

COUNTRY BRIEFING
JULY 2020

Bulgaria



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of over 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members² to research and compile comparative information on statelessness in Bulgaria.³ This briefing summarises the findings on how Bulgarian law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Bulgarian Government for reform in priority areas.

To be stateless is not to be considered as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Bulgaria has signed and ratified three of the four core statelessness conventions ([1954 Convention Relating to the Status of Stateless Persons](#); [1961 Convention on the Reduction of Statelessness](#) and the [European Convention on Nationality](#)). Bulgaria is party to most other relevant instruments except for the [Convention on the Rights of All Migrant Workers and Members of their Families](#). This means Bulgaria has obligations to protect the right to a nationality and to prevent statelessness. Bulgaria is not state party to the European Convention on the Avoidance of Statelessness in Relation to State Succession. Bulgaria retains reservations to both the 1954 Convention and the European Convention on Nationality, which impact on the rights of stateless people in the country. In line with Bulgaria's reservations to Articles 11, 12, 16 and 17 of the European Convention on Nationality, under Bulgarian law, decisions on applications to acquire Bulgarian nationality and decisions to deprive someone of their Bulgarian nationality are not notified with reasons to the person concerned and are not subject to appeal. Positively, in 2019, Bulgaria pledged to withdraw its reservation to Article 31 of the 1954 Convention and to consider reviewing other reservations. In July 2020, the Council of Ministers approved a draft law to withdraw the reservation to Article 31 of the 1954 Convention, but it is yet to be adopted by the Parliament.

The Bulgarian Government should consider withdrawing remaining reservations to the European Convention on Nationality and implementing its pledge to withdraw its reservation to Article 31 of the 1954 Convention to fully protect stateless persons.



STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.⁴ Identification of stateless persons remains the first step to protecting their rights, but also leads to a better understanding of the challenges that need to be addressed. The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. Different government departments in Bulgaria do collect and hold some data on asylum applicants, nationality requests, lawful residents and detainees, which may be acquired through freedom of information requests. However, statelessness has never been comprehensively mapped in Bulgaria. Due to inconsistencies in how nationality and statelessness are recorded and the lack of an effective mechanism to identify stateless people in the country, the size of the stateless population is very likely to be underreported. Bulgaria does not collect statistics on the number of Bulgarian nationals by birth based on the *ius soli* principle in cases of otherwise stateless persons.⁵

In 2017 and 2018, 17 people acquired Bulgarian nationality under a facilitated procedure for stateless persons. In the same period, 13 stateless persons were also naturalised under facilitated procedures for refugees or long-term residents.⁶

The Bulgarian Ministry of Interior collects statistics on the statelessness determination procedure introduced in 2017. The number of people recognised as stateless was 48 in 2017, and 45 in 2018.⁷ Official statistics are also kept regarding the number of stateless persons in detention, but the reliability of this data is questionable due to inconsistencies, and people may be incorrectly assigned a nationality based on country of origin or historical or cultural links. Positively, Bulgaria has included stateless persons in its census to be carried out in 2021.

The Bulgarian Government should take concrete steps to improve and harmonise the recording of statelessness across different government departments and ensure that registration officials are trained to accurately identify and record statelessness.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.⁸

In 2017, Bulgaria introduced a statelessness determination procedure (SDP) through the Law on Foreign Nationals in the Republic of Bulgaria and its Implementing Rules. In April 2019, Bulgaria further amended its statelessness law to provide for the right to a continuous residence permit (for a renewable period of up to one year) for holders of stateless status. The latter amendments entered into force on 24 October 2019. However, access to the SDP has been impeded in practice by the risk of immediate detention of irregularly residing stateless persons who present to the authorities to submit their statelessness application. Additionally, in February 2020, Bulgaria proposed concerning amendments to the SDP. According to the draft law, applicants will be refused stateless status if they hold a valid identity document or have held an identity document that has not been renewed. This would negatively affect people who are unable to renew their documents, for example due to state succession or because their IDs were not issued by the competent authorities. The draft law also envisages that if the applicant has been issued a removal order, prohibited from leaving the country or entering the EU, or has been deprived of their right to reside in Bulgaria, their application will also be rejected. Considering the poor identification of statelessness and the fact that stateless people often lack any kind of documentation, such measures if implemented would pose significant barriers to the majority of stateless people in Bulgaria accessing the protection they are due under the 1954 Convention.

Under the current law, there is no protection during the SDP so applicants have no access to basic rights and may be detained during the procedure. The burden of proof in the SDP lies with the applicant and the standard of proof is higher than in asylum procedures. The Migration Directorate developed the practice of discontinuing the statelessness determination procedure if the applicant is unable to present any document requested by the authorities within a given

short term (usually three days). Positively, the amendments in April 2019 introducing a ‘continuous’ residence permit for holders of stateless status gives recognised stateless people the right to legally reside in Bulgaria, protecting them from being treated as undocumented migrants and facing the risk of detention. However, the residence permit does not provide access to the labour market nor the healthcare system.

Bulgaria should establish in law protection for stateless persons during the statelessness determination procedure including the right to temporary stay and basic rights in line with the 1954 Convention.

Bulgaria should revisit the proposed amendments to the SDP law and seek to improve the protection afforded to stateless people on the territory in line with its international obligations, rather than reducing it.

The Migration Directorate should issue a reasoned decision in writing where an applicant is found not to be stateless, rather than discontinuing the procedure, in order to guarantee the individual an effective remedy.

The Bulgarian Government should integrate safeguards to enable State authorities to initiate the procedure *ex officio*.

