

# A brief update on the situation of stateless persons in Poland

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Katarzyna Przybysławska  
przybyslawska@pomocprawna.org  
Halina Niec Legal Aid Center

**This brief report includes summary information on the current problems concerning stateless persons in Poland, with a special focus on stateless persons coming to Poland from Ukraine, where they were previously residing. Please contact the author for any additional questions.**

1. The size and structure of stateless population in Poland
2. Challenges related to lack of uniform definitions used in data collection
3. Stateless persons leaving Ukraine due to war
4. Shortcomings of identification of statelessness in Poland

## **1. The size and structure of stateless population in Poland**

### **Difficulties in assessing the number of stateless persons**

The size of stateless population in Poland is only partly recorded as in the current legal framework, statelessness often coincides with undocumented or irregular stay and thus a portion of this population eludes official statistics.

### **Procedures relating to statelessness**

This correlation between statelessness and irregular stay is due to the fact that there is no dedicated procedure that would allow to identify statelessness and regularize stay of stateless persons. Statelessness may be determined as a legally relevant fact in the course of other procedures, related to regularisation of stay, return or in the process of affording

international protection. For many stateless persons lack of state-issued documentation is however a considerable obstacle in regularizing their stay. In such a case the only accessible legal pathway for them would be the permit for stay based on humanitarian grounds or the so called tolerated stay – both of which can be decided only as a result of return proceedings. The accessibility of regularization exclusively through return procedures is a critical factor deterring many persons for taking any steps towards regularization.

Stateless persons or persons at risk of statelessness whose stay in Poland is irregular face apprehension and detention which, as practice shows, may often be unduly extended even if there is no reasonable prospect of return, thus amounting to arbitrary detention. Polish law does not have a safeguard against such prolonged detention that would mirror the standard of article 15 sec 4 of the EU Return Directive [*When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.*]

The use and the interpretation of the term ‘stateless’ is not consistent in records held by different Polish authorities. In the last census, two relevant categories were applied: ‘stateless’ (understood as a person without any nationality) and ‘undetermined nationality’. Both categories may have significance in estimating the stateless population in Poland, as the census results were based on self-declared answers by interviewees and no additional verification followed.

#### **Data on statelessness in official statistics**

In the census (2011), 2,020 persons residing in Poland declared they were stateless while in relation to 8,805 no nationality was established (mostly due to the fact that over 75% of those persons were homeless and lacked any documentation). The census data is disaggregated by gender and place of birth (Poland or abroad). In 2021 another public census was carried out.

In June 2022 preliminary results of the census were published quoting the number of stateless persons at 66, whereas 300 persons were reported as having undetermined nationality. These figures are surprisingly low, especially when taken into consideration with the fact that the overall number of foreigners living in Poland has doubled since the last census. It is unclear what are the reasons of the decreased number of stateless persons.

According to information provided by the Ministry of Digital Affairs in 2016, there were 1,328 people registered in the *Powszechny Elektroniczny System Ewidencji Ludności* (PESEL) (universal electronic population register) holding the status of a stateless person. None of the quoted data sources make an estimation on the number of stateless persons who are undocumented in Poland. As of 2021 (December) the Office for Foreigners reported the total number of “stateless persons” and persons of “unknown nationality” holding a valid residence permit as 311, of whom 282 are registered as “without nationality”, and 29 of „undefined nationality”. In 2020 these number were: 302 without nationality and 33 undefined nationality (total: 335). In 2019: 335 without nationality and 36 of undefined nationality (total: 371). No information about their origin is available.

During the first half of 2022 the Office for Foreigners recorded 5 stateless applicants for international protection and 19 with undetermined nationality.

During the same period of time 42 stateless persons and 10 persons with undetermined nationality from Ukraine were granted temporary protection by the Office for Foreigners, but it should be noted that the conditions for stateless and third country nationals were very stringent.

## **2. Challenges related to lack of uniform definitions used in data collection**

The 2001 and 2021 Polish census used the category 'undetermined nationality' as well as 'stateless'. The Office for Foreigners uses the term 'without nationality' and 'undefined nationality'. The Polish Border Guard in its internal records applies several other terms however. According to the Border Guard Headquarters (written reply to an inquiry of HNLAC on statelessness data collection): 'a stateless person' is defined as 'a foreigner of no state affiliation, a foreigner stripped of nationality or claiming to be a national of the so-called unrecognised state'. The second category used by the BG HQ, persons of 'unknown nationality' is defined as: 'persons that are not defined as stateless, those that do not claim being national of any state, claim potential affiliation with many states or – even though they indicate a state affiliation - were not recognised by that state as a national'. A third category used by BG HQ is persons whose 'nationality was not confirmed', understood as 'persons with no identity documents, whose personal details (including nationality) are accepted based on oral statements, which are subsequently verified'.

