

Belgium

Joint Submission to the Human Rights Council at the 38th Session of the Universal Periodic Review

Summary

Belgium¹ is party to the 1954 Convention on the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness, but it retains reservations to the 1961 Convention impacting on stateless people. Belgium is also party to most relevant human rights instruments. The stateless population has never been comprehensively mapped in Belgium, and available data is fragmented. On 1 January 2020, there were 1,134 people registered as “stateless” in the national registry, 22,518 people registered as having “undetermined nationality”. UNHCR estimated that there were 10,933 stateless people in Belgium in March 2020.

Statelessness Determination and Status

In Belgium, the judiciary is competent to determine statelessness and a person can be recognised as stateless by a family court. However, the procedure falls short of international standards and cannot be considered a formal statelessness determination procedure. Applicants are considered undocumented migrants, and therefore have only limited rights and are not protected from removal and detention. The procedure lacks procedural safeguards, and the burden of proof lies almost entirely with the applicant. Recognition as stateless does not result in an automatic residence permit. Persons recognised as stateless by the courts must apply for a residence permit on humanitarian grounds, and it is generally difficult for them to regularise their stay. Without legal residence, they have access only to urgent healthcare and are not permitted to work or access to housing or social security.

Children’s right to a nationality

According to Belgian nationality law, a child born in Belgium is Belgian if they would otherwise be stateless, but further action is required in practice to prove eligibility and the burden of proof lies with the applicant. The provision for foundlings to automatically acquire Belgian nationality only applies to new-borns and there is a risk of statelessness in adoption proceedings. For a child born to Belgian parents abroad to acquire Belgian nationality automatically, at least one parent must also have been born in Belgium, otherwise the parents must take further action before the child turns five. Although all births must be registered in Belgium regardless of the parents’ status, civil registrars must report undocumented people to the immigration authorities. Parents must also be legally residing to subsequently register a child in the National Registry, a precondition for access to many rights.

Risks of Arbitrary Detention of Stateless Persons

In Belgium, there is no dedicated mechanism in place to identify stateless persons or persons at risk of statelessness in detention. People seeking international protection at the border are systematically detained, including on grounds of statelessness. There is no mechanism in place to assess vulnerability prior to the detention decision and no automatic review of detention. As such, stateless persons may face prolonged periods of detention and/or repeated detention.

Deprivation of nationality on national security grounds

The Belgian Nationality Code provides for deprivation of nationality on the grounds of fraud, serious violation of duties as a Belgian national, conviction for certain crimes, or after the annulment of a ‘marriage of convenience’. Since 2013, the powers to deprive a person of their nationality have been expanded to include certain national security grounds. Deprivation may not be requested for persons who hold Belgian nationality through one of their parents or who have become Belgian nationals at birth, which results in discrimination between birthright citizens and naturalised citizens.

Proposed recommendations:

1. Establish a dedicated statelessness determination procedure and protection status in law and in line with UNHCR guidance and good practice.
2. Amend the Belgian Immigration Act to allow for persons recognised as stateless by the courts to be automatically granted a residence permit, and to allow for persons applying for stateless status to be granted a temporary residence permit during the procedure.
3. Amend the Belgian Nationality Code to ensure that all children born abroad to Belgian nationals acquire nationality automatically at birth, remove any risk of statelessness in adoption procedures, and bring provisions on foundlings and on the right to a nationality of children born in Belgium who would otherwise be stateless in line with the 1961 Convention.
4. Take concrete steps to protect stateless people from arbitrary detention, including by introducing a mechanism to identify (risk of) statelessness before the decision to detain, and implementing a thorough assessment of vulnerability and appropriateness of alternative measures in each individual case.
5. Amend national laws to comply with international obligations which prohibit the arbitrary deprivation of nationality and discrimination, while ensuring the avoidance of statelessness.

¹ For a more detailed overview and references, see the full joint submission at: <https://www.statelessness.eu/updates/publications/joint-submission-human-rights-council-38th-session-universal-periodic-review-1>