p>Yes. Since an amendment of the Immigration Police Act in 2018, the Federal Office for Immigration and Asylum (<i>BFA</i>) can order so called coercive detention (<i>Beugehaft</i>) for up to four consecutive weeks, if a person does not cooperate in organising travel documents needed for her/his removal. The Austrian legislator based this administrative measure on ECHR 5(1)(b). Coercive detention can be imposed repeatedly vis-à-vis the same person and there is no automatic judicial review or effective legal remedy in order to ensure speedy judicial review. People held in coercive detention have no access to free of charge legal assistance. Stateless persons are particularly vulnerable to coercive detention, since they lack a country of nationality and thus authorities to assist them in organising</p>	<p>Article 46(2)(a) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p><i>Geiger, D.</i> (2019), 'Die Beugehaft zur Durchsetzbarkeit von Mitwirkungspflichten im Rahmen des Fremdenpolizeigesetzes', in: <i>migraLex</i> 1/2019, 2,</p> <p><i>Klammer, St.</i> (2018), 'Die Beugehaft nach dem FPG', in: <i>Jahrbuch Asylrecht und Fremdenrecht</i> 2018, 147</p> <p>Ludwig Boltzmann Institut für Menschenrechte, Stellungnahme zu</p>

				travel documents. Academia has criticised the introduction of coercive detention in return procedures, i.a., for bypassing procedural safeguards under domestic law and the EU Return Directive (2008/115/EC).	dem Ministerialentwurf betreffend Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das BFA-Verfahrensgesetz und das Grundversorgungsgesetz - Bund 2005 geändert werden (Fremdenrechtsänderungsgesetz 2017 Teil II)
DET.1.c	Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.	ICCPR Article 7 : Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment. Auad v Bulgaria ECtHR (2011) : The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant. EU Returns Directive : Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.		Yes, but with significant exceptions. A return decision under the Immigration Police Act generally includes the identification of one or more potential countries of destination of removal. This rule does not apply if a country of removal cannot be identified due to reasons within the responsibility of the person concerned, e.g. if the person concerned cannot provide documentation and the authorities have reasons to believe they made wrongful assertions regarding their nationality. Furthermore, the country of removal can be altered at a later stage, e.g. if a person's information on their nationality is proven to be false. Detention is only permitted if a real prospect of removal exists, which must be demonstrated by the authority/ Court when ordering/prolonging detention. If a country of removal cannot be identified within the maximum time period of detention (18 months), immigration detention is not/no longer permitted, and can only be issued through another formal detention order if the facts if the case have changed.	Article 52(9) and (10) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) Case Law: VwGH 26.1.2017, Ra 2016/21/0348 and 11.5.2017, 2016/21/0144 (detention justified, if there is real prospect of clarifying detainee's identity and receiving travel documents within maximum time limit of pre-removal detention) VwGH 5.10.2017, Ra 2017/21/0157 (no need to identify country of removal for reasons attributable to the applicant) BVwG 1.8.2018, W247 2201479-2 (country of removal changed during detention for reasons attributable to the applicant)
DET.1.d	Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention.	Auad v Bulgaria ECtHR (2011) Mikolenko v. Estonia ECtHR (2009) : Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Equal Rights Trust (2012) : States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. International Commission of Jurists (2014) : The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.		No. The relevant fact is not nationality status but whether a person can be removed to another country. In case of a stateless person, this might also be a country of former habitual residence. Every foreign person subject to a return procedure is obliged by law to cooperate in organising personal documents needed for their removal. Referral to an SDP is not possible, since there is no SDP currently in place.	Article 46(2)(a) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) UNHCR, Mapping Statelessness in Austria , January 2017, paras 168 Case law as above.
DET.1.e	Are stateless people detained in practice?			Yes, according to existing data and knowledge of UNHCR, stateless people are detained in practice (see POP 2a). In 2019, 14 stateless people were held in immigration detention (including one minor). Their detention lasted for 30 days on average. Despite the outbreak of the COVID 19-pandemic, when most removals were halted due to medical reasons, the number of people in pre-removal detention continued to rise (see DET.3.a). The average duration of pre-removal detention even increased (2018: 25 days, 2019: 28.3 days) and peaked in the first half of 2020 (36.5 days). Stateless people are particularly affected since the average duration of their detention, from January to June 2020, was 58.6 days. This trend was heavily criticised by Austrian NGOs and legal practitioners who called on decision makers to immediately release all persons from pre-removal detention.	Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (3049/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Abschiebungen und Schubhaft von unbegleiteten minderjährigen Geflüchteten, 6 Octobre 2020, 3 Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (2504/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Aktuelle Zahlen zu Schubhaft und Abschiebungen während der COVID-19-Pandemie, 24 August 2020, 4 Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (671/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Daten zu Schubhaft und Abschiebungen im Jahr 2019, 30 March 2020, 4 and 30 ots.at , Sofortige Enthaftung aller Personen in Schubhaft! , 17.4.2020

					tt.com, Asylverfahren: Kritik an längerer und häufiger Schubhaft wegen Corona , 5.7.2020 UNHCR, Mapping Statelessness in Austria , January 2017, paras 169
DET.1.f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives have been exhausted in each individual case?	UNHCR (2014) : Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. EU Returns Directive : Article 15(1)	Yes. Both domestic legislation and jurisprudence provide that detention is only ordered, if all other less invasive measures have been found insufficient, considering all facts of the case, to safeguard the lawful objective pursued by immigration detention. According to legal counsellors and lawyers representing individuals in detention procedures, this rule is often not followed in practice.	Articles 76(1) and 77 Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) Articles 1(3) and 5(2) Bundesverfassungsgesetz vom 29. November 1988 über den Schutz der persönlichen Freiheit, BGBl No. 684/1988 as amended by BGBl I No. 2/2008 (DE) Case Law: VwGH 20.10.2016, Ra 2016/21/0243 VwGH 2.8.2013, 2013/21/0008 VwGH 30.8.2007, 2007/21/0043= VwSlg 17259 A/2007
DET.1.g		Are individual vulnerability assessments carried out before a decision to detain (or soon after)? Please note whether statelessness is considered to be a factor increasing vulnerability.	ENS (2015) : Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Returns Directive : Article 16(3) EU Returns Handbook (2017) : Attention should be paid to the specific situation of stateless persons. Council of the European Union (2013) : European entities should assess the situation of LGBTI persons in detention.	Vulnerability assessments should be part of the proportionality test to be carried out at every administrative or court decision in which immigration detention is ordered/prolonged. The assessment of fitness for detention is in practice largely limited to establishing whether a person was (still) fit for detention which is assessed by a police doctor (a public health officer employed by the local police authority). Statelessness is not considered by law, jurisprudence or administrative practice to be a factor increasing vulnerability.	Articles 76(2) and (2a) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) Case Law: VwGH 29.6.2017, Ro 2016/21/0020 , 3.9.2015, Ro 2015/21/0012 and 2.8.2013, 2013/21/0008 (individual examination, vulnerabilities) VfGH 2012, 3.10.2012, G140/11 ua= VfSlg. 19675/2012 (proportionality test, individual examination)
DET.2.a	Alternatives to detention	Are alternatives to detention established in law and considered prior to any decision to detain?	ICCPR Article 9 FKAG v Australia HRC (2013) : Any decision relating to detention must consider less invasive means of achieving the same ends. UN General Assembly (2009) : Calls upon all States to adopt alternative measures to detention. UNHCR (2014) : Detention can only be justified where other less invasive or coercive measures have been considered and found insufficient. Human Rights Council (2012) : The obligation to always consider alternatives before resorting to detention should be established by law. EU Returns Directive : Article 15(1) Equal Rights Trust (2012) : States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive. International Detention Coalition (2015) : Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.	Yes. Alternatives include: a) accommodation in premises specified by the authority; b) reporting requirements; and c) bail. These or other non-custodial measures must be considered prior to ordering detention. Domestic law also stipulates that alternatives to detention should generally be applied vis-à-vis minors. In practice, the number of minors held in immigration detention is low (no official statistics available) and respective cases often involve age disputes. In a recent report on the human rights situation of migrants, OHCHR noted that the broad scope of the law risks that pre-removal detention is not applied as an ultima ratio, like required by Austrian jurisprudence.	Article 77 Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) OHCHR, Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return , 15-18 October 2018, para 47
DET.2.b		Is there evidence that immigration detention is used in practice prior to all alternatives being considered?	As above.	Yes. According to observations by legal counsellors of <i>Diakonie Flüchtlingsdienst</i> and a recent report of OHCHR, more lenient measures are often not considered with due diligence prior to detention and have diminished in recent years (from 571-348 between 2015 and 2017). Between 2015 and 2018 the number of individuals subject to pre-removal detention more than tripled (1,436-5,010).	OHCHR, Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return , 15-18 October 2018, para 49 Anfragebeantwortung durch den Bundesminister für Inneres Herbert Kickl zur schriftlichen Anfrage (1018/J) der Abgeordneten Dr. Alma Zadić, LL.M., Kolleginnen und Kollegen betreffend 'Schubhaft in österreichischen (Polizei)Anhaltezentren', 18 July 2018 Anfragebeantwortung durch den Bundesminister für Inneres Herbert Kickl zu der schriftlichen Anfrage (3131/J) der Abgeordneten Dr. Alma

