



#IBELONG

# Mapping **STATELESSNESS** in Finland





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UNHCR Regional Representation for Northern Europe  
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# Abbreviations

**CEDAW** Convention on the Elimination of Discrimination against Women

**CERD** Convention on the Elimination of Racial Discrimination

**CRC** Convention on the Rights of the Child

**ECHR** European Convention on Human Rights

**ICCPR** International Covenant on Civil and Political Rights

**ICESCR** International Covenant on Economic, Social and Cultural Rights

**IOM** International Organization for Migration

**Migri** Finnish Immigration Service

**PIS** Finnish Population Information System

**RA** Register of Aliens

# 1. Introduction

In November 2014, UNHCR launched a Global Campaign to End Statelessness in 10 Years. The strategy for the Campaign is set out in a Global Action Plan which contains ten actions that need to be taken to end statelessness. States are encouraged to adopt National Action Plans that include those actions necessary to end statelessness in their own national contexts. In preparation for the Campaign, the UNHCR Regional Representation for Northern Europe has, over the past two years, conducted statelessness mappings in each of the eight countries in the Northern Europe region. The information gathered through these mappings, and consolidated in reports like the current one, is aimed at providing a better understanding of the scope of statelessness in the countries concerned. UNHCR hopes that the findings and recommendations contained in the respective reports will contribute to the ongoing dialogue between UNHCR, the Governments concerned, civil society and other relevant actors on what steps may need to be taken at national level in order to bring the respective countries' national legal frameworks, institutional capacity and practice fully in line with the international and European standards in the area of prevention and reduction of statelessness, and the protection of stateless persons. UNHCR moreover hopes that the reports can serve as a starting point for the development of National Action Plans to end statelessness in each of the countries.

The mapping of statelessness in Finland provides an overview and analysis of the numbers and basic demographic profiles of the persons who are stateless in Finland, and examines existing legislation and procedures governing the recognition of their status and their enjoyment of rights. As the mapping was initiated in 2012, the statistics used for the analysis are generally derived from 2011 or earlier. The mapping highlights positive aspects of addressing statelessness in Finland, as well as some current gaps and challenges, and suggests possible ways of improving the position of stateless persons in Finland. UNHCR hopes that this mapping can contribute to a better understanding of and awareness around the issue of statelessness at the national level, and help encourage the relevant national actors to further investigate how to address statelessness.

The demographic section of this report consists mainly of quantitative analysis with some qualitative elements. The quantitative analysis includes a statistical overview and analysis as well as a review of the registration methods and practices. The identification methodology, i.e. how statelessness is determined and how stateless persons are identified in Finland is also looked into. The qualitative aspect is based on a review of asylum cases from 2009 to 2011 that involved stateless persons and persons considered as of unknown nationality by the Finnish authorities.

The main purpose of the legal analysis section of the report is to investigate the implementation of the 1954 Convention relating to the Status of Stateless Persons<sup>1</sup> (1954 Convention) and the 1961 Convention on the Reduction of Statelessness<sup>2</sup> (1961 Convention) and other relevant international and regional standards on statelessness in Finnish law and policy. In analyzing current Finnish approaches to statelessness in law and policy, particular attention has been paid to whether and to which extent Finnish law and policy provide for the following ways of addressing statelessness: prevention of statelessness, identification and protection of stateless persons and reduction of statelessness.

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<sup>1</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>

<sup>2</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html>

## 1.2 Executive summary

Finland is party to most of the international and regional treaties relevant to the prevention and reduction of statelessness and the protection of stateless persons, and has incorporated them into national law. The right to a nationality has been recognized and the principle of avoiding statelessness has been enshrined in the Constitution of Finland. Furthermore, the Nationality Act of Finland contains several provisions aiming at preventing and reducing statelessness. It also contains a definition of a stateless person and provides for a procedure for determining a person's citizenship status.

Despite the quite comprehensive legal framework, the issue of statelessness has in practice received relatively little attention in Finland. Statelessness is rarely recognized and approached as a challenge on its own and stateless persons are not necessarily seen as persons who may face particular challenges and may therefore require specific attention. Most often, stateless persons are encountered by the authorities in the asylum and other immigration procedures where they are treated similarly to other foreigners, without any particular consideration being made with regard to their status as stateless persons.

The view of the authorities generally is that statelessness is not a major issue in Finland and that the legislation and practice provide enough safeguards for the prevention and reduction of statelessness and protection of stateless persons. NGOs which otherwise deal with questions related to the rights of immigrants in Finland are also not well aware of the specific challenges stateless persons may face.

Statistical information available regarding the stateless population in Finland is limited. Whereas the number of persons registered as stateless in the different registration systems is available, information on their backgrounds and profiles which would help to better understand who the stateless persons in Finland are, is lacking. Moreover, even in terms of mere numbers of stateless persons, the information is unavailable with regard to other immigration procedures than the asylum procedure.

Furthermore, according to the statistics there is a relatively large number of persons residing and registered in Finland as having an unknown nationality; in fact this population is bigger than those registered as stateless. This seems to be a challenge which, to a certain extent, relates to insufficient efforts to determine a person's nationality and also partly to a high burden and standard of proof in establishing statelessness. This category is therefore likely to include persons who in fact are stateless.

Finland has a determination of citizenship status procedure, in which also statelessness can be determined. The procedure, however, has some weaknesses that limit effective and consistent identification of stateless persons. There is also a lack of awareness and understanding of the determination of citizenship status procedure among various actors, apart from the authorities who regularly deal with this procedure (mainly the Local Register Offices and the Finnish Immigration Service, Migri), which means that monitoring of the procedure and identifying possible challenges by other actors remains limited.

## 1.3 Statelessness across the globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least 10 million stateless persons worldwide. The following sections look at the definition of a "stateless person", at the causes of statelessness and at what the consequences of being stateless may be.



### 1.3.1 Defining “a stateless person”

The definition of a “stateless person” is provided in Article 1(1) of the 1954 Convention. The present report focuses on those persons falling under this definition.<sup>3</sup> The Convention defines a stateless person as a “person who is not considered as a national by any State under the operation of its law”. According to the International Law Commission, this definition constitutes customary international law.<sup>4</sup>

“A national” refers to a formal bond between a person and the state, which does not have to be an effective or genuine link.<sup>5</sup> To determine whether an individual is considered as a national or not, it is not only necessary to look at the nationality laws of the states to which a person might have links, but also to the practices of the states in applying or implementing those laws.<sup>6</sup> Moreover, a person’s nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.<sup>7</sup> This means that for the determination whether a person is stateless it is not relevant that that person is in the process of naturalizing or has the option to acquire the nationality of a certain state. If at the time of the determination, that person is in the process of losing, being deprived of or renouncing a nationality, the person is still a national. Furthermore, when statelessness results from voluntary renunciation of nationality, the person may not be excluded from the protection of the 1954 Convention.<sup>8</sup>

In the context of Finland, the categories of persons defined as of “unknown nationality”, “nationality not known” and nationality “pending clarification” are also relevant when examining approaches and challenges related to statelessness, and will be explained in detail in the following sections.

### 1.3.2 Causes of statelessness

Statelessness can be caused by numerous factors. Some of these factors are of a legal technical nature, where statelessness is caused by gaps in nationality laws or conflicts between nationality laws. A State determines through its national law which persons are or can become its citizens. Where a State’s nationality law is based on acquiring nationality by descent (*jus sanguinis*), a child born in that State from parents with a nationality of a country that is acquired through birth on the territory of that State (*jus soli*) would encounter problems in obtaining any nationality if the national legislation of these two countries does not contain any safeguards to protect the child from becoming stateless. Moreover, statelessness can occur later in life. Some legal systems provide for mechanisms of automatic loss of nationality, for example after a long absence from the country. States may also require that a person revokes his or her former nationality before acquiring the nationality of that State. Withdrawal of nationality may also lead to statelessness if there is no adequate safeguard in place to prevent statelessness.

Another major cause of statelessness relates to the dissolution and separation of States, transfer of territory between States, and the creation of new states. In the period of decolonization, groups of persons may have been left out of the initial body of citizens under the nationality legislation of the newly independent state.

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<sup>3</sup> UNHCR, *Expert Meeting: The Concept of Stateless Persons under International Law Summary Conclusions (Prato Conclusions)*, 27 May 2010 Prato, Italy, at 8 paras 11 and 12. The Handbook explains that “persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as *de jure* stateless persons”, UNHCR, *Handbook on Protection of Stateless Persons*, para 7. Individuals who have a nationality but are outside the country of their nationality and are denied diplomatic and consular protection accorded to other nationals by their state of nationality have been referred to as *de facto* stateless, please see the Prato Conclusions. The term *de jure* is not found in any international treaty and is not used in this report, yet it must be emphasized that the present report does not include *de facto* stateless persons.

<sup>4</sup> ILC, *Commentary on the Draft Articles on Diplomatic Protection* (2006) p. 49, para 3 of the commentary, available at: [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_8\\_2006.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf)

<sup>5</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 54.

<sup>6</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 2014, available at: <http://refworld.org/docid/53b676aa4.html>, para 23-24.

<sup>7</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 50.

<sup>8</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 51.

In Europe, many people were left stateless after the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia.

In addition to or underlying the aforementioned causes of statelessness, discrimination in nationality law or in practice against certain parts of the population and arbitrary deprivation of nationality contribute significantly to the creation or perpetuation of statelessness. Based on for example ethnicity or religious beliefs, a certain group within a State or populations living across multiple States are sometimes denied or deprived of nationality. Examples of such populations are the Rohingya in Myanmar the Bidoon in the Arab Gulf States, and parts of the Roma population in Europe.

Discrimination on the ground of gender can also be a cause of statelessness. In some nationality laws, women are not able to pass on their nationality to their children. Moreover, women may lose their nationality upon marriage or upon dissolution of the marriage. The impossibility for women to transmit their nationality to their children is especially problematic in cases where children are born out of wedlock or where the father is unknown, has passed away, has left, is stateless or is a foreigner who is unable to transmit his own nationality or who is unwilling to take the necessary administrative steps to do so. Currently, 27 States still discriminate against women in their laws with regard to transmission of nationality to their children, the majority of which can be found in Africa, Asia and the Middle East.<sup>9</sup> At the same time, laws which discriminate against children born out of wedlock, making it more difficult for them to acquire their father's nationality, can also contribute to creating statelessness.

### 1.3.3 Consequences of statelessness

Most stateless persons encounter many difficulties in every aspect of daily life. Stateless parents may experience difficulties in obtaining a birth certificate for their children and stateless persons generally have problems obtaining personal identification documents. Without such documents, they have difficulties enjoying their basic rights. They may face obstacles accessing education or health care services, entering the labour market, traveling abroad, or owning land or other property. Stateless persons may not be able to open a bank account, to inherit or to get legally married. Stateless persons may be detained for prolonged or repeated periods because they have no identity documents or right to stay in the country they are in. Consequently, stateless persons often face destitution and many stateless populations belong to the most marginalized and vulnerable groups worldwide.

## 1.4 The international and regional legal framework

The international legal framework relating to statelessness consists of international instruments and regional instruments. At the international level, two conventions deal specifically with statelessness: the aforementioned 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

The 1954 Convention aims to guarantee to persons who are stateless the enjoyment of a minimum set of rights while the 1961 Convention provides a set of safeguards for states to include in their nationality laws to ensure that statelessness is avoided. The 1954 Convention entered into force in 1960 and has 83 State Parties.<sup>10</sup> The 1961 Convention entered into force in 1975 and has 61 State Parties at the time of publication.<sup>11</sup> This report

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<sup>9</sup> UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>

<sup>10</sup> As of October 2014. UN Treaty Collection database, available at: <http://goo.gl/GTvqGl>

<sup>11</sup> As of October 2014. UN Treaty Collection database, available at: <http://goo.gl/GTvqGl>

will elaborate further on the 1954 Convention when discussing the obligations provided by this Convention. The 1961 Convention will also be discussed in more detail.

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons* which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary and other stakeholders working on statelessness. The Handbook addresses the definition of a stateless person, procedures to determine who is stateless and the legal status of stateless persons at the national level. UNHCR's Guidelines on Statelessness No. 4 address the prevention of statelessness at birth under the 1961 Convention.<sup>12</sup> Developed on the basis of consultations with international experts and a broad range of stakeholders, the Handbook and the Guidelines will be used in the report to elucidate the obligations stemming from the Conventions.

Other international human rights instruments contain provisions relevant for issues relating to nationality and statelessness. Instruments, like the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Elimination of Racial Discrimination (CERD) contain provisions on the right to a nationality, on equal treatment of men and women, and on the prohibition of discrimination. Besides these instruments, the 1951 Convention relating to the Status of Refugees is, according to its Article 1(A) under (2) applicable on stateless refugees.

At the European regional level, the Council of Europe has adopted two instruments of particular relevance to the question of statelessness. The 1997 European Convention on Nationality<sup>13</sup> entered into force in 2000 and currently has twenty State Parties.<sup>14</sup> In its Article 4, the European Convention on Nationality states that the rules on nationality of each State Party shall be based on, among others, the principle that statelessness shall be avoided. While broader in scope, covering a range of questions relating to the acquisition and loss of nationality, this instrument contains safeguards similar to those found in the 1961 Convention. Article 6(2) of the European Convention on Nationality provides a safeguard against statelessness at birth similar to that of the 1961 Convention. In addition, Article 7 of the European Convention on Nationality, on the loss of nationality *ex lege* or at the initiative of a State Party, contains a safeguard against statelessness as well.

The European Convention on the Avoidance of Statelessness in Relation to the Succession of States entered into force in 2009 and has, at the moment, six State Parties.<sup>15</sup> It elaborates rules for the acquisition of nationality with a view to preventing statelessness in the particular context of state succession. In addition to these two specific instruments, the European Convention on Human Rights (ECHR) is also increasingly relevant to the prevention of statelessness and protection of stateless persons. Although the ECHR does not explicitly protect the right to a nationality, the European Court of Human Rights which is in charge of ensuring the rights contained in the ECHR are not violated, has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.<sup>16</sup> Furthermore, the ECHR sets out rights to be enjoyed by all persons within a state's jurisdiction, whether they are the state's own nationals, foreign nationals or stateless persons.

