

Why we do not care for statelessness as we care for asylum?

Adolfo Sommarribas
Coordinator of the EMN Platform on
Statelessness

Odysseus Summer School
8 July 2019
Brussels, Belgium

INTRODUCTION

EMN PLATFORM ON STATELESSNESS

EMN Platform on Statelessness

- Platform was created by the Council Conclusions of 3 - 4 December 2015
 - *Invite the Commission to launch exchanges of good practices among Member States, using the European Migration Network as a platform;*
 - *Invite Member States' national contact points to actively participate in that platform providing all relevant information with a view to ensuring that it will be a useful instrument in order to achieve the objectives of reducing the number of stateless people, strengthening their protection and reducing the risk of discrimination.*
- Platform is coordinated by EMN Luxembourg

Platform's activities

- Produce policy briefs [EMN Inform] on the state of play of statelessness in the EU;
- Exchange information and best practices between Member States, international organisations and civil society;
- Organise activities in collaboration with international organisations, relevant EU agencies and NGOs in order to raise awareness on statelessness and the means to reduce it.

SECTION I

INTERNATIONAL PROTECTION

International Protection (legal framework)

The legal framework for refugees in the EU is composed of:

International instruments

- 1951 Convention relating to the status of refugees
- 1967 Protocol relating to the Status of Refugees

European Acquis

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

Reception conditions (Directive 2013/33/EU)

- Information (art. 5)
- Documentation (art. 6)
- Residence and free movement (art. 7)
- Family unity (art. 12)
- Detention (art. 8-11)
- Schooling and education of minors (art. 15)
- Employment (art. 16)
- Vocational training (art. 17)
- Material conditions (housing, board, pocket money – art. 18)
- Access to health care (art. 19)

Determination procedure Directive 2013/32/EU

- Ordinary procedure
- Fast-track procedure

Guarantees: personal interview (art. 14 - 17); medical examination (art. 18); provision of legal and procedural information free of charge (art. 19 and 21); free legal assistance and representation in appeals procedures (art. 20); provision of free legal assistance and representation (art. 21 - 23), guarantees for vulnerable persons (art. 24), guarantees for UAM (art. 25) and right to judicial review in case of a negative decision

Determination criteria (Directive 2011/95/EU)

Directive 2011/95/EU establishes the criteria to:

- grant international protection (acts of prosecution in case of refugee and serious harm for subsidiary protection),
- Cessation of international protection
- Exclusion of international protection

Content of the International protection

According to Directive 2011/95/EU rights provided are:

- Protection from non-refoulement
- Information
- Family Unity
- Residence Permit
- Travel document (Refugee passport; Alien Passport)
- Access to employment
- Access to education
- Access to procedures for recognition of qualifications
- Access to social security
- Access to healthcare
- Access to housing
- Freedom of movement within the Member State
- Access to integration facilities

SECTION II

STATELESSNESS

What is statelessness?



Statelessness background

- Statelessness is a *legal anomaly* which often prevents people from accessing fundamental civil, political, economic, cultural and social rights
- Statelessness is a global problem which affects 12 million people around the world (UNHCR)
- A stateless child is born every 10 minutes
- There are approximately 600,000 stateless persons in the EU
- Increased flow of stateless persons in the EU post 2015 Migration Crisis

Main causes

The main causes of statelessness are:

- state succession,
- ill-defined or discriminatory nationality laws,
- arbitrary deprivation of nationality,
- displacement and forced migration,
- birth to a stateless person,
- lack of birth registration or inability to satisfy certain requirements for the acquisition of nationality.

SECTION III

STATE OF PLAY IN THE EU

The 1954 and 1961 Convention on Statelessness

- **1954 Convention**

AT, BE, BG, HR, CZ, DK, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, NL, PT, RO, SK, SI, ES, SE and the UK have ratified the 1954 Convention. CY, EE, MT and PL have not yet signed nor ratified it.

