

Input by civil society to the EASO Annual Report 2018

Fields marked with * are mandatory.

Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 7 March 2019**.

Instructions

Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.

Please contribute your feedback online or copy and paste your answers from an editable type document

Questions

1. Access to territory and access to asylum procedure (including first arrival to territory and registration)

The lack of a procedure and guidance to identify and register stateless people on arrival means they are routinely registered with either imputed or 'unknown' nationality.

It is important to identify and acknowledge the statelessness of asylum applicants for various reasons:

- It may be important for their refugee claim (i.e. to determine their well-founded fear of persecution)
- It is critical to preventing statelessness among the children of refugees and migrants born in the EU and safeguarding the right of all children to a legal identity and nationality (i.e. statelessness is passed on from generation to generation if nobody breaks the cycle; stateless parents give birth to stateless children; children may also be born stateless if parents cannot transfer their nationality (e.g. where gender discriminatory laws such as in Syria and Iraq prevent women passing on their nationality)
- It can impact on access to integration including education and other services if e.g. a stateless person has no birth certificate or other documentation
- It can impact on access to family reunion and naturalisation, due to lack of key documentation and/or proof of family links
- It has an impact on return procedures as there is likely to be no country to which a stateless person can return, and if not identified therefore risks arbitrary detention and/or failed removal attempts

Issues with the identification of statelessness were reported in 2018 by our members in Cyprus, Greece, Kosovo, the Netherlands, Serbia, Slovakia and Sweden, among others.

Reasons for this include:

- there is limited awareness of statelessness among officials;
- most EU+ States do not have a statelessness determination procedure established in law to which officials can refer individuals if they claim to be stateless;
- there is a lack of available information about who may be stateless or at risk of statelessness, and a lack of training and tools to facilitate identification and registration.

Concerning practices stemming from this failure to identify statelessness reported by our members include:

- officials conflating country of origin or former residence with country of nationality
- officials recording an imputed nationality based on language or accent
- new arrivals feeling pressurised to 'produce' a nationality on demand, not being believed or not being permitted to state they do not have one

In some countries, such as Sweden, appealing an incorrect assessment of nationality is not possible; in others, such as Greece, the process to amend an incorrect nationality record can be very complex.

See for further details: <https://statelessjourneys.org/wp-content/uploads/2019/01/ENS-ISI->

[From_Syria_to_Europe_Jan-2019.pdf](https://statelessjourneys.org/wp-content/uploads/2019/01/ENS-ISI-From_Syria_to_Europe_Jan-2019.pdf), pp. 14-18; further research briefings on this issue will be published in April 2019 on the website: <https://statelessjourneys.org>

2. Access to information and legal assistance (including counselling and representation)

There is a significant lack of information and resources for all actors on statelessness and nationality problems and how these interact with and impact on asylum, integration and return procedures. Our members in Greece, for example, identified in 2018 that no one is providing stateless refugees with information about the specific rights due to stateless people under international, regional and national law. All actors reported a lack of awareness and resources, from community organisations, to civil society, lawyers, national and regional authorities.

There is a lack of clarity about how to address statelessness in the asylum context, and who has responsibility for doing so. Knowledge of statelessness tends to be limited to some awareness of the more common profiles of stateless populations, such as Kuwaiti bidoon, Syrian Kurds, or Rohingya. There is generally less understanding of how and why statelessness may occur in different contexts, or of nationality problems that may impact on smaller groups of people or individuals from other countries, their children or spouses, due to discrimination or conflicts in nationality laws.

4. Providing interpretation services

4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)

5. Specific procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

6. Reception of applicants for international protection (including information on reception capacities – rise/fall/stable, material reception conditions, i.e. housing, food and clothing and financial support, contingency planning in reception, access to labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

7. Detention of applicants for international protection (including detention capacity – rise/fall /stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)

The failure to identify and register statelessness, as well as to adequately respond to it, does not only affect the prospects of nationality problems being addressed but can also have an impact on the outcome of refugee status determination procedures.