Internal BG records indicate that the practical interpretation of statelessness is not consistent, which directly impacts the credibility of data on statelessness. In public records related to migration (website "migracje.gov.pl") two terms are used: "without nationality" (similar but not tantamount to "stateless") and "undetermined nationality"(similar to the term "at risk of statelessness").

There is no legal definition of a person with undetermined nationality. However, UNCHR uses the following working definition for the purposes of collecting statistical data: "A person may be assessed as being with undetermined nationality following a review that verifies the following: they lack proof of possession of any nationality; and either A) have links to more than one State (on the basis of birth, descent, marriage or habitual residence); or B) are perceived and treated by authorities in the State of residence as possessing such links to other States."

The HNLAC has long recommended that Polish authorities adopt a definition of statelessness that is in line with the 1954 Convention Relating to the Status of Stateless Persons, whereas a dedicated procedure allowing to identify stateless persons should be introduced. Until these changes are made, all Polish statistics related to statelessness should be regarded with certain caution.

### **3. Stateless persons leaving Ukraine due to war**

Since the outbreak of War in Ukraine on 24 February 2022, 42 stateless persons and 10 persons with undetermined nationality from Ukraine were granted temporary protection by the Office for Foreigners, but it should be noted that the statutory conditions for stateless and third country nationals to be granted temporary protection are very stringent. Temporary protection is available to stateless persons married to Ukrainian nationals and to those falling under of the two categories:

- stateless persons who can prove that before 24 February 2022, they were legally residing in Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and are unable to return to their country or region of origin in safe conditions,
- stateless persons (and their family members) who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine.

There are at least 2 problematic issues preventing many stateless persons from Ukraine from applying for temporary protection in Poland:

1. There is a risk that interpretation of statelessness by the Polish Office for Foreigners responsible for the TPD procedure in their cases may be inconsistent. As mentioned before, the application of the term „statelessness” has been inconsistent in the past and thus there is a risk of applying it in a unjustifiably strict manner, narrowing down the category of eligible persons. The biggest risk is that statelessness here will be understood as tantamount to holding an officially recognized status of a stateless person - as Ukraine has introduced a statelessness identification procedure shortly before the war.

It should be noted however, that for the purposes of the TPD procedure, statelessness may be established independently, by the Polish Office for Foreigners, as a legally relevant fact in this process. The standard of fair procedure can only be met however if a uniform definition of statelessness is applied and interpreted in line with international law.

2. Another problem lies in the requirement to demonstrate that the stateless person was legally residing in Ukraine on the basis of a valid permanent residence permit. Though stateless population in Ukraine is large, the statelessness identification procedure has only recently been introduced. Many stateless persons and persons at risk of statelessness remain unidentified and many lack adequate documentation. Such persons would be unable to demonstrate the above condition and as a result would be unable to benefit from temporary protection.

The low number of stateless persons applying for temporary protection in Poland may therefore be assigned to the fact that many of them would be unable to fulfil the statutory requirements even though Ukraine was the country of their former habitual residence, they cannot safely return to Ukraine and they have no other state that would take them back.

#### **Statelessness in Ukraine**

Estimates for the size of the stateless population in Ukraine vary significantly. In 2021, UNHCR reported 35,875 people who were stateless or had 'undetermined nationality', only 6,047 of whom were recorded as legally residing in Ukraine. Many tens of thousands more are thought to be at risk of statelessness including 10-20% of the Roma population and 55% of children born in nongovernment-controlled areas (NGCA) and Crimea since 2014. According to the World Bank, 999,000 people over 15 years-old reside in Ukraine without a national ID card. Although not all will be stateless, most will be unable to prove their Ukrainian citizenship through documentation and may be at increased risk of statelessness. Ukraine introduced a statelessness determination procedure in 2021 to determine who is stateless on its territory and grant them protection. By the end of 2021, only 55 people had been granted a temporary residence permit through this procedure; and more than 800 had applied and been documented with a certificate of application confirming legal stay.<sup>1</sup>

According to European Network on Statelessness, populations affected by statelessness in Ukraine include:

- Romani people who lack civil documentation to acquire/confirm their Ukrainian nationality
- Former citizens of the USSR who were unable to acquire Ukrainian nationality in 1991 and have remained stateless due to lack of access to legal aid and other factors
- People from non-Government-controlled areas and Crimea and those internally displaced who have been unable to obtain/renew personal documents since 2014
- Asylum-seekers, refugees, and migrants (and their children) residing in Ukraine who were stateless prior to leaving their countries of origin or have since become stateless due to displacement, discrimination, State succession, or deprivation of nationality.