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<sup>12</sup> UNHCR, *Handbook on Protection of Stateless Persons*, and UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, December 2012, available at: <http://refworld.org/docid/50d460c72.html>

<sup>13</sup> Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <http://www.refworld.org/docid/3ae6b36618.html>

<sup>14</sup> Number provided by the Council of Europe's Treaty Office as of August 2014., available at: <http://goo.gl/k7bvWl>

<sup>15</sup> Number provided by the Council of Europe's Treaty Office as of August 2014, available at: <http://goo.gl/C5CWl5>

<sup>16</sup> See *Genovese vs Malta* (Application no. 53124/09), October 2011, available at <http://goo.gl/lwNO9E>

# 2. Face of Statelessness in Finland

## 2.1 Background

### 2.1.1 Historical background

The principle of *jus sanguinis* was laid down in Section 4 of the first constitution of independent Finland, Constitution Act of 1919,<sup>17</sup> according to which everyone born to Finnish parents had the right to Finnish nationality. The Act also provided for the automatic confer of nationality from a Finnish man to his foreign wife. However, a Finnish woman could not pass her nationality to her foreign husband.<sup>18</sup>

The first Nationality Act of Finland<sup>19</sup> was adopted in 1920 and regulated the naturalization of foreign citizens. It provided for the grant of nationality upon application by a person who had lived in Finland for the last five years, had a good reputation and was able to support himself and his family, provided that he lost or was freed from his former nationality. A wife and minor children would automatically acquire Finnish nationality with their husband or father. The Act did not contain any provisions on loss of nationality; therefore the Act was complemented with an Act on the Loss of Finnish Nationality<sup>20</sup> in 1928. This Act provided for the loss of Finnish nationality upon acquisition of a foreign nationality, for loss of nationality for a person without any close connections to Finland at the age of 22 as well as for a possibility for Finnish nationals to apply to the President for release from their Finnish nationality.<sup>21</sup>

The provisions on acquisition and loss of nationality were included in one Act, the Act on Acquisition and Loss of Finnish Citizenship of 1941.<sup>22</sup> The Act aimed at preventing dual nationality and, to a certain, extent statelessness, and at promoting gender equality. According to the Act, children born to stateless fathers, and children born out of wedlock, acquired Finnish citizenship from their mother. Foundlings were also, for the first time, mentioned in the Act.<sup>23</sup>

In 1968, the Constitutional provision on citizenship<sup>24</sup> was amended and a new Nationality Act<sup>25</sup> and a Nationality Decree<sup>26</sup> were adopted. These amendments introduced several reforms to the Finnish nationality legislation. A very important provision regarding the prevention of statelessness was introduced; children born in Finland

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<sup>17</sup> *Suomen hallitusmuoto*, 94/1919

<sup>18</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 4.

<sup>19</sup> Act on the Grant of Finnish Citizenship to a foreigner, *Laki ulkomaalaisen ottamisesta Suomen kansalaiseksi*, 33/1920.

<sup>20</sup> *Laki Suomen kansalaisuuden menettämisestä* 181/1927.

<sup>21</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 4-5.

<sup>22</sup> *Laki Suomen kansalaisuuden saamisesta ja menettämisestä*, 325/1941.

<sup>23</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 5.

<sup>24</sup> Act amending section 1 subsection 4 of the Constitution Act, *Laki hallitusmuodon 4 §:n 1 momentin muuttamisesta*, 518/1967.

<sup>25</sup> *Kansalaisuuslaki*, 401/1968.

<sup>26</sup> *Kansalaisuusasetus*, 402/1968.

who would otherwise become stateless now automatically acquired Finnish nationality at birth. Other major changes included the abolishment of automatic acquisition of nationality of foreign women marrying Finnish men, which was replaced by facilitated discretionary naturalization for spouses of Finnish nationals regardless of gender; thus equality between spouses in terms of acquisition of Finnish nationality was introduced. These amendments also enabled Finland to accede to the 1957 Convention on the Nationality of Married Women the same year, 1968.<sup>27</sup> Reflecting the close ties and cooperation between the Nordic countries,<sup>28</sup> the Act also introduced exceptions to naturalization beneficial to other Nordic citizens, including a declaration procedure for the acquisition of nationality to nationals of other Nordic countries and former Finnish nationals who in the meanwhile had been nationals of other Nordic countries.<sup>29</sup>

Some major amendments were made to the 1968 Nationality Act in 1984.<sup>30</sup> An additional provision on the prevention of statelessness was introduced; a person could only be released of Finnish nationality on the condition that she or he would not become stateless. Gender equality was also again taken one step further as the Act was amended to ensure that a Finnish mother would always pass on her Finnish nationality to her child. Adopted children were mentioned for the first time in the nationality legislation and were granted a possibility to acquire Finnish nationality by declaration. Further, a new Nationality Decree,<sup>31</sup> which introduced a provision requiring proof of Finnish or Swedish language<sup>32</sup> skills to be enclosed to the nationality application, entered into force in 1985.<sup>33</sup>

The prevention of statelessness was elevated to a Constitutional principle in 2000 when the new Constitution of Finland<sup>34</sup> entered into force. Section 5 of the new Constitution contains a provision, which sets out the condition that voluntary or involuntary loss of nationality is possible only if the person concerned is in possession of, or will be granted the nationality of another State.<sup>35</sup>

The Nationality Act<sup>36</sup> entered into force in 2003, and is the one currently in force. One of the major aims of this Nationality Act, in line with Section 5 of the Constitution, is the prevention of statelessness, to which end it contains several provisions. It also provided for Finland's accession to the 1961 Convention and to the European Convention on Nationality; Finland became party to the two conventions in August 2008.<sup>37</sup> The Act also introduced the possibility of multiple citizenship and further promoted gender equality. This time, it was the position of men which was improved as the Act provides for confer of Finnish nationality at birth for a child born out of wedlock to a Finnish man and a foreign mother.<sup>38</sup> The Act also established a procedure for the determination of citizenship status.

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<sup>27</sup> Treaty Series of Finland (FTS) 80/1968 and 56/1970.

<sup>28</sup> *Treaty of Co-operation between Denmark, Finland, Iceland, Norway and Sweden (the so called Helsinki Treaty)*, FTS 28/1962; Agreement on the Implementation of Certain Rules on Citizenship concluded between Denmark, Finland, Norway and Sweden, FTS 11/1969. Iceland acceded to the agreement in 1998.

<sup>29</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 6-7.

<sup>30</sup> Act amending the Nationality Act, *Laki kansalaisuuslain muuttamisesta*, 584/1984.

<sup>31</sup> *Kansalaisuusasetus*, 699/1985.

<sup>32</sup> Finnish and Swedish are the two official languages of Finland.

<sup>33</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 8-9.

<sup>34</sup> *Suomen perustuslaki*, 731/1999.

<sup>35</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 10.

<sup>36</sup> *Kansalaisuuslaki*, 359/2003.

<sup>37</sup> FTS 96-97/2008 and FTS 93-95/2008.

<sup>38</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, revised and updated January 2013, EUDO Citizenship Observatory, p. 13.

Some important amendments were made to the Nationality Act in 2011.<sup>39</sup> For instance, the period of residence required for naturalization was shortened with one year, and a shorter period of residence was required for applicants who fulfil the Finnish or Swedish language skills. Furthermore, changes were introduced concerning the starting point of the period of residence. Earlier, only residence of a continuous nature was counted towards the period of residence required for naturalization. The amendment provided for the inclusion of half of the time with a temporary residence permit in the total period of required residence.<sup>40</sup>

A new Nationality Decree entered into force in May 2013.<sup>41</sup>

## 2.1.2 National legal framework

The 2003 Nationality Act with its amendments, the Nationality Decree of 2013 and Section 5 of the Constitution comprise the current legal nationality regime of Finland. One of the main principles of the Nationality Act of 2003 is the prevention of statelessness, as stated in its *travaux préparatoires*.<sup>42</sup>

# 2.2 A statistical overview of the stateless population in Finland

## 2.2.1 Specifics of the data used

Administrative data on the stateless population in Finland is available in two different public registers, the Finnish Population Information System (PIS) and the Register of Aliens (RA).

PIS is a computerized national register that contains basic information about Finnish nationals as well as foreigners residing permanently or continuously in Finland. PIS is maintained by the Population Register Centre, which falls under the Ministry of Finance, and the Local Register Offices. Registration of information is based on statutory notifications made by private individuals and public authorities. Regarding private individuals, the Local Register Offices register basic information related to the identification of persons; the data recorded includes name, personal identity code,<sup>43</sup> address, home municipality, citizenship, place and country of birth, native language, family relations and date of birth.<sup>44</sup>

The requirements for registering a foreigner in PIS are laid down in the Population Information Act, Section 9.<sup>45</sup> The main principle is that a foreigner is registered in PIS if she or he has a home municipality in Finland. The regulations on home municipality are in turn found in the Act on Home Municipality,<sup>46</sup> according to

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<sup>39</sup> Act amending the Nationality Act, *Laki kansalaisuuslain muuttamisesta*, 579/2011.

<sup>40</sup> *EUDO Citizenship Observatory Country Report: Finland*, Jessica Fagerlund, Sampo Brander, September 2009, revised January 2013, EUDO Citizenship Observatory, p. 19-20.

<sup>41</sup> *Kansalaisuusasetus 293/2013*. The previous Nationality Decree 799/2004 was enacted to complement the 2003 Nationality Act. The new Nationality Decree 293/2013 is to a large extent similar to the old one. The main amendment concerns the obligation of the Local Register Offices to request for determination of citizenship status by Migri (Section 1 of the new decree and Section 2 of the old decree), which will be discussed further in section 3.3 below.

<sup>42</sup> Government Bill, *Hallituksen esitys 235/2003*.

<sup>43</sup> A personal identity code is given when the person is entered into the Population Information System for the first time, in accordance with Section 11 of the Population Information Act, *Laki väestötietojärjestelmästä ja Väestötietokeskuksen varmennepalveluista*, 661/2009.

<sup>44</sup> Homepage of the Population Registration Centre, [www.vrk.fi](http://www.vrk.fi), and the Population Information Act, 661/2009

<sup>45</sup> The Population Information Act, 661/2009.

<sup>46</sup> *Kotikuntalaki*, 201/1994.

which a foreigner (who is not an EU or EEC citizen) shall have a home municipality in Finland if she or he has been granted a continuous or permanent residence permit in accordance with the Aliens Act,<sup>47</sup> or if her or his family member has a home municipality in Finland.<sup>48</sup> Furthermore, a foreigner who has been granted a temporary residence permit in accordance with the Aliens Act, which is valid for at least one year, and, taking into consideration the circumstances, has an intention to remain in Finland permanently, shall also be registered in PIS.

The basis for registering a person's nationality by the Local Register Offices<sup>49</sup> is the information and the decision provided by Migri. With regard to stateless persons, in principle a person should only be registered as stateless when she or he has been determined as such by Migri, and this information is available in the person's documents issued by Migri. A person's nationality is registered as unknown in cases where the person's passport or other registration documents<sup>50</sup> do not contain information about the person's nationality. Nationality may also be registered as pending clarification. This is most common in cases of newborn children in which the Local Register Offices have a responsibility to request for the nationality of the child to be determined by Migri.<sup>51</sup> Pending such a determination by Migri, the nationality is recorded as pending clarification.<sup>52</sup> There are, however, some discrepancies in how different Local Register Offices record nationality or the lack of it. While the Population Register Centre provides advice to the Local Register Offices, it does not have the competency to issue binding regulations. To harmonise the practices of Local Register Offices, a working group was established in 2013. This working group will also take into account the need for harmonisation of the recording of nationality status.<sup>53</sup>

Regulations regarding the purpose, use and content of the RA are found in the Register of Aliens Act.<sup>54</sup> According to Section 2 of the Act, the RA is maintained and used for the processing, decision-making and control of matters relating to the entry into and departure from Finland and residence of aliens in the country. It is also used for processing and decision-making matters related to the acquisition, retention and loss of Finnish citizenship and the determination of citizenship status. As such, it also contains information on stateless persons entering and residing in Finland and possible changes of their citizenship status. Moreover, the RA is used for ensuring the security of the state and for carrying out security investigations. The main controller of the RA is Migri. It is also maintained and used by the Ministry of Foreign Affairs, the Police, the Frontier Guard, the Customs, the Ministry of Employment and Economy, the Employment and Economic Development Centres and Officers, the Prison Administration Authority and the Ombudsman for Minorities.

A person is registered in the RA when an issue concerning the person is initiated in accordance with the Aliens Act or the Nationality Act, e.g. when an asylum application is lodged upon entry into the country or a residence permit application is submitted at a Finnish Embassy abroad. The data regarding the person is for the first time registered in accordance with her or his passport, other relevant documents (e.g. marriage and

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<sup>47</sup> *Ulkomaalaislaki*, 301/2004. Continuous residence permit is granted as the first permit e.g. for those who are granted international protection and their family members. A permanent residence permit is granted after the person, having first been granted a continuous residence permit, has resided in Finland continuously for at least four years. If the continuous permit has been granted on the basis of international protection, the four years are counted from the day the person entered Finland.

<sup>48</sup> Section 9 of the Population Information Act provides for some exceptional circumstances in which a person can be registered in PIS even without having a home municipality in Finland.

<sup>49</sup> Since 1 March 2014, the first registration of foreigners into PIS can be performed also by Migri and the Police, based on an amendment to the Population Information Act, available at: <http://www.finlex.fi/fi/laki/alkup/2014/20140145>

<sup>50</sup> According to the information provided by the Local Register Office of Helsinki, 5 September 2012, such other documents are e.g. residence permit issued by the Finnish authorities, marriage certificates, birth certificates, work and study certificates from Finland.

<sup>51</sup> According to Section 1 of the Nationality Decree, *Valtioneuvoston asetus kansalaisuudesta*, 293/2013, Local Register Offices shall always request for the citizenship status definition when 1) the child is born out of wedlock and the mother is not a Finnish national; 2) when the child's parents are married and are not Finnish nationals nor nationals of the same country; 3) when the parents of the child are married, are not Finnish nationals and are nationals of the same country but the child does not automatically acquire the parents' nationality under operation of law of the parents' country of nationality.

<sup>52</sup> E-mail from the Local Register Office of Helsinki, 4 September 2012.

<sup>53</sup> The Finnish Ministry of the Interior's Comments on the draft study, 7 March 2014.

<sup>54</sup> The Register of Aliens Act, *Ulkomaalaisrekisterilaki*, 1270/1997.



birth certificates) and the information submitted on the residence permit application. Information regarding an asylum-seeker is registered based on the information obtained from her or him during the asylum procedure and from reliable documents, when available. The person is asked to confirm, on the residence permit application or in the asylum interview, that the information she or he has provided is correct and truthful to the best of her or his knowledge. The person is informed of the consequences of providing false information, which also has an impact on the assessment if the information is changed later on.<sup>55</sup>

The authority registering the information about an asylum-seeker for the first time is either the Police or the Frontier Guard. The information is then updated in the RA based on the information obtained from the person or from other authorities later on by relevant authorities.<sup>56</sup>

In accordance with Section 10 of the Population Information Act, information entered into the RA serves as guidance for the information to be entered into PIS. It states that the Local Register Officer has to check which information has been registered in the RA before entering information regarding the person into the PIS. If the information provided to the Local Register Office is not found, or if it differs from the information in the RA, the Local Register Office has to request Migri for a statement regarding the issue. Migri shall process such a request as expeditiously as possible. Further, if the Local Register Office registers information regarding a person that differs from the content of the statement by Migri, the Local Register Officer has to inform Migri of the content of this differing registration.

The Government Bill on the Population Information Act<sup>57</sup> has justified this provision, *inter alia*, by the fact that registering foreign nationals in PIS has previously been problematic with regard to general conditions for registration and procedures, and also with regard to the reliability of the information recorded in the system. Previously, in some cases information was recorded in PIS based solely on information provided by the person herself or himself or based on incomplete documentation.

It should be noted that the new Population Information Act, with the provision on coordination between the two registers, only entered into force in March 2010. Therefore, information registered and not updated after the entry into force of the new Act is likely to contain more errors and inconsistencies, including concerning nationalities (or the lack of it) of the persons registered, than the information entered and updated more recently.