For example, issues reported in 2018 by our members in Bulgaria, Cyprus, Kosovo, Russia, Greece and the Netherlands, included:

- a higher risk of refugee protection being refused because doubts about a person's identity and/or nationality impacted negatively on the assessment of credibility;
- refugee claims based significantly on an individual's statelessness not being perceived by States as grounds to grant asylum (reported in the Netherlands);
- delays to the determination procedure due to decision-makers lacking the relevant necessary expertise (reported in Greece).

There are also stateless people who do not qualify for refugee or subsidiary protection. These individuals should nonetheless be identified as early as possible in order to facilitate referral to a procedure to determine their lack of nationality and to provide appropriate protection accordingly under the 1954 Convention on the Status of Stateless Persons. All EU MS except for Malta, Poland, Cyprus and Estonia have acceded to the 1954 Convention, which sets out obligations owing to stateless people that can only be met if states are able to identify who on their territory is stateless.

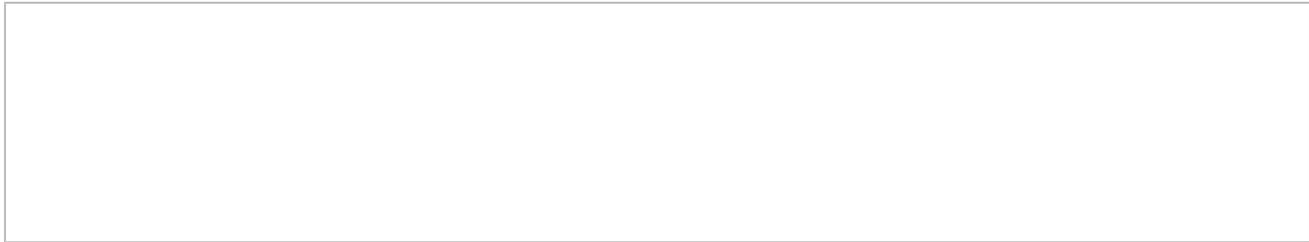
If no statelessness determination procedure is in place (as in the majority of EU MS), stateless individuals may have no option other than to claim asylum. After one or more refusal, they are likely to receive removal orders that cannot be implemented in practice, which places them at risk of repeated and potentially arbitrary detention on account of having no country to which they can be returned.

There is little consistency in how statelessness is currently recorded/registered by EU MS. Existing practice includes:

- Recording someone as stateless based on an individual's claim;
- Recording someone as stateless only if documentary evidence of their statelessness is available (virtually impossible for stateless people asked to prove a negative);
- Never recording statelessness (13 EU MS have failed to record data on stateless asylum applicants according to Eurostat).

For this reason, ENS proposed an amendment to the draft text of the Common Procedure Regulation, recommending that Article 27(1)(a) of the Asylum Procedures Directive be amended to specify the need to record 'nationality or statelessness' in order to enable authorities to record where an individual is or claims to be stateless – the fact of which can be determined subsequently as part of resolving the asylum claim and/or an application for recognition and protection as a stateless person. If the individual is later shown to have a nationality, then relevant records can be amended accordingly. In addition to amending Article 27 APR it is also suggested that the definition of a stateless person (Article 1 of the 1954 Convention and customary international law) be included in Article 4(2) APR ('A stateless person is a person who is not considered as a national by any State under the operation of its law').

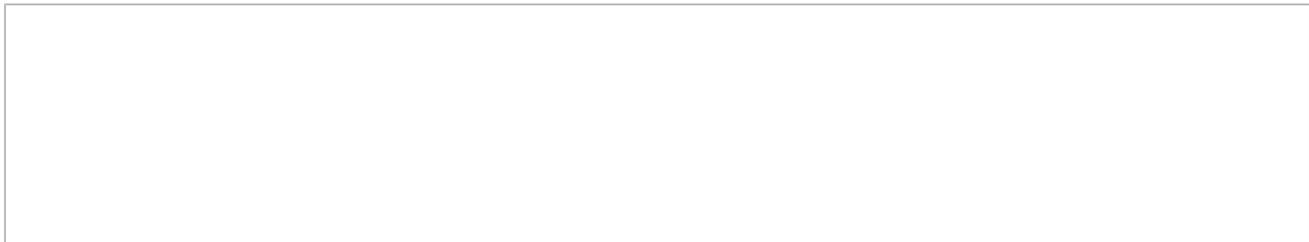
9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)



