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PASPOORT



STATELESSNESS
INDEX

THEMATIC BRIEFING | JULY 2021

Deprivation of nationality and the prevention of statelessness in Europe

The Statelessness Index

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool developed and maintained by the European Network on Statelessness (ENS),¹ that assesses European countries' law, policy, and practice on the protection of stateless people and on the prevention and reduction of statelessness against international norms and good practice. ENS has worked with its members to research and compile comparative information on statelessness in 27 countries in Europe so far, with some further countries to be added in future annual updates. For information on the Statelessness Index methodology, including how country data is collected and analysed, see: (<https://index.statelessness.eu/about/methodology>).

How is deprivation of nationality assessed in the Index?

The Statelessness Index uses the following set of benchmarks to assess countries' law, policy, and practice on deprivation of nationality. These benchmarks are drawn from international and regional human rights standards, soft law, relevant reports – including the Principles on Deprivation of Nationality as a National Security Measure² – and consultation with experts. The benchmarks and their sources can be viewed in more detail in the 'List of norms and good practice' available on the Statelessness Index website (<https://index.statelessness.eu/about/methodology>).

1. States should not render any person stateless through deprivation of nationality. Where provisions for deprivation of nationality exist, these should be interpreted narrowly and in accordance with international law.
2. Deprivation of nationality must be provided for by law, necessary, carried out in pursuance of a legitimate aim and proportionate to such aim, and in accordance with procedural safeguards.
3. Acts of deprivation of nationality must be subject to judicial scrutiny and the person concerned has the right to a fair trial or hearing.
4. States must not directly or indirectly discriminate against a person or group of people, in law or practice, on any ground prohibited under international law. Each State is also bound by the principle of non-discrimination between its nationals.
5. Renunciation and other forms of voluntary loss of nationality shall not result in statelessness.

The Index assessment for each country aims to reflect overall performance on deprivation of nationality across the five benchmarks. The country examples highlighted in this briefing are illustrative and, given performance varies both within and across the different benchmarks, they do not necessarily reflect the country's performance and consequent assessment on deprivation of nationality overall. All sources for the assessments and examples presented in this briefing can be found in the Statelessness Index country surveys. The Statelessness Index data is updated on an annual basis, so the overall assessment may change from year to year. This briefing was published in July 2021, based on Index data which is accurate as of January 2021.

1. INTRODUCTION

Most people regard their nationality as a secure legal status. However, in the recent past, deprivation of nationality has become increasingly prevalent. Nationality plays a key role in protecting an individual from arbitrary State power and securing access to rights. As such, depriving a person of their nationality weakens their ability to enjoy fundamental rights and to access the most basic services, puts them at risk of statelessness and social exclusion, and exposes them to expulsion from the territory.

This briefing summarises how law, policy, and practice in the 27 countries featured in the Statelessness Index perform against international norms and good practice on deprivation of nationality. It describes the relationship between deprivation of nationality and the prevention of statelessness, provides an overview of norms and good practices on deprivation of nationality, and presents a state of play analysis using data from the Statelessness Index. It highlights categories of nationals who are disproportionately affected by deprivation of nationality and suggests key action areas to protect the right to a nationality and prevent statelessness in Europe.

Stateless person

A stateless person is someone 'who is not considered as a national by any State under the operation of its law'.³ This definition is part of customary international law and has been authoritatively interpreted by UNHCR as requiring 'a mixed question of fact and law'.⁴

Person at risk of statelessness

A person who is not stateless but is at risk of becoming so, a person whose statelessness has not yet been determined but there are indications that they may be stateless, or a person whose statelessness may become evident over time. Hidden statelessness can come to light in an immigration detention context, as well as at different stages in migration or international protection procedures.

Nationality

Nationality refers to the legal bond between an individual and a State. Each State is competent to determine who is considered a national under its law, in compliance with international law. For the purposes of this briefing, citizenship and nationality are synonymous.

Deprivation of nationality

For the purposes of this briefing, deprivation of nationality refers to any loss, withdrawal, or denial of nationality that was not voluntarily requested by the individual.

Renunciation of nationality

Renunciation of nationality refers to the voluntary loss of nationality.

