

# Statelessness and the refugee crisis in Europe

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**The European Union needs to issue a Directive on common standards for statelessness determination procedures with a view to mitigating the particular impacts of statelessness in the context of the continuing refugee crisis in Europe.**

In the upheaval of today's refugee crisis, European immigration officers can face the particular yet confusing case of stateless people<sup>1</sup> seeking asylum in Europe, with the result that stateless people regularly face long periods of immigration detention waiting to be identified in need of international protection as stateless persons.

Having a nationality constitutes a legal bond with a state<sup>2</sup> and provides numerous rights as well as obligations. Not having a nationality leaves the concerned individual legally non-existent and largely unprotected by national legislation. Their access to education and health care is extremely limited, they cannot legally get married, they cannot vote and they may also be unable to return to their country of origin as citizens. Statelessness may result from a variety of causes<sup>3</sup> but in the case of Syrian refugees seeking protection in neighbouring countries and in Europe, gender-discriminatory nationality laws are greatly to blame.

In Syria, Jordan and Lebanon, nationality is passed on exclusively by the father. As a result, in the absence of the father, Syrian mothers cannot register the birth of their child who may therefore not acquire a nationality. Due to continuing conflict and displacement, the father may be untraceable or his whereabouts unknown. In addition, a child can also be rendered stateless if the father is stateless, if there is no proof that the father is a national of the country concerned, if the child

is born out of wedlock, or if the marriage has not been registered (which is also not uncommon in current circumstances). Syrian Kurds are particularly liable to have already been left without a nationality. Finally, birth registration practices in the countries hosting most Syrian refugees (Turkey, Jordan and Lebanon) show serious shortcomings, which put newborn babies at risk of being stateless. These factors leave a generation of Syrian children at high risk of statelessness and thus of being unable to claim their rights.

## **What is the importance for the EU?**

In practical terms the European Union (EU) may not be able to return those without an identified nationality when the conflict ends. But meanwhile in the case of stateless asylum seekers who meet the criteria set out in Article 1 of the 1951 Convention Relating to the Status of Refugees – including those who did not have a nationality prior to their departure – the 1951 Convention is to be applied instead of the statelessness conventions of 1954 and 1961. Unlike the latter conventions, the 1951 Refugee Convention has been signed and ratified by **all** EU Member States. However, the 1954 Convention has also been signed by most EU Member States, who are therefore obliged to provide a certain level of protection to stateless persons falling within their jurisdictions.

The EU's mandate in protecting stateless persons is often contested. Whereas the



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A young woman from Syria carries her child in her arms next to a makeshift camp located near the train station of Idomeni on the Greek-FYROM border, March 2016.

**prevention and reduction of statelessness** are to be primarily addressed through nationality law, which is under the competence of the Member States, the **protection of stateless persons** is governed through migration law, where arguably, according to the Lisbon Treaty, the EU has competence;<sup>4</sup> therefore, the EU has to address several of the statelessness-related legal and protection challenges within the asylum context.

In order for the EU to successfully manage the cases of thousands of stateless refugees, beyond the legal reference in the Lisbon Treaty it should put in place an EU Directive providing for common standards for the elaboration of statelessness determination procedures in each EU Member State.<sup>5</sup> The elaboration across the EU of dedicated procedures would help Member States to provide very similar protection regimes, thereby preventing well functioning procedures in some Member States from creating a pull factor. Yet so far only Belgium, France, Hungary, Italy, Latvia, Slovakia, Spain and the United Kingdom have put in place such procedures and even these demonstrate severe shortcomings.

The elaboration of common standards for an EU-wide statelessness determination

procedure would greatly improve access by affected individuals to a protection status in a situation of mass influx, prevent 'protection-shopping' and challenge the existing procedures in a constructive way. Even though Member States' considerations and interests may differ in relation to stateless persons, which might delay the elaboration of such common standards, the mainstreaming of their rights, their status determination and the related protection requirements need to be put higher on the political agenda of the EU.

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1. The international legal definition of a stateless person in the 1954 Convention Relating to the Status of Stateless Persons is "a person who is not considered as a national by any State under the operation of its law".
2. Article 2 (a) of the European Convention on Nationality.
3. See (2009) *Forced Migration Review* issue 32 on 'Statelessness' [www.fmreview.org/statelessness](http://www.fmreview.org/statelessness)
4. This competence has been established by Article 67 (2) in conjunction with Article 352 of the Lisbon Treaty, where "stateless persons must be treated equally with third country nationals", as suggested by Molnar T (2014) 'Moving Statelessness Forward on the International Agenda', *Tilburg Law Review* 19.
5. See for instance European Parliament (2015) *Practices and Approaches in EU Member States to Prevent and End Statelessness; Study for the LIBE Committee* <http://bit.ly/EUParl-statelessness-2015>