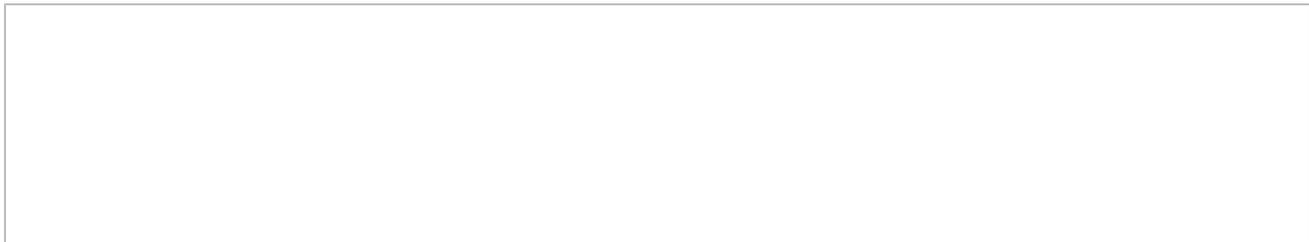
10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

There is a lack of country of origin information on statelessness and nationality problems. ENS, with its members and partners, is in the process of producing information for six countries/populations affected by statelessness (Kuwait, Iraq, Syria, Palestinians, Myanmar, and Iran), which will be published over the second and third quarters of 2019. It is essential, however, that other COI providers seek to include and mainstream relevant information on statelessness and nationality problems throughout their country of origin information reports.

11. Vulnerable applicants (including definition, special reception facilities, identification mechanisms/referral, applicable procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).



12. Content of protection – situation of beneficiaries of protection (including access to social security, social assistance, healthcare, housing and other basic services; Integration into the labour market; Measures to enhance language skills; Measures to improve attainment in schooling and/or the education system and/or vocational training)



13. Return of former applicants for international protection

It is vital that mechanisms are in place to identify statelessness in the context of return procedures and decisions to detain, in order to safeguard against the arbitrary detention of stateless people. Referral mechanisms must be in place from return proceedings to procedures to determine statelessness and grant protection status to stateless persons under the 1954 Convention; and attention should be paid in this regard to relevant case law from ECtHR e.g. Kim v. Russia, Auad v. Bulgaria, and the newly issued ALIMURADOV v. RUSSIA and MARDONSHOYEV v. RUSSIA. Further information on the risk of arbitrary detention of stateless people can be found here: <https://www.statelessness.eu/protecting-stateless-persons-from-detention> and the significance of the two judgements from Russia, here: <https://www.statelessness.eu/blog/european-court-human-rights-again-finds-extended-detention-stateless-individuals-illegal-two>

14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)

15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)

*** 16. Other relevant developments**

1 character(s) minimum

Statelessness:

- Spain acceded to the 1961 Convention on the Reduction of Statelessness in Sept 2018
 - 4 EU MS are yet to accede to the 1954 Convention on the Status of Stateless Persons: Cyprus, Estonia, Malta and Poland, despite pledge by the EU to UN High-Level Meeting on the Rule of Law in 2012 that all MS would accede to the 1954 Convention and consider acceding to the 1961 Convention.
- SDPs and rights granted to stateless persons:
- UNHCR Handbook on the Protection of Stateless Persons states that:
“{...} it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments”
(<https://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>)
 - In its Statelessness Index, ENS provides comparative info on how 18 European States are performing against international norms and good practice on the determination of statelessness and protection of stateless persons: <https://index.statelessness.eu> Performance is mixed and there are areas in which all states are required to make improvements to fulfil international and regional obligations.
 - In particular, 16 EU MS (signatories to the 1954 Convention) do not have statelessness specific protection regimes in place and should consider introducing them to grant stateless people their rights under the Convention: Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Slovenia, and Sweden.
 - Where States do have SDPs, they do not consistently protect people during the procedure, risking violation of their rights and increasing the risk of arbitrary detention. Countries with SDPs should ensure access to temporary residence status and basic rights (in line with people seeking asylum) while awaiting a decision: France, UK, Bulgaria, Hungary, Spain and Italy fail to consistently guarantee protections to stateless people awaiting determination of their status: <https://index.statelessness.eu/themes/statelessness-determination-and-status-group-1>
 - France: new legislation passed in 2018 (in force 1 March 2019) increases the length of the residence permit granted to stateless under its SDP to ‘up to 4yrs’, with a permit for 10yrs on renewal. This brings