2. INTERNATIONAL LEGAL FRAMEWORK

The ability of European States to deprive individuals of their nationality is limited by various international and human rights instruments. Core to these limitations is the prohibition of arbitrary deprivation of nationality, the obligation to prevent statelessness, and the prohibition of discrimination on certain protected grounds and between nationals. Article 15.2 of the Universal Declaration of Human rights (UDHR), for example, states that 'no one shall be arbitrarily deprived of his nationality', whereas both the International Convention on the Reduction of Statelessness (1961 Convention) and the European Convention on Nationality (ECN) only allow for statelessness to arise as a result of deprivation of nationality in very limited circumstances.⁷

Three normative frameworks setting limits on State practices of deprivation of nationality are especially relevant in the European context: the United Nations, the Council of Europe, and the European Union.⁸ Of the 27 countries analysed in the Index, all are members of the Council of Europe and 18 are members of the European Union.⁹ 20 have acceded to the 1961 Convention (France has signed but not acceded to the 1961 Convention).¹⁰ Of these, six entered reservations on deprivation of nationality permitting them to render individuals stateless in limited circumstances. 12 Index countries have acceded to the European Convention on Nationality (ECN), and a further seven have signed but not yet acceded.¹¹


The right to a nationality

The right to a nationality plays a crucial role in the recognition, protection, fulfilment, and respect of the full range of other human rights.⁵ The right to a nationality is enshrined in various international and regional human rights treaties and instruments, including the **Universal Declaration of Human Rights (UDHR)** (Article 15), the **International Covenant on Civil and Political Rights (ICCPR)** (Article 24(3)), the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** (Article 5(d)(iii)); the **Convention on the Elimination of All Forms of Discrimination Against Woman (CEDAW)** (Article 9); the **Convention on the Rights of the Child (CRC)** (Articles 7 & 8); the **European Convention on Nationality (ECN)** (Article 4) and other regional treaties.⁶

3. DEPRIVATION OF NATIONALITY IN EUROPE: A REGIONAL OVERVIEW

Global and regional reports show that deprivation of nationality is on the rise and is increasingly being used by States as a counterterrorism measure. Some European countries are leading this trend.¹² The Index data shows that of the 27 countries included, nine have amended their legislation since 2010 to expand powers to deprive someone of their nationality on national security grounds. There has also been an increase in the use of deprivation of nationality as a sanction for fraudulent acquisition of nationality. This expansion of powers has not been accompanied by automatic safeguards against statelessness. Only eight Index countries explicitly prohibit statelessness arising from deprivation of nationality. The extent to which powers to deprive nationality where it would lead to statelessness are applied is unclear. Experts report a lack of transparency around how deprivation powers are exercised with many facing difficulties accessing this information.

Deprivation of nationality: How Statelessness Index countries compare

 POSITIVE	 SOMEWHAT POSITIVE	 POSITIVE AND NEGATIVE	 SOMEWHAT NEGATIVE	 NEGATIVE
 CZECH REPUBLIC	 GERMANY ¹³	 ALBANIA	 AUSTRIA	
 PORTUGAL	 HUNGARY	 BELGIUM	 BULGARIA	
	 MOLDOVA	 CROATIA	 CYPRUS	
	 NORTH MACEDONIA	 FRANCE	 ITALY	
	 POLAND	 GREECE	 MALTA	
	 SERBIA	 IRELAND	 UNITED KINGDOM	
	 SLOVENIA	 LATVIA		
	 SPAIN	 NETHERLANDS		
		 NORWAY		
		 SWITZERLAND		
		 UKRAINE		

4. DEPRIVATION OF NATIONALITY RESULTING IN STATELESSNESS

International framework

According to international norms and good practice, States should avoid depriving a person of their nationality if this would result in statelessness.¹⁴ This obligation has been acknowledged as customary international law.¹⁵ Both the ECN and the 1961 Convention provide for limited exceptions to this general rule. Under both conventions, deprivation of nationality may result in statelessness where nationality has been acquired through fraud.¹⁶ The 1961 Convention also allows deprivation to result in statelessness on the grounds of disloyalty (Article 8(3)(a)), such as actions contrary to the vital interests of the State, and allegiance to another State (Article 8(3)(b)). However, these exceptions to the 1961 Convention are only valid if the State made a declaration at the time of signature, ratification or accession to retain the possibility to deprive individuals of their nationality on these exceptional grounds, provided such grounds already existed in the State's domestic legal framework at the time. States must also interpret these exceptions narrowly.¹⁷

Good practice

Of the 27 countries featured in the Statelessness Index, eight demonstrate good practice in this area, with legal frameworks prohibiting deprivation of nationality if this would result in statelessness.¹⁸ Three of these countries, **North Macedonia**, **Poland**, and the **Czech Republic** do not have measures to deprive individuals of their nationality at all. Nationality may only be lost through voluntary renunciation. In **Portugal**, **Serbia**, and **Slovenia**, although deprivation of nationality can be triggered in cases of alleged fraud in the naturalisation process, it can never render the individual stateless.



Safeguards against statelessness in all grounds for deprivation of nationality in Portugal

Portuguese nationality can be lost in two ways: through renunciation or fraudulent acquisition. In both cases there are safeguards against statelessness. For example, Article 12-A of the Nationality Act establishes that acquisition or withdrawal of nationality is null and void if it was based on (i) false documents; (ii) documents certifying false or non-existent facts; or (iii) false statements. However, nullification is not applicable if it results in statelessness (Article 12-A(2)).'

