

COUNTRY BRIEFING
FEBRUARY 2019

Poland



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 members³ to research and compile comparative information on statelessness in Poland.⁴ This briefing summarises the findings on what are the issues and how Polish 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 Polish 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

Poland has not acceded to any of the four core statelessness conventions, though it has signed (but not ratified) the [European Convention on Nationality](#). It is party to all the other relevant regional and international human rights instruments, but does retain some reservations and declarations, for example, its declaration that certain articles of the Convention on the Rights of the Child should be interpreted in line with 'Polish customs and traditions' and 'principles of morality'. It also has reservations to the Convention against Torture relating to confidential inquiries and arbitration. As a European Union member state, it is bound by the [EU Returns Directive](#).

The Polish Government should accede to the [1954 Convention relating to the Status of Stateless Persons](#), the [1961 Convention on the Reduction of Statelessness](#), and the [European Convention on Nationality](#). It should also consider acceding to the [Convention on the Avoidance of Statelessness in Relation to State Succession](#).

STATELESS POPULATION DATA

The Polish Government publishes disaggregated data on the number of 'stateless' people in the Polish census, but other overlapping terms, such as 'undetermined nationality' are also used, making figures unreliable. As there is no legal definition of a stateless person in Poland, the authorities use and interpret the term inconsistently and practice shows that different government departments use different overlapping terms and definitions, including 'without a nationality', 'stateless person' and 'undefined nationality'

As of 2018 (December) statistics published by the Office for Foreigners put the total number of "stateless persons" and individuals of "unknown nationality" holding a valid residence permit at 435, out of which 390 persons were registered as stateless, while 45 individuals were of unknown nationality. No information about the origin of these individuals is available.

There is no published data on stateless people in detention, though some figures are collected by the Polish Border Guard. UNHCR estimates for the stateless population in Poland are based on data from the 2011 census. A mapping study on statelessness in the country is forthcoming.

The Polish Government should take steps to improve the recording of statelessness, including the harmonisation and definition of the statistical categories used by different agencies, by introducing a uniform definition of a stateless person in line with the 1954 Convention.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.⁵

Poland does not have a dedicated statelessness determination procedure (SDP), but statelessness may be identified through other administrative procedures. There is no legal definition of a stateless person and no procedure is tailored to identifying statelessness, but it can be raised as a legally relevant fact during asylum, return or removal procedures, for example. Legalisation proceedings may be of relevance to stateless persons but have limited scope as statelessness in Poland often coincides with irregular stay. For undocumented stateless people, amnesty proceedings are also relevant, but are not regularly accessible.

All of these procedures are conducted by different Government agencies, with the procedure for granting protection being centralised (Office for Foreigners), and legalisation and return proceedings being conducted locally by the Voivode's Office (local administration) and the Commander in Chief of the relevant division of the Border Guard respectively. Authorities are not obliged to consider a claim to be recognised as stateless and there is no guidance for the assessment. There is no 'stateless' status but rather the possibility to receive a permit for tolerated stay with a right to work, healthcare and basic social assistance.

The Polish Government should establish in law a dedicated statelessness determination procedure in line with UNHCR guidance and good practice and international standards enshrined in the 1954 Convention, including to grant stateless people a residence permit, right to work, study and facilitated naturalisation. The Government should take steps to ensure officials are trained to accurately identify statelessness and consider providing undocumented stateless persons with an identification document and a travel document.



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.⁶ Powers to detain in Poland are far-reaching and there are few protections against arbitrary detention of stateless people. For example, there is no requirement for a country of removal to be set prior to

ordering detention. The identification of statelessness during removal procedures may make removal unenforceable and lead to issuing a permit for tolerated stay, but there is no explicit provision establishing statelessness as a juridically relevant fact nor stipulating detention as a last resort (though alternatives are prescribed in law). There are some procedural safeguards and remedies for detainees, but there are obstacles to accessing legal aid. A permit for tolerated stay may be granted upon release from detention with access to some basic rights including to work, education and healthcare.

The Polish Government should take further steps to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status and ensuring clear referral routes from returns proceedings. The Government should also put in place robust mechanisms to ensure residence rights for those released from detention, including those with tolerated stay, and embed consideration of statelessness as a juridically relevant fact in all decisions to detain.



PREVENTION AND REDUCTION

Efforts to prevent and reduce statelessness in Poland are mixed. There are partial safeguards in law to prevent statelessness, for example, in the case of foundlings and adopted children. Access to birth registration is facilitated, for example, there is a provision for births to be registered ex officio if parents do not register the birth within the legal deadline. However, the safeguard in nationality law to prevent statelessness in the case of children born in Poland applies only to children born to stateless or unknown parents. In the case of children born abroad to same sex parents there is also a risk of statelessness due to discriminatory practice by the Polish authorities that may prevent the child acquiring a Polish passport or documentation in practice.

The Polish Government should consider amending the Act on Polish Citizenship so that all children born on the territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of the parents, and to protect individuals who renounce their nationality from statelessness. The Government should also take concrete steps to proactively identify, address and eliminate any stereotypical or discriminatory views or actions among their staff and agencies concerning same-sex partnerships to prevent the risk of statelessness among children born to same-sex parents.

SUMMARY OF RECOMMENDATIONS

- Accede to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the European Convention on Nationality. Consider acceding to the Convention on the Avoidance of Statelessness in Relation to State Succession.
- Improve the recording of statelessness in national statistics, including the harmonisation and definition of the statistical categories used by different agencies, by introducing a uniform definition of a stateless person in line with the 1954 Convention.
- Establish in law a dedicated statelessness determination procedure and protection status in line with UNHCR guidance and good practice and international standards under the 1954 Convention, including to grant stateless people a residence permit, right to work, study and facilitated naturalisation.
- Ensure government officials are trained to accurately identify statelessness and consider providing undocumented stateless persons with an identification document and a travel document.
- Take further steps to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status and ensuring clear referral routes from returns proceedings.
- Put in place robust mechanisms to ensure residence rights for those released from detention, including those with tolerated stay permits, and embed consideration of statelessness as a juridically relevant fact in all decisions to detain.
- Consider amending the Act on Polish Citizenship so that all children born on the territory who would otherwise be stateless acquire a nationality at birth regardless of the status of the parents, and to protect individuals who renounce their nationality from statelessness.
- Take concrete steps to proactively identify, address and eliminate any stereotypical or discriminatory views or actions among Government staff and agencies concerning same sex partnerships to prevent statelessness of children born to same-sex parents.

ENDNOTES

¹<https://index.statelessness.eu>

²www.statelessness.eu

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⁴ <https://index.statelessness.eu/country/poland>

⁴<https://index.statelessness.eu/country/poland>

⁵ UNHCR (2014), Handbook on Protection of Stateless Persons,

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

⁶ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change,

https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

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