

Input by civil society organisations to the Asylum Report 2024

Fields marked with * are mandatory.

Dear Colleagues,

The production of the Asylum Report 2024 is currently underway. The [annual Asylum Report series](#) presents a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, researchers and UNHCR. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policies or practices in 2023 by topic as presented in the online survey (**'Part A' of the form**).

We also invite you to share with us any publications your organisation has produced throughout 2023 on issues related to asylum in EU+ countries. These may be reports, articles, recommendations to national authorities or EU institutions, open letters and analytical outputs (**'Part B' of the form**).

Your input can cover information for a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain.

All submissions are publicly accessible. For transparency, contributions will be published on the EUAA webpage. For reference, contributions to the 2023 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

Please submit your contribution to the Asylum Report 2024 by Thursday, 30 November 2023.

Instructions

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

Part A:

- New developments and improvements in 2023 and new or remaining challenges;
- Changes in policies or practices, transposition of legislation or institutional changes during 2023;
- Across the different thematic sections feel free to make reference to issues related to the implementation of the Temporary Protection Directive at national level.

Part B:

- New publications your organisation produced in 2023

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments.

PART A: Contributions by topic

1. Access to territory and access to the asylum procedure (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

It is positive that last year's EUAA Annual Report included a section on statelessness and awareness of the issue has certainly grown amongst civil society actors and in some EU+ States as more visibility is given to statelessness in the migration/asylum context.

However, there is still generally limited awareness of statelessness among officials and there is a lack of clarity around the definition of a stateless person and limited reference to the 1954 Convention in the EU asylum acquis. The Parliament's agreed position on the new EU Pact on Migration and Asylum shows welcome progress towards recognition of the need to identify and record statelessness at screening and protect the rights of stateless people. Proposed amendments under negotiation to the Screening Regulation would help protect some stateless people from human rights violations. However, in other instruments, there is still significant progress needed to ensure that stateless people receive the protection they are entitled to under international law.

Most EU+ States still 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 only limited training to facilitate accurate identification and

registration. This leads to protection needs and States' obligations under the 1954 Convention being unfulfilled as they remain unidentified.

ENS launched the Stateless Journeys campaign (<https://statelessjourneys.org/>) in October 2022, which provides information and practical tools for refugee response actors, including a series of thematic briefings and webinars to help those working in the asylum and migration context in Europe identify and address statelessness in their work. ENS is also currently developing national toolkits to identify and address statelessness with some of its members.

Positively, case law contributed to ensure that an asylum procedure must be accessible. In June 2023, the Court of Justice of the EU found that the Hungarian legislation requiring stateless persons and third-country nationals to obtain travel documents and submit an in-person declaration of intent at the embassy in Serbia or Ukraine, in order to apply for international protection, does not comply with Article 6 of the EU Qualification Directive (Court of Justice of the European Union, *European Commission v Hungary*, C 823/21 (22 June 2023): <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274870&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1504563>).

At the national level, however, developments have been less encouraging. In a case of a person from Western Sahara, whose birth certificate indicated he was a Moroccan national, who was refused statelessness status by the French authorities, the Council of State held that the mere fact that Western Sahara is a non-self-governing territory is not sufficient to regard people of Sahrawi origin who were granted Moroccan nationality as stateless (Council of State, *M.D.A. v Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 457625 B (27 December 2022): <https://www.conseil-etat.fr/arianeweb/#/view-document/?storage=true>; and ENS blog: <https://www.statelessness.eu/updates/blog/french-administrative-supreme-court-rejected-stateless-status-application-sahrawi>).

Our response to question 11 addresses the situation of stateless people and people at risk of statelessness under the EU temporary protection mechanism.

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

There is still a lack of information and resources for all actors on statelessness and nationality problems, although this has improved somewhat in recent years through the work of ENS and its members under the Stateless Journeys campaign and improvements by other actors, including EUAA to include information on statelessness in its outputs and practical tools, and the current development of an EUAA training on statelessness.

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

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

5. Special 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 – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the 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 – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

There continue to be many gaps in European countries' legal frameworks and practice to prevent the arbitrary detention of stateless persons. Notwithstanding some harmonisation across EU Member States bound by the EU Return Directive, law, policy, and practice differ across the region. Even within some countries the legal framework is complex, with different types of detention entailing different rights and remedies (for example in Malta and Germany). Data on detention is very limited with few States accurately recording how many stateless people they detain.