Barriers to ensuring deprivation of nationality does not lead to statelessness

'Covert' deprivation

In some cases, a positive assessment of the legal framework can obscure problematic State practices. In **Croatia**, although the legal framework is in line with international norms, there are reports of individuals having been rendered stateless in practice by being erased ex officio from the Croatian Citizenship Registry Books. In **Serbia**,

there have been instances of 'quasi-loss' of nationality whereby the authorities claim an individual has never held Serbian nationality despite being treated as such up to that point. The individuals affected received certificates confirming that their nationality was not registered and that they held the nationality of the former Socialist Federal Republic of Yugoslavia. The competent authority did not examine whether the individual would be rendered stateless as a result of the cancellation of their nationality certificates. Experts report that such cases are becoming increasingly rare.

Insecurity in cases of fraud

Fraud is the most common ground on which deprivation of nationality is permitted and operates in 19 of the 27 Index countries.¹⁹ However, the data is insufficient to establish whether States apply deprivation of nationality on this ground if it would result in statelessness. In **France**, for example, the courts consistently quash deprivation orders on grounds of fraud if this would leave the individual stateless.²⁰ In other countries, time limits restrict the ability of the State to deprive individuals of their nationality on grounds of fraud, therefore the acquisition of nationality becomes irrevocable if the State does not initiate the relevant procedure within a certain period since nationality was acquired.²¹ When these time limits are relatively short, such as in **Belgium** and **Germany** (five years), they protect legal certainty and foster inclusion. However, when time limits are lengthy, such as in **Bulgaria**, **Latvia**, and **Hungary** (10 years), the **Netherlands** (12 years), or **Spain** (15 years), they increase legal instability and leave the individual with insecure nationality. In **France**, the time limit is two years after the discovery of the fraud, rather than two years after acquisition of nationality, which also creates insecurity.

Multiple grounds for deprivation of nationality

10 Index countries allow for statelessness to arise on grounds other than fraud. **Cyprus** has as many as nine grounds on which Cypriots could be deprived of their nationality, none of which has a safeguard to prevent statelessness. In **Cyprus**, **Malta**, and **Ireland**, naturalised nationals can also be rendered stateless if they reside abroad for seven years without notifying the relevant authorities. Such legal provisions (remnants of the British Empire) do not contravene the 1961 Convention, but they do violate the ECN. In other Index countries, the most common grounds for deprivation of nationality potentially resulting in statelessness include disloyalty and service in a foreign army. For example, **Austria**, **Germany**, **Ireland**, **Spain**, and **Greece** allow for statelessness to arise in cases where their nationals serve in foreign armed forces, but it is unclear whether such provisions are still applied in practice.

5. PROCEDURAL SAFEGUARDS

International framework

Procedural safeguards are core to preventing abuse and arbitrariness in legal procedures relating to deprivation of nationality.²² They apply irrespective of whether the deprivation of nationality would result in statelessness.²³ According to regional and international norms, deprivation of nationality may only be applied if it is prescribed by law, is the least intrusive means to achieving a legitimate aim and proportionate to such aim, and if adequate procedural safeguards are in place. Compliance with the principle of proportionality, including conducting a careful examination of each individual case and ensuring that deprivation is the least restrictive measure, is key to ensure that the decision is not arbitrary.²⁴ Given the severity of the consequences associated with statelessness, deprivation resulting in statelessness can only be considered proportionate in limited and narrow circumstances.²⁵ Deprivation of nationality should always be exercised in accordance with the law, and State authorities must act diligently and expeditiously to avoid arbitrariness.²⁶ Decisions on deprivation of nationality should provide reasons in writing,²⁷ and be subject to judicial scrutiny.²⁸ The punitive nature of deprivation of nationality means that most due process obligations, normally reserved to the criminal context, should also apply in the judicial process.²⁹ States should also ensure that free legal aid is available to challenge the decision.³⁰

Good practice

A key procedural safeguard is that decisions to deprive a person of their nationality are issued by a court, thereby ensuring that deprivation always follows a finding of guilt by a criminal or a civil court.³¹ Of the 27 Index countries, only **Belgium** and **Portugal** provide for such safeguard. In all other cases, the decision to deprive a person of their nationality is taken by a political authority or a government body at State (or federal) level. Almost all countries in the Index ensure the right of appeal before a relevant court in cases of deprivation of nationality. Legal aid is also provided in most cases. In some countries, such as **Austria, Belgium, France, Germany,** and **Italy**, there are designated time limits within which the State must act, which provide legal certainty and help ensure that the competent authorities act diligently.



Courts as competent authorities to decide on deprivation cases in Belgium

In Belgium, decisions to deprive an individual of their nationality are taken by the courts. The Belgian Court of Appeal is the competent authority to decide on deprivation cases, on grounds of fraud or for acts conducted in serious violation of an individual's duties as a Belgian national. Civil or criminal judges are competent in cases of deprivation following a criminal conviction, marriage of convenience, or conviction for terrorism offences.