					Zadić, LL.M., Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Schubhaft und Anhaltung im Jahr 2018 , 21 May 2019
DET.3.a	Procedural safeguards	Is there a maximum time period for immigration detention set in law? What is it?	<p>UN Human Rights Council (2010) : A maximum period of detention must be established by law and upon expiry the detainee must be automatically released.</p> <p>UNHCR (2012) : To guard against arbitrariness, maximum periods of detention should be set in national law.</p> <p>EU Returns Directive: Article 15(5)</p> <p>Equal Rights Trust (2012) : Detention should always be for the shortest time possible.</p>	<p>Yes. Three months for minors and six, ten or 18 months for adults. Asylum-seekers can only be detained for a maximum time period of ten months. Detention of up to 18 months is only admissible under certain circumstances: a) it is not possible to verify a person's identity and nationality; 2) the proposed country of removal has not approved entry or transit; or c) the individual offers resistance and thus prevents their removal or has done so in the past.</p> <p>The Austrian Supreme Administrative Court (<i>Verwaltungsgerichtshof</i>) clarified that the period of detention shall be as short as possible and that removals be organised in a way that detention can be avoided at best.</p> <p>The average duration of pre-removal detention continues to increase (2018: 25 days, 2019: 28.3 days) and peaked in the first half of 2020 (36.5 days) in spite of the COVID 19-pandemic, when most removals were halted due to medical reasons. Stateless people are particularly affected as the average duration of their detention, from January to June 2020, was 58.6 days.</p> <p><i>De facto</i> police arrest under Article 39 Immigration Police Act or Article 40 Federal Agency Procedure Act can be upheld for a maximum time period of 24 to 72 hours, depending on the concrete circumstances of the case.</p>	<p>Article 39 and 80 Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 40-41 BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Case Law: VwGH 19.05.2011, 2008/21/0527</p> <p>Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (2504/I) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Aktuelle Zahlen zu Schubhaft und Abschiebungen während der COVID-19-Pandemie, 24 August 2020, 4</p> <p>Anfragebeantwortung durch den Bundesminister für Inneres Karl Nehammer, MSc zu der schriftlichen Anfrage (671/I) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Daten zu Schubhaft und Abschiebungen im Jahr 2019, 30 March 2020, 30</p> <p>Anfragebeantwortung durch den Bundesminister für Inneres Herbert Kickl zu der schriftlichen Anfrage (3131/I) der Abgeordneten Dr. Alma Zadić, LL.M., Kolleginnen und Kollegen an den Bundesminister für Inneres betreffend Schubhaft und Anhaltung im Jahr 2018 , 21 May 2019</p>
DET.3.b		Does law/policy provide that individuals must be informed in writing of the reasons for their immigration detention?	<p>UN General Assembly (1988) : Anyone who is arrested shall be informed at the time of the reason for his arrest.</p> <p>EU Returns Directive: Detention shall be ordered in writing with reasons being given in fact and in law.</p> <p>Equal Rights Trust (2012) : Stateless detainees shall receive their order of detention in writing and in a language they understand.</p> <p>International Commission of Jurists (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.</p>	<p>Yes. The Federal Office for Immigration and Asylum (BFA) orders immigration detention through written decision, including the reasons for detention. Prior to the detention order being issued, the BFA, in general, conducts an oral hearing, during which an interpreter is present. In general, detention orders are issued in a shortened procedure through a so called <i>Mandatsbescheid</i>. Arrests by the police based on Article 39 Immigration Police Act or Article 40 Federal Agency Procedure Act, which can be upheld for a maximum time duration of 72 hours, are not ordered through written decision. Persons concerned are to be informed of the reasons of their arrest and legal remedies available in a language they understand and have the right that their consular representation is informed of their arrest.</p>	<p>Articles 39 , 40 and 76(4) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 57 Allgemeines Verwaltungsverfahrensgesetz 1991, BGBl No. 51/1991 as amended by BGBl I No. 58/2018 (DE)</p> <p>Articles 40 and 41 BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p>
DET.3.c		Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?	<p>Equal Rights Trust (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.</p>	<p>Partly, yes. The written detention order contains information on legal remedies and the appointed legal aid organisation, which is informed automatically after a detention order has been issued. According to reports by legal counsellors and lawyers, persons in immigration detention who refuse to sign their detention order are sometimes not given the order. People under <i>de facto</i> police arrest have no access to free legal aid (with the exception of arrests under Article 40(1)(1) Federal Agency Procedure Act). Since there is no SDP in Austria there is no guidance on how to access it.</p>	<p>Articles 40(1)(1), 51(1)(1), 52(1) and (2) BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Federal Ministry of the Interior of Austria, Information For Pre-Deportation Detainees, January 2014</p>
DET.3.d		Are there regular periodic reviews of detention before a court	<p>Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial</p>	<p>Yes. Officials of the Federal Office for Immigration and Asylum (<i>BFA</i>) are obliged to assess, ex officio, whether detention is still proportionate every four weeks. Automatic</p>	<p>Article 80(4) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial</p>

		or independent body, which can order release?	<p>supervision of the lawfulness of the measure.</p> <p>Equal Rights Trust (ERT) (2012) : To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities.</p>	<p>review by the BFA is not conducted if an appeal has been filed against detention. Automatic judicial review only takes place after four months.</p>	<p>English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 22a(4) BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p>
DET.3.e		What remedies are available to challenge detention? Please mention any obstacles to accessing effective remedies in practice.	<p>ICCPR Article 9(4) ECHR: Article 5(4) Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p>Alimuradov v. Russia ECtHR (2019): The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.</p>	<p>Detained persons can appeal to the Federal Administrative Court (<i>Bundesverwaltungsgericht</i>), which must decide on the continuation of detention within seven days. Filing an appeal costs 30 EUR and if the appeal is rejected, applicants must cover all trial expenses (up to approx. 900 EUR). In 2018, 18% of challenged detention orders were annulled or replaced.</p> <p>For obstacles regarding the access to an effective remedy, see DET 3g.</p>	<p>Article 22a BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Article 2(1) Verordnung des Bundesministers für Finanzen betreffend die Gebühr für Eingaben beim Bundesverwaltungsgericht sowie bei den Landesverwaltungsgerichten, BGBl II No. 387/2014 as amended by BGBl II No. 118/2017</p> <p>Article 1(3)-(5) Verordnung des Bundeskanzlers über die Pauschalierung der Aufwandsätze im Verfahren vor den Verwaltungsgerichten über Beschwerden wegen Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt und Beschwerden wegen Rechtswidrigkeit eines Verhaltens einer Behörde in Vollziehung der Gesetze, BGBl II No. 517/2013</p> <p>Bundesgesetz über das Verfahren der Verwaltungsgerichte, BGBl I No. 33/2013 as amended by BGBl I No. 57/2018</p> <p>Anfragebeantwortung durch den Bundesminister für Verfassung, Reformen, Deregulierung und Justiz, Dr. Josef Moser zur schriftlichen Anfrage (3078/I) der Abgeordneten Dr. Alma Zadić, LL.M., Kolleginnen und Kollegen betreffend 'Schubhaft in österreichischen (Polizei-)Anhaltezentren', 10 May 2019</p>
DET.3.f		Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?	<p>Equal Rights Trust (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation.</p> <p>ENS (2015) : The detaining state should have rules in place that govern the process of re-documentation and/or ascertaining entitlement to nationality.</p>	No.	
DET.3.g		Is free legal aid available to challenge detention? Please describe any barriers to accessing legal aid in practice.	<p>UNHCR (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means.</p> <p>EU Returns Directive: Article 13(3)</p>	<p>In general, yes. Persons subject to pre-removal detention under Article 76 Immigration Police Act are provided with free legal aid. Legal counsellors are obliged to represent them during an appeal procedure upon their request. People under <i>de facto</i> police arrest have no access to free legal aid (except for arrests under Article 40(1)(1) Federal Agency Procedure Act).</p> <p>Access to independent legal counselling and to an effective remedy might depend on the legal aid organisation appointed (automatic assignment). The Austrian Government contracted two organisations to provide free legal aid to individuals subject to pre-removal detention: <i>Verein Menschen-rechte Österreich (VMÖ)</i> and <i>ARGE Rechtsberatung</i>, consisting of <i>Diakonie Flüchtlingsdienst</i> and <i>Volkshilfe Oberösterreich</i>. As noted by OHCHR in a recent report, <i>VMÖ</i>'s independence and the quality of its counselling are frequently questioned by the media as well as different stakeholders, including public officials.</p> <p>In May 2019, the Austrian Parliament adopted a law establishing a "Federal Agency</p>	<p>Article 52(1) and (2) BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>OHCHR, Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return, 15-18 October 2018, paras 40-41</p> <p>diepresse.com, Asylverein im Visier der Behörden, 12 May 2017</p> <p>Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung, BGBl I No. 53/2019</p> <p>UNHCR, 'UNHCR-Analyse des Entwurfs für ein BBU-Errichtungsgesetz', 15/SN-127/ME, 11 April 2019</p>

