

COUNTRY BRIEFING
NOVEMBER 2018

Ukraine



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu>) 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 \(ENS\)](#)¹, 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](#)² to research and compile comparative information on statelessness in [Ukraine](#).³ This briefing summarises the findings on how Ukrainian 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 Ukrainian 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. Ukraine is a party to almost all core relevant international and regional legal instruments on prevention and reduction of statelessness, including both the [1954 Convention Relating to the Status of Stateless Persons](#) and the [1961 Convention on the Reduction of Statelessness](#). Ukraine is also a party to the [European Convention on Nationality](#). All mentioned treaties were ratified by Ukraine without any reservations. Ukraine is also a party to almost all other relevant international human rights instruments.

Ukraine signed the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession but hasn't acceded to it yet. Although Ukraine's policy is oriented toward European integration, European Union law is not binding for Ukraine and can only be taken into account as a reference for the development of its own legal system and policy.

Despite accession to all the relevant international instruments, the mechanisms for ensuring the rights of stateless persons and reduction of statelessness have not been established in Ukraine.

The Government of Ukraine should ensure compliance in practice with the international obligations it has accepted. Ukraine should also accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.



STATELESS POPULATION DATA

Data on the stateless population in Ukraine is limited and contested. The only official source of information on the number of stateless persons is the All-Ukrainian Population Census of 2001. However, the Census data is significantly outdated and does not reflect the real situation regarding the number of people without any citizenship in Ukraine. Besides, the Census data contains information on two overlapping categories of the population – stateless persons ([82,550 people](#)⁴) and persons who did not indicate their citizenship (40,464 people).

Other sources of data or information about statelessness include UNHCR, NGOs and the Ombudsperson of Ukraine on Human Rights, but NGOs have raised concerns about the lack of reliable data on statelessness in Ukraine. For example, according to data provided by the Ombudsman's Office in 2017, there were officially registered [6,500 stateless persons](#)⁵ in Ukraine. At the same time, according to the UN Refugee Agency, by 2016, [35,363 stateless persons](#)⁶ lived in Ukraine.

Statistical data of the executive bodies cannot be recognised as credible sources of information on the stateless population as various state registers and statistical reports do not contain a category of "stateless persons".

The Ukrainian Government should create a reliable source of information on the number of stateless persons in Ukraine in order to ensure effective policies to prevent and eliminate statelessness.



STATELESSNESS DETERMINATION AND STATUS

There is a definition of a "stateless person" in Ukrainian law that is similar to the 1954 Convention. However, the law defines a "stateless person" as someone not considered a citizen of any state "in accordance with its laws" rather than "under the operation of its law", which is narrower than the 1954 Convention definition.

Ukraine has a dedicated stateless status but no formal mechanism to identify or determine this. Despite the international obligations of Ukraine, administrative procedures are still weak, and legislation is inconsistent, making it difficult for people to claim stateless status and documentation.

The legal status of stateless persons derives from the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons". The Constitution of Ukraine and other laws allow for restrictions of the rights of stateless persons only on the basis of the law. Nevertheless, only those stateless persons who are documented and entitled to residence on the territory of Ukraine have access to social and economic rights, in particular, to the right to work, social security, housing, education and medical care. Undocumented stateless persons do not have access even to minimum social and economic rights (except for access to emergency medical care). Children of undocumented stateless persons usually have access to primary education, but without obtaining personal documents, they often are not able to obtain a certificate of education.

Ukraine should establish a dedicated procedure for the determination of statelessness in line with good practice, and grant the rights enshrined in the 1954 Convention to all stateless persons on the territory (including a residence permit, right to work, study, and facilitated naturalisation). Ukrainian government should ensure the confirmation and acquisition of citizenship of persons in the temporarily occupied territories.



