

30 May 2023

To the Office of the Ombudsperson in Ukraine

The [European Network on Statelessness](#) (ENS) is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 41 European countries, including in Ukraine. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. Our members in Ukraine are Right to Protection (R2P), Desyate Kvitnya (The Tenth of April) and International Foundation for Health and Environmental Protection “Region Karpat” (NEEKA).

ENS and its partners have been providing information on statelessness in Ukraine through the [Statelessness Index](#). Since February 2022, we have been [responding to the war in Ukraine](#) and have published several outputs, including advocacy briefings to raise awareness about statelessness in Ukraine, and a series of country information briefings on routes to protection for stateless refugees from Ukraine.

ENS hereby expresses its concerns regarding the Law of Ukraine on Amendments to Certain Laws of Ukraine on the Protection of the State Border of Ukraine, adopted on 23 February 2023. These amendments allow the State Border Protection Authorities and the Security Service of Ukraine to decide on the forced deportation of foreigners and stateless persons without a corresponding decision of an administrative court. They also significantly expand the circle of persons who can be detained and allow detention irrespective of the court’s decision.

These amendments broaden the scope of administrative authorities’ discretion and increase the risk of arbitrary decisions on deportation and detention. Stateless persons and persons at risk of statelessness are at heightened risk of arbitrary, prolonged, repeated and unlawful detention, leading to serious human rights violations in deportation procedures. By the nature of being stateless, a stateless person will often have no country to which they can be returned, as most country will only accept to receive their own recognised nationals as returnees, while no country recognises them as a national. It is therefore essential that statelessness be considered a juridically relevant factor in detention and return decisions.

These amendments do not comply with the clear international and European legal norms and good practices protecting people from unlawful detention, including when there is no reasonable prospect of removal, and deportation, in particular the *jus cogens* norm of prohibition of arbitrary detention, the European Convention on Human Rights (Article 5(1)), the EU Return Directive (Articles 15(1), (4) and 16(3)), the 1954 Convention Relating to the Status of Stateless Persons (Article 31), and the International Covenant on Civil and Political Rights (Articles 7 and 9(1)). Case law of the European Court of Human Rights (see e.g. [Auad v. Bulgaria](#) and [Shoygo v. Ukraine](#)) and the Court of Justice of the European Union (see e.g. [C-357/09 PPU Kadzoev](#)) have further reinforced these standards.

ENS advocates for non-arbitrary decisions to deport and detain, taking into consideration statelessness and the risk of statelessness, as well as the need for a reasonable prospect of removal. We support our partners Right to Protection, Desyate Kvitnya (The Tenth of April) and International Foundation for Health and Environmental Protection “Region Karpat” (NEEKA) in their advocacy against the above-mentioned amendments and their call for the Ukrainian Ombudsperson to submit a constitutional complaint to challenge this legislation with the Constitutional Court of Ukraine.

The international community has adopted a strong humanitarian response to Ukraine, and many countries have opened their borders to people displaced from Ukraine. We hope that Ukraine in turn will likewise demonstrate a strong commitment to protect forcibly displaced persons in line with international law, which also applies even in exceptional circumstances.

Sincerely,



Chris Nash

Director, European Network on Statelessness