				for the Provision of Care and Support" (<i>Bundesbetreuungsgesetz</i>). The agency will, i.a., assume legal counselling for persons subject to immigration detention. It is fully State-owned and mainly works under the auspices of the Ministry of Interior. Due to the Ministry's potential influence on future legal counsellors, UNHCR and many other stakeholders criticised the planned restructuring of legal aid for lacking independence in fact and appearance.	
DET.4.a	Protections on release	Are people released from detention issued with identification documents (including confirmation of their stateless status) and protected from re-detention?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 27 UNHCR (2014) : Being undocumented cannot be used as a general justification for detention. ENS (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.	No.	Information provided by legal counsellors.
DET.4.b		If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law?	Said Shamilovich Kadzoev v Direktsia Migratsia' pri Ministerstvo na vatreshnite raboti ECJ (2009) : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. Equal Rights Trust (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.	If removal cannot be carried out due to factual grounds not attributable to the individual (e.g. difficulties to obtain travel documents, or unwillingness of identified countries to accept an individual), detention is not admissible and the person can apply for "tolerated stay" and a card documenting this fact (<i>Karte für Geduldete</i>). According to information provided by legal counsellors from <i>Diakonie</i> , persons in pre-removal detention are sometimes released because their assumed countries of origin do not identify them as their nationals. Yet, their release is often preceded by several months spent in detention. Consulate officials of specific countries (e.g. Algeria, Morocco and Tunisia) frequently visit immigration detention facilities to conduct identification interviews.	Article 46a Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) Case Law: VwGH 26.1.2017, Ra 2016/21/0348 and 11.5.2017, 2016/21/0144 (detention justified, if there is real prospect of clarifying detainee's identity and receiving travel documents within maximum time limit of pre-removal detention; a countries former unwillingness to accept an individual is not) Bundesamt für Fremdenwesen und Asyl, Antragsformular Karte für Geduldete
DET.4.c		If re-detention occurs, is the cumulative time spent in detention counted towards any maximum time limits?	Equal Rights Trust (2012) : When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.	No. Earlier periods of immigration detention are only taken into consideration if they were ordered on the same legal grounds and case facts.	Article 80(4) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018)
DET.5.a	Return and readmission agreements	Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?	UNHCR (2014) : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.	Yes. Most bilateral and multilateral readmission or return agreements also address stateless people (with the exception of agreements with Albania, Georgia, Moldova and Nigeria). Austria concluded bilateral readmission agreements with 19 EU/EEA countries and 3 third countries (Albania, Nigeria and Tunisia). As an EU member state, Austria participates in 17 multilateral EU readmission agreements with third countries. Stateless people are not addressed under the declaration "Joint Way Forward on migration issues between Afghanistan and the EU".	Bundesministerium für Europa, Integration und Äußeres, Bilaterale Staatsverträge European Commission, Migration and Home Affairs, Return & Readmission See also: Anfragebeantwortung durch die Bundesministerin für Europa, Integration und Äußeres Dr. Karin Kneissl zu der schriftlichen Anfrage (2967/J) der Abgeordneten Dr. Stephanie Krisper, Kolleginnen und Kollegen betreffend 'Rückübernahme-abkommen', 26 April 2019 European Union External Action, Joint Way Forward on migration issues between Afghanistan and the EU
DET.5.b		Are you aware of cases of cases of stateless people being returned under such agreements?		No.	

Prevention and Reduction

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
PRS.1.a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to be granted nationality? [If yes, continue to PRS1b. If no, proceed to PRS1h]	<p>UN Convention on the Reduction of Statelessness, 1961: Article 1</p> <p>European Convention on Nationality, 1997: Article 2</p> <p>Convention on the Rights of the Child 1989: Article 7</p> <p>Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017): States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless.</p> <p>European Parliament (2018): The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.</p>	<p>Yes. Children born stateless in Austria are entitled to naturalisation with reduced requirements if they:</p> <p>a) were born on Austrian territory (including ships and aircrafts under Austrian flag);</p> <p>b) have been stateless from birth until the application for naturalisation;</p> <p>c) have lived lawfully in Austria for at least ten years (five years of continuous residence preceding the application required);</p> <p>d) are between 18 and 20 years of age;</p> <p>e) have not been convicted with final effect by a domestic court for certain offences / by a domestic or a foreign court to imprisonment of five or more years. They also have to demonstrate proficiency in German and pass a nationality test.</p> <p>Since 1981, only one person born stateless in Austria acquired Austrian nationality under the above-mentioned provision. In a policy paper published in advance of parliamentary elections in September 2019, UNHCR called on decision makers to amend the Nationality Act in order to ensure rapid and nonbureaucratic naturalisation of children born in Austria who would otherwise be stateless.</p> <p>All children born in Austria (including stateless children) can qualify for discretionary naturalisation after six years of residence in the country, subject to the normal requirements for naturalisation of migrants. Between 2008 and 2018, 196 people born stateless in Austria (plus 21 with undetermined and 15 with unknown nationality) were naturalised under other provisions of the Nationality Act.</p>	<p>Articles 11a(4)(3) and 14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Statistik Austria, Eingebürgerte Personen im Inland seit 2007 nach Rechtsgrund</p> <p>STATcube – Statistical Database of Statistik Austria, Naturalisations, 'Naturalisations under Article 14 of the Nationality Act, Time Section: 1981-2018' (DE, registration fee required)</p> <p>STATcube – Statistical Database of Statistik Austria, Naturalisations, Naturalizations by Place of birth: Austria and former Nationality: stateless, undetermined, unknown, Time section: 2008-2018' (DE, registration fee required)</p> <p><i>Stern, J. & Valchars, G., Country Report: Austria</i>, EUDO Citizenship Observatory, revised and updated September 2013, 35</p> <p><i>Stiller, M. (2019), Pathways to Citizenship for Foreigners in Austria</i>, IOM/EMN National Report</p> <p>UNHCR, UNHCR-Empfehlungen zu den Themen Flucht und Asyl in Österreich, August 2019, 20</p> <p>Case Law: VwGH 3.5.2000, 99/01/0272 = VwSlg 15411 A/2000 (all persons applying for Austrian Nationality, whether under the discretionary procedure or under naturalisation upon legal entitlement, must demonstrate proficiency of German and pass the nationality test) VwGH 29.1.1997, 94/01/0744 and 19.3.1997, 95/01/0620 (statelessness alone is neither a sufficient condition for facilitated naturalisation nor an indicator of “advanced assimilation” that would justify the reduction of the general residence requirement of ten years)</p>
PRS.1.b		Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)?	<p>UNHCR (2012): The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application.</p> <p>ENS (2015): The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.</p>	Non-automatic. Naturalisation under Article 14 of the Nationality Act is granted upon application.	Article 14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)
PRS.1.c		Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality?	<p>UNHCR (2012): The test is not an inquiry into whether a child's parents are stateless.</p> <p>ENS (2015): Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on.</p>	No.	As above.
PRS.1.d		Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes,	UNHCR (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof	Yes. There is no information available on administrative practice, since the provision has only been applied once since 1981.	STATcube – Statistical Database of Statistik Austria, Naturalisations, 'Naturalisations under Article 14 of the Nationality Act, Time Section: 1981-2018' (DE, registration fee required)

		please describe how this is determined in practice.	must be shared between the claimant and the authorities. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected.		
PRS.1.e		Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence.	UN Convention on the Reduction of Statelessness, 1961 : Article 1(2) UNHCR (2012) : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. Convention on the Rights of the Child, 1989 : Articles 3 & 7 Committee on the Rights of the Child (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. European Convention on Nationality, 1997 : Article 6(2)(b)	Yes. A period of ten years of lawful residence and five years of continuous residence is required, and the person must be between the age of 18 and 20 at the time of application. Under the regime of discretionary naturalisation, a period of six years of lawful residence is required.	Articles 14 and 11a(4)(3) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) <i>Stiller, M.</i> (2019), Pathways to Citizenship for Foreigners in Austria , IOM/EMN National Report
PRS.1.f		Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence.	Committee on the Rights of the Child (2011) : The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State. ENS (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.	No.	As above.
PRS.1.g		What are the age limits (if any) for making an application for nationality for a stateless person born on the territory?	UN Convention on the Reduction of Statelessness, 1961 : Article 1(2) UNHCR (2012) : Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. ENS (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.	The application must be filed between the age of 18 and 20. The age limit of 20 is at variance with Article 1(2)(a) of the 1961 Convention, which was criticised by UNHCR in its mapping study. UNHCR recommended that the application procedure should start as soon as possible after birth and be open until the age of 21. The restrictive age requirement was also criticised by CEDAW and CRC in their latest Concluding Observations on Austria. There is no age limit for the application for discretionary naturalisation.	Article 14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) UNHCR, Mapping Statelessness in Austria , January 2017, 303 and 314 CEDAW, Concluding observations on the ninth periodic report of Austria (Adopted by the Committee at its seventy-third session, 1–19 July 2019), paras 28 and 29 CRC, Concluding Observations on the combined fifth and sixth periodic reports of Austria (March 2020), para 21 <i>Vonk, O., Vink, M. & de Groot, G.</i> (2013), ' Protection against Statelessness: Trends and regulations in Europe ', EUDO Citizenship Observatory, May 2013, 39
PRS.1.h		Are there specific provisions to protect the right to a nationality of children born to refugees?	UNHCR (2012) : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities.	No.	
PRS.2.a	Foundlings	Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure.	UN Convention on the Reduction of Statelessness, 1961 : Article 2 European Convention on Nationality, 1997 : Article 6(1)(b)	Yes. According to Article 8 of the Nationality Act, a new-born child under the age of six months found on Austrian territory and of unknown parentage is regarded as a national by descent, until proven to the contrary.	Article 8 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) UNHCR, Mapping Statelessness in Austria , January 2017, paras 257-259
PRS.2.b		Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality?	UNHCR (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth.	Yes. Foundlings only acquire nationality by descent when they are under the age of six months. This is at variance with Article 2 of the 1961 Convention. In its 2017 mapping study, UNHCR recommended the scope of Article 8(1) Nationality Act be expanded by	Article 8 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018)