- **1961 Convention**

AT, BE, BG, HR, CY, DK, FI, DE, ES, HU, IE, IT, LV, LT, LU, NL, PT, RO, SK, SE and the UK have ratified the 1961 Convention.

- FR signed it but has not yet ratified it,
- CY, EL, EE, MT, PL and SI have not yet signed nor ratified it.

The Recognition Procedure

- Currently, a majority of MS (**AT, BE, HR, CZ, EE, FI, DE, IE, LT, MT, NL, PL, SK, SI, SE**) and **NO**, do not have a specific administrative determination procedure for stateless persons.
- **AT, EE, LT** and **NL** do not have any type of determination procedure for stateless persons.
- **BG, FR, HU, IT, LV, LU, ES** and **UK** have a specific administrative or legal determination procedure.
- There is no common administrative determination procedure at the European level for the determination of statelessness.

Types of procedures identified

- Specific Determination Procedure (**BG, FR, HU, IT, LU, LV, ES and UK**)
- Judicial procedures used by the MS for the Determination of Statelessness (**BE, IT** when TCN without residence permit)
- General administrative procedure or inside another administrative procedures (**CZ, FI, DE, SK, SI, SE and NO**)
- Ad-hoc Administrative Procedures (**HR, IE, MT and PL**)

Determination of Statelessness and the Residence Permit

Stateless persons will not be granted immediately or automatically an authorisation of stay or a residence permit in most of the Member States:

- In **EE, IE, LT, NL, PL, PT, SI, SK and NO** stateless persons are considered as TCNs (any residence permit).
- **AT, DE, FI, LU** and **SE** grant a residence permit depending of the type of residence permit the applicant applies for in accordance with the national rules.
- **BE** can grant a residence permit using the humanitarian regularisation procedure.
- **CY** and **CZ** apply procedure for international protection.

Only MS which grant a residence permit once the stateless status is granted: **ES, FR, HR, HU, IT, LV, SK and UK**.

Type of residence permits granted

There are four types of residence permits granted:

- Specific residence permits (**ES, FR, HR, HU, IT, LV, SK and UK**)
- General residence permits – residence permits are open to stateless individuals once they fulfil the relevant conditions as with other TCNs (**AT, BE, DE, EE, EL, FI, IE, LT, LU, NL, PL, PT, SE**).
- Humanitarian permits – may arise out of other procedures (e.g. international protection) (**CZ, EL, FI, HR**)
- Humanitarian permits/authorisation to stay – may arise as part of the return process when the person cannot be removed (**BE, CZ, FI & NL**).

Duration of validity of the residence permit granted to stateless persons

- The duration of validity of the residence permit granted to stateless persons varies between Member States and depends on the kind of residence permit that will be granted.
- MS which grant a specific residence permit to the stateless persons, the duration will vary from 2 years to unlimited number of years.

Travel documents

There are two type of travel documents granted to stateless persons by Member States:

- Alien passport: **AT, CZ, FI, SI and SE**
- Travel document for stateless persons (1954 convention):
BE, DE, FR, HU, IT, LV, LT, LU, SK, ES, UK and HR.

Rights recognized to stateless persons

- **Access to Labour Market:** depends on the type of residence permit, in most MS this access is granted under the same conditions as for TCNs.
- **Access to Education and Training:** most of the MS grant access under the same conditions as those which apply to TCN legally residing in the MS and/or depending on the type of residence permit (FI, FR, DE, LT, LV, LU, SI).
- **Access to health care and social aid:** granted by most MS.
- **Access to nationality** is simplified in 14 MS (BE, HR, CZ, EE, DE, HU, IT, LT, LU, NL, SK, SL, SE, UK).

Supports provided to stateless persons in applying for a residence permit

- Most MS responded that there were no particular State supports (**BE, BG, CY, FI, FR, HR, LU & SE**) or noted that NGOs were active in this area (**CZ, NL**).
- **PL** reported on their procedure to regularise the status of abandoned minors – temporary residence permit.
- **LT** noted that municipalities cover certain administrative fees for stateless persons who are long-term residents.
- **EE** noted that there are preferential criteria for persons of undetermined citizenship in obtaining residence permits.
- **LV & HU**, described supports embedded in their SDP.