DETENTION

Ukrainian legislation allows detention of foreigners and stateless persons in immigration detention centres. Immigration detention powers are provided for in law, but the grounds for detention go beyond the purposes allowed under ECHR Article 5(1)(f). A person who has entered the country without legal grounds for residence can be placed in immigration detention before a deportation or

extradition decision has been taken or for the purpose of identification. Certain provisions in law still allow the State Migration Service and State Border Guard Service to detain people without a court order.

The legislation of Ukraine on immigration detention of stateless persons contains a number of significant gaps. In particular, a proposed country of removal does not need to be identified prior to detention, statelessness is not considered juridically relevant, the law does not stipulate assessment of vulnerability of a person prior to detention.

The legislation of Ukraine provides for two alternatives to detention in Ukraine - bail or a surety deposit – but those are rarely used.

Ukrainian legislation enshrines procedural guarantees of rights of persons in immigration detention. The term of detention of a stateless person is six months and can be extended for no more than 18 months. The extension of the term of detention is made by a court decision, which is ruled following consideration of a claim by a relevant governmental body. A person has the right to appeal against a court decision on their detention, but undocumented stateless persons do not have access to free legal aid. A detained person must be informed of their rights and duties in a language they understand. Ukrainian governmental authorities usually refrain from detaining stateless persons who were residing in Ukraine for a long period of time.

People released from detention are issued with a certificate of immigration detention, and are entitled to apply for a temporary residence permit for a period of one year. Although Ukrainian legislation provides for two alternatives to immigration detention in Ukraine, only persons who were in detention are entitled for temporary residence permit.

Ukraine should amend its legislation to ensure stateless persons are fully protected from arbitrary and unlawful detention in line with international standards, and that detention is only ever used as a measure of last resort.



PREVENTION AND REDUCTION

Ukrainian nationality law is based on a combination of the principles of *jus sanguinis* and *jus soli*. There are legal safeguards in Ukrainian nationality law to prevent statelessness in the case of foundlings, adopted children and children born to Ukrainian nationals abroad. The most significant gap is the absence of provisions in law to automatically grant Ukrainian nationality to some children born on the territory who would otherwise be stateless, as eligibility is dependent on the status of the parents. So, there is no full safeguard against children being born stateless on the territory.

Access to birth registration for children whose parents are stateless persons is limited. Parents with no identity documents are not able to register the birth of their child as a passport must be shown to the competent authority in the procedure for registration. Roma people are particularly vulnerable to this

problem, due to a range of factors including discrimination, lack of documentation and marginalisation. Late birth registration is provided by law, but registration of birth after one year requires submitting of other documents, e.g. medical records of a child. Registration of the birth of a person older than 18 years is only possible on the basis of a court decision. However, persons without any ID cannot apply to a court without the assistance of an attorney.

Ukraine should guarantee citizenship to children born on the territory of Ukraine if they would otherwise be stateless. Ukraine should simplify the administrative procedure for late birth registration and ensure the particular barriers faced by Roma communities are addressed to guarantee universal access to legal identity for all children in line with international law.

SUMMARY OF RECOMMENDATIONS

- Establish in legislation and practice a procedure for the determination of statelessness and granting of a stateless status that provides protection to stateless people on the territory in line with the 1954 Convention (including a residence permit, socio-economic rights and facilitated route to naturalisation)
- Accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession;
- Collect and report on reliable and up-to-date information on the stateless population residing on the territory;
- Ensure registration of birth of children whose parents do not have identity documents;
- Ensure the acquisition of citizenship for children born on the territory of Ukraine if they would otherwise be stateless.

ENDNOTES

- 1 <https://www.statelessness.eu>
- 2 Lead Country Researchers for the Statelessness Index in Ukraine are Kateryna Gaidei and the NGO "Desyate Kvitnya".
- 3 <https://index.statelessness.eu/country/ukraine>
- 4 State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: <http://2001.ukrcensus.gov.ua/publications/#p14>
- 5 The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine 2017: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=3>
- 6 UNHCR Statistics, The World in Numbers: <http://popstats.unhcr.org/>

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