				deleting the age limit or ensuring that this provision at least covers all children who are not old enough or who do not have the physical, mental, intellectual or sensory capacities to communicate accurately information pertaining to the identity of their parents or their place of birth.	UNHCR, Mapping Statelessness in Austria , January 2017, paras 258, 303 and 314
PRS.2.c		Can nationality be withdrawn from foundlings if this leads to statelessness?	UNHCR (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.	No.	Article 8 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)
PRS.3.a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired?	UN Convention on the Reduction of Statelessness, 1961 : Article 5 ENS (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin.	No, not before the new nationality is acquired. But a child national automatically loses Austrian nationality if, in the course of the adoption, they obtain a new nationality and: 1) the nationality was not acquired <i>ex lege</i> but upon explicit declaration of intent on behalf of the child's legal representative or, with the legal representative's consent, by themselves or a third person (a minor over the age of 14 shall lose Austrian nationality only under the condition that they have expressly consented to the declaration of will); and 2) the child's written request to retain Austrian nationality due to reasons of their best interests is rejected. Austrian nationality is not lost, however, if a foreign nationality is obtained automatically and the child national did not object to this acquisition even if the foreign law provides for a right to object.	Articles 27 and 28 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) Case Law VwGH 16.2.2012, 2010/01/0035 (automatic loss of nationality confirmed in case of a child nationals who obtained Swiss nationality upon application of their parents) <i>Stern, J. & G. Valchars</i> (2013), Country Report: Austria , EUDO Citizenship Observatory, 33
PRS.3.b		Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process.	European Convention on Nationality, 1997 : Article 6(4)(d) Committee on the Rights of the Child (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption.	Yes. Children residing in Austria and under the age of 14 who have been adopted by national parents are entitled to Austrian nationality, if, by this act, 1) Austria's international relations are not significantly impaired; and 2) law and order and public safety or other public interests as stated in ECHR 8(2) are not endangered. Nationality shall be granted within six weeks upon application. The above-mentioned residence requirement is waived if the adoptive parent has been lawfully residing abroad for at least twelve months before filing the application.	Article 11b Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)
PRS.4.a	<i>Ius sanguinis</i>	Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless?	UN Convention on the Reduction of Statelessness, 1961 : Article 4 UNHCR (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child.	Yes. Children born to nationals abroad acquire Austrian nationality by descent, if 1) their mother is a national; 2) their father is a national and they are born in wedlock. If born out of wedlock, nationality is automatically conferred to children abroad if 1) their father is a national and acknowledged paternity before or within eight weeks of birth; or 2) their father is a national and his paternity has been judicially declared paternity before or within eight weeks of birth. Otherwise stateless children born abroad acquire nationality by descent if an Austrian national is the legal mother or father of the child according to the legislation of the country of birth. The provisions governing the acquisition of Austrian nationality by descent for children born out of wedlock were introduced in 2013 following judgments of the ECHR (<i>Genovese v. Malta</i>) and the Austrian Constitutional Court. In their latest Concluding observations on Austria, CEDAW and CRC criticised the existing legislative barriers to the acquisition of Austrian nationality by children born out of wedlock.	Article 7(1) and (3) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) Case Law: VfGH 29.11.2012, G 66/12 ua = VfSlg. 19.704/2012 and 26.2.2014, G88/2013 = VfSlg. 19.842/2014 (denial of <i>Ius Sanguinis</i> conferral to children of Austrian fathers born out of wedlock is unconstitutional; reference to ECtHR <i>Genovese v. Malta</i>) VfGH 11.10.2012, B 99/12 = VfSlg. 19.692/2012 (acquisition of nationality by descent also if child was born abroad by surrogate mother; no violation of <i>ordre public</i> ; right to identity and nationality read together with the principle of the best interests of the child trump prohibition of surrogacy) UNHCR, Mapping Statelessness in Austria , January 2017, paras 235-238 CEDAW, Concluding observations on the ninth periodic report of Austria (Adopted by the Committee at its seventy-third session, 1–19 July 2019), paras 28 and 29

				In a 2012 judgment the Austrian Constitutional Court gave priority to a child's right to identity and acquisition of nationality iure sanguinis over the prohibition on surrogacy. According to the Court, the provincial government's refusal to recognise a foreign birth certificate necessary to confer Austrian nationality due to a suspicion of surrogacy was not permissible in view of the best interests of the child.	CRC, Concluding Observations on the combined fifth and sixth periodic reports of Austria (March 2020), para 21
PRS.4.b		Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)?	Genovese v. Malta ECtHR (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW Gen. rec. No. 32, 2014 : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR (2014) : Action 4	Yes. As mentioned above, children born out of wedlock only acquire nationality by descent if their Austrian father acknowledges paternity before or within eight weeks of birth. As noted by UNHCR in its mapping study, the short deadline of eight weeks for the establishment of fatherhood creates a risk that some children will be left stateless due to delays in establishing paternity. If paternity is established later than eight weeks after birth, the child can only acquire Austrian nationality (upon application) if paternity is established and a) the child is either a lawful resident in Austria at the time of application, or b) the father has been permanently and lawfully residing abroad for at least 12 months. Moreover, applicants must cover all fees and prove that, through the award of nationality, Austria's international relations are not significantly impaired and law and order and public safety or other public interests as stated in ECHR 8(2) are not endangered.	Article 7(1) and 12(2) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) UNHCR, Mapping Statelessness in Austria , January 2017, para 238 <i>Stern, J. & G. Valchars</i> (2013), Country Report: Austria , EUDO Citizenship Observatory, 42 Case Law: VwGH 22.11.2005, 2004/01/0596 (acquisition of Austrian nationality at birth in order to prevent statelessness)
PRS.5.a	Birth registration	Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents?	Convention on the Rights of the Child, 1989 : Article 7 International Covenant on Civil and Political Rights, 1966 : Article 24(2) Council of Europe (2009) : Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown. UNHCR (2012) : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR (2014) : Action 7 UN Sustainable Development Goal 16.9	Yes. Access to registration and documentation of births in Austria is open to everyone, regardless of nationality and legal status of the parents or the child. Every birth occurring on Austrian territory must be communicated to the civil registry office of the place of birth within one week after birth. Notifications of birth are generally made by hospitals or doctors/midwives. Austrian civil registry offices are obliged to register immediately all births notified to them and issue birth certificates. The parents must submit documents confirming their nationality and, if they are married, marriage certificates. If these documents contain non-Latin letters, authorised transcripts must be submitted. Decisions issued by the Federal Agency for Immigration and Asylum (BFA) asylum authority or the Federal Administrative Court (BVwG) that contain information on personal data and civil status are considered as "other appropriate certificates" according to Article 36(2) Civil Status Act. If documents certifying the parents' identity, nationality and/or marital status cannot be presented, civil registrars have to conduct ex officio investigations, by (i.a.) 1) conducting oral hearings with the parents; 2) asking the asylum authority to share transcripts from asylum interviews; 3) conducting oral hearings with testimonies. Oral declarations made before the registration office have greater probative value, since false declarations leading to official documentation is a criminal offence. Domestic legal commentaries suggest that, in order to facilitate birth registration of asylum-seekers and beneficiaries of international protection, civil registrars should act flexibly and, e.g., refrain from requiring documents, if they cannot be presented due to reasons not within the responsibility of the persons concerned. In cases of recognised refugees, civil registrars usually rely on the personal data as noted in the person's refugee passport (<i>Konventionsreisepass</i>).	Articles 9(1) and (2), 35(1), 36, 40(1) and 53(3)(1) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE) Articles 2(2) and 11(1)(1) Verordnung der Bundesministerin für Inneres über die Durchführung des Personenstandsgesetzes 2013 (Personenstandsgesetz-Durchführungsverordnung 2013), BGBl II No. 324/2013 as amended by BGBl II No. 59/2019 Article 29(1)(11) 22a BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018) <i>Kutscher, N. & T. Wildpert</i> (2018), <i>Personenstandsrecht</i> 2, § 36 PStG 2013, paras 6 and 9 <i>Kutscher, N.</i> (2016), <i>Personenstandsfälle von Fremden und die Erfassung, Verarbeitung und Speicherung im Zentralen Personenstandsregister</i> , in: <i>ÖStA</i> 3/2016, 40 <i>Kutscher, N. & T. Wildpert</i> (2019), <i>Personenstandsrecht</i> 2, <i>Personenstandsgesetz 2013 – ZPR DA</i> <i>Tossmann</i> (2019), Kursunterlagen: Standesbeamten-Dienstprüfung OÖ (Gesamtskriptum) Oberösterreichische Landesregierung, Migrationsrecht für Standesbeamte , Oktober 2018, 14 Bundes-Fachverband der österreichischen Standesbeamten, Skriptum für die Standesbeamten-Dienstprüfung , Stand 1.2.2016 Case Law:

					VwGH 28.1.1970, 0281/69 (file notes and transcripts of oral hearings provide full evidence)
PRS.5.b		Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued.	UN Human Rights Council, Resolution A/HRC/RES/20/4 : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents.	Yes. All persons born in Austria receive a birth certificate, in which place and time of birth, the name of the child and the (legal) parents are documented. The domestic legal framework for the registration of births in Austria allows civil registrars to be flexible and also issue correct and fully valid birth certificates to persons who cannot provide documents confirming their identity, nationality or family status. If no documents are provided and oral declarations are made before the registration office or the asylum authority, persons concerned are still issued a “normal” birth certificate, which is fully valid according to national and international law. The additional information “based on oral statement” is only inserted in the Central Civil Status Database.	Article 36(4) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)
PRS.5.c		Is the child’s nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father’s nationality is recorded and/or automatically attributed to the child, if there’s a formal procedure, if information on both parents is recorded etc.)	Convention on the Rights of the Child, 1989 : Articles 3 & 7	Yes, civil registry offices determine a child’s nationality and insert this information in the Central Civil Status Register (<i>Zentrales Personenstandsregister, ZPR</i>). Nationality is not documented on the birth certificate, though, and the civil registrar’s determination of nationality is neither binding on other authorities nor regarded as full (legal) evidence according to Article 229(1) Code of Civil Procedure.	Article 40(3) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE) Article 229(1) Gesetz vom 1. August 1895, über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung), RGBl No. 113/1895 as amended by BGBl I No. 109/2018
PRS.5.d		If a child’s nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child’s nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	Convention on the Rights of the Child, 1989 : Articles 3 & 7 UN Convention on the Reduction of Statelessness, 1961 : Articles 1 & 4 UNHCR (2012) : States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child’s status of undetermined nationality. Such a period should not exceed five years.	No.	
PRS.5.e		Are there credible reports to suggest that children are prevented from registering in practice because of parents’ legal status or other reasons (please specify)?	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration : States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2019) : Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.	No.	

PRS.5.f		Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)?	<p>Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child, JGC No. 4 (2017) and JGC No. 3 (2017): Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes.</p> <p>Council of Europe: ECRI General Policy Recommendation No. 16(2016) on safeguarding irregularly present migrants from discrimination: States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector.</p>	<p>Health and civil registry authorities are not required to report undocumented migrants on the occasion of birth registration. Civil registrars are required to report marriages/civil partnerships of non-nationals to the immigration authorities though.</p> <p>As observed by ECRI in a report on Austria, the systematic creation of firewalls between the health and social system and the immigration authorities has not yet been envisaged by the Austrian authorities. Nevertheless, ECRI noted that firewalls are implicit in certain laws (e.g. on access to education) and that information provided by PICUM would suggest the existence of a firewall between the health system and the immigration authorities.</p> <p>ECRI recommended that the Austrian authorities collect data on the number and living conditions of undocumented migrants in Austria, set up clear and explicit firewalls preventing housing, social security and assistance providers from sharing data on the legal status of migrants with the immigration authorities; and work to eliminate the practical obstacles limiting migrants' access to services in the fields of education, health care and employment.</p>	<p>Article 48(9) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p>Article 30(7) BFA-Verfahrensgesetz, BGBl I No. 87/2012 as amended by BGBl I No. 29/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 48(9) and 109 Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 27/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Articles 1 and 17 Bundesgesetz über die Schulpflicht (Schulpflichtgesetz 1985), BGBl No. 76/1985 as amended by BGBl I No. 23/2020 (DE)</p> <p>ECRI, Sixth Report on Austria, 2 June 2020, paras 19-25</p>
PRS.5.g		Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice.	<p>Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017): Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration.</p> <p>UN Human Rights Council, Resolution A/HRC/RES/20/4: Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.</p>	<p>Yes, all births occurred on Austrian territory must be communicated and necessary documents submitted to the responsible civil registry office within seven days after birth. Delays are common and, in general, do not render any consequences, except for the fact that birth certificates are only issued free of charge within two years after birth.</p> <p>Late registration of births abroad is possible, but only accessible to:</p> <ol style="list-style-type: none"> Austrian nationals; stateless people and persons of undetermined nationality with habitual residence in Austria; or recognised refugees with main domicile/habitual residence in Austria. <p>There are legal and practical barriers for late birth registration of stateless people:</p> <ol style="list-style-type: none"> The Austrian Civil Status Act and its implementing regulation lack both a definition of a "stateless persons"/"person with undetermined nationality" as well as standardised operating procedures to be applied in such cases. Administrative practice is thus not consistent and there is a risk of mis-categorisation (no access to late birth registration for persons of unknown nationality). The definition of statelessness contained in the Austrian MOI's (non-binding) guidance document for civil registrars is narrow, and inconsistent; Stateless people are, in general, required to provide documents confirming their birth outside of Austria (for lower documentation requirements vis-à-vis asylum-seekers and beneficiaries of international protection as suggested by legal commentaries see above, PRS 5a). Late birth registration is not accessible to (stateless) beneficiaries of subsidiary protection and persons of "unknown" nationality. 	<p>Articles 9(1) and 35(2) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p>Article 35(6) Gebührengesetz 1957, BGBl No. 267/1957 as amended by BGBl I No. 99/2020 (DE)</p> <p><i>Kutscher, N. & T. Wildpert</i> (2019), <i>Personenstandsrecht</i>², <i>Personenstandsgesetz 2013 – ZPR DA</i>, 1.1.8.1 Auslandsfälle / II. Sonstige Regelungen DA</p> <p>UNHCR, Mapping Statelessness in Austria, January 2017, para 80</p> <p>Case Law: LVwG Tirol 22.1.2019, LVwG-2018/14/1219-1 (subjective right to late birth registration in case of statelessness/undetermined nationality; burden of proof)</p>
PRS.5.h		Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines.	As above	The fees for late birth registration amount to approx. 10-25 EUR. The application for late birth registration can be lodged with any civil registration office in Austria and consular offices abroad. The procedure is the same as for the registration of births occurring in Austria (see PRS 5a). Negative decisions of civil registration offices or their omission to issue a certificate for late birth registration can be appealed within four weeks to the respective Provincial Administrative Court	<p>Article 35(5) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 104/2018 (DE)</p> <p>gesundheit.gv.at, Neuausstellung einer Geburtsurkunde oder internationalen Geburtsurkunde</p>

				(Landesver-waltungsgericht). The Provincial Administrative Court's decision can be appealed within six weeks to the Constitutional Court (<i>Verfassungsgerichtshof</i>) or the Supreme Administrative Court (<i>Verwaltungsgerichtshof</i>).	<i>Teschner, W.</i> (2016), Beschwerden gegen Bescheide der Personenstandsbehörden (Standesämter) beim Landesverwaltungsgericht, in: ÖStA 3/2016, 43 Case Law on late birth registration: LVwG Tirol 22.1.2019, LVwG-2018/14/1219-1 (subjective right to late birth registration in case of statelessness/undetermined nationality; burden of proof)
PRS.6.a	Reduction	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	UNHCR (2014) : Action 7	Several hospitals in Austria are equipped with so called "Babypoints" (outposts of civil registry offices), facilitating automatic birth registration and issuance of birth certificates immediately after birth at the hospital. Since March 2019, birth registration can be done via the app "Digitaler Babypoint" or the online platform oesterreich.gv.at. This service is, at the time being, only available for Austrian nationals who are married.	oesterreich.gv.at, Krankenhäuser mit speziellen Baby-Urkundenservices bzw Babypoint oesterreich.gv.at, Schwangerschaft und Geburt
PRS.6.b		Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information.	UN Convention on the Reduction of Statelessness, 1961 : Article 9 UNHCR (2014) : Action 4 UN Human Rights Council (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.	Yes. Statelessness in Austria mainly occurs in a migratory context. In 2012, an analysis of the former Asylum Court's practice regarding stateless asylum-seekers found that most stateless asylum-seekers at that time were Syrian Kurds or Palestinians. Looking at the high numbers of people from Syria who applied for asylum in Austria, particularly in the years 2015 and 2016, this finding is very likely to still be valid. Recent anecdotal evidence gathered by UNHCR Austria shows that there might also be a significant number of stateless Palestinian refugees from Iraq living in Austria.	UNHCR, Mapping Statelessness in Austria , January 2017, para 73, 74, 76, 77 and 81 Bundesministerium für Inneres, Asyl, Statistiken
PRS.6.c		Has the Government implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.)	UN Convention on the Reduction of Statelessness, 1961 UNHCR (2014) : Actions 1 & 8 UNHCR (2015) : States parties to the 1954 Convention are required to help stateless persons become naturalised nationals.	No.	
PRS.7.a	Deprivation of nationality	Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.).	UN Convention on the Reduction of Statelessness, 1961 : Article 8 & 9 European Convention on Nationality, 1997 : Article 7(3) Universal Declaration of Human Rights : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 UNHCR Guidelines on Statelessness No.5 (2020) : the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification).	Yes. The Austrian Nationality Act contains provisions on loss and deprivation of nationality which may result in statelessness. Domestic law provides for ex lege loss of nationality if a national intentionally acquires a foreign nationality without having been granted the right to retain Austrian nationality beforehand. Automatic loss of Austrian nationality might cause a person to become stateless, if the foreign nationality has, in the meantime, been renounced. There is no safeguard against statelessness established in law further to the possibility of being granted the right to retain Austrian nationality before acquiring a foreign nationality. Deprivation of nationality is possible if: a) Austrian nationality was obtained by fraudulent means; b) a national voluntarily enters the military service of a foreign country; c) a national is in the services of a foreign country and, through their behaviour, severely damages the interests or the reputation of Austria (not applied in practice); d) a national voluntarily takes an active part in combat operations abroad on behalf of an organised armed group in the context of an armed conflict and deprivation does not cause the person to become stateless; e) a person had acquired Austrian nationality more than two years but less than six earlier and has not renounced their former nationality yet.	Articles 24 (resumption of award of nationality) 27-30 and 42 (automatic loss) and 24 and 32-36 (deprivation) Staatsbürgerschaftsgesetz 1985, BGBl I No. 311/1985 as amended by BGBl I No. 24/2020 (DE) , Unofficial English translation (amended version as of BGBl I No. 56/2018) UNHCR, Mapping Statelessness in Austria , January 2017, paras 260-290 UNHCR, UNHCR-Analyse des Entwurfs einer Novelle zum Asylgesetz 2005, Fremdenpolizeigesetz 2005, Niederlassungs- und Aufenthaltsgesetz und Staatsbürgerschaftsgesetz 1985 , 27 January 2011, 31 <i>Stern, J. & G. Valchars</i> (2013), Country Report: Austria , EUDO Citizenship Observatory, 17