Risk of statelessness arising from gaps in procedural safeguards

Insufficient procedural safeguards in the decision-making process

In **Ireland**, **Malta**, and **Cyprus**, the decision to deprive individuals of their nationality can be referred to a 'Committee of Inquiry' for scrutiny prior to taking a final decision. A similar measure previously existed in the UK, but this was repealed in 2002. In both **Malta** and **Ireland**, these committees provide insufficient procedural safeguards. In Ireland, for example, decisions taken by the three-person Committee are non-binding and the Minister makes the final decision. In 2020, the Irish Supreme Court emphasised that, due to the severe consequences of deprivation of nationality, the person must be entitled to a process with minimum procedural safeguards, including that the decision is made by an independent and impartial decision-maker. It concluded that the current procedure for deprivation of nationality in Ireland 'does not meet the high standards of natural justice required and is therefore invalid having regard to the provisions of the Constitution'.³² In **Malta**, the Minister controls the composition and rules of procedure of the committee. The Maltese procedures for deprivation of nationality are also subject to an ongoing legal challenge filed in 2020. In both countries, there are no appeal rights against a decision to deprive an individual of their nationality, although judicial review is possible.

Absence of or barriers to appeal rights

In almost all Index countries, decisions to deprive an individual of their nationality are subject to a right of appeal and/or to judicial review proceedings. However, this is not the case in **Bulgaria**. This is a significant gap, given that deprivation of nationality can lead to rightlessness. Although Bulgarian law contains an explicit safeguard to prevent statelessness in cases of deprivation of nationality, where statelessness is not identified prior to the issuing of a deprivation order, the absence of remedies and appeal rights puts individuals at serious risk of statelessness.

According to the Principles on Deprivation of Nationality on National Security Grounds, 'no person whose nationality has been withdrawn shall be deprived of the right to enter and remain in that country in order to participate in person in legal proceedings related to that decision'.³³ Recent cases in the **UK** show that individuals who have been deprived of their nationality can face difficulties exercising their appeal rights.³⁴ Deprivation of nationality in the UK takes effect on the day of the decision and subsequent appeals do not have a suspensive effect. Individuals who are outside the UK when deprived of their nationality and precluded from returning are thus compelled to exercise their appeal rights from abroad, often in dire conditions exacerbated by the COVID-19 pandemic.³⁵

6. VOLUNTARY LOSS OF NATIONALITY

International framework

International law protects the right to change one's nationality (Article 15(2) UDHR). However, this right is limited by important constraints, including that individuals should not be able to change their nationality if this would result in statelessness.³⁶ States should only accept renunciation if the individual possesses another nationality or is granted official, non-discretionary, and unconditional assurance in writing that they will acquire a nationality imminently.³⁷ If the nationality of the other State is not acquired, States should ensure that the individual will automatically re-acquire their nationality and/or deem that this has never been lost.³⁸ Where States do not permit multiple nationalities for naturalised nationals, they should allow for a 'grace period', of no less than one year after naturalisation, during which individuals may renounce their nationality of origin. If naturalisation is conditional upon renunciation of a former nationality, the general obligation to avoid statelessness under the 1961 Convention prohibits States from retracting an assurance that they would grant nationality to a person, on grounds that conditions of naturalisation are not met.³⁹

Good practice

Almost all 27 Index countries demonstrate good practice in this area, with legal safeguards preventing statelessness in cases of renunciation of nationality. Some countries, such as **Portugal** and the **Netherlands**, have especially strong safeguards, requiring that renunciation only takes place after the person concerned has acquired another nationality. In other cases, such as **Hungary** and **Moldova**, renunciation is accepted only if there is an official confirmation or promise to grant the nationality of another State. Some countries also have procedures to reacquire the original nationality if the new nationality is not acquired. In **North Macedonia**, reacquisition is automatic if the person does not acquire the other nationality within a year. In the **UK** and **Norway**, renunciation is considered to have no effect if the individual does not acquire another nationality after six months. In some instances, such as in **Albania** and **Croatia**, reacquisition is subject to conditions.

Risk of statelessness as a result of voluntary loss of nationality

Time limits for the individual to reclaim nationality

In **Croatia**, although the legislation states that a decision to renounce nationality may be annulled if a person does not acquire the nationality of another State, the law also includes a time limit for the person to act. Individuals have six years from the moment of renunciation to make an application for annulment of the renunciation. This means that individuals could be left stateless if they do not act within the set time limit, which is contrary to Article 7 of the 1961 Convention.