Likewise, Migri informs the Local Register Offices of changes in personal information of immigrants, including regarding their nationality, that are made to the records of Migri. This practice is not based on law but has been agreed upon and is considered to be in line with the purpose of the Population Registration Act.<sup>58</sup>

Regarding the total number of stateless persons and persons of unknown nationality residing in Finland, there are some significant differences in the statistics provided by Statistics Finland, the Finnish public authority specifically established to maintain statistics, (used in table 1 and 2 below), and those on foreign nationals residing in Finland provided by Migri on its homepage.<sup>59</sup> According to the statistics published by Migri, there were 752 stateless persons residing in Finland at the end of 2011, which does not significantly differ from the Statistics Finland figure of 760. However, according to the statistics published on the homepage of Migri, the number of persons with unknown nationality at the end of 2011 was 2,862, as compared to 818 persons with unknown nationality and 618 persons whose nationality was pending clarification in the statistics

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<sup>55</sup> Procedural Guideline on the Handling of the statement requests made by the Local Register Office at the Finnish Immigration Service (*Maistraatin lausuntopyyntöjen käsittely Maahanmuuttovirastossa*), issued on 10 May 2010 by Migri, use by public authorities only, p. 5.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Hallituksen esitys 89/2008*, General justifications of the Bill.

<sup>58</sup> Procedural Guideline on the Handling of the statement requests made by the Local Register Office at the Finnish Immigration Service (*Maistraatin lausuntopyyntöjen käsittely Maahanmuuttovirastossa*), issued on 10 May 2010 by Migri, use by public authorities only, p. 10.

<sup>59</sup> [http://migri.fi/download/25355\\_Suomessa\\_asuvat\\_ulkomaalaiset\\_2011.pdf](http://migri.fi/download/25355_Suomessa_asuvat_ulkomaalaiset_2011.pdf)



provided by Statistics Finland. Both of these figures are based on the data from PIS. However, PIS contains a category called “data in plain language”;<sup>60</sup> this category contains information on nationalities written in plain language and which does not appear in the statistics in the same way as nationalities do when recorded in the coded format. It appears that Migri has included three different categories, unknown nationality, nationality pending clarification and the “data in plain language” category all within the category of unknown nationality. Statistics Finland, on the other hand, has coded the “data in plain language” category and has been able to place this data in correct nationality categories.<sup>61</sup> Furthermore, Statistics Finland uses two distinct categories of unknown nationality and nationality pending clarification whereas in the statistics published by Migri these two are contained in the same category of unknown nationality. Data from Statistics Finland therefore seems to be most detailed and accurate and was therefore chosen as the baseline statistical data for the purpose of this mapping.

Statistics used and published by UNHCR on the stateless population in Finland<sup>62</sup> are based on statistics provided by Migri; UNHCR has added together the numbers of stateless persons and those reported as unknown nationality by Migri when publishing statelessness statistics. However, in light of the above, this quite clearly leads to an incorrect and exaggerated number of stateless persons residing in Finland and it is recommended that in the future, statistics provided by Statistics Finland (which excludes the category “data in plain language”) are used.

## 2.2.2 The target population

The origin and causes of statelessness mainly lie outside of Finland. There is very little information readily available regarding the exact origins and profiles of stateless persons, as this kind of information cannot be automatically generated from any of the sources used in this report. The statistical information on stateless persons and persons with unknown nationality cannot be broken down by countries of birth or countries of former residence, as this information is not recorded in the RA on separate fields. The only way of accessing information on countries of birth and former residence of persons recorded as stateless or of unknown nationality is to go into individual case files and look for information on the country of birth and former residence.<sup>63</sup> Without this information, the face of statelessness in Finland remains very limited and the analysis as to which extent persons with certain profiles are correctly defined as stateless, would be lacking.

Therefore, for the purposes of this mapping, Migri granted UNHCR a research permit, allowing the researcher access to asylum decisions made in recent years with regard to persons whom Migri considered as stateless, of “unknown nationality” or as having “nationality not known”. The figures below and the analysis is based on information gathered from the review of all decisions (excluding asylum applications handled in accordance with the Dublin regulation and annulled decisions) from 2009, 2010 and 2011 with regard to stateless persons and persons whose nationality was unknown/not known.<sup>64</sup> In total, the researcher reviewed 34 cases of persons registered as stateless, 15 cases of persons registered as having unknown nationality, and 76 cases of persons registered as having nationality not know.

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<sup>60</sup> In Finnish: *Tieto selväkielisesti*.

<sup>61</sup> Explanation and analysis provided by the Population Register Centre, email 13 September 2012 and the Statistics Finland, telephone conversation on 11 October 2011.

<sup>62</sup> E.g. on UNHCR's homepage, <http://goo.gl/YFTT80>

<sup>63</sup> E-mail from Migri, 10 September 2012.

<sup>64</sup> The figures presented in this chapter do not correspond with those presented in the statistical review because of this exclusion of cases, which were not materially decided upon.

The main countries of former habitual residence of persons considered as stateless in the asylum procedure during the years 2009 to 2011 were the following:

- Occupied Palestinian Territories (West Bank, Gaza): 10 cases / 23 individuals;
- Syria: 14 cases / 15 individuals;
- Various other: 10 cases / 21 individuals.<sup>65</sup>

15 asylum decisions (15 cases / 19 individuals) adopted between 2009 and 2011 in respect of persons of “unknown nationality” were reviewed. These persons were considered to have had their previous residence in various countries and areas, and included e.g. Palestinians from Gaza, Iraq and Lebanon and Kurds from Syria.

76 asylum decisions adopted between 2009 and 2011 in respect of persons recorded as “nationality not known” were reviewed. The absolute majority of these decisions, i.e. 72, concerned asylum-seekers from Kosovo. In most of these cases (51) the individuals were in a possession of some kind of identity document issued by UNMIK (often an expired or valid identity card). Others had identity documents issued by the Former Yugoslav authorities, the authorities of Serbia or Kosovo or carried no identity documents at all. In a few cases, Migri considered some members of the family, most commonly children, as nationals of Serbia or Kosovo.

Statistics on return - forced or voluntary - which could have shed some further light on the profile of stateless persons who have entered Finland are not available from public sources, apart from assisted voluntary return information provided by the International Organization for Migration (IOM), and it has not been possible to obtain such information from the authorities (Migri or Finnish Police). It is therefore not possible to present statistics on returns and the countries of return of stateless persons, persons with unknown nationality and persons whose nationality is not known. According to assisted voluntary return statistics of IOM, IOM assisted ten persons to return voluntarily from Finland to the Palestinian territories between 1 January 2010 and 31 August 2012;<sup>66</sup> these persons were most likely stateless Palestinians.<sup>67</sup>

### 2.2.2.1 GROUPS COVERED BY ADMINISTRATIVE DATA

The statistical overview covers three different sections:

1. Persons registered in PIS as stateless, with unknown nationality and persons whose nationality is pending clarification.<sup>68</sup>
2. Stateless persons, persons with unknown nationality and persons whose nationality is not known who are seeking asylum and who have been granted asylum or other types of residence permits in the asylum procedure.<sup>69</sup>
3. Stateless persons, persons with unknown nationality and persons whose nationality is not known who have been granted Finnish nationality.<sup>70</sup>

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<sup>65</sup> Stateless Palestinians from Lebanon and Iraq and other stateless persons from Estonia, Latvia, Former Soviet Union, Iran and Somalia. In some of these cases only one person in the family was stateless.

<sup>66</sup> See: <http://www.vapaaehtoinenpaluu.fi/en>

<sup>67</sup> E-mail from IOM Finland, 17 September 2012.

<sup>68</sup> Data obtained from the Population Registration Centre and Statistics Finland, 9 October 2012.

<sup>69</sup> Data obtained from Migri.

<sup>70</sup> Data obtained from Migri and Statistics Finland.

## 1. FINNISH POPULATION INFORMATION SYSTEM (PIS)

The data on stateless persons residing in Finland can unfortunately not be broken down by countries of birth, as this information is not readily available in a report format from PIS. Similarly, there is no such data available regarding persons whose nationality has been registered as “unknown”.<sup>71</sup>

**Table 1:** Total stateless population according to PIS (2002-2011)

	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
<b>Stateless</b>	760	750	730	698	722	730	740	770	919	964
<b>“Unknown”</b>	618	773	760	753	636	77	487	454	387	360
<b>Pending clarification</b>	818	554	322	215	115	552	96	88	70	166

Source: Population Registration Centre and Statistics Finland, September 2012

Persons whose citizenship status is pending clarification and who are registered in PIS are in most cases children born in Finland whose citizenship status is pending determination by Migri,<sup>72</sup> as can also be concluded from the high proportion; 92.6%, of these persons in age group 0-4 years (see table 2 below). It should be noted that data in the category of nationality pending clarification is generally transitional, and that persons in this category should remain there only for a limited period of time.

**Table 2:** Stateless population by age (2011)

Age	Stateless	“Unknown”	Pending clarification
<b>0 – 4</b>	13	37	572
<b>5 – 9</b>	17	23	4
<b>10 - 14</b>	25	39	2
<b>15 - 19</b>	21	18	4
<b>20 - 24</b>	48	62	8
<b>25 – 29</b>	79	91	5
<b>30 – 34</b>	109	133	8
<b>35 – 39</b>	105	119	3
<b>40 – 44</b>	71	88	4
<b>45 – 49</b>	67	71	4
<b>50 – 54</b>	58	49	1
<b>55 – 59</b>	51	38	1
<b>60 – 64</b>	33	17	1
<b>65 -</b>	63	33	1
<b>Total</b>	760	818	618

Source: Statistics Finland, September 2012

The number of stateless persons are highest in the age categories of those above 20 years; the proportion of those under 20 is only 9.5 % and the proportion of the youngest children (0-4 years) only 1.7 %. The age distribution of persons with unknown nationality is very similar to that of stateless persons. The proportion of persons under 20 years old is 14.3 % and those of the youngest children (0-4 years) 4.5 %, which is slightly higher than in the category of stateless persons.

<sup>71</sup> Explained by the Population Registration Centre, e-mail of 21 August 2012.

<sup>72</sup> This was referred to by Migri, the Population Register Centre and the Local Register Office of Helsinki.

## 2. ASYLUM APPLICATIONS AND DECISIONS

The number of asylum applications submitted by stateless persons has remained relatively low throughout the years, varying between 7 and 52 per year, during 2005 to 2012 (see table 3 below). The number has only once during the past six years exceeded 50 applications (in 2010), and only in 2010 and 2011 the number of asylum applications submitted by stateless persons has been over 1 % of the total number of asylum applications submitted. The highest number of asylum applications ever submitted during the course of one year in Finland, close to 6,000 applications, was in 2009. However, the number of stateless persons seeking asylum did not follow the trend but remained at the same level as during the previous years. In 2007, when the number of asylum-seekers was significantly lower than during the previous and preceding years, the number of applications by stateless persons was also at the lowest. On the other hand, the number of asylum applications submitted by persons with unknown nationality increased quite significantly in 2011 and 2012, more than doubling since 2010.

**Table 3:** Asylum applications (2005-2012)

	2005	2006	2007	2008	2009	2010	2011	2012
<b>Stateless persons</b>	32	18	7	26	20	52	34	27
<b>Not known/“unknown”</b>	23	11	7	27	42	41	76	94
<b>All nationalities<sup>73</sup></b>	3576	2324	1505	4035	5988	4018	3088	3129

Source: Migri, [http://www.migri.fi/about\\_us/statistics/statistics\\_on\\_asylum\\_and\\_refugees](http://www.migri.fi/about_us/statistics/statistics_on_asylum_and_refugees)

The Finnish versions of the asylum decision statistics have been used for this part of the statistical review. The Finnish versions use two separate categories of “unknown nationality” and “nationality not known” (throughout 2005-2012) whereas these have been grouped into one in the English versions. It is not entirely clear why the difference is made between these two categories, but based on the information obtained from Migri<sup>74</sup> it seems that the practice of whether unknown nationality should be indicated as “nationality not known” or “unknown nationality” in the register is not consistent, especially at the time of registering an asylum application. Furthermore, based on the review of asylum decisions from 2009-2011, it also seems to partly relate to whether formal citizenship status definition has been conducted or not. At least in 2009-2011, in most cases of nationality unknown a determination of citizenship status was not conducted. The majority of these decisions concerned persons from Kosovo.

<sup>73</sup> Total of all nationalities, including stateless persons and persons with not known/unknown nationality.

<sup>74</sup> E-mail from Migri, 10 September 2012.

**Table 4:** Asylum decisions (2012)<sup>75</sup>

Decision	Stateless	Unknown	Not known	All nationalities <sup>76</sup>
<b>Refugee</b>	21	0	7	553
<b>Subsidiary protection</b>	7	0	2	670
<b>Humanitarian protection</b>	4	0	1	112
<b>Other</b>	1	0	3	266
<b>GRANTS, TOTAL</b>	<b>33</b>	<b>0</b>	<b>13</b>	<b>1601</b>
<b>Rejection</b>	2	0	7	666
<b>Safe country of origin</b>	0	0	0	18
<b>Safe country of asylum</b>	1	0	1	35
<b>Dublin</b>	10	0	11	571
<b>Manifestly unfounded</b>	0	0	2	448
<b>REJECTIONS, TOTAL</b>	<b>13</b>	<b>0</b>	<b>21</b>	<b>1738</b>
<b>Annulled</b>	5	0	2	441
<b>GRANTS %</b>	64,7%	-	36,1%	42,6 %
<b>TOTAL ALL DECISIONS</b>	<b>51</b>	<b>0</b>	<b>36</b>	<b>3780</b>

Source: Migri, [http://www.migri.fi/about\\_us/statistics/statistics\\_on\\_asylum\\_and\\_refugees](http://www.migri.fi/about_us/statistics/statistics_on_asylum_and_refugees)

The proportion of positive decisions, i.e. grants of residence permits, for stateless persons has varied between 17.6% and 64.7 % during the past eight years. Most of the time there has not been a direct correlation between the percentages of grants generally and in respect of stateless persons; some years the percentage of grants for stateless persons has been higher than the general percentage of grants and sometimes lower. However, looking at the past eight years, the average percentage of grants for stateless persons is around the same as the general percentage of grants.

### 3. APPLICATIONS FOR AND GRANTS OF FINNISH NATIONALITY

The number of applications for naturalization by stateless persons has remained quite steady during recent years and also correlate with the number of grants of Finnish nationality. The number of applications made by persons whose nationality is not known has significantly increased during the past couple of years which has also been reflected in increased numbers of grants. Also, grants for stateless persons and persons whose nationality is unknown significantly increased in 2012, as did the total number of grants for all nationalities. Compared to the total number of grants of Finnish nationality, the grants for stateless persons and persons of “unknown”/“not known” nationality has been around 1-2 % of the total number of grants each year.

**Table 5:** Applications for Finnish nationality (2005-2012)

	2005	2006	2007	2008	2009	2010	2011	2012 <sup>77</sup>
<b>Stateless persons</b>	51	58	49	49	37	39	37	39
<b>Unknown</b>	1	5	10	25	19	11	25	30
<b>Not known</b>	1	1	2	18	19	69	69	68

<sup>75</sup> The tables specifying asylum decisions for the years 2005-2011 can be found in annex 1.

<sup>76</sup> Total of all nationalities, including stateless persons and persons with not known/unknown nationality.

<sup>77</sup> 1 January 2012 – 30 September 2012. The total figures for 2012 were not readily available at the time of the completion of this report in November 2013.

**Table 6:** Grants of Finnish nationality (2005-2012)

	2005	2006	2007	2008	2009	2010	2011	2012
<b>Stateless persons</b>	51	39	45	46	32	29	23	82
<b>Unknown</b>	1	1	3	12	11	21	11	38
<b>Not known</b>	1	0	1	2	9	11	65	119
<b>All nationalities<sup>78</sup></b>	5683	4433	4824	6682	3413	4334	4794	9581

Source: Migri, September 2012 and November 2013.