The lack of identification of statelessness also leads to an increased risk of unlawful and arbitrary detention, as evidenced by more detailed analysis that we published in the ENS Statelessness Index in 2023. Statelessness is still not considered a factor increasing vulnerability and it is rarely juridically relevant in decisions to detain. Only a handful of countries require a country of removal to be identified prior to detaining someone, or an assessment of whether a reasonable prospect of removal exists. Legal safeguards to prevent the arbitrary detention of stateless people are generally inadequate. Some countries provide procedural safeguards such as access to legal aid and regular judicial review, and all except the United Kingdom have set a time limit on immigration detention in law. Although a few countries grant some form of tolerated stay or minimum social assistance to those released from detention, most do not provide protection or identity documents on release. Identifying statelessness is an essential step to address it and prevent arbitrary detention, especially in the refugee context.

ENS published a policy briefing on detention and return as part of the Stateless Journeys Campaign: <https://statelessjourneys.org/the-issues/detention-and-return/>, and a webinar presenting the briefing and focusing on protecting stateless people from arbitrary detention in the context of returns procedures: <https://www.statelessness.eu/updates/event/webinar-detention-and-return-protecting-rights-stateless-people-0>

8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)

Mechanisms are lacking to ensure that where an individual claims to be stateless or where there are indications of statelessness during international protection procedures, they are referred to a dedicated statelessness determination procedure (SDP) to have their statelessness status determined in line with international standards. This is important to ensure that if refused refugee or subsidiary protection, an individual's protection needs under the 1954 Convention are adequately assessed in line with due process standards and with procedural safeguards. This determination is also important regardless of whether an individual is granted another form of international protection, as statelessness will impact on their access to other rights. Poland, Cyprus and Estonia still have not acceded to the 1954 Convention.

Portugal adopted legislation that paves the way for the introduction of an SDP in 2023. The law introduced the definition of a stateless person and recognises that persons who are considered stateless according to the 1954 Convention are entitled to statelessness status. The law amends existing provisions of the Asylum Act and the Immigration Act, although further legislation must be approved to establish an SDP, safeguards for applicants, the rights granted upon recognition of statelessness status, and the authority responsible for assessing claims. The law is available at <https://diariodarepublica.pt/dr/detalhe/lei/41-2023-217571941>.

The Netherlands adopted a legislation package on statelessness in June 2023 after ongoing discussions since 2014. The reform notably introduces a procedure for identifying stateless people and a pathway to Dutch nationality for stateless children born in the Netherlands without residence rights. While this is a welcome development, challenges remain, including that the procedure does not provide for a right of residence (and therefore access to protection and rights) upon recognition as stateless. More information is available on this ENS Statelessness Index news update: <https://www.statelessness.eu/updates/blog/new-statelessness-legislation-netherlands-worth-wait> and this ENS blog by Caia Vlieks and Katja Swider: <https://www.statelessness.eu/updates/blog/new-statelessness-legislation-netherlands-worth-wait>.

A legislative proposal has been submitted in Belgium, which currently has a judicial procedure to determine statelessness, but recognition does not lead to any protection or rights. Following its pledge at the High-Level Officials Meeting under the Global Refugee Forum in December 2021, the government has made a proposal to introduce a residence permit for stateless people, but the proposal has serious shortcomings and is overly complex, which cast doubts on whether approval of this legislation will improve the situation of stateless people in Belgium.

In July 2023, Czechia introduced amendments to its Immigration Act to add provisions on statelessness determination. However, while the amendments provide clarity on the procedure and safeguards, they do not introduce a dedicated SDP leading to a statelessness status, and rights granted to stateless applicants are limited.

ENS understands that discussions are also underway towards the introduction of SDPs in Malta, Switzerland, and Ireland.

There have been developments regarding the protection of stateless Palestinians in case law. In a case before the CJEU (OFPRA v SW, Case C-294/22, 5 October 2023: [https://curia.europa.eu/juris/document/document.jsf?](https://curia.europa.eu/juris/document/document.jsf?text=&docid=278242&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=51535)

[text=&docid=278242&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=51535](https://curia.europa.eu/juris/document/document.jsf?text=&docid=278242&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=51535)), a stateless

person of Palestinian origin who lived in one of UNRWA's areas of operations in Lebanon made an asylum application in France claiming that it was impossible for UNRWA to provide him with sufficient access to medical care and appropriate living conditions required by his health condition. The Council of State submitted a request for a preliminary ruling to the CJEU. The Court followed the Advocate General's opinion and found that UNRWA's protection or assistance must be considered to have ceased when UNRWA is unable to ensure that the person 'has access to the healthcare and medical treatment without which that person is exposed to a real risk of imminent death or to a real risk of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy'. The existence of that risk is for the national court to assess.

At the national level, developments have been less encouraging. In a case in the Netherlands, the Council of State found that a stateless person of Palestinian origin who left UNRWA's areas of operations voluntarily was excluded from Article 1(D) of the Refugee Convention, even where the applicant's former refugee camp was made inaccessible (Council of State, 202103732/1/V3 (27 June 2023): <https://www.raadvanstate.nl/uitspraken/@138040/202103732-1-v3/#highlight=unrwa>).