French law in line with UNHCR recommendations for the length of residence permits for recognised stateless persons (i.e. min. 2yrs, preferably 5yrs). See: Code de l'entrée et du séjour des étrangers et du droit d'asile - Art L313-26 & <https://index.statelessness.eu/country/france> (NB. 2018 update due in March 2019)

- Bulgaria: despite introducing an SDP in 2017, there are considerable deficiencies in the legal framework for the protection of stateless people in Bulgaria. The new law does not guarantee recognised stateless people protection status, legal residence or other rights. Contrary to the 1954 Convention, there are de-facto exclusion clauses in Bulgarian law, whereby a refusal may be issued to an applicant for stateless status who is staying irregularly or who has less than 5yrs uninterrupted lawful residence in Bulgaria. Bulgaria has reservations to Arts. 27 & 28 1954 Convention, according to which a travel document will only be issued to permanent or long-term residents. See: <https://www.statelessness.eu/blog/tainted-trust-despite-introduction-statelessness-determination-procedure> & <https://index.statelessness.eu/country/bulgaria>
- The Netherlands: a Bill is currently before parliament to introduce a dedicated SDP in law and remove reservations to the 1954 Convention. It is strongly recommended that this Bill progresses as soon as possible to introduce a procedure and protection status in Dutch law in line with international norms and good practice to provide stateless people in the country with the protection due to them under the Convention. See: <https://www.statelessness.eu/resources/consultation-submission-proposed-statute-law-statelessness-determination-procedure> & <https://index.statelessness.eu/country/netherlands>
- Belgium: a Bill is currently being considered by the Belgian Federal Parliament that aims to introduce in law a residence and protection status for stateless people recognised under Belgium's SDP, as well as a right to family reunification. It is strongly recommended that this Bill progresses to introduce a protection status for stateless people in line with international norms and good practice. See: <https://www.statelessness.eu/resources/joint-submission-belgian-parliament-new-legislative-proposal-stateless-protection-status>
- Greece: the Greek Parliament adopted legislation in 2016 that provides a legal basis to introduce an SDP in Greece, but a procedure and protection status are yet to be adopted. See: <https://www.statelessness.eu/blog/greece-moves-one-step-closer-introducing-effective-statelessness-determination-procedure>

References and Sources

*** 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box**

See links provided in sections above

Please upload your file

The maximum file size is 1 MB

Consent for making the input publicly available

*** Do you consent on making your input available on the EASO website?**

Yes

No

Case law

Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

- CASE OF HOTI v. CROATIA (Application no. 63311/14) – violation of Article 8 (right to private and family life) - determination of stateless status, evidential requirements, standard of proof
- CASE OF ALIMURADOV v. RUSSIA (Application no. 23019/15) – violation of Article 3 (prohibition of torture and inhuman or degrading treatment or punishment), Article 5 § 1 (right to liberty and security of person) and Article 5 § 4 (speedy review by a court of the lawfulness of detention) - arbitrary detention of stateless person
- CASE OF MARDONSHOYEV v. RUSSIA (Application no. 8279/16) - violation of Article 5 § 1 - arbitrary detention of stateless person

Contact details

* Name of the contributing stakeholder

European Network on Statelessness

Contact person, Role

* Email

* I accept the provisions of EASO [Legal and Privacy Statements](#)

Contact

Consultative-Forum@easo.europa.eu