### 2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

A person's records remain active in the RA in case of a negative decision on a residence permit and a decision on return of the person, until the person has left the country or the deportation has been successfully implemented. Persons who have been issued with negative decisions and who remain in Finland but do not cooperate with the authorities and choose to live clandestinely are not covered by any administrative data. Such persons would typically be rejected asylum-seekers avoiding removal from the country or other persons who have not been granted an extension of their previous residence permit, as well as those facing expulsion due to crimes committed in Finland. The number of such persons generally and the number of such stateless persons in Finland is not known; the Aliens police (who is responsible for implementation of decisions on return, refusal of entry and removal from the country) and Migri are unable to provide such information, which cannot be deduced from other sources either.<sup>79</sup>

The Finnish Refugee Advice Centre, which is the biggest NGO providing legal advice to asylum-seekers in Finland and which also deals with other immigration questions, launched a project in April 2012 called *Paperittomat*, which means "paperless" or "persons without documents". This project, *inter alia*, looks into the situation of migrants living in Finland illegally, as well as other situations of foreigners in limbo, which may also be related to statelessness. At the time of writing this report, it was too early to draw any conclusions with regard to the profiles of persons the project has come across.<sup>80</sup> Nevertheless, this project may in the future provide some valuable information as to the extent of the numbers and circumstances of stateless persons living in Finland illegally.

There are also stateless persons who have sought and have been granted other residence permits on the grounds of international protection needs, e.g. residence permits for purposes of studies, work and family reunification in Finland, but there are no reliable statistics regarding this type of residence permits for stateless persons. Migri has concluded that the initial registration of nationality in the registration system in cases of residence permit applications is often incorrect, especially when it comes to registering a person's nationality as stateless or unknown. As the nationality, or the lack of it, is not of any significant relevance when granting residence permits based on other grounds than international protection, the mistakes have often remained in the system even after the mistake has been noticed in the process and a decision has been taken.<sup>81</sup> Any data on residence permits granted for stateless or persons with unknown nationality outside the asylum procedure would therefore be unreliable and such statistics are thus not provided in this report.

<sup>78</sup> Data from Statistics Finland: <http://www.stat.fi>.

<sup>79</sup> E-mail from Migri of 5 September 2012 and telephone conversation with the Aliens Police on 5 September 2012.

<sup>80</sup> Information on the project in Finnish on the homepage of the Refugee Advice Centre, Pakolaisneuvonta <http://goo.gl/VbkTTd> Telephone conversation with the Refugee Advice Centre on 7 September 2012 and 4 November 2013.

<sup>81</sup> E-mail correspondence and telephone conversation with Migri, 10 September 2012.

## 2.3 Qualitative analysis of stateless persons

### 2.3.1 Specifics of the information used

The current mapping project did regrettably not include room for participatory assessments with stateless persons in Finland, in which their voices could have been duly heard. More detailed statistical information on the background of stateless persons who reside in Finland would have enabled a closer look into the situations of different groups of stateless persons in Finland.

Moreover, the general lack of information and awareness about stateless persons and limited understanding of their specific situation among the authorities and other actors also limit the possibilities of drawing conclusions on the human face of statelessness in Finland. Based on discussions with NGOs and other actors who generally deal with asylum-seekers, refugees and human rights issues, these actors very rarely come across stateless persons and do not generally have an idea of who the stateless persons in Finland are, and whether they face particular challenges.

The only qualitative aspect was provided for by the review of 125 asylum cases concerning persons who were considered as stateless or of unknown / not known nationality from 2009 to 2011, which are referred to in various parts of this report. In light of this review, most stateless persons who arrive to Finland as asylum-seekers originate from the Middle East. In most of these cases, the applicants had claimed a fear of harm on the basis of, or related to, their lack of a nationality. These cases will be discussed in more detail in section 3.4.2.1 below.

## 2.4 Conclusions and recommendations

There are several measures, both legislative and practical, in place in order to ensure consistent recording of information regarding foreigners, including stateless persons, in the different public registers. The cooperation between Migri and the Local Register Offices in this regard is on an advanced level. In principle, this should ensure to a large extent that the different authorities share the same view regarding the personal information of the individual, including her or his nationality, the lack of a nationality or the lack of clarity of the person's nationality. Room for improvement remains though, in terms of harmonisation of recording of statelessness and unknown nationality, within and among the authorities. In particular within the asylum procedure, there are two very similar sounding categories used: "unknown nationality" and "nationality not known". Even though some explanations by Migri were provided, it remains largely unclear why these two separate categories are used. It is recommended that this is further assessed and clarified, and that the possibility of merging these two categories in a consistent manner by Migri is looked into. It appears that both "unknown nationality" and "nationality not known" are registered as "unknown nationality" in PIS.

The statistics on stateless persons in Finland provide very little information concerning the background and profile of this population. Stateless persons in Finland are generally of foreign origin but further information on their backgrounds and profile is unavailable both from PIS as well as from RA. Data regarding a person's country and place of birth and other relevant biodata is registered in both of these systems. However, the challenge is obtaining this data in a report format. Currently the only way of obtaining information regarding the profiles of stateless persons in Finland is to manually go through individual case records. Moreover, in cases of residence permits granted outside the asylum procedure, even basic information on numbers of stateless persons is unreliable as the RA contains incorrect information with regard to nationality (or the lack of it).

The review of the individual case decisions formed the only solid basis for information and analysis of the backgrounds and profiles of stateless persons in Finland. However, it does not provide a complete picture, as not all stateless persons enter Finland as asylum-seekers.

For the purpose of further understanding and analysing the scope of statelessness in Finland, it is recommended that means of recording and processing data regarding the backgrounds and profiles of stateless persons are developed, both with regard to the RA and the PIS. It is also recommended that records regarding the nationality of, or lack of nationality of a person in immigration procedures other than the asylum channel, are improved, so that also immigration statistics provide a reliable basis for analysing statelessness in Finland.

Finally, raising awareness among authorities, NGOs and other actors is required in order to ensure that the potential specific challenges and needs of stateless persons receive appropriate attention. This would in turn help in gathering information on the profiles of individuals and groups behind the statistics.



# 3. Determination of statelessness and rights attached to the status

## 3.1 Introduction

It has been explained in the introductory section above that the 1954 Convention sets out the definition of a “stateless person”. This definition identifies the persons who are entitled to the protection provided by the 1954 Convention. While ultimately only the acquisition of a nationality will end a person’s statelessness, in situations where this is not (yet) possible, it is necessary to protect stateless persons.<sup>82</sup> Having a statelessness determination procedure makes it possible to identify those persons who are entitled to the protection regime of the 1954 Convention.

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be taken into consideration. The procedure must be accessible for stateless persons<sup>83</sup> and while the procedure is underway, applicants should be entitled to a certain number of rights.<sup>84</sup> During the procedure, stateless persons may not be detained for reasons relating to their statelessness. Where they are detained, it must be a measure of last resort and the person may not be held with convicted criminals or individuals awaiting trial.<sup>85</sup> Moreover, pending the outcome of the procedure, the applicant may not be expelled from the State where the procedure is ongoing.<sup>86</sup>

When a person’s statelessness has been determined, he or she is entitled to the rights of the 1954 Convention. In the first place, this means granting the right of residence, which is not explicitly laid down in the 1954 Convention, but follows from its object and purpose.<sup>87</sup> Also, stateless persons have a right to work, based on Article 17 of the 1954 Convention.<sup>88</sup> The right to public relief (of Article 23 of the 1954 Convention) and the right to identity and travel documents (Articles 27 and 28 of the 1954 Convention respectively) are further important rights for persons recognized as stateless to be discussed here. Apart from the 1954 Convention, other instruments provide content to the protection of stateless persons as well. Human rights law, for example the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), CRC, CEDAW and – in Europe – the ECHR, contains certain rights especially relevant for the protection of stateless persons.

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<sup>82</sup> UNHCR recommends nationality campaigns or nationality verification procedures for those populations that have long-established ties with the state, including long-term habitual residence or residence at the time of state succession. UNHCR, “Handbook on Protection of Stateless Persons”, para 58-59.

<sup>83</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 68 to 70.

<sup>84</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 144 to 146.

<sup>85</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 112-115.

<sup>86</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 72 and 145.

<sup>87</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 147.

<sup>88</sup> Moreover, Articles 18 and 19 of the 1954 Convention provide the rights to self-employment and to practice liberal professions.

In the following, the rights of stateless persons as provided by the international legal framework will be addressed and compared to the standards provided within the national legal system. This includes a description of administrative and judicial procedures in which the determination of statelessness may take place, even though these procedures do not have the establishment of statelessness as a specific aim.<sup>89</sup>

## 3.2 National legal framework

Finland is a party to the 1954 Convention<sup>90</sup> to which it acceded at the same time with the 1951 Refugee Convention. Finland made seven reservations to the 1954 Convention at the time of accession:

- A general reservation with regard to more favourable treatment for the nationals of the other Nordic Countries (i.e. Denmark, Iceland, Norway and Sweden); while Finland committed to accord stateless person the same treatment as to aliens generally; Finland explained that such treatment would not be affected by possible more favourable treatment to the nationals of the Nordic countries.
- Article 7(2): Finland stated that it would not generally grant stateless persons exemption from legislative reciprocity.
- Article 8 regarding exemptions from exceptional measures: Finland stated that the article shall not be binding on Finland.
- Article 12(1): Finland stated that the convention would not have an impact on the provisions of private international law, which were currently in force in Finland (i.e. if in conflict with private international law, a stateless person would not be governed by the country of his domicile or residence). This reservation was however removed in 1970.<sup>91</sup>
- Article 24(1)b and (3): With this reservation, Finland rejected the responsibility to provide social security to stateless persons lawfully residing on its territory, on the same level as to nationals;
- Article 25: Finland made a reservation concerning the responsibility to grant documents in the place of the authorities of a foreign country, if the documentary records necessary for the delivery of such certificate do not exist in Finland;
- Article 28: Finland made a reservation not accepting the obligation to issue specific travel documents to stateless persons lawfully residing in its territory. Finland concluded that instead, it considered the practice of issuing Aliens passports for such purposes useful. Finland would however, accept travel documents issued to stateless persons in accordance with this provision by other Contracting States.

The general reservation with regard to more favourable treatment for the nationals of other Nordic countries refers to the general obligation under Article 7 (1) of the 1954 Convention to accord the same treatment to stateless persons as to aliens generally. The obligation has been explained further by Nehemiah Robertson in his commentary on the 1954 Convention:

*“The reference ‘to aliens generally’ is that to foreigners who do not enjoy any specific privileges, either on the basis of the domestic law of the given country or on that of an international agreement between the home state of the foreigner and the state of his residence. In other words, the ‘treatment accorded to aliens generally’ is the least favourable treatment which foreigners enjoy in the country of the residence of the stateless person.”<sup>92</sup>*

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<sup>89</sup> UNHCR, *Handbook for Protection of Stateless Persons*, para 57.

<sup>90</sup> FTS 80/1968.

<sup>91</sup> FTS 56/1970.

<sup>92</sup> UNHCR, *Convention relating to the Status of Stateless Persons, Its History and Interpretation*, A Commentary by Nehemiah Robinson, 1997, <http://www.refworld.org/docid/4785f03d2.html>

In this light, Finland's reservation does not seem to be necessary but serves more as a clarification. The other Nordic countries that are parties to the 1954 Convention, i.e. Denmark, Norway and Sweden, did not make the same reservation.

With regard to the reservation to Article 8, it should be noted that this Article was drafted in the context of the aftermath of the Second World War and principally refers to the possibility to exclude persons, for instance from Germany and Japan. In addition, as noted by Robinson in his commentary:

*“Under its first sentence, Article 8 does not preclude the application of exceptional measures to stateless persons, it only prohibits (within the limitation of the second sentence) their application to a stateless person ‘solely on account of his having previously possessed the nationality ...’. In other words, a state is free to apply to a stateless person exceptional measures if they are taken on grounds other than his former nationality. Thus Article 8, sentence one, would not hinder the application of exceptional measures on account of the economic or political activity or special unwanted contacts of a stateless person, if such activity or contacts are, in general, a reason for applying all or some of the exceptional measures.”<sup>93</sup>*

Since 1954, developments in international human rights law have strengthened non-discrimination principles. For instance, under Article 2(1) of the ICCPR, by which Finland is bound, each State Party undertakes “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as ... national or social origin, property, birth or other status”. Bearing in mind Robinson's commentary and subsequent developments in international human rights standards, it is recommended that Finland withdraw this reservation to the 1954 Convention.

With regard to Article 7(2), Robinson's commentary notes that Article 7(2):

*“deals with an important element in the legal status of stateless persons.... [A]liens enjoy only the most elementary rights (protection of person and property) on the basis of accepted international rules. In all other instances every state is free to treat them as it pleases. Generally, a state is inclined to grant aliens broader rights if its own citizens will be treated in the same way. This is the meaning of ‘reciprocity’ - ‘I treat your citizens as you treat mine’. ‘Exemption from reciprocity’ means that a person is to be granted rights which ordinarily are accorded on the basis of reciprocity, without requiring reciprocity. The justification for applying the exemption from reciprocity to stateless persons lies in the fact that they do not enjoy the protection of a foreign country. Consequently, they could not qualify under the rule of reciprocity.”*

The Finnish reservation therefore appears to ignore the fact that stateless persons are in a fundamentally different position to aliens when it comes to the rule of reciprocity, which as a matter of definition, cannot apply to stateless persons who do not enjoy the rights, privileges or protections afforded to aliens who are nationals of a foreign country. It is therefore recommended that Finland review and consider lifting this reservation.

Finland's reservation to Article 25 with regard to granting of documents in the place of the authorities of a foreign country may lead to situations where stateless persons residing in Finland who cannot expect to receive assistance in obtaining documents from the authorities of their former nationality or residence cannot access important personal documents. Such documents may include documents relating to family position (birth, marriage, divorce, adoption or death certificates) or special position of the person (school or professional certificates). Lack of such documents is likely to cause serious challenges for a stateless person. It is therefore recommended that Finland review its reservation to this article as well.

Reservations to Article 24 and 28 will be looked into more closely in the below sections concerning public relief, social security and travel documents.

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<sup>93</sup> *Ibid.*

The 1954 Convention was ratified by a Decree and the Convention text as such did not become Finnish law. The main aspects of the Convention have been incorporated into Finnish national legislation by the Nationality Act and the Nationality Decree.<sup>94</sup> Other relevant provisions are found in the Administrative Procedure Act,<sup>95</sup> the Administrative Judicial Procedure Act,<sup>96</sup> the Aliens Act<sup>97</sup> as well as the Population Register Act.<sup>98</sup>

Statelessness is defined and the determination of citizenship status procedure is regulated in the Nationality Act. According to Section 2, subsection 1 of the Nationality Act, citizenship means a legislative bond between an individual and the State defining the individual's status in the State as well as the basic rights and duties existing between the individual and the State.

Section 2, subsections 1 (3) and 1 (4) of the Nationality Act provide for the definition of a stateless person. The definition has been divided into two parts: subsection 1 (3) defines a person who is involuntarily stateless and subsection 1 (4) defines a person who is voluntarily stateless.<sup>99</sup> According to subsection 1 (3), "involuntarily stateless" means a person who has no citizenship in any State and who has remained stateless against his or her own or his or her parent's or guardian's will. According to subsection 1 (4), "voluntarily stateless" means a person who has no citizenship in any State and who has remained stateless by his or her own or his or her parent's or guardian's will. The statelessness definition of the national law thus differs from the definition in the 1954 Convention, which only defines a stateless person without making a distinction between voluntary and involuntary statelessness.