The situation of stateless minors

- Stateless children born in the MS (*iure soli* applied automatically at birth or subject to certain conditions and modalities)
- Children born in exile
 - Birth certificates
 - Determination procedure (no specific determination procedure)
 - Legal representation during the determination procedure
 - Burden of Proof

Conclusions (1/2)

- Only 24 Member States have ratified the 1954 Convention and 21 Member States have ratified the 1961 Convention.
- There is no homogeneity between Member States in the determination procedures.
 - Dedicated administrative determination procedure
 - General administrative procedure or inside another administrative procedure
 - Ad-hoc administrative procedure
 - Judicial procedures (**BE and IT** – when applicant is not legal resident)
- There is no link between the determination of statelessness and residence permit.

Conclusions (2/2)

- Access to the labour market, education and training as well as health care and social aid does not depend on the granting of the status but on the residence permit that the stateless person obtains.
- All MS facilitate the access to nationality for stateless children.
- There is no specific determination procedure for UAM
 - In most cases guardian is appointed
 - Legal aid is provided (except LV and UK)
 - Burden of proof remains with the applicant (except DE)

Actions proposed

- Harmonisation of statelessness determination procedures;
- Increase practical cooperation with other countries about exchange of information and documents (registration of birth, citizenship, passports etc.);
- Establish a specific determination procedure for stateless children (vulnerable population);
- Need of granting a specific residence permit for stateless persons once the status is granted by the MS;
- Harmonize the types of residence permit and the type of travel document granted (e.g. duration, type of document).

SECTION IV

WHY WE DO NOT CARE FOR STATELESSNESS?

Possible explanations (1/2)

- It is not part of the EU acquis (not an obligation for MS per se as no sanctions can be imposed by the EU).
- It is taken as a very complex legal and technical issue
 - Difficult to prove a negative,
 - Requires a knowledge of international public law and law of other countries
 - Expensive.
- Magnitude of the phenomenon in the EU is relatively low.

Possible explanations (2/2)

- Fear to become a pull factor
- Lack of sense of persecution or serious harm
- Lack of coverage by the media
- Ignorance and misconceptions about statelessness amongst the general public

Applications from stateless persons for international protection in the EU (2012 – 2017)

	2012	2013	2014	2015	2016	2017
Stateless applicants	3,515	9,670	15,655	19,605	10,720	5,380
Total n° of applications	278,280	367,825	562,680	1,257,030	1,206,120	650,970
Percentage	1.3%	2.6%	2.8%	1.6%	0.9%	0.8%

Source: Eurostat, 2018

Recognition rate of applications for international protection made by stateless persons in the EU (2016)

	Total	Positive decisions	Geneva Convention status	Subsidiary protection status	Humanitarian status	Rejected	% of positive decisions	% of negative decisions
Nº decision on stateless persons applications	18,175	16,250	12,365	3,365	515	1,925	89.4%	10.6%
Total n° of decisions	1,106,405	672,900	366,485	257,915	48,505	433,505	60.8%	39.2%
Percentage	1.6%	2.4%	3.4%	1.3%	1.1%	0.4%	-	-

Source: Eurostat, 2018

SECTION V

WHY SHOULD WE CARE ABOUT STATELESSNESS?

Problems generated by statelessness

- Number of stateless persons continues to grow
 - Some countries around the world have stopped registering people
- Difficult to return these people to their country of origin or last residence
- Social exclusion
- Victims of human traffickers and criminal organisations
 - Slavery
 - Prostitution
 - Organ harvesting

SECTION VI

Questions?/Discussion

THANK YOU FOR YOUR ATTENTION!

www.emnluxembourg.lu

<http://www.linkedin.com/company/european-migration-network/>

<http://www.twitter.com/EMNMigration>

<http://www.ec.europa.eu/emn>