Conditions relating to strict single nationality rule

In **Austria**, the Nationality Act requires that all previous nationalities (including other EU nationalities) are relinquished in order to acquire Austrian nationality through naturalisation. Applicants for Austrian nationality receive only a temporary guarantee of grant of Austrian nationality, conditional upon the individual fulfilling the requirements for naturalisation. There is a risk of statelessness if, after relinquishing

all previous nationalities, **Austria** decides to revoke the grant of naturalisation because the individual no longer fulfils the conditions for acquisition. A case is currently pending before the Court of Justice of the European Union, which scrutinises the compatibility of this practice with EU law.⁴⁰

Insufficient safeguards regarding family members

In some Index countries, such as **Poland** and **Austria**, safeguards to prevent statelessness arising from voluntary loss of nationality are insufficient because they do not adequately address the situation of family members (see Section 8 - Discrimination).

7. DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

International framework

International norms and good practice require States to avoid using deprivation of nationality on grounds of national security. If States resort to deprivation powers for the purposes of safeguarding national security, the measures should be interpreted and exercised narrowly, only after a lawful conviction that meets international standards of due process and fair trial and provided that the person has conducted themselves in a manner seriously prejudicial to the vital interests of the State.⁴¹

In any event, such powers should not make individuals stateless and should not discriminate between individuals according to their route to nationality. There should be no arbitrary deprivation of nationality, individuals must have access to a fair trial, including remedies and reparation, and other international obligations must be respected.⁴²

Good practice

Individuals should not be deprived of their nationality on national security grounds, but only around a third of Index countries demonstrate good practice in this area. **Croatia**, the **Czech Republic**, **North Macedonia**, **Poland**, **Hungary**, **Portugal**, **Ukraine**, and **Serbia** do not have any provisions in their legal frameworks to deprive people of their nationality on national security grounds.

Risk of statelessness arising from deprivation of nationality on national security grounds

Expansion of State powers

A majority of Index countries allow for deprivation on national security grounds. In some States, such as **France** and the **UK**, these powers have existed in law for many years. However, in most countries, deprivation of nationality on grounds of national security has been introduced (or modified) recently to address the phenomenon of their nationals allegedly travelling abroad to participate in terrorist activities. **Albania**, **Austria**, **Belgium**, **Bulgaria**, **Germany**, **Italy**, **the Netherlands**, **Norway**, and the **UK** have all amended their legislation since 2010 to make it easier for the competent

authorities to deprive individuals of their nationality on security grounds. These new powers have not necessarily coincided with an increase in their application, but they have drastically expanded the potential reach of State action. In the **UK**, for example, following recent amendments, it is now possible for the Home Secretary to deprive naturalised nationals of their nationality even where this would render them stateless.



Expansive use of deprivation of nationality on national security grounds in the UK

As a result of amendments to the British Nationality Act in 2014, statelessness may arise from measures taken to protect national security. The amended provision allows the UK Government to deprive naturalised nationals of nationality when they have conducted themselves in a manner prejudicial to the vital interests of the UK and there is no safeguard to prevent statelessness on this ground. Although this new power has not yet been used in practice, the UK has deprived British nationals of their nationality on the grounds that it was 'conducive to the public good' to do so. In 2017 alone, the UK Government issued 104 deprivation orders on this ground. In many cases, the individuals were outside the UK when the deprivation was ordered, seriously impeding their ability to challenge the decision.

Distinctions between nationals

In most Index countries, provisions to deprive individuals of their nationality on national security grounds differentiate between nationals according to how nationality was acquired. **Albania, Belgium, Bulgaria, Cyprus, France, Ireland, Italy, Malta, and Moldova** reserve the application of deprivation powers to individuals who acquired nationality after birth. However, in almost all cases the distinction is made between multiple and single nationality holders to prevent deprivation on national security grounds resulting in statelessness. Only **Cyprus, Greece, Ireland** and the **UK** (on some grounds), do not have these safeguards, which means that individuals could be made stateless if their conduct is deemed prejudicial to national security.



Implicit safeguard against statelessness in Italy

In **Italy**, the safeguard against statelessness is implicit rather than explicit because the government ratified the 1961 Convention without any reservation in 2015. Although the framing of Article 10bis of the new legislation on deprivation of nationality on national security grounds does not mention multiple nationalities, the introduction of Article 8 of the 1961 Convention into Italian law means that Italy cannot make individuals stateless for the purposes of national security.