The Government Bill of the Nationality Act<sup>100</sup> further explains that a person can be stateless because the nationality legislation of any State was not applicable to the person at the time of her or his birth or later on. It is also explained that a person can be stateless because she or he has not exercised her or his right to nationality of a certain country or she or he has voluntarily renounced or been freed of her or his nationality. The *travaux préparatoires* contained in the Government Bill do not, however, provide any explanation as to why breaking down the definition of a stateless person to voluntarily and involuntarily stateless persons in the Act was considered necessary.

Further, Section 2, subsection 1 (5) of the Act defines a person with unknown nationality as a person with regard to whom there is no information on nationality or statelessness. The Government Bill states, as a clarification between a stateless person and a person whose nationality is unknown, that the status of a stateless person has been successfully determined (as stateless), while a person's nationality is regarded as unknown in a situation where there is no information regarding her/his nationality.

Section 2, subsection 1 (6) defines a citizenship status as a present or former citizenship, statelessness or citizenship being unknown. The Government Bill explains that the term citizenship status is a general term which can be used when no detailed view is being taken whether the person has any nationality, whether she or he is voluntarily or involuntarily stateless or whether she or he is a person with unknown nationality.

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<sup>94</sup> *Kansalaisuuslaki*, 359/2003, *Kansalaisuusasetus*, 293/2013 (previous Nationality Decree 799/2004).

<sup>95</sup> *Hallintolaki*, 434/2003.

<sup>96</sup> *Hallintolainkäyttölaki*, 586/1996.

<sup>97</sup> *Ulkomaalaislaki*, 301/2004.

<sup>98</sup> *Laki väestötietojärjestelmästä ja Väestörekisterikeskuksen varmennepalveluista*, 661/2009.

<sup>99</sup> The Government Bill and other preparatory work (e.g. comments of the parliament) do not provide any further explanation as to why a separation has been made in the Nationality Act between involuntarily and voluntarily stateless persons. It has not been clarified whether Finland has by so doing followed the practice of some other countries or whether the separation was considered as necessary based on previous experiences.

<sup>100</sup> *Hallituksen esitys* 235/2002, detailed justifications of Section 2.

### 3.3 Statelessness determination procedure or other procedures in which statelessness status is determined

In Finland, there is no specific statelessness determination procedure. Determination of statelessness takes place through and as part of other procedures, in particular the asylum procedure and the determination of citizenship status procedure provided for in Section 36 of the Nationality Act.<sup>101</sup>

With regard to the determination of citizenship status procedure, the Government Bill of the Nationality Act<sup>102</sup> explains that a correct determination of citizenship of a person is of importance for having rights or obligations related to it, for being registered in official administration correctly, for the alien's residence in Finland, or for other reasons equivalent to these. The Government Bill further clarifies that a determination of citizenship status is required when not enough information is available regarding the basis for acquisition, retention or loss of citizenship. The purpose of the provision is to clarify the citizenship status in situations where it is unclear, and to improve the consistency of the information regarding nationality in different registries maintained by the authorities.

Section 36 further states that efforts shall be made to determine the citizenship status of a person with unknown nationality if her or his home municipality is in Finland. Moreover, Section 1 of the Nationality Decree concerns the obligation of Local Register Offices to request Migri to determine the citizenship status of a child born in Finland in cases when 1) the child is born out of wedlock and the mother is not a Finnish national; 2) when the child's parents are married and are neither Finnish nationals nor nationals of the same country and 3) when the parents of the child are married, are not Finnish nationals and are nationals of the same country but the child does not automatically acquire the parents' nationality under operation of law of the parents' country of nationality. Section 1 of the Nationality Decree further states that Local Register Offices do not need to request for a determination of citizenship status of a child when the information to be entered into PIS has been confirmed in a reliable manner in accordance with Section 19 (1) of the Act on Population Information System.<sup>103</sup> Moreover, Local Register Offices shall request for the determination of citizenship status for foundlings and children whose parents' nationality is unknown.

It should be noted that the current Nationality Decree entered into force in May 2013. The Local Register Offices' responsibility to request for a determination of citizenship status was amended, and further specified, compared to the corresponding provision in the previous Nationality Decree.<sup>104</sup>

The determination of citizenship status procedure seems not to have been specifically intended for detecting cases of statelessness. However, the Supreme Administrative Court, in its judgment KHO:2012:28<sup>105</sup> from April 2012, interpreted Section 36 of the Nationality Act rather broadly, emphasizing the aspect of preventing statelessness. The case did not concern statelessness as such, but dealt with a question of which foreign nationality or nationalities a child born in Finland to foreign parents of two different nationalities should be considered and the determination of citizenship status by Migri in such a case. Migri's authority to conduct citizenship status determination in the case was questioned and subsequently denied by the Administrative

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<sup>101</sup> Determination of citizenship status procedure was introduced into the Finnish legislation for the first time by the current Nationality Act in 2003. Government Bill, *hallituksen esitys* 235/2002, detailed justifications of Section 36.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Väestötietojärjestelmästä ja väestörekisterikeskuksen varmennepalveluista annettu laki*, 661/2009. Section 19 (1) describes conditions under which information which is to be entered into PIS and which is based on a foreign document can be regarded as reliable.

<sup>104</sup> *Kansalaisuusasetus* 799/2004. According to Section 2 of the previous Nationality Decree Local Register Offices had to request for determination of citizenship status by Migri when the child's parents were not married to each other and when they were not Finnish nationals, or one of them was not a Finnish national and when the child's parents were married to each other and were not Finnish nationals or nationals of the same country.

<sup>105</sup> KHO:2012:28, 30.4.2012/1046, available at <http://www.finlex.fi>

Court of Helsinki. Migri appealed<sup>106</sup> the decision of the Administrative Court to the Supreme Administrative Court, defending its authority to determine citizenship status in this case. Migri stated that the purpose of Section 2 of the Nationality Decree<sup>107</sup> was first and foremost to map situations where a child born in Finland could become stateless as a result of the nationality legislation of the countries of nationality of the parents, and where, consequently, the provision of Section 9 of the Nationality Act on the secondary right to Finnish nationality through birth may become applicable (discussed in section 4.3.1.1 below). Moreover, Migri stated that one of the main aims of the Nationality Act is to prevent statelessness and that determining whether a child acquires the nationality of one of the parents serves that aim, as it ensures that children born in Finland are not rendered stateless.

The Supreme Administrative Court *inter alia* stated that Section 36 of the Nationality Act is formulated in a way that the need to determine citizenship status may be based on various reasons. The court further stated that the responsibility of the Local Register Offices in this regard applies to situations where the child's nationality, considering her or his parents' nationalities, is typically unclear. Further, one of the purposes of the determination of citizenship status request by the Local Register Office to Migri is to ensure that the child will not become stateless. The court concluded that the initial decision of Migri in the matter was valid and should enter into force.

The decision of the Supreme Administrative Court contains a very interesting and significant point regarding the determination of citizenship status procedure from the prevention of statelessness point of view. The decision clearly defines the prevention of statelessness as one of the purposes of the procedure, even though this is not explicitly mentioned in the Nationality Act or the Nationality Decree.

Also, as part of the asylum procedure, the determination of citizenship status procedure is used to determine statelessness. Of the 34 cases in which "statelessness" was established in the asylum procedure during 2009 to 2011, 14 cases were determined through the determination of citizenship status procedure.<sup>108</sup> In the rest of the cases, "statelessness" was determined by the caseworker in the Asylum Unit of Migri, without using the determination of citizenship status procedure. No clear pattern could be seen as to when it was decided that the determination of citizenship status procedure was needed and when not. In 12 of the 15 cases where nationality was determined as "unknown", the determination of citizenship status procedure was used. This procedure was not used in the cases where asylum-seekers from Kosovo received the status "nationality not known".<sup>109</sup> Apart from the applicants from Kosovo, there were four other cases concerning applicants from other countries whose nationality was considered as "not known". In two of these cases, the determination of nationality as "not known" was a result of the determination of citizenship status procedure.<sup>110</sup>

The possible outcomes of the determination of citizenship status procedure are various. The decision either states that the person is a Finnish citizen, is regarded in Finland as a citizen of a certain country, that the person is regarded in Finland as a stateless person, or that the person's citizenship status in Finland is unknown. The citizenship status determination decision uses the wording "the person is regarded in Finland as a national of/stateless/of unknown nationality...". Only in cases where the person has been determined to be a Finnish national is it stated in the decision that the person is a Finnish national. This reflects the fact that Migri only has authority to make legally binding decisions with regard to nationality of Finland, not of other countries.

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<sup>106</sup> Migri has the right to appeal the decisions of an Administrative Court in accordance with Section 42 of the Nationality Act to the extent that a decision by Migri has been reversed or changed by a decision of an Administrative Court.

<sup>107</sup> Previous Nationality Decree 799/2004.

<sup>108</sup> Conducted by the Nationality Unit of Migri.

<sup>109</sup> Only in the cases of an unspecified number of children this procedure was used. According to Migri, the practice has been, that if persons from Kosovo only have a UNMIK document or another document which does not prove the nationality of Kosovo, their nationality was recorded as not known. The practice has however recently changed; person may be considered and register as a national from Kosovo based on the information provided by the person herself or himself too, without supporting documents. E-mail from Migri, 18 October 2012.

<sup>110</sup> Again, it is not clear why the difference between nationality "unknown" and "not known" exists and what the difference entails. Based on the information in the asylum decisions, the circumstances of these two cases were very similar to those in which normally nationality had been defined as unknown.

If the person is determined to be stateless, the decision does not specify if the person is considered to be voluntarily or involuntarily stateless.<sup>111</sup>

	2010	2011	2012
<b>DECISIONS, TOTAL</b>	<b>1428</b>	<b>1500</b>	<b>2106</b>

Source: Migri, [http://www.migri.fi/tietoa\\_virastosta/tilastot/kansalaisuustilastot](http://www.migri.fi/tietoa_virastosta/tilastot/kansalaisuustilastot)

Statistics according to the content of the decisions made in the determination of citizenship status procedure are currently not available. The only statistics that provide some information regarding the content of the decisions are the statistics regarding persons whose citizenship has been determined in the procedure in 2011 and 2012 according to the nationality that they are registered with *currently* in the RA. These statistics are therefore not 100% accurate in respect of the citizenship status at the time of the decision, but give an idea of the numbers of different types of decisions. According to these statistics, out of the persons whose citizenship status was determined in 2011 and 2012, 79 were registered as stateless, 37 with nationality not known and 21 with unknown nationality as of October 2012. In comparison, 920 were registered as Finnish nationals.<sup>112</sup>

Information regarding the countries of birth or previous habitual residence of persons for whom a request and a decision of citizenship status determination has been made is not available. Information regarding the persons status, e.g. whether the person resides in Finland with a residence permit, the type of permit, whether her or his application for asylum or other type of residence permit is still pending or whether the person resides in Finland at all, is also not available. According to Migri however, the request is often made when the person does not (yet) have a residence permit, in particular when the request is made during the asylum or residence permit procedure and when the request is made with regard to a newborn child for whom a residence permit has not yet been applied for or granted.<sup>113</sup> The average processing times of the determination of citizenship status requests were 228 days in 2011, and 184 days in 2012.<sup>114</sup>

### 3.3.1 Competent authority

According to Section 36 of the Nationality Act, Migri determines citizenship status at the request of a public authority or the party. Migri has the competence to decide on the acquisition, retention and loss of Finnish citizenship and on the determination of citizenship status according to Section 3 of the Nationality Act. The Nationality Unit of Migri deals with the determination of citizenship status.

The Unit has a number of staff who are specialized and trained for handling requests for determination of citizenship status. Requests regarding acquisition of the parents' nationality are decided and signed off by an officer when the child automatically acquires the nationality of one of the parents. More complicated cases, including those where the person is considered to be stateless, go through a process of preparation and recommendation by an officer and a superior officer must approve the recommendation and enforce the decision. The decision is signed by both of these officers.<sup>115</sup>

Decisions with regard to nationality, and in particular with regard to statelessness, are however not exclusively made in the determination of citizenship status procedure by the Nationality Unit of Migri. As explained above, such a determination can also be made by the Asylum Unit. Based on the review of the asylum cases

<sup>111</sup> E-mail from Migri, 17 September 2012.

<sup>112</sup> E-mail from Migri, 18 October 2012. These statistics from 2012 are from 1 January to 18 October 2012.

<sup>113</sup> E-mail from the Finnish IS, 21 September 2012.

<sup>114</sup> 1 January – 20 September 2012.

<sup>115</sup> E-mail from Migri, 17 September 2012.



from 2009 to 2011, there were no clear guidelines or established practice as to when the Asylum Unit should request for the determination to be conducted by the Nationality Unit.

### 3.3.2 Procedural aspects

#### 3.3.2.1 INITIATING THE PROCEDURE AND THE COURSE OF THE PROCEDURE

In accordance with Section 36 of the Nationality Act, the determination of citizenship status procedure can be initiated either by a public authority or by the person her or himself. Section 2 of the Nationality Act places a responsibility on the Local Register Offices to always request for the citizenship status determination of a child whose birth they have been informed about when the child's parents are not married to each other and are not Finnish nationals, or one of them is not a Finnish national, or when the child's parents who are married to each other are neither Finnish nationals nor nationals of the same country. This is the most common type of citizenship status determination request which Migri deals with.

**Table 7:** Initiation of citizenship determination-procedure (2010-2012)

Request made by	2010 <sup>116</sup>	2011	2012 <sup>117</sup>
<b>Person concerned or guardian</b>	-	3	10
<b>Local Register Offices (S.2 Nationality Decree<sup>118</sup>)</b>	-	882	901
<b>Internal, linked to asylum or other residence permit application</b>	-	89	78
<b>Embassy notification acquisition of another nationality before 1 June 2003</b>	-	8	2
<b>Other</b>	-	157	163
<b>Total</b>	1817	1139	1154

Source: Migri, September 2012

Table 7 illustrates that the highest number of citizenship status determination requests is made by the Local Register Offices. The number of requests made by persons concerned or a guardian is surprisingly low. The number of requests made in 2010 was high compared to 2011 but seems to be on the rise again, as the 2012 figure only includes requests made by 20 September 2012.

Subsection 2 of Section 36 of the Nationality Act further states that when the nationality of a person who has a home municipality in Finland is unknown, efforts should be made to determine the citizenship of the person. As mentioned above, the responsibility for initiating the process in this type of cases has not been defined in the law or in the Government Bill. According to the biggest Local Register Office of Finland, the one in Helsinki, the Register Office does not initiate this process when registering a person with unknown nationality and with a municipality of residence in Finland.<sup>119</sup>

There are no further provisions regarding the procedure for determining citizenship status in the Nationality Act or in the Nationality Decree. The Government Bill on the Nationality Act does not provide for further explanations or guidance either. The details of the procedure and the practice have to a large extent been left to be defined by Migri, but they also follow the legal provisions relating to administrative procedures generally.

<sup>116</sup> The specifics of 2010 are not available; only the total number of requests is known.

<sup>117</sup> 1 January – 20 September 2012.

<sup>118</sup> Section 2 of the old Nationality Decree 799/2004 which was replaced by the new Nationality Decree 293/2013 in May 2013. In the new decree, the Local Register Offices' obligation to request for determination of citizenship status is stated in Section 1.

<sup>119</sup> Email from the Local Register Office of Helsinki on 5 September 2012.



