

COUNTRY BRIEFING
MARCH 2019

Slovenia



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 member, The Peace Institute, to research and compile comparative information on statelessness in [Slovenia](#).³ This briefing summarises the findings on how Slovenian 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 Slovenian Government for reform in priority areas.

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

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Slovenia is state party to only one of the core statelessness conventions, the [1954 Convention Relating to the Status of Stateless Persons](#). It is not party to the [1961 Convention on the Reduction of Statelessness](#), the [European Convention on Nationality](#) or the [Convention on the Avoidance of Statelessness in Relation to State Succession](#). However, Slovenia has signed and ratified all other relevant international and regional human rights treaties, without retaining any reservations that would have a direct impact on statelessness and is bound by the EU Returns Directive.

The Slovenian Government should accede to the [1961 Convention on the Reduction of Statelessness](#), the [European Convention on Nationality](#) and the [Convention on the Avoidance of Statelessness in Relation to State Succession](#) and commit to upholding international standards to protect stateless people and prevent and reduce statelessness.



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.⁴ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. There is little available data on the stateless population in Slovenia. The last census from 2002 recorded 2,527 people as having 'unknown citizenship' status. However, it cannot be determined if no data on citizenship was collected or if respondents self-identified as stateless, meaning that it is unclear who is included in this category and the data is therefore unreliable.

The Ministry of the Interior collects data on people claiming statelessness during immigration, international protection, and naturalisation procedures. However, there are overlapping categories, as the Ministry uses both 'without citizenship' and 'unknown citizenship' as categories. Between 2009 and 2013, five people acquired Slovenian citizenship through facilitated naturalisation proceedings for stateless persons as prescribed by the Citizenship Act. Under the 'Aliens Act' permanent residence permits were issued to thirteen stateless people and international protection was granted to one stateless person. Slovenia has no statelessness determination procedure and no national mapping study of statelessness has been conducted. This, alongside the

existence of groups that have been disproportionately exposed to statelessness - in particular, Roma and Erased⁵ populations – means that these existing statistics are likely to be an underrepresentation of the numbers of stateless people in Slovenia.

The Slovenian Government should take concrete steps to improve the recording of statelessness by harmonising and defining statistical categories used by different agencies. It should include the recording and counting of stateless individuals in the census and consider conducting a comprehensive national mapping study to provide a reliable estimate of the statelessness population in Slovenia.



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.⁶

Slovenia does not have a dedicated statelessness determination procedure (SDP). There are other administrative procedures through which statelessness can be identified (for example an application for residence, international protection or naturalisation). However, there is no dedicated stateless protection status and no obligation in law to consider a claim of statelessness, nor clear instructions, guidance or training for officials conducting the assessment. The definition of a stateless person in Slovenian law is narrower than the 1954 Convention. The burden of proof is on the applicant, the standard of proof is very high, and legal aid is only available for judicial review. Research shows that people claiming to be stateless will face the presumption of having another citizenship or being able to apply for one in another country and the public official will refer them to embassies of other countries rather than considering their statelessness as a relevant circumstance.

The Slovenian Government should establish a dedicated statelessness determination procedure in law and 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. Stateless children without legal residence should be treated the same as those with residence rights in line with the best interests of the child. The Slovenian Government should ensure that public officials and registration officials are trained to accurately identify statelessness and consider it as a relevant circumstance.



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.⁷ Slovenia 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](#)⁸ 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. In Slovenia, there are few protections against the arbitrary detention of stateless people. Under the Constitution, a proportionality test must be carried out when deciding to detain, but in practice, a country of removal may not be identified prior to detaining, and alternatives to detention are not routinely considered, though they are set out in law as 'more lenient measures'. Detention is only subject to independent review after the first three-month extension, and there are very limited remedies for an individual to challenge their detention. Legal aid is not available. Statelessness is not considered a juridically relevant fact in decisions to detain and stateless people are detained in practice.

The Slovenian Government should take steps to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status, as well as embedding consideration of statelessness as a juridically relevant fact in all decisions to detain.



PREVENTION AND REDUCTION

Slovenia is neither party to the 1961 Convention nor the European Convention on Nationality. There are safeguards in Slovenian law to prevent statelessness in the case of foundlings, most adopted children and children born abroad to Slovenian parents. However, there are also significant gaps in existing safeguards. The safeguard in nationality law to prevent statelessness among children born in Slovenia relies on the status of the parents rather than the child. The parents of a stateless child born on the territory must also be stateless (or unknown) for the child to acquire Slovenian nationality. If the parents are not nationals of the Republic of Slovenia but have citizenship of another state which they cannot confer to the child, said child is not protected from statelessness by Slovenian law.

Every child's right to a legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.⁹ In Slovenia, birth registration law and practice is generally positive and late birth registration is possible, though subject to a fine.

The Slovenian 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, regardless of the status of the parents.

SUMMARY OF RECOMMENDATIONS

- Ratify the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession
- Define and harmonise statistical categories used across government agencies at all administrative levels, and include the recording and counting of stateless individuals in the census
- Conduct a comprehensive mapping study to accurately identify the stateless population in Slovenia
- Establish a dedicated 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 Slovenia
- Set up regular training for public officials to accurately identify statelessness and consider it as a relevant circumstance
- Set up safeguards to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status, and embedding consideration of statelessness as a juridically relevant fact in all decisions to detain
- Amend the law to ensure that all children born on Slovenian territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of the parents

ENDNOTES

¹ <https://index.statelessness.eu>

² www.statelessness.eu

³³ <https://index.statelessness.eu/country/slovenia>

⁴ Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

⁵ For more information on the Erased, see: <http://www.mirovni-institut.si/izbrisani/en/>

⁶ UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

⁷ 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

⁸ 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

⁹ UN Convention on the Rights of the Child, Article 7.

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