Bulgaria should make appropriate amendments to the Law on Labour Migration and Labour Mobility and the Law on Health Insurance, in line with the rights enshrined in the 1954 Convention, so that holders of stateless status in Bulgaria can work and access health insurance.



DETENTION

Bulgaria is bound by the [EU Returns Directive](#), which requires particular attention to be paid to the situation of vulnerable persons; and the [EU Returns Handbook](#)⁹ requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person’s detention. In practice, there are limited safeguards in Bulgarian law against the arbitrary detention of stateless people, as currently the identification of a country of removal is not required by law prior to issuing a removal decision and ordering detention. The problem is aggravated by the poor identification of statelessness upon (and during) detention. Positively, the amendments proposed to the Law on Foreign Nationals in February 2020 foresee that the removal order must indicate the country of removal. However, the same legislative amendments also provide the option for the authority that issued the removal order to change the information about the country of removal if “valid reasons for this arise”. If these amendments are adopted, a person would be deprived of procedural safeguards to separately challenge a subsequent change to the country of removal in court.

Bulgaria has adopted the maximum time limit of detention permissible under EU law, 18 months. Despite legislative amendments in 2017 that introduced two less coercive measures in addition to weekly reporting (a financial guarantee and a passport surrender), they have not yet been applied in practice as alternatives to detention. The Migration Directorate does not keep statistics on alternatives to detention applied to stateless persons. If released from detention, stateless persons are not granted temporary residence rights nor access to basic social services.

The Bulgarian Government should take further steps to protect stateless persons from arbitrary detention by ensuring clear referral routes to the statelessness determination procedure for people in detention and/or subject to removal proceedings.

Bulgarian law should introduce the obligation that a country of removal must be set prior to detention and can be appealed separately and should provide access to basic rights for those released from detention to protect against re-detention. In case removal is possible, detention should be used as a last resort only, upon exhaustion of all alternative less coercive measures.



PREVENTION AND REDUCTION

Every child's right to a legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.¹⁰ As State party to the 1961 Convention and the European Convention on Nationality, Bulgaria has obligations to prevent and reduce statelessness on its territory. Positively, full safeguards are in place in Bulgaria to prevent statelessness in the case of foundlings, but there are gaps for other stateless children born on the territory and for adopted children. One

such gap exists for children born to foreign mothers whose country of nationality does not allow women to pass on their nationality to their children. In some cases, the authorities automatically register the child with the same nationality as the mother and have no legal obligation to check whether the mother can pass on her nationality. Thus, instead of registering the child as a Bulgarian national on the basis of the fact that they were born on Bulgarian territory and would otherwise be stateless (the *ius soli* principle), in practice, the Bulgarian authorities assign the child a fictitious foreign nationality.

In Bulgarian law there are no remedies against refusal, withdrawal or deprivation of Bulgarian nationality. Although the Law on Bulgarian Citizenship provides that one shall not be deprived of Bulgarian nationality if the person would remain stateless, there are no remedies if the provision is not observed, such as, for example, if statelessness is not identified.

Bulgaria should amend its sub-laws to ensure that children born on its territory are not incorrectly assigned a foreign nationality where they are in fact stateless and ensure that all children born on the territory are able to acquire a nationality at birth.

The Bulgarian Government should introduce effective remedies to challenge the acquisition and loss of Bulgarian nationality.

SUMMARY OF RECOMMENDATIONS

The Bulgarian Government should:

- Withdraw all reservations to the 1954 Convention Relating to the Status of Stateless Persons and the European Convention on Nationality.
- Harmonise and disaggregate quantitative data on stateless persons in Bulgaria and build the capacity of officials to accurately identify and record statelessness.
- Establish in law protection for stateless persons during the statelessness determination procedure including temporary legal stay and rights in line with the 1954 Convention.
- Put an end to the practice of discontinuing the statelessness determination procedure by disproportionately placing an unreasonable burden of proof on the applicant. Instead, issue a reasoned decision in writing where an applicant is found not to be stateless.
- Make amendments to the Law on Labour Migration and Labour Mobility and the Law on Health Insurance, in line with the 1954 Convention, so that holders of stateless status in Bulgaria can work and access health insurance.
- Dismiss the amendments proposed in February 2020 to the Law on Foreign Nationals or consider revising them by adding that applicants can only be excluded from stateless status, if they also do not meet the requirements of the law on the granting of stateless status.
- Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to the statelessness determination procedure, the obligation that a country of removal must be set prior to detention, and access to basic rights for those released from detention to protect against re-detention.
- Ensure full implementation of the EU Returns Directive in line with the Revised EU Returns Handbook, including the requirement to pay attention to the specific circumstances of stateless persons and to have recourse to detention only as a measure of last resort.
- Amend Bulgarian sub-laws to ensure that children born on Bulgarian territory are not incorrectly assigned a nationality where they are in fact stateless, and to ensure that acquisition of nationality based on the *ius soli* principle is observed.
- Introduce effective remedies regarding acquisition and loss of Bulgarian nationality.

ENDNOTES

- 1 <https://www.statelessness.eu>
- 2 Lead Country Researcher for the Statelessness Index in Bulgaria is ENS Member, the Foundation for Access to Rights - FAR (Valeria Ilareva)
- 3 <https://index.statelessness.eu/country/bulgaria>
- 4 Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>
- 5 Ministry of Justice of the Republic of Bulgaria, Decision No.95-00-80/21.08.2019 to grant access to public information.
- 6 Ibid.
- 7 Ministry of Interior, Decision No.812104-199/26.08.2019 to grant access to public information
- 8 UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protectionstateless-persons.html>
- 9 European Commission (2017) Annex to the Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf
- 10 UN Convention on the Rights of the Child, Article 7.

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