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 continues to be a general lack of comprehensive information on statelessness and nationality rights in country of origin information, although this is improving. ENS member Asylos developed a COI Research Database, available at: <https://resources.asylos.eu/available-research/>. Asylos published a report on Stateless Palestinians in Lebanon, available at: <https://resources.asylos.eu/available-research/information-about-the-report/?pdb=2269>. Laurence Hamieh from Asylos also published a blog on the ENS website on six principles to consider when conducting country of origin information research on statelessness, available at: <https://www.statelessness.eu/updates/blog/statelessness-6-principles-consider-when-conducting-country-origin-information>. We hope that more COI research from other organisations continues to be published and relied on by decision-makers. In our Stateless Journeys website (www.statelessjourneys.org), we also have Country Position Papers on Myanmar, Kuwait, Iran, Iraq and Syria which provide more info on the main stateless populations from these countries (although these have not been updated since publication).

11. Issues of statelessness in the context of asylum (including identification and registration)

See also Question 1. With regard to the EU temporary protection mechanism activated following the war in Ukraine, there are at least 35,000 stateless people in Ukraine according to UNHCR and other sources suggest there could be many tens of thousands more. These include part of the Roma population, children born in NGCAs and Crimea since 2014, former citizens of the USSR and asylum seekers, refugees and migrants. The recently introduced statelessness determination procedure in Ukraine only grants recognised stateless people temporary residence, two years after which they may acquire permanent residence. Recognition levels are still very low. During the first three months of 2023, 114 persons were recognised as stateless, of which 84 were provided with temporary residence permits. Many stateless people who have

links only to Ukraine (and were in many cases born in Ukraine) have no documentation to prove these links to Ukraine.

Therefore, under the temporary protection regime, Member States are not currently required to extend temporary protection to most stateless and undocumented people who are/were living in Ukraine. Alternative routes, such as asylum, may be the only option but they have drawbacks and are limited in some Member States.

Some EU Member States, such as Spain, the Netherlands and Portugal, have a wider scope of application of the temporary protection regime and extend it to those fleeing Ukraine who had permanent or temporary stay and are unable to return to a country of origin. However, restrictions apply in some of these countries. For example, in the Netherlands, people who had a temporary residence permit in Ukraine are eligible for temporary protection if they registered at a Dutch townhall before 19 July 2022 and no longer receive temporary protection since September 2023. In Portugal, since December 2022, stateless people with a temporary residence permit or long-term visa in Ukraine are no longer entitled to temporary protection. Some countries implement the temporary protection regime in a very restrictive way such as Austria and Hungary who do not extend temporary protection to stateless people even if they had a valid permanent residence permit in Ukraine, and other routes of protection are very limited.

Additional challenges and longer-term issues for stateless people and undocumented people include the right to return to Ukraine, access to birth registration and prevention of childhood statelessness among children born to refugees, and access to a nationality. For example, it is reported that children born in Hungary to parents fleeing the war are registered as having 'unknown nationality' on their birth certificates, which leads to an increased risk of statelessness. Parents may face difficulties obtaining proof of their child's nationality or statelessness, and the risk of statelessness is heightened for children born to parents of a nationality other than Ukrainian, including beneficiaries of international protection, or stateless parents.

National courts have interpreted and applied temporary protection. In February 2023, the Austrian Federal Administrative Court found that the applicant, a stateless man who fled Ukraine with a temporary residence permit, did not qualify for temporary protection under the Austrian law implementing the Temporary Protection Directive, as he did not benefit from international protection or equivalent national protection in Ukraine (case available at:

<https://www.ris.bka.gv.at/Dokument.wxe?>

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bvbwg&Entscheidungsart=Undefined&SucheNachRechtssatz=True&SucheNachText=True&GZ=W189+2265524-1&VonDatum=01.01.2014&BisDatum=03.04.2023&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=699ab742-b16b-4c96-8aae-72a705d2d368&Dokumentnummer=BVWGT_20230210_W189_2265524_1_00

In December 2022, in a case where French authorities rejected an application for temporary protection made by an Armenian national who held a temporary residence permit in Ukraine, the French Council of State recalled that France did not extend the scope of temporary protection to other categories of people according to the EU Temporary Protection Directive and Council Decision. It held that the difference in treatment between third-country nationals, depending on whether or not they hold a permanent residence permit in Ukraine, does not as such infringe the principles of equal treatment or non-discrimination as to give rise to serious doubts as to the lawfulness of the refusal decision (case available at:

<https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-12-27/465365>.)