The request for the determination of citizenship is made on a form (KAN\_9), which is available on the homepage of Migri.<sup>120</sup> The cost of the request when made by a private person is 34 euros.<sup>121</sup> The request can be made in Finnish, Swedish (the two official languages of Finland) or in English. The translation costs from any other language to Finnish, Swedish or English have to be borne by the applicant. Whereas it is possible that the application is lodged through an attorney or a counsellor (in accordance with Section 12 of the Administrative Procedure Act), in practice this has not happened.<sup>122</sup>

The determination of citizenship status procedure is to a large extent written; no interviews are conducted. Migri may seek to clarify certain matters through telephone. The oral hearing of the applicant is in principle possible in all administrative matters, including the determination of citizenship status procedure, in accordance with the Administrative Procedure Act but there is no specific provision for it in the Nationality Act. Oral hearing is however guaranteed (in accordance with the Aliens Act) as part of the asylum procedure in cases where the determination of citizenships status procedure concerns a person who is an asylum-seeker. The explanation by Migri for the lack of oral hearing in the determination of the citizenship status procedure is that generally in nationality matters, oral hearing is not part of the standard procedure; it is simply not considered necessary by Migri.<sup>123</sup>

When the request for determination of citizenship status has been made on behalf of an authority, Migri informs the authority about the decision and also the person concerned. If the person concerned is registered in PIS, the information is in most cases transmitted electronically in the system.<sup>124</sup> Together with the decision, Migri sends out a short note ("information box") to the person, explaining the purpose and the context of the decision.<sup>125</sup>

### 3.3.2.2 QUESTIONS OF PROOF (BURDEN AND STANDARD)

Section 39 of the Nationality Act relates to the obligation of a party to provide information in the determination of citizenship status procedure. The section states that for such determination, a party shall provide Migri and, in the cases referred to in Section 38 (regarding retention of Finnish nationality at the age of 22 years), the Local Register Office with all information in her or his possession related to the acquisition or loss of citizenship, and contribute to producing the necessary information and documents to the extent such contribution can reasonably be demanded from her or him.

Requests for further information from the person concerned are common by Migri in the determination of citizenship status procedure. According to Migri, in matters related to possible statelessness the types of further information required are various, including identity documents from the applicant's country of (former) habitual residence. The verification of the authenticity of the documents may be conducted by the National Bureau of Investigations at the request of Migri.<sup>126</sup>

The principle of the benefit of the doubt in the asylum process is reflected in Section 98, Subsection 3 of the Aliens Act, which states that after obtaining the available statement, the authorities shall decide on the matter in favour of the applicant on the basis of her or his statement if the applicant has contributed to the investigation of the matter as far as possible and if the authorities are convinced of the veracity of the application with regard to the applicant's need for international protection. A similar provision cannot be found in the Nationality Act and is not considered to be applicable in the determination of citizenship status

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<sup>120</sup> [http://www.migri.fi/asiointi/lomakkeet/kansalaisuuslomakkeet-kan\\_9\\_fi](http://www.migri.fi/asiointi/lomakkeet/kansalaisuuslomakkeet-kan_9_fi)

<sup>121</sup> *Sisäasiainministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta* 1038/2012, Ministry of Interior Decree on the costs of the services of Migri, entry into force 1 January 2013, valid until 31 December 2013.

<sup>122</sup> Meeting with Migri, 1 August 2012.

<sup>123</sup> *Ibid.*

<sup>124</sup> E-mail from Migri, 17 September 2012.

<sup>125</sup> Meeting with Migri, 1 August 2012.

<sup>126</sup> *Ibid.*

procedure by Migri. However, in principle, a significant part of clarifying the matter in the determination of citizenship status procedure regarding possible cases of statelessness depends on the facts that the applicant presents, as in most cases she or he is considered to be in the best position to provide the information and clarifications. If there is no reason to doubt the veracity of this information, the matter is decided on the basis of that information. It is worth noting though that while a grant of refugee status or other form of international protection is clearly understood as a favourable decision to the applicant, a decision for the person to be found stateless is not necessarily considered as such according to Migri.<sup>127</sup>

In light of the examples given by Migri with regard to drawing the line between stateless and “unknown nationality”, Migri relies heavily on the person’s ability to provide documents to support her or his claim of statelessness. If the person is unable to provide any documentary evidence with regard to her or his identity and nationality or the lack of it, and Migri deems that there is a possibility that the person has a nationality (i.e. Migri deems that they cannot rely on the person’s statements only), the person’s citizenship status is defined as unknown rather than stateless, until further information is provided. Consequently, the likelihood that the person is determined to be stateless is higher if the person is able to provide documents, e.g. a travel document, which supports the claim or the assumption that she or he is stateless.<sup>128</sup> This approach however appears problematic; the assumption seems to be that the main reason why a person would not be providing documentary evidence regarding her or his statelessness claim is that the person is simply unwilling to do so, and that every stateless person has access to identity and other documents from the country of (former) residence.

In nine of the reviewed asylum cases determined during the years 2009 to 2011 where the nationality of the applicant had been determined as unknown, the applicant’s previous country of residence had not as such been questioned. Most of these cases concerned Palestinians from various countries of habitual residence and Kurds from Syria. These cases in principle did not have any significant, obvious or consistent differences from those cases in which Palestinians from various countries of residence and Kurds from Syria had been considered as stateless. Based on the content of the asylum decisions, it is not possible to draw conclusions as to why exactly in these cases the persons were not considered as stateless. In a few of the decisions, it was more obvious that the conclusion of “unknown nationality” was arrived at because of general lack of credibility, which also concerned nationality (or the possible lack of it) and therefore there was a genuine uncertainty regarding the person’s nationality.

A case of an asylum-seeker illustrates the difficulties with regard to the burden of proof. The person had provided his birth certificate and refugee identity documents (which had been considered as technically genuine by the Finnish authorities) and some documents regarding the country of origin and nationality of his parents. However, he himself did not believe that he was a national of the country of origin of his parents or the country of his habitual residence. The Nationality Unit, which determined his citizenship status, considered that the person should have provided reliable documents regarding his identity and nationality in order for his nationality to be determined; in the absence of such documents it was considered that his nationality was not known. However, it remained unclear as to what further documents were expected of the person and it appeared that the burden of proof with regard to the nationality or the lack of it was fully placed on the applicant. Further, the person’s credibility was generally not questioned in the asylum assessment and he was granted subsidiary protection that was partly based on the fact that the person did not appear to be a national of any country. In light of this, the decision to consider the person’s nationality as “not known” rather than stateless appears peculiar and unfortunate. The person’s own possibilities to further prove his nationality or lack of it appeared limited. Also, by not formally determining the person in question as stateless while granting him a residence permit in Finland, deprives him of the rights attached to statelessness in Finland.

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<sup>127</sup> E-mail from Migri, 7 August 2012

<sup>128</sup> *Ibid.*

### 3.3.2.3 ACCESS TO COURTS

Decision regarding citizenship status determination can be appealed as any other decision that Migri has made in accordance with the Nationality Act (Section 41). Any decision made by Migri is regarded as an administrative decision and can be appealed in accordance with the Administrative Judicial Procedure Act to the Administrative Court, which decision in turn can be appealed to the Supreme Administrative Court.

**Table 8:** Appeals to Administrative Courts by persons concerned

Request made by	2011	2012 <sup>129</sup>
<b>Person concerned or guardian</b>	0	1
<b>Local Registration Office</b>	9	3
<b>Internal, linked to asylum or other residence permit application</b>	4	2
<b>Other</b>	3	3
<b>Total</b>	16	7

Source: Migri, September 2012

Considering the total numbers of requests made and decisions taken by Migri, the number of appeals on these matters has been very limited.

**Table 9:** Decisions by Administrative Courts

	2011	2012 <sup>130</sup>
<b>Appeal rejected</b>	13	7
<b>Appeal accepted</b>	0	0
<b>Appeal not investigated</b>	1	0
<b>Case annulled</b>	2	0
<b>Total</b>	16	7

Source: Migri, September 2012

The appeal rates on the determination of citizenship status decisions are low. This may be at least to a certain extent attributed to the lack of awareness of this procedure among different actors apart from those authorities who directly and regularly deal with the requests. The administrative courts did not accept the appeal in a single case between January 2011 and September 2012.

**Table 10:** Appeals to Supreme Administrative Court, total by all parties<sup>131</sup>

Request made by	2011	2012 <sup>131</sup>
<b>Person concerned or guardian</b>	0	0
<b>Local Registration Office</b>	5	1
<b>Internal, linked to asylum or other residence permit application</b>	7	5
<b>Other</b>	2	2
<b>Total</b>	14	8

Source: Migri, September 2012

<sup>129</sup> 1 January – 20 September 2012.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

**Table 11:** Decisions by the Supreme Administrative Court

	2011	2012 <sup>132</sup>
<b>Appeal rejected</b>	11	5
<b>Appeal accepted</b>	2	2
<b>Case annulled</b>	1	1
<b>Total</b>	15	7

Source: Migri, September 2012

### 3.3.2.4 OTHER PROCEDURAL ASPECTS

The Supreme Administrative Court dealt with the legal nature and the permanence of a citizenship status determination in case KHO:2011:77<sup>133</sup> of September 2011. The case also touches upon deprivation of Finnish nationality which will be further discussed in section 4.3.3 below. In this case, Migri on its own initiative took a new decision and determined a child, whom it had earlier determined to be a Finnish national in the determination of citizenship status procedure, as stateless. The child was born in Finland out of wedlock to a mother who was a Gambian national. There was no information about the father. Migri had first concluded that the child could not acquire the mother's nationality according to the nationality legislation of Gambia. As the child would otherwise be stateless, he was granted Finnish nationality by birth. Later on, it turned out through DNA tests that the father of the child was a national of Gambia who resided in Finland. The parents however did not want to establish the paternity of the man to the child. According to the information in the possession of Migri, a child acquires the nationality of Gambia from a Gambian father. Therefore, Migri considered that the child would have acquired Gambian nationality from his father had the paternity been established. In light of this information, Migri subsequently took a new decision regarding the citizenship status of the child and decided that the child was stateless for reasons on the part of his parents and therefore did not have a right to Finnish nationality.

The mother of the child appealed the decision of Migri to the Administrative Court of Oulu, requesting the second decision of Migri to be repealed and the child to be declared to be and have been a Finnish national since birth. The Administrative Court accepted the appeal, stating that the first decision of Migri when it determined the child to be a national of Finland was based on at the time available and correct information and was a legally valid decision.

Migri appealed the decision of the Administrative Court to the Supreme Administrative Court, stating that a citizenship status decision is not a decision granting nationality but a statement regarding the citizenship in light of the available information. Migri referred to Section 50 of the Administrative Procedure Act stating that a new decision was allowed because of the fault of the applicant and because of the obvious nature of the error. Migri further pointed out that Finnish nationality cannot be a benefit which can be obtained by hiding relevant information or by providing false information, and that administrative decisions regarding citizenship must be available for changes in order to guarantee that the information in public registers is correct. Migri also stated that it later learned that in fact, Gambian nationality can be acquired from any parent who is a national of Gambia by birth. In addition, Migri had learned that the paternity of the father to the child had later on been established. Finally, Migri concluded that the child would have acquired Gambian nationality from both of his parents.

The Supreme Administrative Court endorsed the decision of the Administrative Court. The Supreme Administrative Court emphasized the Constitutional provisions on protection under law and protection of rights and liberties. The court stated that a citizenship status decision can be appealed in accordance of Section 41 of the Nationality Act and that if it has not been appealed, the decision will become legally

<sup>132</sup> *Ibid.*

<sup>133</sup> KHO:2011:77, 16.9.2011/2617, available at <http://www.finlex.fi>

valid after the timeframe set for the appeal. Further, the possibility to amend a citizenship status decision is not provided for in the Nationality Act. Section 33 of the Nationality Act pertaining to the deprivation of Finnish nationality is only applicable if Finnish nationality was acquired by application or declaration. The court stated, however, that challenges with regard to determining citizenship had to be weighed against an individual's right to protection under law. The decision with which the person has been determined to be a Finnish national creates an assumption of Finnish nationality with the rights and benefits that come with it.

The Supreme Administrative Court concluded that, considering the Constitutional provisions on protection under the law, protection of rights and liberties and the requirement that an individual's rights and obligations are governed by Acts,<sup>134</sup> as well as the fact that the Nationality Act does not provide for changing of a citizenship status decision, Migri did not have the right to change the decision without a request of the party.

## 3.4 Rights of applicants and recognized stateless persons

### 3.4.1 Rights of applicants during the statelessness determination procedure

If the determination of citizenship status procedure is conducted in the context of an asylum case, the person has no special rights besides those of an asylum-seeker. Also in other types of cases, most importantly in cases where the determination of citizenship status procedure is initiated in order to confirm the nationality of a child born in Finland, the person's rights are linked to her or his immigration status in Finland, i.e. to the type of residence permit she or he (and in the case of newborn children, the parent or parents) has in Finland, not to the pending determination of citizenship status procedure.

The Nationality Act is silent on whether the determination of citizenship status procedure is available for persons who reside illegally in the country. However, as it is not excluded in the law, Migri has adopted a view that the procedure is available even for those residing illegally in Finland and for persons who reside outside of Finland. It is expected though that the person is available for further inquiries and clarifications. This may pose some challenges in a case where the person resides in Finland illegally.<sup>135</sup>

#### 3.4.1.1 DETENTION

An alien may be ordered to be held in detention if, among other grounds, holding an alien in detention is necessary for establishing her or his identity.<sup>136</sup> It is further stated that holding an alien in detention on grounds that her or his identity is unclear requires that the alien gave unreliable information when the matter was processed or refused to give the required information, or that it otherwise appears that her or his identity cannot be considered established. The Government Bill states that typically this would be the case when

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<sup>134</sup> Constitution of Finland, *Perustuslaki* 731/1999. Section 21 – Protection under the law (1) Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. (2) Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act. Section 22 - Protection of basic rights and liberties The public authorities shall guarantee the observance of basic rights and liberties and human rights. Section 80 - Issuance of Decrees and delegation of legislative powers (1) The President of the Republic, the Government and a Ministry may issue Decrees on the basis of authorization given to them in this Constitution or in another Act. However, the principles governing the rights and obligations of private individuals and the other matters that under this Constitution are of a legislative nature shall be governed by Acts. If there is no specific provision on who shall issue a Decree, it is issued by the Government.

<sup>135</sup> E-mail from Migri, 31 August 2012.

<sup>136</sup> Section 121 of the Aliens Act.

an alien has been found in possession of several travel documents with different identities.<sup>137</sup> During the citizenship determination procedure, detention on this and other grounds is not excluded.

### 3.4.1.2 EXPULSION

As the purpose of the determination of citizenship status procedure according to the law is linked to *inter alia* the existence of Finnish nationality and a person's right to remain in the country, it logically follows that at the very minimum, a person illegally residing in Finland has the right to stay in the country pending the procedure. Also in practice, there are no known cases of deportation pending the determination of citizenship status procedure.<sup>138</sup>

Nonetheless, there is one case of a family who was deported and it was only later discovered that a child of the family who was born in Finland had acquired Finnish nationality at birth in accordance with Section 9 of the Nationality Act. The citizenship status of the child had not been determined prior to deportation. Since this case, guidelines have been issued to the effect that when a decision on return and removal from the country is being made, it has to be noted whether the citizenship status of a child who was born in Finland has been determined, in order to check if the child has possibly acquired Finnish nationality. According to the guidelines, removal from the country cannot be implemented before the citizenship status has been determined for the child in this kind of situations.<sup>139</sup>

### 3.4.1.3 PUBLIC RELIEF AND SOCIAL SECURITY

The rights of immigrants to social security in Finland depend on their residence status. As long as an immigrant is legally in the country, he or she has some rights to public relief. If a stateless person does not yet have a residence permit, she or he is in most cases an asylum-seeker in Finland. Basic services, such as accommodation, reception money (which should guarantee necessary income for a life in dignity if the person does not have any other income and some social services) and urgent health care<sup>140</sup> are guaranteed for asylum-seekers as well as for rejected asylum-seekers until they leave the country.<sup>141</sup> There are no specific public relief and social security related rights granted to persons pending the determination of citizenship status procedure.

