



THEMATIC BRIEFING | SEPTEMBER 2021

Statelessness determination and protection in Europe: good practice, challenges, and risks



Why do we need SDPs?



How Statelessness Index countries compare



Key elements of an SDP



Countries without an SDP



Recommendations

Why do we need statelessness determination procedures?

Stateless person

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



**Statelessness
in a migratory context**



***In situ* statelessness**



Key elements of an SDP



Statelessness determination and protection in Europe

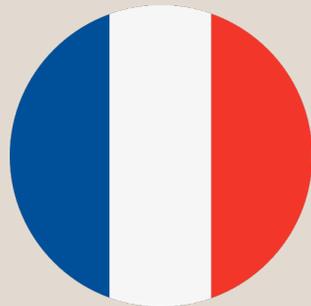


Definition of a stateless person



Good practice

Definition refers to the 1954 Convention and meets the definition in Article 1.



Barrier

Statelessness status is refused on the grounds of expired identity documents, irregular stay, lack of means of subsistence or conviction



Access to the procedure



Good practice

Applications orally or in writing, any language, no fees, no time limits, no lawful stay requirement.



Barrier

Applications only in English in writing, no guidance, complex form and lack of cooperation between agencies.

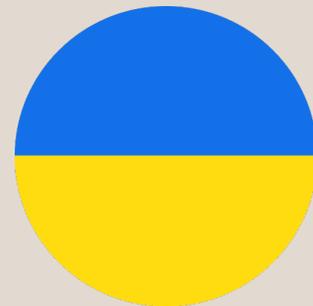


Assessment of applications



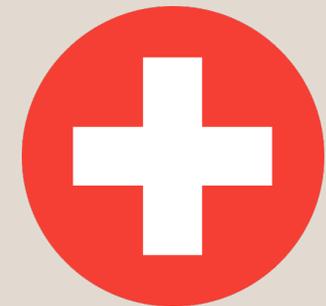
Good practice

Law recognises the support needs of unaccompanied minors, people with disabilities, and people with language, literacy, or health-related barriers



Barrier

The standard of proof is 'full proof'. No provision to acknowledge the challenges faced in evidencing statelessness



Procedural safeguards



Good practice

Free legal aid, mandatory interviews, flexible documentation requirements, decisions in 45 days.



Barrier

No legal aid, no interview, time limits rarely complied with, no referral between asylum and SDP.



Appeal rights



Good practice

Right of appeal to an independent body in all countries with an SDP, except for the United Kingdom



Barrier

No statutory right of appeal, although applicants may apply for administrative and judicial reviews.



Protection during the procedure



Good practice

Applicants are considered lawfully staying and have an ID, right to work, housing and social security.



Barriers

Discretionary rights of residence, no protection from detention/expulsion, lack of social and economic rights.



Statelessness status



Good practice

Indefinite right to reside, documents, work, education, healthcare and social security on the same basis as nationals.



Barrier

Restricted 'domicile' status, work permit must be requested, social security is limited, only essential healthcare



Routes to naturalisation



Barriers

- High fees
- Discretionary 'good character' requirements
- Lengthy residence requirements (up to 10 years)
- No exemption from language, citizenship and integration tests



Countries without an SDP

SDP without
protection
status

Toleration status

Other routes to
regularisation

Statelessness
status without
an SDP

Recommendations

1

Introduce fair and accessible SDPs in line with norms and good practice

2

Ensure that SDPs lead to a dedicated protection status for people recognised as stateless

3

Provide specialised training on statelessness and nationality rights and ensure cooperation between relevant public authorities

4

Ensure that stateless migrants and refugees have an accessible route to naturalisation to resolve their statelessness