				<p>Any loss of nationality extends to spouses or children, who had derived a right no naturalise as family members, even if they themselves had acquired nationality bona fide. In its mapping report, UNHCR pointed out that this provision may result in statelessness and is not in line with the 1961 Convention.</p> <p>Under the Nationality Act, proceedings regarding the award of nationality may not be resumed where it would render a person stateless. The only exception to this prohibition is in cases where nationality was obtained by fraud.</p>	
PRS.7.b		Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, judicial oversight, appeal, time limit, subject to prior sentencing)?	UN Convention on the Reduction of Statelessness, 1961 : Article 8(4) European Convention on Nationality, 1997 : Article 11 Principles on Deprivation of Nationality : Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation.	<p>The competent authority for withdrawal of Austrian nationality (through automatic loss, deprivation or revocation) is the respective provincial government and at a local level the authority where the person has their habitual residence. The decision to withdraw Austrian nationality can be appealed within four weeks to the respective Provincial Administrative Court (<i>Landesverwaltungsgericht</i>). The Provincial Administrative Court's decision can be appealed within six weeks to the Constitutional Court (<i>Verfassungsgerichtshof</i>) or the Supreme Administrative Court (<i>Verwaltungsgerichtshof</i>). Applicants who cannot afford the costs of the proceedings can apply for legal aid.</p>	<p>Articles 39-41 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p>
PRS.7.c		Are provisions on deprivation of nationality that may render a person stateless applied in practice?		<p>Yes. Particularly from 2017-2019 the provisions on automatic loss of Austrian nationality were applied vis-à-vis Austrian nationals who were believed to have acquired Turkish nationality upon explicit declaration of intent. Provincial governments initiated thousands of procedures regarding the loss of nationality after a putative Turkish electoral register, containing names and dates of Austrian nationals, had been leaked to the authorities in mid-2017. Many putative dual nationals were thus handed administrative decisions determining the automatic loss of Austrian nationality.</p> <p>In December 2018, the Constitutional Court (<i>Verfassungsgerichtshof</i>) ruled that the unofficial copy of a putative Turkish electoral list is not authentic and can thus not justify, without other pieces of evidence, automatic loss of nationality. In an earlier judgment of September 2018, the Supreme Administrative Court (<i>Verwaltungsgerichtshof</i>, <i>VwGH</i>) reached a slightly different conclusion. <i>VwGH</i> asserted that, if the applicant is listed on above mentioned putative Turkish electoral list and the Austrian authorities are not able to receive information on nationality status from Turkish authorities, the burden of proof lies on the applicant who must show that they have not acquired Turkish nationality status, in particular by presenting an excerpt from the Turkish civil register.</p> <p>Following CJEU's decision in the case C-221/17 (<i>Tjebbes et al</i>), both Supreme Courts have finally affirmed that a proportionality test must be conducted ex officio in the context of automatic loss of nationality. In earlier rulings <i>VwGH</i> (and lower instances) held that there is no need for a proportionality test in these cases.</p>	<p><i>Groß, P. P.</i> (2019), Entscheidungsbesprechung zu VfGH 11. 12. 2018, E 3717/2018 und VwGH 25. 9. 2018, Ra 2018/01/0364, in: <i>migraLex</i> 1/2019, 28-31</p> <p><i>Hörtenhuber, H. & S. Dörnhöfer.</i> (2019), Entscheidungen des VfGH - Dezember-Session 2018, Verlust der Staatsbürgerschaft für Doppelstaatsbürger, in: <i>ÖJZ</i> 12/2019, 68</p> <p><i>Koppensteiner, F.</i> (2015), Verlust der Staatsbürgerschaft als Mittel zur Terrorismusbekämpfung?, in: <i>SPRW</i>, 187</p> <p><i>Reiter-Zatloukal, I.</i> (2011), Migration und politisch motivierter Staatsbürgerschaftsentzug im 20. Jahrhundert, in: <i>Dahlvik/Fassmann/Sievers</i> (eds.), <i>Migration und Integration</i>, Jahrbuch 1/2011, Vienna University Press, 75-87</p> <p>Globalcit.eu, Austria: Constitutional Court overturns citizenship deprivation for naturalised former Turks, 21 December 2018</p> <p>Case Law: VfGH 17.6.2019, E1832/2019 (proportionality and violation of ECHR 8 to be assessed, ex officio, in the context of automatic loss of nationality; reference to CJEU <i>Tjebbes</i> and ECtHR <i>Ramadan</i>) VfGH 11.12.2018, E3717/2018 (automatic loss of nationality upon application for foreign nationality not admissible on the grounds of questionable evidence: unofficial copy of Turkish electoral list) VfGH 29.9.2011, G 154/10 = VfSlg. 19.516/2011 (revocation of naturalisation inadmissible, if a person has renounced their former nationality and does not fulfil income requirements anymore for reasons not attributable to them; requirement to submit travel documents when applying for residence permit can be waived in cases of stateless people)</p> <p>VwGH 30.9.2019, Ra 2018/01/0477</p>

					<p>(proportionality and violation of ECHR 8 to be assessed, ex officio, in the context of automatic loss of nationality; reference to CJEU <i>Tjebbes</i>) VwGH 25.9.2018, Ra 2018/01/0364 (automatic loss of nationality upon putative application for Turkish nationality; burden of proof lies on the applicant, if the Austrian authorities are not able to receive information on nationality status from Turkish authorities and if the applicant is listed on a Turkish electoral register) VwGH 2.8.2018, Ra 2018/01/0337 (CJEU <i>Rottmann</i> not applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign nationality; no proportionality test required) VwGH 26.6.2013, 2011/01/0251 (proportionality must be considered in procedures relating to the deprivation of nationality; reference to CJEU <i>Rottmann v. Freistaat Bayern</i>) VwGH 15.3.2012, 2010/01/0061 (automatic loss of nationality upon application for foreign nationality) VwGH 26.5.2009, 2009/01/0017 (deprivation of nationality under the provision governing the reopening of procedures in cases of fraud admissible, even if this leads to statelessness)</p> <p>LVwG Wien 29.5.2019, VGW-153/058/725/2019 (CJEU <i>Tjebbes</i> applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign (Turkish) nationality; proportionality test required, but loss of nationality proportionate if there are real prospects of being granted residence permit/humanitarian stay upon application) LVwG Salzburg 13.6.2019, 405-11/134/1/22-2019 (CJEU <i>Tjebbes</i> not applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign (Turkish) nationality; no proportionality test required)</p>
PRS.7.d		<p>Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness?</p>	<p>UN Convention on the Reduction of Statelessness, 1961: Article 7 European Convention on Nationality, 1997: Article 7 and 8</p>	<p>No. Both under the rules governing voluntary renunciation of Austrian nationality (Articles 37 and 38 of the Nationality Act) and under the rules regarding a person's duty to relinquish their former nationality before acquiring Austrian nationality (Article 20), there are no safeguards preventing a person from becoming stateless.</p> <p>As a consequence of Austria's strict 'single nationality' approach, the Nationality Act requires that upon (future) acquisition of Austrian nationality all previous nationalities (including of EU member states) have to be relinquished, except if a person is stateless when initiating the procedure. An applicant only receives a guarantee of grant of Austrian nationality, until evidence is provided that:</p> <ul style="list-style-type: none"> a) the applicant relinquished their former nationalities, or b) the applicant was unable or could not reasonably be expected to take the necessary steps to relinquish their previous nationality. <p>The guarantee of grant of Austrian nationality is only temporary and conditional, since it can be revoked by the authorities if the applicant no longer fulfils any of the requirements for naturalisation, except the income requirement as clarified by the Constitutional Court (<i>Verfassungsgerichtshof</i>) in a 2011 judgment. In recent judgments both the Constitutional Court and the Supreme Administrative Court (<i>Verwaltungsgerichts-</i></p>	<p>Articles 20(1)(1), 37 and 38 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 24/2020 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)</p> <p>Case Law: VwGH 13.2.2020, Ra 2018/01/0159 Request for Preliminary Ruling, C-118/20, JY v. Wiener Landesregierung (DE, EN)</p> <p>VfGH 13. 3. 2019, E 4081/2018 = VfSlg 20322 = ecolx 2019, 641 (revocation of guarantee of grant of Austrian nationality only admissible if there exist 'serious grounds')</p> <p>VfGH 29.9.2011, G 154/10 = VfSlg. 19.516/2011 = migraLex 2012, 34 (revocation of naturalisation inadmissible, if a person has renounced her former nationality and does not fulfil income requirement any more for reasons not attributable to her; requirement to submit travel documents when applying for residence permit can be waived in cases of stateless people) LVwG Wien 23.1.2018, VGW-152/065/11511/2017-7 (revocation of a guarantee to grant Austrian nationality because of multiple</p>