### 3.4.1.4 OTHER RIGHTS GUARANTEED

An asylum-seeker has the right to work after three months from lodging of the asylum application if she or he has a valid travel document and if she or he does not have a valid travel document, after six months from lodging the asylum application, in accordance with Section 81 of the Aliens Act.

The Finnish Constitution, Section 16, guarantees the right to education for everyone. However, the obligation to participate in basic education and the responsibility of the municipalities to organize basic education only covers those who reside in Finland permanently, in accordance with the Act on Basic Education.<sup>142</sup> As asylum-seekers are not considered to reside in Finland permanently, they are not covered by this legal obligation. In practice however, according to the *travaux préparatoires* in the Government Bill of the Act on Reception of Persons Seeking International Protection, it appears that most asylum seeking children are able to access

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<sup>137</sup> Government Bill, *hallituksen esitys* 28/2003, detailed justification of Section 121.

<sup>138</sup> E-mail from Migri, 17 September 2011.

<sup>139</sup> *Ibid.*

<sup>140</sup> In accordance with the Act on Healthcare, *Terveystieteiden laki* 1326/2010, Section 50 and Act on Specialized Healthcare, *Erikoissairaanhoidon laki* 1062/1989, Section 3. For children, the healthcare services are provided on a higher level, i.e. on the same level as for those immigrants who have a home municipality in Finland, in accordance with Section 26 of the Act on Reception of Persons Seeking International Protection, *Laki kansainvälistäsuojelua hakevan vastaanotosta*, 746/2011.

<sup>141</sup> Act on Reception of Persons Seeking International Protection, *Laki kansainvälistäsuojelua hakevan vastaanotosta*, 746/2011.

<sup>142</sup> *Perusopetuslaki*, 628/1998.

basic education.<sup>143</sup> There are no specific rights with regard to education granted to persons pending the determination of citizenship status procedure.

### **3.4.2 Rights of persons recognized as stateless**

No specific status or residence permit is granted to persons who have undergone the citizenship determination procedure. The result of the procedure may however have an impact on the status or residence permit granted under an immigration procedure, primarily in the asylum procedure. In most cases, though, the procedure is aimed at determining the citizenship status of a child born in Finland or a person already residing in Finland; rather than granting a status or a residence permit, the procedure results in registration or correction of the registration of the person's nationality.

As for persons determined as stateless in the asylum procedure, the rights granted depend on whether and which kind of residence permit the person is granted in Finland.

Persons who are determined as stateless have some specific rights with regard to the naturalization procedure, and in case of a stateless child born in Finland, the right to automatic acquisition of Finnish nationality.

#### **3.4.2.1 THE RIGHT OF RESIDENCE**

There is no legal provision under which a person's right to residence in Finland is linked solely to the fact that the person is stateless. The right to residence in Finland depends on the result of the other immigration procedures, and whether a residence permit is granted or not.

In three of the 34 cases from 2009 to 2011 which were reviewed and in which the persons were determined to be stateless, the person's lack of nationality was considered as the main reason rendering the person vulnerable to harm and therefore deserving of international protection or a residence permit on individual compassionate grounds. In an additional 13 cases, the person's lack of a nationality was taken into consideration in the assessment of the claim but was not considered to be a contributing or cumulative factor for granting international protection or a residence permit on other grounds (even though in some of these cases, a residence permit was granted but on grounds not related to the person's lack of nationality). Many of these 13 cases concerned stateless Kurds from Syria; statelessness was mentioned in the assessments of all these claims. However, rather than examining the consequences of statelessness for these persons, emphasis was put on the Kurdish ethnicity.

In 10 decisions where the persons were deemed to be of "unknown nationality", a residence permit was granted based on various grounds. In two of the cases, the grant of residence permit was linked to the issue of lack of nationality or the uncertainty of existence of nationality. This seems to refer to the person's actual statelessness, even though the person was not determined as such. In one of these cases, a child born in Finland to an applicant whose nationality was determined as unknown due to credibility issues, was determined as not having acquired any other nationality, and therefore as having acquired Finnish nationality since the child would otherwise have become stateless. The parent was consequently granted a residence permit based on family ties to a Finnish national.

#### **3.4.2.2 THE RIGHT TO WORK**

The right to work is linked to the residence status of the immigrant; there are no specific provisions on right to work specifically concerning stateless persons. Right to work is included in permanent and continuous residence permits and in most types of temporary residence permits too, in accordance with the Aliens Act.

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<sup>143</sup> Government Bill, *hallituksen esitys 266/2010 Laiksi kansainvälistä suojelua hakevan vastaanotosta*.



### 3.4.2.3 THE RIGHT TO PUBLIC RELIEF AND SOCIAL SECURITY

The right to social security in Finland is based on residence in Finland. The basis for various social security related rights and services is laid down in the Act on Application of Social Security Legislation based on Residence.<sup>144</sup> According to this Act, the social security legislation is applied to a person who is a permanent resident in Finland, who has her or his actual home in Finland and who mainly resides in Finland. The social security legislation can also be applied to a person who has just moved to Finland if there are reasons to assume that the person's intention is to settle in Finland permanently. Such indications are for instance, a residence permit granted on the grounds of international protection or a residence permit based on family ties. A person is not considered to reside in Finland permanently, if she or he for example moves to Finland solely because of studies, is an asylum-seeker, or has been granted temporary protection in Finland. This applies to stateless persons the same way as to other immigrants and more importantly, as the social security system is primarily based on residence, not on nationality, stateless persons and immigrants generally are to a large extent treated similarly as nationals in terms of social security. In addition, the Act on Application of Social Security Legislation based on Residence specifies that the provisions of the Act that are applicable to Finnish nationals are also applicable to refugees and stateless persons.<sup>145</sup>

However, as according to the Act on Application of Social Security Legislation based on Residence the comprehensive social security system only applies to persons whose residence in Finland is considered as permanent, stateless persons who reside in Finland lawfully but are not considered to reside in Finland permanently are not covered by the residence based, comprehensive social security system.

The articles of the 1954 Convention which deal with public relief (Article 23) and labour legislation and social security (Article 24) state that the Contracting State shall accord to stateless persons lawfully residing in their territory the same treatment as is accorded to nationals, with some possible exceptions with regard to social security. The reference is made to lawful residence only; therefore the treatment in terms of social security of those stateless persons who are residing in Finland lawfully but whose residence is not considered permanent is not in compliance with the 1954 Convention.

Finland made a reservation to Article 24 (1) b and (3) concerning social security at the time of the accession to the 1954 Convention. However, as under the current legislation stateless persons lawfully and permanently residing in Finland are covered by the same social security system as nationals, the reservation no longer seems necessary and it is therefore recommended that Finland lifts this reservation and at the same time reviews the possibility to extend the social security system to cover those stateless persons whose residence in Finland is lawful but considered other than permanent.

### 3.4.2.4 IDENTIFICATION AND TRAVEL DOCUMENTS

Stateless persons do not have specific rights to identification documents in Finland but the same rights and provisions apply to them as to immigrants generally. In accordance with Section 96 of the Aliens Act, a card indicating that an application for international protection is pending can be issued to an asylum-seeker by the police or the Border Guard. However, in practice these cards are not being issued as the need for them has been determined to be very limited. Currently, asylum-seekers are issued with residence cards by the reception centres, which is not an official identity document.<sup>146</sup>

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<sup>144</sup> *Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta*, 1573/1993.

<sup>145</sup> *Ibid*, Section 11. Furthermore, the act contains a definition of a stateless person. Section 2 (2) 12 defines a stateless person as someone who is stateless in accordance with the 1954 Convention relating to the Status of Stateless Persons. This definition is not identical with the definition of a stateless person in the Nationality Act. It remained unclear within the scope of the study whether this difference in definitions has any implications in practice and would merit a further examination.

<sup>146</sup> E-mail from the Immigration Department of the Ministry of Interior, 10 October 2012, and telephone conversation with the Police Department of the Ministry of Interior, 11 October 2012.



When a residence permit is granted, a residence permit card can be granted in accordance with Section 33a of the Aliens Act. A residence permit card is however not regarded as an identity document. A normal identity card can be granted in accordance with the Identity Card Act<sup>147</sup> to a foreigner who is considered to reside in Finland permanently in accordance with the Act on Home Municipality,<sup>148</sup> who has been registered in PIS and whose identity has been established.

A working group led by the Ministry of Interior is currently conducting an investigation into possibilities of issuing asylum-seekers and immigrants who reside in Finland with a residence permit, but whose identity has not been established and who can therefore not obtain an identity card, with a document that would give them sufficient proof of identity needed for accessing certain commercial services, such as opening of bank accounts.<sup>149</sup> Inquiries made in 2011 revealed that the vast majority of asylum-seekers and immigrants who had a residence permit in Finland but whose identity had not been established experienced difficulties opening bank accounts in Finland (which in turn made it difficult to sustain a job in some cases). Furthermore, many foreigners who had residence permits in Finland experienced problems in paying e.g. telephone bills, and receiving social security benefits. Sometimes they were even refused to be registered by the Local Registration Offices because of their lack of an identity document. It was pointed out by the municipalities hosting immigrants with residence permits based on international protection (whose identity has often not been established and who therefore could not obtain identity cards) that having to come up with alternative solutions for being able to use banking and other services puts these immigrants in an unequal situation as compared to other residents of the municipalities. The report of the working group further stated that in 2011, about half of the travel documents issued to immigrants in Finland in 2011 had been marked with "identity not established", indicating that the number of immigrants who cannot currently obtain an identity document is significant.

In 2012, 167 travel documents (Refugee travel documents, Aliens passports and temporary Aliens passports) were issued to stateless persons. In 33 of them it was indicated that the identity of the person had not been established. 26 travel documents were issued to persons of unknown nationality and 257 to persons whose nationality was not known.<sup>150</sup> In seven documents issued to persons belonging to the last two categories, it was indicated that the identity of the person had not been established.<sup>151</sup> Although the percentage of travel documents marked with "identity not established" issued to stateless persons and persons with unknown/not known nationality was lower than the percentage of such travel documents issued to foreigners generally, the problem also clearly concerns stateless person and persons whose nationality is unknown/not known.

The working group concluded that further investigation into solving the situation for asylum-seekers was needed; Migri is currently conducting a project for possible creation of an electronic payment card system for asylum-seekers. As for the immigrants residing in Finland with residence permits, the working group suggested that issuing an identity card for those immigrants whose identity has not been established and who are not in possession of a reliable, national identity document, should be considered, on the basis of the personal information registered in the RA. The working group report has been circulated for review by the various stakeholders. It is expected that the next step will be a project aiming at necessary legislative

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<sup>147</sup> *Henkilökorttilaki*, 829/1999, Section 1.

<sup>148</sup> *Kotikuntalaki*, 201/1994.

<sup>149</sup> Ministry of Interior Decision on Investigation on possibilities for issuing a type of a identity card to asylum-seekers enabling them to access certain services, *Sisäasiainministeriön asettamispäätös*, SMO56:00/2011, email from the Ministry of Interior on 29 September 2012, and a report "*Turvapaikanhakijoiden ja Suomessa jo asuvien ulkomaalaisten henkilöllisyyden osoittaminen pankki- ja muussa asiointissa*" (Proving of identity of asylum-seekers and other foreigners living in Finland with regard to accessing banking and other services), ISBN 978-952-491-807-7 (PDF), 30 November 2012, available at <http://www.intermin.fi/julkaisu/462012?docID=38566>

<sup>150</sup> The Finnish term used in these statistics is "*selvittämättä*".

<sup>151</sup> E-mail from the Finnish Police (*Poliisihallitus*), 26 November 2013. In 2011 the figures were the following: 122 travel documents out of which 22 were marked with "identity not established" were issued to stateless person, 32 travel documents out of which 11 were marked with "identity not established" were issued to persons with unknown nationality and 188 travel documents out of which 12 were marked with "identity not established" were issued to persons whose nationality was not known.

amendments. These will most probably be in line with the proposals of the working group, the subsequent statements by the various stakeholders and further investigation into the matter.<sup>152</sup>

Section 134 of the Aliens Act<sup>153</sup> provides that an Aliens passport can be issued to an alien residing in Finland if she or he cannot obtain a national passport from the authorities of the country of origin, if she or he is stateless or if there is another specific reason. The Government Bill specifically mentions that in practice, persons who cannot obtain a national passport are often stateless persons.<sup>154</sup> However, if a stateless person has been granted refugee status, she or he will be issued with a Refugee travel document instead, in accordance with Section 135 of the Aliens Act.

Finland made a reservation to Article 28 of the 1954 Convention, stating that Finland would not issue specific travel documents to stateless persons but stateless persons lawfully residing in Finland would be issued with Aliens passports. Considering the wording of the 1954 Convention which only requires a travel document to be issued and does not specify it as a specific travel document for stateless persons as well as the provisions on issuance of Aliens passports, including the reference to stateless persons in the Government Bill, it would seem that the reservation to Article 28 is no longer necessary. It is therefore recommended that Finland lift its reservation to Article 28.

## 3.5 Conclusions and recommendations

The Nationality Act divides the definition of stateless person in two; involuntarily and voluntarily stateless person. This division, in particular at legislative level, is rare in international comparison. The *travaux préparatoires* in the Government Bill of the Nationality Act does not provide any details or explanations as to why such a division has been considered necessary and it does not explain why the definition of stateless person in the 1954 Convention was not adopted as such.

UNHCR's Handbook on Protection of Stateless Persons, paragraph 51, refers to voluntary renunciation of nationality. According to the Handbook, the question of an individual's free choice is not relevant when determining eligibility for recognition as stateless under Article 1(1) of the 1954 Convention; it may, however, be pertinent to the matter of the treatment received thereafter. Those who have renounced their nationality voluntarily might be able to reacquire such nationality, unlike other stateless persons. Paragraph 162 of the Handbook further states that a Contracting State need not necessarily grant or renew permission for stay to individuals who have voluntarily renounced their nationality, nor would these persons be entitled to all of the rights foreseen by the 1954 Convention. However, it is clear that even those who have voluntarily renounced their nationality are to be considered stateless.

In particular, the part of the voluntary stateless person definition in the Nationality Act, which states that a person who is stateless due to her or his parent's or guardian's will is considered voluntarily stateless, appears somewhat problematic. A child who remains stateless because of her or his parent's or guardian's will does not choose statelessness. Furthermore, in light of the case law presented above (and also in Section 4.3.1.1. below), it appears that at least in some cases where the child has not acquired any other nationality, which in the view of the authorities has been the choice of the parents, the child has been considered to be of unknown nationality and not stateless. This is a clear deviation from the definition in Section 2 of the Nationality Act and Article 1 of the 1954 Convention.

