STATELESSNESS INDEX

COUNTRY BRIEFING
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Germany

INTRODUCTION

The Statelessness Index[1] is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the European Network on Statelessness (ENS)[2], a civil society alliance of over 120 organisations and individuals in 40 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members[3] to research and compile comparative information on statelessness in Germany.[4] This briefing summarises the findings on how German law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the German Government for reform in priority areas.

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

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. As State party to many of these treaties, Germany has obligations to protect the right to a nationality and to prevent statelessness. Positively, Germany has signed and ratified both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, it has two significant reservations to the 1954 Convention: on travel documents (Article 27) and access to social security (Article 23). Germany is also party to the European Convention on Nationality (with a reservation relating to loss of nationality in certain circumstances), but has yet to accede to the Convention on the Avoidance of Statelessness in Relation to State Succession, which protects the right to a nationality and obliges the State to prevent statelessness in cases of State succession.

The German Government should consider withdrawing its reservations to the 1954 Convention and European Convention on Nationality acceding to the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.#

STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.[5] The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. There are various sources of data on the stateless population in Germany, including the *GENESIS-Online Datenbank* of the Federal Statistical Office and the Federal Office for Migration and Refugees. UNHCR estimates there to be 13,458 stateless people in Germany.[6] However, although statistical data in Germany is comprehensive, there are potentially overlapping categories in data sets, such as 'unclear nationality', 'unknown/not specified', and 'Palestinian Territories'; and statelessness has never been mapped in the German context. Without a dedicated statelessness determination procedure and a lack of guidance and updates for authorities recording statelessness, data on the stateless population remains unreliable.

The German Government should take concrete steps to improve the recording of statelessness, including by harmonising and defining the statistical categories used by different agencies and at different administrative levels (Federal and Land), and ensuring that

registration officials are trained to accurately identify and record statelessness.

STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.[7] Although statelessness may be determined through certain administrative procedures in Germany such as applications for travel documents, asylum and 'toleration' (*Duldung*), there is no formal statelessness determination procedure. Furthermore, the administrative procedures available fall short of standards set out in the UNHCR Handbook on the Protection of Stateless Persons in a number of areas: there is no obligation in law to consider a claim; the burden of proof is on the applicant; there is a lack of clear guidance on how to determine statelessness; access to procedures is limited for example by the lack of free interpreting; and there is little available information on how to regularise your status as a stateless person. Legal aid may be available if in financial need, but there are practical barriers to access including a registration requirement, which is difficult to meet for people in an irregular situation. Most importantly, a determination of statelessness in Germany does not in itself give access to the rights set out in the 1954 Convention.

The German Government should establish in law a dedicated statelessness determination procedure in line with UNHCR Guidance and good practice and fulfil its obligations to stateless persons under the 1954 Convention, including to grant them a residence permit, right to work, study and facilitated naturalisation.

DETENTION

Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.[8] Rules and procedures in Germany contain some protections against arbitrary detention, such as the requirement that a deportation order specify the state to which the person is to be removed, a maximum time limit on detention, and access to remedies to challenge detention. Access to free legal aid, however, is limited. Germany is bound by the EU Returns Directive, which requires particular attention to be paid to the situation of vulnerable persons; and the revised EU Returns Handbook[9] requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person's detention. The lack of a dedicated statelessness determination procedure and protection status in Germany and failure to consider statelessness as a juridically relevant fact in decisions to detain, means that stateless people with no other legal pathway to regularisation face prolonged periods on 'tolerated stay' (*Duldung*), maintaining an obligation to leave the country and a risk of re-detention.

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

PREVENTION AND REDUCTION

As State party to the 1961 Convention and the European Convention on Nationality, Germany has obligations to prevent and reduce statelessness on its territory. Positively, German law contains safeguards to prevent statelessness in the case of foundlings, adopted children, children born abroad to German nationals and children born in Germany since January 2000 where one parent has at least eight years' legal residence. However, where the latter does not apply, an application for naturalisation is required before the age of 21 and after five years' continuous, legal residence. This means that the right to nationality of otherwise stateless children born on the territory is either contingent on the legal status or actions of their parents or requires an application for naturalisation, leaving some children born in Germany stateless for a minimum of five years. This gap is particularly acute for the children refugees seeking asylum in Germany, given that they and their parents may remain with insecure status for prolonged periods while awaiting determination of their international protection claims.

Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.[10] Birth registration must be free and take place immediately after birth without delay. Although German law stipulates that all children must be registered immediately, some face barriers to birth registration in practice due to parents' missing documents or fear of detention and deportation, as registry officials are required by law to report undocumented migrants to the authorities. Additionally, late birth registration requires habitual residence and a travel document, which presents barriers to undocumented and stateless people.

The German Government should consider amending the law to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth, and remove all practical barriers to birth registration, including the requirement that registry officials share information with immigration authorities.

SUMMARY OF RECOMMENDATIONS

- Accede to the Convention on the Avoidance of Statelessness in Relation to State Succession.
- Withdraw all reservations to the 1954 Convention Relating to the Status of Stateless Persons and the European Convention on Nationality.
- Harmonise and disaggregate quantitative data on stateless persons in Germany and build the capacity of officials to accurately identify and record statelessness across government agencies at all administrative levels.
- Consider carrying out a comprehensive exercise to accurately map the stateless population in Germany.
- Establish a statelessness determination procedure and protection status in law and in line with good practice to give full effect to the rights enshrined in the 1954 Convention to stateless people in Germany.
- Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to a procedure to determine statelessness and residence rights for those released from detention to protect against re-detention.
- Ensure full implementation of the EU Returns Directive in line with the Revised EU Returns Handbook, including the requirement to pay attention to the specific circumstances of stateless persons, provide access to legal advice and representation and linguistic assistance.
- Amend nationality laws to ensure that all otherwise stateless children born in Germany acquire a nationality at birth.
- Remove all practical barriers to birth registration, including the requirement that registry officials share information with immigration authorities, ensure that the status of parents or criteria for late birth registration does not prevent immediate registration.

ENDNOTES

1 https://index.statelessness.eu
2 www.statelessness.eu
3 Lead Country Researcher for the Statelessness Index in Germany is individual ENS Member, Helena–Ulrike Marambio
4 Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Stateless-ness, 4 December 2015, http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/
5 https://index.statelessness.eu/country/germany
6 UNHCR (2018) Global Trends 2017, http://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html
7 UNHCR (2014), Handbook on Protection of Stateless Persons, http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html
8 ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf
9 European Commission (2017) ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf
10 UN Convention on the Rights of the Child, Article 7

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