Inadequate determination of statelessness

To comply with international law, States are required to carefully examine an individual's nationality status and determine any risk of statelessness before issuing

a deprivation order. This should include ensuring that the person possesses another nationality at the time of deprivation of nationality (not whether they could acquire one in the future). Statelessness must be assessed based on the law of the State or States with which the person enjoys a relevant link and how the competent authorities in that State or those States apply the law in practice in the specific case. Nationality status must therefore be confirmed in writing by the competent authority of the State in question, and not be based on another State's interpretation of its nationality laws.⁴³ States must have regard to the internationally accepted definition of statelessness, established in Article 1 of the Convention relating to the Status of Stateless Persons (1954 Convention), and consider guidance on the interpretation of this definition. According to UNHCR guidance, determination of statelessness is a 'mixed question of fact and law', requiring an analysis of how the relevant competent authorities apply the law in practice in a specific case.⁴⁴ It is unclear how Index countries determine statelessness for the purpose of deprivation of nationality on national security grounds. For example, in at least two cases, the UK authorities have conducted their own interpretation of another State's nationality laws, which has resulted in individuals being deprived of their British citizenship when the other State did not recognise them as their nationals, rendering them stateless.⁴⁵

8. DISCRIMINATION

International framework

International and regional human rights norms prohibit discrimination. Article 9 of the 1961 Convention precludes deprivation of nationality on racial, ethnic, religious, or political grounds, irrespective of whether the deprivation would lead to statelessness or not. UNHCR Guidelines clearly establish that the list of discriminatory grounds protected under Article 9 is continuously non-exhaustive.⁴⁶ The ECN also specifies in Article 5 that States should not discriminate between different categories of nationals: '[e]ach State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently'. States must also ensure that deprivation of nationality does not discriminate against family members. Articles 2 and 8 of the CRC (read jointly) and Article 9 CEDAW prohibit derivative loss of nationality. States should therefore ensure that individuals are autonomous, and that nationality is not dependent on another person.

All Index countries that have provisions on deprivation of nationality distinguish between different kinds of nationals in how they exercise these powers. Therefore, there are no examples of good practice to highlight whereby States adhere to the norm not to distinguish between their nationals. Some States have explicit safeguards to ensure family members or dependents are not impacted by deprivation of nationality or renunciation of nationality. This is the case in **Latvia** and **Greece**, for example, where the law precludes derivative deprivation of nationality. In **France**, a French spouse who marries a foreigner may renounce French nationality only if they have acquired the foreign nationality of their spouse.

Risk of statelessness arising from discrimination in provisions on deprivation of nationality

Most Index countries distinguish between single and multiple nationality holders for the purposes of safeguarding against statelessness in their legislation on loss or deprivation of nationality. International law warns against discrimination between single and multiple nationality holders. While such discrimination may be intended to avoid statelessness, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has reminded States that the 'protection of mono nationals from statelessness cannot be a legal justification or defence for exposing dual nationals to citizenship stripping'.⁴⁷ Such a distinction could constitute direct discrimination on the basis of 'national or social origin'.⁴⁸ 12 of the Index countries with provisions on deprivation of nationality distinguish between naturalised and birthright nationals, including **Albania, Belgium, Bulgaria, Cyprus, France, Ireland, Italy, and Latvia**. Such measures discriminate between nationals according to how they acquired their nationality. This type of distinction is often found in provisions relating to deprivation on national security grounds and risks disproportionately impacting on minority communities, reinforcing already present racialised inequalities.

Insufficient safeguards against derivative loss of nationality

In **Austria**, deprivation of nationality extends to the individual's spouse and/or children, even if their nationality was acquired legitimately. In **Poland**, although renunciation of nationality can only take place if the individual holds another nationality, there is no explicit requirement to prove that minor children covered by the application also hold another nationality and will not become stateless as a result of the renunciation.

9. Conclusion and key actions

This briefing demonstrates the links between deprivation of nationality and statelessness, providing a snapshot of current law, policy, and practice on deprivation of nationality in Europe. Drawing on data from the Statelessness Index, it has highlighted some of the good practices in ensuring that deprivation of nationality complies with international and regional instruments, whilst also showing how new and persisting risks of statelessness can arise from the exercise of these powers.

Key action areas

The following four key action areas highlight where urgent attention is needed from policy- and decision-makers to ensure compliance with international standards and prevent statelessness arising from the exercise of deprivation of nationality powers.

1

Provide clear, updated, and accessible data on deprivation of nationality

- States should ensure that relevant public authorities publish disaggregated data on all individuals deprived of their nationality on an annual basis.
- Data should be disaggregated at a minimum by age, sex/gender, ethnicity, place of residence, and should specify the grounds on which individuals were deprived of their nationality and whether they were on the territory at the time of being deprived of their nationality.

2

Introduce or improve safeguards to prevent statelessness in all cases of deprivation or renunciation of nationality

- States should introduce legal safeguards to ensure that individuals are not deprived of their nationality on grounds that it was acquired through fraud if this would render them stateless.
- In cases where nationality can only be acquired after renouncing all other nationalities, States must grant unconditional and irrevocable assurances that individuals will be granted nationality after renouncing their original nationality/ies.
- States must ensure that procedures for renunciation of nationality are in line with international law and best practice, including guaranteeing that renunciation is only accepted after receiving a written assurance from the relevant State that the person has another nationality and facilitating reacquisition of nationality if statelessness arises after renunciation.