				<p><i>hof</i>) ruled that a guarantee of grant of Austrian nationality can only be admissible on 'serious grounds'. Nevertheless, the procedure is applied rigorously by the Austrian authorities and appellate courts which can result in people becoming stateless. For instance, people may become stateless when they relinquished their former nationality and, at a later stage, the assurance to acquire Austrian nationality is revoked based on a new assessment of eligibility. This occurred in a recent case of a former Estonian national, who applied for Austrian nationality in 2008 and voluntarily renounced her Estonian nationality in 2015 after receiving a guarantee of grant of Austrian nationality. As a result of her renunciation, the applicant became stateless and lost her EU citizenship. In 2017, the competent authority revoked the assurance to grant her Austrian nationality and rejected her application for Austrian nationality. The authority, and at a later stage the Administrative Court of Vienna, based their decision on the fact that the applicant had been penalised for committing several 'serious' administrative offences (road traffic offences) before and after the guarantee to grant Austrian nationality was given to her. Therefore, she no longer met the good conduct requirement for naturalisation. The Austrian Supreme Administrative Court then referred the case to the CJEU, asking the court:</p> <p>1) if the case falls within the scope of EU citizenship and thus EU law is applicable and 2) if the first question is answered in the affirmative, to clarify whether the revocation of the guarantee that prevented the recovery of EU citizenship is compatible with the principle of proportionality.</p> <p>Moreover, domestic law and practice relating to the temporary and conditional guarantee of grant of Austrian nationality is incompatible with Austria's obligations under international law (Article 7 of the 1961 Convention and Articles 7 and 8 ECN).</p> <p>In the 2014 'Tunis Conclusions' on the interpretation of the 1961 Convention, UNHCR specifies that:</p> <p>a) an assurance for the future acquisition of a nationality, linked to the loss of the previous nationality, is only acceptable 'if the assurance is unconditional and does not leave any discretion to the authorities of the country of the other nationality'; and b) 'once issued, assurances may not be retracted on the grounds that conditions of naturalisation are not met, thereby rendering the person stateless'.</p>	<p>administrative offence is admissible and proportionate, even when rendering the applicant stateless)</p> <p><i>Daigneault, E.W.</i> (2020), Austria: Estonian citizen becomes stateless after retraction of an assurance of naturalisation, Globalcit.eu</p> <p><i>De Groot, D.</i> (2020), CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon? (C-118/20 JY v Wiener Landesregierung), published at Globalcit.eu and EU Law Analysis</p> <p><i>Garzon, W.</i> (2016), § 20 StbG, in: Plunger/Esztegar/Eberwein, Kommentar zum Staatsbürgerschaftsgesetz</p> <p>Newsletter on European Free Movement Issues – for Judges NEFIS 2020/2, 2</p> <p>UNHCR, Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions"), March 2014, paras 44 and 45</p>
PRS.7.e	Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice.	Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards.	<p>Following a terrorist attack in Vienna on 2 November 2020, debates on tightening the rules governing deprivation of nationality due to involvement in terrorist activities have been renewed. The terrorist, who was born and grew up in Vienna, held Austrian and North Macedonian nationality. He was previously sentenced for attempting to travel to Syria and join the 'IS'. Based on this sentence, a procedure was initiated to deprive him of Austrian nationality, but it had to be discontinued because current legislation only allows for deprivation of nationality if the person actively participates in terrorist activities.</p> <p>In late 2018/early 2019, officials of the federal and provincial governments announced that they would be examining if "foreign terrorist fighters" could be stripped of Austrian nationality.</p>	<p>derstandard.at, Entzug der Staatsbürgerschaft für Attentäter: Für Wien wäre Bund gefordert gewesen, 4.11.2020</p> <p>kurier.at, Terror in Wien: SPÖ fordert Änderung des Staatsbürgerschaftsrechts, 7.11.2020</p> <p>derstandard.at, Ausbürgern ist die falsche Antwort, 10.11.2020</p> <p>thelocal.at, ANALYSIS: Vienna terror attack was 'only a matter of time', 4.11.2020</p> <p>kurier.at, Wiener IS-Kämpfer soll Staatsbürgerschaft verlieren, 9.3.2019</p> <p>kurier.at, Entzug der Staatsbürgerschaft: Eine Option bei IS-Kämpfern?, 20.2.2019</p>	

PRS.7.f		<p>Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice.</p>	<p>ICCPR: Article 26 UN Convention on the Reduction of Statelessness, 1961: Article 9 European Convention on Nationality, 1997: Article 5 Principles on Deprivation of Nationality: Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals.</p>	No.	
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Resources

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
RES.1.a	Published judgments	Number of published judgments adjudicating statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		<p>Since there is no SDP currently in place in Austria, judgments adjudicating statelessness relate to applications for international protection, return procedures, immigration detention as well as automatic loss or deprivation of Austrian nationality. Via the Austrian Legal Information System (<i>Rechtsinformationssystem, RIS</i>) many cases mentioning statelessness or relevant to statelessness can be accessed. However, most results are not relevant as they are only citations of legal documents/norms.</p>	<p>Legal Information System of the Republic of Austria (Rechtsinformationssystem, RIS)</p> <p>Selected case law:</p> <p>1) <i>Verfassungsgerichtshof</i> VfGH 17.6.2019, E1832/2019 (proportionality and violation of ECHR 8 to be assessed, ex officio, in the context of automatic loss of nationality; reference to CJEU <i>Tjebbes</i> and ECtHR <i>Ramadan</i>) VfGH 13. 3. 2019, E 4081/2018 = VfSlg 20322 = ecolex 2019, 641 (revocation of guarantee of grant of Austrian nationality only admissible if there are 'serious grounds') VfGH 11.12.2018, E3717/2018 (automatic loss of nationality upon application for foreign nationality not admissible on the grounds of questionable evidence; unofficial Turkish electoral register) VfGH 24.9.2018, E761/2018 ua; 22.9.2017, E1965/2017 and 18.9.2014, U73/2014 (Stateless Palestinian asylum-seekers ex Gaza; Articles 1D 1951 Convention / 12(1)(a) Directive 2004/83/EU; <i>ipso facto</i> refugee status indicated by granting of subsidiary protection/UNHCR COI paper on "non-removal policy"; reference to CJEU <i>El Kott et al</i> and <i>Bolbol</i>) VfGH 6.3.2014, U2131/2012 and English summary on Refworld (stateless Roma who was born and spent his entire life in Austria: expulsion would disregard human dignity (ECHR 3); expulsion temporarily inadmissible: applicant has to be granted a reasonable time limit to acquire the nationality of another country (Article 31, 1954 Convention); expulsion permanently inadmissible, if the applicant is unable to acquire another nationality for reasons not attributable to him) VfGH 29.11.2012, G 66/12 ua = VfSlg. 19.704/2012 and 26.2.2014, G88/2013 = VfSlg. 19.842/2014 (denial of <i>Ius Sanguinis</i> conferral to children of Austrian fathers born out of wedlock is unconstitutional; reference to ECtHR <i>Genovese v. Malta</i>) VfGH 11.10.2012, B 99/12 = VfSlg 19.692/2012 (acquisition of nationality by descent also if child was born abroad by surrogate mother; no violation of <i>ordre public</i>; right to identity and nationality read together with the principle of the best interests of the child trump prohibition of surrogacy) VfGH 29.9.2011, G 154/10 = VfSlg. 19.516/2011 = <i>migraLex</i> 2012, 34 (revocation of naturalisation inadmissible, if a person has renounced her former nationality and does not fulfil income requirement any more for reasons not attributable to her; requirement to submit travel documents when applying for residence permit can be waived in cases of stateless people)</p> <p>2) <i>Verwaltungsgerichtshof</i> VwGH 13.2.2020, Ra 2018/01/0159 Request for Preliminary Ruling, C-118/20, JY v. Wiener Landesregierung (DE, EN) VwGH 30.9.2019, Ra 2018/01/0477</p>