While the applicant in the French case was an Armenian national, both cases confirm serious concerns ENS has raised regarding the exclusion from temporary protection for most stateless people fleeing Ukraine (see our Ukraine landing page: <https://www.statelessness.eu/statelessness-ukraine-crisis>)

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

13. Content 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)

All but three EU MS have acceded to the 1954 Convention Relating to the Status of Stateless Persons, but, as in previous years, the rights afforded to stateless people in Europe still fall short of these international obligations. In the absence of adequate procedures to identify and determine statelessness, many stateless people remain unidentified and denied access to the rights established in the Convention. Some limited progress was made in this respect in 2023.

A positive jurisprudential development from the European Court of Human Rights obliges States to regularise migrants unlawfully living in a country. Switzerland refused to issue a residence permit to an elderly foreign national from Iran, who had been living in the country for over 50 years and cited strong family and social ties in Switzerland. The applicant was residing unlawfully because a deportation decision issued against him had not been enforced due to the lack of an Iranian passport. The Court found that Switzerland breached its positive obligation under Article 8 ECHR to regularise a foreigner who was unlawfully present, and found that a fair balance had not been struck between the public interest and his right to respect for private life (*Ghadamian v Switzerland* case, application no. 21768/19, (9 May 2023): <https://caselaw.statelessness.eu/caselaw/ecthr-ghadamian-v-switzerland>).

In the NEAR & Enlargement region, the ECtHR found that Serbia violated Article 2(2) of Protocol no. 4 ECHR when it refused for 7 years to issue a travel document to a Syrian national who was granted refugee status in Serbia and whose passport expired, on the ground that there were no subsidiary regulations yet to implement the Asylum Act (European Court of Human Rights, *S.E. v Serbia*, app. no. 61365/16 (11 July 2023): [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2261365/16%22\],%22itemid%22:\[%22001-225763%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2261365/16%22],%22itemid%22:[%22001-225763%22]})).

At the national level, in April 2023, a Czech court found that, despite the Ministry of Interior's refusal to issue identity documents to persons applying to be recognised stateless, applicants have the right to be issued with an identity document. The court referred to UNHCR Guidelines and to its previous ruling, according to which the analogy with the asylum procedure should be preserved regardless of whether statelessness determination is regulated under the Asylum Act or the Immigration Act (following a legislative amendment in 2021). (*Czechia - Decision of the Municipal Court in Prague*, n. 14 A 18/2023-35 (24 April 2023), <https://vyhledavac.nssoud.cz/DokumentOriginal/Html/711208>).

Under the 1954 Convention, stateless people should be able to access a facilitated route to naturalisation in order to resolve their statelessness. Requirements for naturalisation are often hard (and sometimes impossible) to meet for stateless individuals. There have been some developments in EU MS in 2023. For example, in Sweden, the government instructed an inquiry to suggest recommendations within one year to restrict conditions to acquire Swedish nationality, including by requiring a longer habitual residence and strengthening good character requirements.

14. 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 and ensure access to the rights and protections enshrined in the 1954 Convention. Referral mechanisms must be in place from return proceedings to procedures to determine statelessness and grant protection to stateless persons.

15. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

16. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

17. National jurisprudence on international protection in 2023 (please include a link to the relevant case law and/or submit cases to the [EUAA Case Law Database](#))

Please see the document attached.

18. Other important developments in 2023

PART B: Publications

1. If available online, please provide links to relevant publications produced by your organisation in 2023

Please see the document attached.

2. If not available online, please share your publications with us at: Asylum.Report@euaa.europa.eu or upload your file using the functionality below (max. file size 1MB).

Please upload your file

The maximum file size is 1 MB

d438da57-c156-4a28-b28b-00dd87c7d683/EUAA_Asylum_Report_2024__list_of_resources.pdf

3. For publications that due to copyright issues cannot be easily shared, please provide references using the table below.

	Title of publication	Name of author	Publisher/Organisation	Date
1				
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Contact details

* Name of Organisation

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Name and title of contact person

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

Useful links

- [EUAA Asylum Report 2023 \(https://euaa.europa.eu/asylum-report-2023\)](https://euaa.europa.eu/asylum-report-2023)
- [Executive Summary -Asylum Report 2023 \(https://euaa.europa.eu/asylum-report-2023/executive-summary\)](https://euaa.europa.eu/asylum-report-2023/executive-summary)
- [Sources on Asylum 2023 \(https://euaa.europa.eu/publications/sources-asylum-2023\)](https://euaa.europa.eu/publications/sources-asylum-2023)
- [National asylum developments database \(https://euaa.europa.eu/national-asylum-developments-database\)](https://euaa.europa.eu/national-asylum-developments-database)
- [Asylum in Europe in 2022: A Year in Review \(https://euaa.europa.eu/asylum-europe-2022-year-review\)](https://euaa.europa.eu/asylum-europe-2022-year-review)

Background Documents

[Word template to submit input](#)

Contact

[Contact Form](#)