- States should introduce legal safeguards to ensure that deprivation of nationality does not have a derivative effect on family members or dependents.
- Competent authorities must conduct a thorough assessment of an individual's particular circumstances, including a full determination of their resultant nationality status or potential statelessness, prior to depriving individuals of their nationality and in line with international law and UNHCR guidance. This determination must be informed by close consultation with and written confirmation from the State or States with which the person has a relevant link.

3

Guarantee effective procedural safeguards for all decisions on deprivation of nationality

- States should ensure that deprivation of nationality is only carried out when it is prescribed by law, necessary, the least intrusive means to achieve a legitimate aim, and proportionate to such aim.
- States should guarantee adequate procedural safeguards in all decisions on deprivation of nationality, including the right to a hearing, the right to a fair trial and appeal rights, before the deprivation decision takes effect.
- States should guarantee access to the country in order to exercise the right to a fair trial and the right of appeal if individuals are outside the country when deprived of their nationality.
- Where alleged criminal conduct is the ground for deprivation of nationality, States must only initiate the procedure to deprive a person of nationality after a final finding of guilt by a criminal court.

4

Avoid using deprivation of nationality for the purposes of safeguarding national security

- To safeguard national security, States should rather employ criminal law and existing counter-terrorism measures, which are likely to be more effective in keeping countries safe from future acts of terrorism and apply equally to all nationals.
- If deprivation of nationality on grounds of security is deployed, States should ensure that these powers are interpreted and applied narrowly, after lawful convictions that meet international fair trial standards, and without rendering individuals stateless.