				<p>(proportionality and violation of ECHR 8 to be assessed, ex officio, in the context of automatic loss of nationality; reference to CJEU Tjebbes) VwGH 25.9.2018, Ra 2018/01/0364 (automatic loss of nationality upon putative application for Turkish nationality; burden of proof lies on the applicant, if the Austrian authorities are not able to receive information on nationality status from Turkish authorities and if the applicant is listed on a Turkish electoral register) VwGH 2.8.2018, Ra 2018/01/0337 (CJEU <i>Rottmann</i> not applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign (Turkish) nationality; no proportionality test required) VwGH 30.8.2018, Ra 2018/21/0029 and 31.8.2017, Ra 2017/21/0024 (Stateless Yazidi from Armenia, born in former USSR; (1) no violation of applicant's duty to cooperate in obtaining a replacement travel document, if authority/court does not provide sufficient evidence for concluding that the applicant is a national of a particular State; (2) the lack of further investigations by a lower instance can never be held against the applicant; (3) application of 'tolerated stay' card not to be rejected if court's investigations indicate statelessness) VwGH 15.9.2016, Ra 2016/21/0104 (application for a Foreigner's Passport on grounds of statelessness; right to oral hearing and summons of witness in appeal procedure; Court obliged to conduct investigations) VwGH 20.3.2014, 2013/08/0004 (1954 Convention has no direct effect; no subjective rights derived from Articles 17 and 24; incorrect interpretation of UNHCR Guidelines on Statelessness No. 2, para 17) VwGH 20.12.2013, 2013/21/0111 (application for a Foreigner's Passport on grounds of statelessness; embassy's refusal to issue return certificate could be an indication of statelessness) VwGH 26.6.2013, 2011/01/0251 (proportionality must be considered in procedures relating to the deprivation of nationality; reference to CJEU <i>Rottmann v. Freistaat Bayern</i>) VwGH 15.3.2012, 2010/01/0061 (automatic loss of nationality upon application for foreign nationality) VwGH 26.5.2009, 2009/01/0017 (deprivation of nationality under the provision governing the reopening of procedures in cases of fraud admissible, even if this leads to statelessness) VwGH 22.11.2005, 2004/01/0596 (acquisition of Austrian nationality at birth in order to prevent statelessness) VwGH 3.5.2000, 99/01/0272 = VwSlg 15411 A/2000 (all persons applying for Austrian Nationality, whether under the discretionary procedure or under naturalisation upon legal entitlement, must demonstrate proficiency of German and pass a nationality test) VwGH 3.12.1997, 96/01/0511 (conduct of a personal hearing in cases of possible statelessness) VwGH 29.1.1997, 94/01/0744 and 19.3.1997, 95/01/0620 (statelessness alone is neither a sufficient condition for facilitated naturalisation nor an indicator of "advanced assimilation" that would justify the reduction of the</p>
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					<p>general residence requirement of ten years)</p> <p>3) <i>Bundesverwaltungsgericht</i> BVwG 6.5.2019, W119 2152199-1 (<i>ipso facto</i> refugee status for stateless Palestinian asylum-seekers with last habitual residence in Lebanon's Saida En Alhelwa refugee camp)</p> <p>4) <i>Landesverwaltungsgerichte</i> LVwG Wien 29.5.2019, VGW-153/058/725/2019 (CJEU <i>Tjebbes</i> applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign (Turkish) nationality; proportionality test required, but loss of nationality proportionate if there are real prospects of being granted residence permit/humanitarian stay upon application) LVwG Salzburg 13.6.2019, 405-11/134/1/22-2019 (CJEU <i>Tjebbes</i> not applicable in cases regarding automatic loss of nationality due to voluntary acquisition of foreign (Turkish) nationality; no proportionality test required) LVwG Tirol 22.1.2019, LVwG-2018/14/1219-1 (subjective right to late birth registration in case of statelessness/undetermined nationality; burden of proof)</p> <p>5) <i>Asylgerichtshof</i> (ceased to exist) AsylGH 20.5.2009, D3 406.439-1/2009 (real country of origin / nationality / country of last habitual residence of an asylum-seeker has to be established ex officio if feasible)</p>
RES.1.b		Number of published judgments mentioning statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		As above.	
RES.2.a	Pro Bono	Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe.	UNHCR (2014) : Applicants must have access to legal counsel.	<p>The legal aid organisations <i>ARGE Rechtsberatung</i> (consisting of <i>Diakonie Flüchtlingsdienst</i> and <i>Volkshilfe Oberösterreich</i>) and <i>Verein Menschen-rechte Österreich</i> provide free legal advice to persons who received a negative decision in the asylum/return procedure or a detention order.</p> <p>DLA Piper Austria does not provide legal advice, but, together with ENS and Diakonie, the law firm published a report on childhood statelessness in Austria in 2017.</p>	DLA Piper/ENS/Diakonie Flüchtlingsdienst, ' No Child Should be Stateless in Austria ', 2017
RES.3.a	Literature	Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available).		Yes. The majority of domestic academic literature on statelessness focuses on recovery and deprivation of nationality.	<p><i>Bachmann, S.</i> (2018), Staatsbürgerschaftsrecht, in: <i>Bachmann et al.</i> (eds.), <i>Besonderes Verwaltungsrecht</i>, Verlag Österreich, Wien, 207-224</p> <p><i>Burger, H.</i> (2013), Heimatrecht und Staatsbürgerschaft österreichischer Juden. Vom Ende des 18. Jahrhundert bis in die Gegenwart, Böhlau, Wien</p> <p><i>Charokh, H.</i> (2019), Ein Schattendasein: Staatenlosigkeit in Österreich, in: <i>Stimme. Zeitschrift für Minderheiten</i> Nr. 111/2019, 13-15</p> <p><i>Charokh, H.</i> (2016), Staatenlos in Österreich, in: <i>asyl aktuell</i> 4/2016, 14-19</p> <p><i>Çinar, D. & H. Waldrauch</i> (2006), Austria, in: <i>Bauböck, R.</i> et al. (eds.), <i>Acquisition and Loss of Nationality. Policies and Trends in 15 European Countries</i>, Amsterdam University Press, 11-61</p>

				<p><i>Daigneault, E.W. (2020), Austria: Estonian citizen becomes stateless after retraction of an assurance of naturalisation, Globalcit.eu</i></p> <p><i>De Groot, D. (2020), CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon? (C-118/20 JY v Wiener Landesregierung), published at Globalcit.eu and EU Law Analysis</i></p> <p><i>Eberwein, H. & D. Zauner (2016) § 3 StbG, in: Plunger/Esztegar/Eberwein, Kommentar zum Staatsbürgerschaftsgesetz</i></p> <p><i>Garzon, W. (2016), § 20 StbG, in: Plunger/Esztegar/Eberwein, Kommentar zum Staatsbürgerschaftsgesetz</i></p> <p><i>Groß, P. P. (2019), Entscheidungsbesprechung zu VfGH 11. 12. 2018, E 3717/2018 und VwGH 25. 9. 2018, Ra 2018/01/0364, in: migraLex 1/2019, 28</i></p> <p><i>Geiger, D. (2019), 'Die Beugehaft zur Durchsetzbarkeit von Mitwirkungspflichten im Rahmen des Fremdenpolizeigesetzes', in: migraLex 1/2019, 2</i></p> <p><i>Hinterberger, K. F. & St. Klammer (2015), Das Rechtsinstitut der fremdenpolizeilichen Duldung, in: migraLex 2015, 73</i></p> <p><i>Hörtenhuber, H. & S. Dörnhöfer. (2019), Entscheidungen des VfGH - Dezember-Session 2018, Verlust der Staatsbürgerschaft für Doppelstaatsbürger, in: ÖJZ 12/2019, 68</i></p> <p><i>Karger, B. (2013), Die Praxis des Asylgerichtshofes in Bezug auf staatenlose Asylsuchende</i></p> <p><i>Klammer, St. (2018), 'Die Beugehaft nach dem FPG', in: Jahrbuch Asylrecht und Fremdenrecht 2018, 147</i></p> <p><i>Kolonovits, D. (2003), Rechtsfragen des Wiedererwerbs der österreichischen Staatsbürgerschaft durch Opfer des Nationalsozialismus (Vertriebene) nach Österreichischem Staatsbürgerschaftsrecht, in: Österreichische Historikerkommission (ed.), Staatsbürgerschaft und Vertreibung, Oldenbourg Wissenschaftsverlag, 7-23</i></p> <p><i>Koppensteiner, F. (2015), Verlust der Staatsbürgerschaft als Mittel zur Terrorismusbekämpfung?, in: SPRW, 187</i></p> <p><i>Reiter-Zatloukal, I. (2011), Denationalisation, Migration und Politik. Zur Praxis des Staatsangehörigkeitsentzugs im 20. Jahrhundert, in: migraLex 1/2011, 2</i></p> <p><i>Reiter-Zatloukal, I. (2011), Migration und politisch motivierter Staatsbürgerschaftsentzug im 20. Jahrhundert, in: Dahlvik/Fassmann/Sievers (eds.), Migration und Integration, Jahrbuch 1/2011, Vienna University Press, 75-87</i></p> <p><i>Stern, J. & G. Valchars (2013), Naturalisation Procedures for Immigrants. Austria, EUDO Citizenship Observatory, European University Institute, Florence</i></p>
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