#### **Example of statelessness-related cases handled by HNLAC:**

##### **1. Roma cases: often concerning undocumented persons.**

One recent case concerned a Roma woman, Ukraine-born and settled, who bore a child in a Ukrainian hospital but declared a false name to the hospital administration. She never received a birth certificate but proceeded to Poland only with the hospital documents in hand. In order to regularize her status in Poland she had to first gather proof that she is the mother of the child, and a DNA test was necessary.

##### **2. Persons coming from internationally unrecognized Donieck and Lugansk Republics.**

These persons hold Donieck and Lugansk issued "passports" respectively, and do not hold Ukrainian passports. From our primary assessment it seems that they may experience difficulties in crossing the border and later registering as temporary protection beneficiaries under the "Special law" in Poland, as well as accessing the Diia app.

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<sup>1</sup> BRIEFING: Update on access to protection for stateless refugees from Ukraine, European Network on Statelessness, 28 April 2022, available at: [https://www.statelessness.eu/sites/default/files/2022-04/ENS\\_briefing-Statelessness\\_Temporary\\_Protection\\_Directive-Apr\\_2022.pdf](https://www.statelessness.eu/sites/default/files/2022-04/ENS_briefing-Statelessness_Temporary_Protection_Directive-Apr_2022.pdf)

Since these Republics are seen as subjected to Russian rule, the Ukrainian consulates are not providing any assistance to these persons abroad. They are unable to receive Ukrainian passports and prove their Ukrainian nationality.

Moreover, several years ago Ukraine has transferred all its civil registry records online, and so, persons issued with Donieck/Lugansk documents are left with "paper" copies of some documents only, as they are not included in these transferred registries. This may lead to statelessness, especially in relation to children.

### **3. Persons coming to Poland from Crimea**

Persons coming to Poland from Crimea may experience the same difficulties, however most adults are still keeping their Ukrainian documents (or they have both Russian and Ukrainian passports).

### **4. Russian nationals living permanently in Ukraine**

Another group at risk is Russian nationals who have been living permanently in Ukraine. Many of them are high skilled workers, university teachers, experts etc. Many of them are currently fleeing to Poland to seek protection as the Russian forces have begun a policy of arresting Russian nationals working at universities for example.

Once they arrive in Poland, they may be faced with backlash and have difficulties in accessing protection. Some have married Ukrainian nationals while in Ukraine.

We have received a number of questions concerning the possibility of renunciation of Russian nationality with the hope of receiving Ukrainian nationality. Russian law imposes a condition, however, that all such persons should first present a proof of new nationality, before they are allowed to renunciate Russian nationality (this, of course, is a safeguard against statelessness in line with the 1961 Reduction of Statelessness Convention). Unfortunately, under present circumstances, this condition often means that such persons are left in a Catch-22 situation: once they apply for Ukrainian nationality, they are first issued a "temporary certificate" that only proves that they are in the process of naturalization. This procedure may take very long. The temporary certificate is not enough however to be granted the required permission to renunciate Russian nationality. It is also not sufficient to receive any kind of assistance from the Ukrainian consulate in Poland, which means that this category of refugees falls in a protection gap.

## **4. Recommendations**

- A definition of statelessness in line with 1954 Convention Relating to the Status of Stateless Persons should be adopted into the Act on Foreigners,
- Poland should accede to 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness,
- A dedicated statelessness identification procedure should be established in law,

- A legal pathway for regularization of status of stateless persons should be laid out in law,
- Act on Foreigners should include a clear safeguard against detention of persons in case no reasonable prospect of return exists, that would mirror the standard of article 15 sec 4 of the EU Return Directive,
- All relevant authorities (Office for Foreigners and Border Guard) should be trained on statelessness and its identification,
- Special efforts should be made to ensure regularisation of stateless persons and persons at risk of statelessness from Ukraine who are not covered by temporary protection in Poland. Such efforts should include but not be limited to identifying and reaching out to minority groups from Ukraine at risk of statelessness, encouraging them to apply for other available forms of protection and ensuring they have easy access to relevant information and legal assistance in a language they understand.