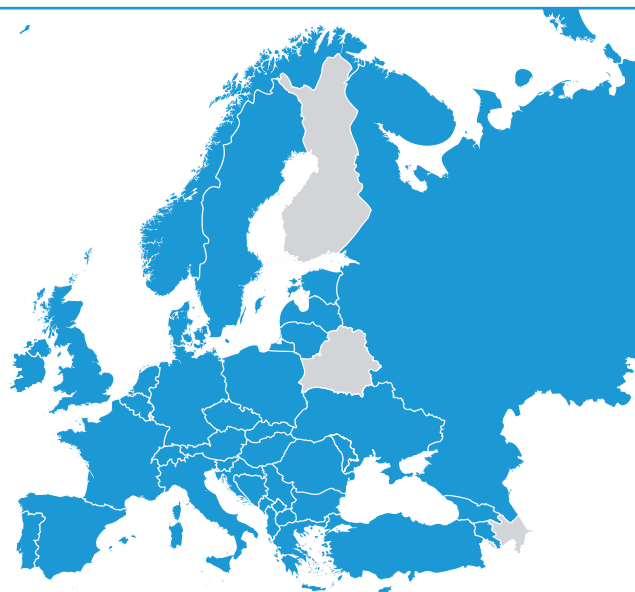
REFERENCES

1. Available at: <https://www.statelessness.eu/>
2. Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at: <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by the Institute on Statelessness and Inclusion (ISI) in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians, and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure.
3. UN Convention Relating to the Status of Stateless Persons, 28 September 1954, Article 1(1).
4. UNHCR Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons, Geneva (2014), para. 23: <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR-Handbook-on-Protection-of-Stateless-Persons.pdf>.
5. Human Rights Council (HRC), 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', A/HRC/19/43 (2011).
6. See also the American Convention on Human Rights (ACHR) (Article 20); the Arab Charter on Human Rights (Article 24); the Covenant on the Rights of the Child in Islam (Article 7); the Association of Southeast Asian Nations (ASEAN) Declaration (paragraph 18); and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Article 24).
7. See Involuntary Loss of European Citizenship (ILEC), Guidelines Involuntary Loss of European Citizenship (2015).
8. For an exhaustive list of international standards on nationality law, see: de Groot, G.R and Vonk, O. W (2016). *International Standards on Nationality Law. Texts, Cases and Materials*. Oisterwijk: Wolf Legal Publishers
9. Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Slovenia, and Spain.
10. Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Ireland, Italy, Latvia, Moldova, Netherlands, North Macedonia, Portugal, Serbia, Spain, UK, Ukraine, and Norway.
11. State parties: Albania, Austria, Bulgaria, Czech Republic, Germany, Hungary, Moldova, Netherlands, North Macedonia, Portugal, Ukraine, and Norway. Signed but not acceded: Croatia, France, Greece, Italy, Latvia, Malta, and Poland.
12. See Institute on Statelessness and Inclusion, 'The World's Stateless 2020: Deprivation of Nationality', (2020); Jules Lepoutre, 'Citizenship Loss and Deprivation in the European Union (27+1)', EUI Working Paper RSCAS 2020/29, Robert Schuman Centre for Advanced Studies, Global Governance Programme-392, GLOBALCIT (2020); Emilien Fargues, Iseult Honohan, 'Revocation of Citizenship: The New Policies of Conditional Membership', EUI Working Paper RSC 2021/23, Robert Schuman Centre for Advanced Studies, Global Governance Programme-438, GLOBALCIT (2021).
13. German law on deprivation of nationality changed in 2019. The law now permits deprivation of nationality on national security grounds, which may affect how Germany is assessed in the Statelessness Index in the future.
14. The duty to avoid statelessness is a 'fundamental principle of international law', UN Human Rights Council (HRC), 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General', A/HRC/25/28 (2013), p. 3; Institute on Statelessness and Inclusion, 'Commentary to the Principles on Deprivation of Nationality As a National Security Measure', (2020), pp. 92, para 33-40; European Convention on Nationality (ECN) 1997, Article 4(b); UN Convention on the Reduction of Statelessness 1961, Article 7(6).
15. Explanatory Report to the ECN, 1997, pp. 23, para 33; see also International Law Commission, 'Fourth report on the expulsion of aliens, by Mr. Maurice Kamto, Special Rapporteur, A/CN.4/594 (24 March 2008) para 29.
16. 1961 Convention, Article 8.2.b; and ECN, Article 7.3.
17. UN Human Rights Council (HRC), 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General', A/HRC/25/28 (2013), para 12.
18. Bulgaria, Croatia, Czech Republic, North Macedonia, Poland, Portugal, Serbia and Slovenia.
19. Albania, Austria, Belgium, Cyprus, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Malta, Moldova, Netherlands, Spain, Switzerland, UK, Ukraine, and Norway.
20. See for example: Fargues E. (2019) Simply a matter of compliance with the rules? The moralising and responsabilising function of fraud-based citizenship deprivation in France and the UK. *Citizenship Studies* 23: 356 - 371.
21. Lepoutre (2020), *op.cit* 12, p.22
22. UNHCR, Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from

- Loss and Deprivation of Nationality 'Tunis Conclusions' (2014), para 25.
23. UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05 (2020), para 97.
 24. See for example: ILEC Guidelines (2015), *op.cit* 7, para 10.
 25. UNHCR, Guidelines on Statelessness No. 5 (2020), para 95.
 26. ECN, Article 10; 1961 Convention, Article 8.4; European Convention on Human Rights and its interpretation by the European Court of Human Rights, for example in: *Ghoumid v France*, application no. 52273/16 (25 June 2020), *K2 v United Kingdom*, application no. 42387/13 (7 February 2017), *Usmanov v Russia*, application no. 43936/18 (22 December 2020).
 27. ECN, Article 11 ; Tunis Conclusions (2014), para 26.
 28. ILEC Guidelines (2015), III.2; ECN, Article 12; 1961 Convention, Article 8(4).
 29. ISI Principles (2020), Principle 7.6.
 30. ECN, Article 13.
 31. Tunis Conclusions (2014), para 27.
 32. *Damache v Minister for Justice* [2021] IESC 6, 10 February 2021, para 134.
 33. ISI Principles (2020), Principle 7.6.7.
 34. *Begum v Secretary of State for the Home Department* [2021] UKSC 7.
 35. *P3 v Secretary of State for the Home Department* SC/148/2018 and SC/148/2020 (SIAC 11/02/2021).
 36. 1961 Convention, Article 7.2 and ECN, Article 8(1).
 37. UNHCR Guidelines on Statelessness No. 5 (2020), para 25; Tunis Conclusions 2014, para 44.
 38. UNHCR Guidelines on Statelessness No. 5 (2020).
 39. Tunis Conclusions (2014), para 45.
 40. Case C-118/20, *Wiener Landesregierung (Révocation d'une assurance de naturalisation)*.
 41. ISI Principles (2020), Principle 4.
 42. *Ibid.*
 43. UNHCR Guidelines on Statelessness no. 5 (2020), para 81.
 44. UNHCR Handbook on Protection of Stateless Persons (2014), para 23.
 45. 'Shamima Begum will not be allowed here, says Bangladesh', *The Guardian* (2019), available at: <https://www.theguardian.com/uk-news/2019/feb/20/rights-of-shamima-begums-son-not-affected-says-javid>
See also: *Pham v Secretary of State for the Home Department* [2015] UKSC 19, [2015] 1 WLR 1591, albeit the UK Supreme Court did not adjudicate on Pham's statelessness.
 46. UNHCR Guidelines on Statelessness no. 5 (2020), para 79. This is further set out in the Tunis Conclusions (2014), paras 70-71.
 47. UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 'Amicus Brief before the Dutch Immigration and Naturalisation Service' (23 October 2018), para 40.
 48. ISI Commentary (2020) *op.cit* 14, Principle 6 pp. 34-43.

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