

Remember the forgotten, protect the unprotected

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In addition to the efforts to prevent and reduce statelessness, states should also establish an identification and protection mechanism for stateless persons.

Stateless persons are victims of a serious human rights violation: they are deprived of the protective link between a state and its citizens. Yet statelessness is a forgotten issue in Europe, as in the rest of the world.

The obligation of states to protect stateless persons is unambiguously anchored in international law. However, in practice these instruments are often ineffective, or even unknown by officials whose job it should be to implement them. Training is therefore a key preliminary condition for improving protection standards.

In the EU context (where six member states¹ are not even party to the 1954 Convention), it might be possible to achieve a more effective implementation of relevant international instruments by bringing stateless protection under the scope of the common European asylum policy. Although currently there is little political will to move in this direction, at least one

member state (Hungary) is promoting this rather pioneering proposal² in its response to the European Commission's Green Paper on the Future Common European Asylum System.³ Should this initiative be successful, a Statelessness Directive could be drafted that would reunite the principles and create a legally binding obligation on member states to establish a protection regime for (non-refugee) stateless persons, based on already existing good practices.

2. Visibility

Stateless persons are often invisible and, unlike in the case of asylum

seekers, there are no reliable statistics about their number. The vast majority of EU member states do not have in place any specialised procedure to identify and protect stateless persons. Rather, potential statelessness is treated as a side-issue, within the framework of asylum and immigration procedures, which are usually inadequate for this purpose. Two EU member states (Spain and Hungary) have specific legislative provisions that explicitly regulate statelessness determination procedures and provide for a separate stateless status.

Experience shows that representing statelessness separately in statistics and legislation and defining a separate protection status help significantly to raise awareness about the magnitude of this phenomenon and to improve protection mechanisms by tailoring them to specific needs.

3. Identification

In most EU member states, statelessness is only dealt with as a secondary issue in asylum procedures, without any specific procedural guidance, and in some countries it is not considered at all. Spanish and Hungarian practices show that the creation of a separate, designated statelessness determination procedure, regulated by detailed legislative provisions, not only spectacularly raises protection standards but also facilitates the task of assessing who is stateless and who is not.

De facto stateless people often find themselves in a situation where their removal from the country is unenforceable, yet they do not qualify for any protection status. It is also in the interest of states to include *de facto* statelessness in their relevant identification mechanism, in order to avoid a state of legal limbo and the social risks this may entail. The identification of stateless persons can be easier than the process of refugee



Some 4,000 people in Slovenia do not have official status. Alija Berisha, seen holding his child, has been fighting in the courts to win legal residence.

Protection regimes are scarce and fail to provide appropriate and durable solutions. This article outlines a five-step model for European states to construct a rights-based protection mechanism for stateless persons.

1. Awareness raising

The legal obligation of states to protect stateless persons derives from direct sources (international instruments dealing explicitly with statelessness), indirect sources (international instruments that articulate the right to a nationality) and soft law (non-binding recommendations on statelessness).

status determination. Nevertheless, it requires special knowledge, and it is therefore important to establish a specialised and specifically trained unit within asylum authorities to conduct statelessness determinations.

It is evident that, in such a procedure, authorities cannot realistically verify whether a certain applicant is unable to claim nationality from any country in the world. Consequently, statelessness legislation should determine the range of countries in relation to which the applicant's citizenship should be tested (such as country of birth, of former residence and where family members live). A lower standard of proof should be applied when determining statelessness, for example by using the term 'substantiating' one's statelessness instead of 'proving' it (similarly to refugee status determination). In addition, the burden of proof should be shared between the applicant and state authorities. The applicant's main procedural obligation should be to cooperate with the authority, not to provide all necessary evidence.

4. Protection status

One of the key objectives of the future Common European Asylum System is the achievement of a uniform legal and social status for refugees and beneficiaries of subsidiary protection. A few EU countries make specific provision in law for the category of stateless person but even in these countries the rights attached to the status are lesser than those granted to refugees (notwithstanding that the two relevant Conventions contain a practically identical list of minimum obligations and recommendations for higher standards). However, in some member states, stateless persons may have access to complementary forms of protection, such as 'tolerated stay' or a humanitarian residence permit. Non-removability will be the ground for protection and not statelessness per se – which falls far short of the benchmarks set by the 1954 Convention.

When formulating a protection status for stateless persons, the following should be kept in mind:

- Refugees and stateless persons have similar protection needs, as both categories lack valid

and effective state protection. Applying this logic and reflecting the great similarities between the two relevant Conventions, there is no reason for the legal and social status of stateless persons to differ from that of refugees.

- Statelessness is a long-lasting phenomenon: once a nationality is lost it is unlikely to be recovered within a reasonable timescale. While refugees often have a reasonable hope of eventually returning to their country of origin, stateless forced migrants rarely have a chance to obtain the citizenship of their former country of residence. The legal and social characteristics of the stateless status should consequently ensure long-term viability in the host country. Integration should be encouraged through, for example, facilitated access to the labour market, social benefits, public education and integration programmes. Offering a second-class protection status (based solely on humanitarian or non-removability grounds) may easily lead to social exclusion as well as to undesirable secondary movements between different host countries.

5. A durable solution

In the case of stateless persons only one durable solution exists: acquiring a new nationality. Criteria for naturalisation vary across European countries. While EU member states have generally adopted specific legal provisions to avoid statelessness at birth or to prevent it later in life, they appear to be reluctant to set significantly preferential naturalisation rules for stateless persons, even though the 1997 Council of Europe Convention on Nationality clearly requires states to facilitate the access to citizenship for stateless persons who are lawfully and habitually residing on their territory.⁴

The reduction of statelessness has repeatedly been recognised as in the common interest of the international community. In light of both this and the persistent nature of statelessness, states should adopt a more open approach when determining specific rules concerning the acquisition of their citizenship by stateless persons,

such as a notably shorter time of required residence before application.

The way forward?

In order to establish an effective European protection regime for stateless persons, significant efforts will have to be made to raise awareness and improve knowledge about legal obligations and current examples of good practice. After five decades of neglect of this issue, it is time for all EU member states to support the Hungarian government's proposal to integrate statelessness protection in the European Union, recognising that significant improvements and harmonisation on the issue of statelessness are indispensable complementary elements of creating a rights-based Common European Asylum System.

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1. Bulgaria, Cyprus, Estonia, Malta, Poland and Portugal.
2. http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/contributions/member_states/hungary_en.pdf, p11.
3. http://ec.europa.eu/justice_home/news/intro/doc/com_2007_301_en.pdf (last accessed 20 September 2008).
4. 1997 Council of Europe Convention on Nationality, Article 4 (4) (g)

See also: G. Gyulai, 'Forgotten without Reason: Protection of Non-Refugee Stateless Persons in Central Europe', Hungarian Helsinki Committee, 2007 <http://www.unhcr.org/refworld/publisher,HHC,,,497475802,0.html>