While Finland does not have a specific statelessness determination procedure, the determination of citizenship status procedure can also be used for determining statelessness. Determination of citizenship status is

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<sup>152</sup> E-mail from the Ministry of Interior, 5 November 2013.

<sup>153</sup> *Ulkomaalaislaki*, 301/2004.

<sup>154</sup> *Hallituksen esitys 28/2003*, detailed justifications of Section 134.

regulated in the national legislation of Finland. The determination of citizenship status procedure is a central procedure, which benefits from the special expertise on nationality and statelessness of the Nationality Unit of Migri. The procedure provides a basis for a consistent decision-making concerning citizenship status, including statelessness in various procedures, i.e. registration, asylum and other immigration procedures as well as in the naturalization procedure. As there is one central body with the authority to determine citizenship, in principle status determination is not required repeatedly and the decision can be relied on throughout the different procedures.

However, the purpose of the determination of citizenship status procedure is first and foremost linked to the acquisition or loss of Finnish nationality and the correctness of information in public registers. It is possible to identify stateless persons through the procedure but it is not one of the explicitly stated purposes of the procedure in the legislation. This is reflected in the nature of the procedure, which is largely a written procedure and where the burden of proof with regard to statelessness lies mainly on the applicant. Whereas the benefit of the doubt principle is reflected in the legislation concerning the asylum procedure and is a recognized and widely respected principle of refugee law in the Finnish jurisprudence, this principle is not recognized as being applicable in the determination of citizenship status procedure. This procedure is in principle accessible to persons residing illegally in Finland and who are not in any immigration procedure. Still, the law and the practice define the procedure rather as a procedure for determining the existence of Finnish nationality or other citizenship status as a part of another immigration procedure or registration than as a possibly separate procedure for identification of stateless persons. However, the Supreme Administrative Court in its jurisprudence has clearly interpreted that one of the purposes of the determination of citizenship status procedure is the determination and prevention of statelessness. This provides a solid basis for further development of the procedure in order for it to be better suitable for identification of stateless persons.

The Nationality Unit of Migri is the decision-making authority in the determination of citizenship status procedure but does not have exclusive authority in determining statelessness. As illustrated in the statistical overview and in the review of the asylum decisions from 2009 to 2011, the determination of citizenship status is regularly requested internally by the Asylum Unit. Previously, including during the period from 2009 to 2011, there were no guidelines on what type of cases the internal request should be made and based on the review of the asylum decisions, the requests have not always been made in a consistent manner. In very similar types of cases the request was sometimes made and sometimes not, i.e. in some cases statelessness was determined by the Asylum Unit and sometimes by the Nationality Unit. There have however been some positive developments as Migri has recently issued more extensive instructions concerning the procedure, and also an official responsible for the effective functioning of the procedure within the Nationality Unit has been appointed in 2013.<sup>155</sup>

Because of the high standard of proof and heavy burden of proof regarding statelessness, a person's nationality is sometimes determined as unknown or not known rather than stateless even though there are very strong indications of statelessness. Furthermore, in some of the cases the conclusions made in the asylum assessment refer to statelessness and the person's situation as a stateless person and yet it was not concluded that the person indeed is stateless.

Furthermore, while unknown nationality is determined in the Nationality Act, there is another widely used category which is not mentioned in the legislation: nationality not known. This is used especially in the asylum procedure. Nationality is most often defined as not known by the Asylum Unit, but the Nationality Unit also uses the definition as a possible result of the determination of citizenship status procedure. The difference between these two categories does not seem to be entirely clear within Migri nor based on the review of the asylum decisions from 2009 to 2011.

In conclusion, there are some elements in place for determining statelessness in terms of the legislation and practical aspects in Finland through the determination of citizenship status procedure. The existing

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<sup>155</sup> The Finnish Ministry of Interior's Comments on the draft study, 7 March 2014.

procedure however does not fully take into consideration the specific aspects of statelessness and does not in its present form guarantee a fair, efficient and consistent determination of statelessness and identification of stateless persons. The existing procedure could better address the specific situations and aspects of statelessness if it was adapted especially in terms of burden and standard of proof. The burden of proof between the applicant and Migri should be shared and the same standard of proof as for refugee status determination, namely, a finding of statelessness should be warranted where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law should be adopted.<sup>156</sup> The possibility of an oral hearing<sup>157</sup> should be strengthened in particular in cases where the determination is not linked to the asylum procedure (in which the applicant’s right to oral hearing has been guaranteed). Furthermore, the procedure in cases where the determination of citizenship status is linked to asylum procedure would also need to be strengthened in order to ensure consistency in terms of the authority, i.e. the Asylum Unit or the Nationality Unit of Migri, and also in terms of the conclusion of the determination itself.

With regard to rights of stateless persons, there are very few provisions in the Finnish national legislation referring specifically to stateless persons; in principle, the rights of stateless persons depend on their residence status, similarly to other immigrants. In many respects, these provisions however guarantee the minimum rights to stateless persons as required by Finland’s international obligations, but there are also areas with gaps.

For instance, according to Article 23 and 24 of the 1954 Convention, the Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and social security as is accorded to their nationals. This obligation is fulfilled by Finland in the sense that the social security system of Finland is based on residence, not on nationality. However, as residence which can be considered as permanent in the meaning of the Act on Application of Social Security Legislation based on Residence is required, stateless persons who indeed reside in Finland lawfully but are not considered to reside in Finland permanently, are not covered by the Act and the residence-based, comprehensive social security system.

Moreover, according to Article 27 of the 1954 Convention, Contracting States shall issue identity papers to any stateless person in their territory who do not possess a valid travel document. However, as there is no specific provision for identity documents issued for stateless persons and as identity documents generally are only issued to persons lawfully and permanently residing in Finland, stateless persons who are in Finland temporarily, pending the processing of their asylum or other residence permit application or unlawfully, are not provided with identity papers as required by the Convention. Furthermore, an additional obstacle for obtaining an identity document is the requirement of established identity, which is a challenge for many stateless persons.

Therefore, in order to ensure that stateless persons can enjoy the rights guaranteed in the international treaties binding Finland, the need and possibilities of amending the current social security regime with regard to specific provisions for stateless persons should be looked into. The issuance of identity documents to stateless persons should also be looked into as part of the ongoing work with regard to the issuance of identity documents to asylum-seekers and immigrants whose identity has not been established.

Furthermore, Finland’s reservations to the 1954 Convention should be reviewed with the view of lifting them, in light of the developments since 1968 when Finland acceded to the Convention and the current nationality legislation and practice.

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<sup>156</sup> This approach is encouraged in UNHCR’s *Handbook on Protection of Stateless Persons*, para 91.

<sup>157</sup> UNHCR, *Handbook on Protection of Stateless Persons: Right to an interview* is recommended as one of the procedural safeguards in para 71.

# 4. Reduction and prevention of statelessness

## 4.1 Introduction

The ultimate solution for stateless persons is the acquisition of a nationality. In addition, the occurrence of statelessness should be limited as much as possible by preventing new cases from occurring. The 1961 Convention provides safeguards for State Parties to implement through their nationality laws in order to prevent people from becoming stateless. These safeguards are complemented by other international and regional instruments containing rights to a nationality and corresponding duties of States, like the 1997 European Convention on Nationality; the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession; CEDAW; CRC and the ICCPR.

Statelessness should be prevented at birth. Articles 1 to 4 of the 1961 Convention provide safeguards that prevent children from becoming stateless at birth. These include obligations towards children born in the State's territory who would otherwise be stateless, as well as towards children born abroad to a person who is a national of the Contracting State who would otherwise be stateless.<sup>158</sup> States must also ensure that foundlings and persons born on a ship or aircraft acquire a nationality (Articles 2 and 3 of the 1961 Convention). These safeguards are in line with Article 7 of the CRC, which grants the right to acquire a nationality.

The 1961 Convention further seeks to prevent statelessness upon a change in civil status. This is laid down in Article 5 of the 1961 Convention and is complemented by Article 9 of CEDAW which grants women equal rights with men to acquire, change or retain nationality, in particular in the context of marriage. Safeguards against statelessness in case of renunciation, deprivation or loss of nationality are described in Articles 7, 8 and 9 of the 1961 Convention.

Reduction of statelessness is possible through naturalization or other measures through which nationality may be acquired. In line with Article 32 of the 1954 Convention, states must "make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings".

In the following, these measures to prevent and reduce statelessness will be discussed in more detail, where the national measures will be assessed against the relevant international standards. In this way, it can be concluded to what extent the national legal system is in line with the safeguards for prevention and reduction as set by the 1961 Convention and other instruments.

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<sup>158</sup> As included in paragraph 4 of Article 1 and Article 4 of the 1961 Convention.

## 4.2 National legal framework

Finland is a party to a number of international and regional treaties relating to prevention and reduction of statelessness. Finland acceded to the most significant one of these in 2008, the 1961 Convention. The Convention was ratified without reservations and at the time of the accession, no amendments to the Nationality Act or other national legislation were deemed necessary, as the authorities considered them to be in compliance with the Convention already.<sup>159</sup>

In 2008, Finland also became a party to the European Convention on Nationality.<sup>160</sup> Finland made two reservations to the Convention, in respect of Article 21 and Article 22.<sup>161</sup> Finland is not party to the 2006 European Convention on the Avoidance of Statelessness in Relation to State Succession. Finland ratified the CRC in 1991,<sup>162</sup> the CEDAW in 1986,<sup>163</sup> the ICCPR in 1976,<sup>164</sup> and the ECHR in 1989.<sup>165</sup>

The most important national legal instruments concerning the prevention and reduction of statelessness are the Constitution and the Nationality Act. The acquisition of Finnish nationality is regulated in the Nationality Act. It is to a large extent based on the principle of *jus sanguinis*, complemented by a few provisions reflecting the principle of *jus soli*.

## 4.3 Acquisition and loss of nationality under the national legal framework and the compatibility with international standards

### 4.3.1 Avoidance of statelessness at birth

#### 4.3.1.1 BIRTH ON THE STATE'S TERRITORY

Acquisition of Finnish nationality at birth is regulated in Section 9 of the Nationality Act. The Finnish nationality is always automatically acquired at birth from a Finnish mother. The Finnish nationality is also automatically acquired at birth from a Finnish father if the father is married to the (non-Finnish) mother of the child or if the child is born in Finland (to a non-Finnish mother) and the man's paternity of the child is established. The Finnish nationality is also acquired from the father if the father has died but at the time of his death was a Finnish national and married to the (non-Finnish) mother of the child or if the child was born in Finland (to a non-Finnish mother) and the man's paternity of the child is established.

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<sup>159</sup> FTS 96-97/2008.

<sup>160</sup> FTS 93-94/2008.

<sup>161</sup> FTS 95/2008. With regard to Article 22, paragraph 3, sub-paragraph g, Finland made a reservation to the effect that the obligations based on Article 21 are not binding on Finland when, by virtue of the Conscription Act, units are called up for extra service, which means service in serious disruptive situations under normal conditions or in exceptional circumstances with the aim of raising and maintaining the defence preparedness and training formations in their pre-planned composition, so that the unit may be called up for service during service times of mobilization. In respect of Article 22, sub-paragraph a according to which persons who have been exempted from military service in relation to one State Party shall not be deemed to have performed their military service in Finland. A person may, however, be exempted from military service under section 74 or 76 of the Conscription Act.

<sup>162</sup> FTS 60/1991.

<sup>163</sup> FTS 68/1986.

<sup>164</sup> FTS 7-8/1976.

<sup>165</sup> FTS 18/1990.

Finnish nationality is also acquired at birth if the child is born in Finland and if the child does not acquire any other nationality at birth and she or he does not have, what is referred to in the Section 9 of the Nationality Act as “a secondary right”, to acquire the nationality of any other country. The secondary right to acquire a nationality has been explained further in the Government Bill of the Nationality Act.<sup>166</sup> Certain actions by the parents, such as registering the child with the authorities of the country of one of the parents’ nationality may be required for acquiring the nationality, but there should be no discretion allowed on behalf of the authorities of that country. If discretion is allowed, e.g. if the nationality needs to be applied for, the child is not considered to have a right to the parents’ nationality and therefore acquires Finnish nationality as she or he would otherwise be stateless.

Moreover, a child who is born in Finland acquires Finnish nationality through the place of birth if her or his parents have refugee status in Finland or if they have otherwise been provided protection vis-à-vis the authorities of their country of nationality. An additional requirement is that the child does not acquire either parent’s citizenship except through registration of the child’s birth with the authority of the parent’s country of nationality, or through another procedure requiring the assistance of the authorities of this country. If the protection referred to was given to only one of the parents, it is also required that the child does not acquire the other parent’s nationality by birth nor has a secondary right through birth to acquire it.

However, because of the reference to a secondary right to acquire another nationality in the Nationality Act it is possible that a child born in Finland who would have a right to the nationality of her or his parent(s) does not acquire the nationality due to the lack of required action by the parents and does not acquire Finnish nationality either.

A judgement by the Supreme Administrative Court of Finland from September 2011<sup>167</sup> dealt with the question of secondary right to nationality and the extent of a parent’s responsibility for a child born in Finland to acquire the nationality of the parent(s). The child was born in Finland out of wedlock to a Somali mother (registered in PIS). The local register office of Helsinki which had registered the child, had requested Migri, in accordance with Section 36 of the Nationality Act and Section 2 the Nationality Decree<sup>168</sup> to determine the citizenship status of the child of which the result was “stateless”. Migri however held that the mother had not fulfilled her obligation under Section 39 of the Nationality Act to provide all information in her possession related to the acquisition of citizenship, and contributed to producing the necessary information and documents to the extent such contribution could reasonably be demanded from her, as she had resisted the paternity to the child to be clarified. Migri decided that because a child born out of wedlock could not acquire the nationality of Somalia through the mother and because she did not want to contribute to identifying the child’s father, the child was stateless for the reasons depending on its mother.

The mother appealed the decision of Migri to Helsinki Administrative Court. During the appeal, the mother stated that the child’s father was a national of Somalia who did not reside in Finland and did not want a relationship with the child. The Administrative Court held, in accordance with national law, that the child had acquired Finnish nationality at birth. The Administrative Court also referred to the best interest of the child and to Finland’s international obligations under CRC<sup>169</sup> as a further basis for the decision.

Migri appealed the decision to the Supreme Administrative Court, holding that a child could only acquire Finnish nationality through place of birth if it did not have even a secondary right to another nationality, and that the principle of *jus soli* is only secondary in the Finnish law. According to Migri, establishing the paternity of the child should be considered a minimum requirement by the parents for a child to acquire the father’s nationality. Migri further held that the efforts to establish paternity of children born to foreign mothers in

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<sup>166</sup> *Hallituksen esitys* 235/2002.

<sup>167</sup> KHO:2011:78, 16.9.2011/2618, available at <http://www.finlex.fi>

<sup>168</sup> *Kansalaisuusasetus* 799/2004. This decree has been since then repealed by a new Nationality Decree 293/2013 in which the Local Register Offices’ obligation to request for determination of citizenship status has been stated in Section 1.

<sup>169</sup> At the time of the decision of Migri, Finland was not yet party to the 1954 Convention and the European Convention on Nationality.



Finland out of wedlock would decrease if it were known that avoiding establishment of paternity enabled acquiring Finnish citizenship for a child. In this case, the mother knew who the father was and that he was a national of Somalia and information about the reluctance of the father to establish the paternity was only based on the mother's statements.

The Supreme Administrative Court rejected the appeal of Migri and endorsed the decision of the Administrative Court. The Supreme Administrative Court stated that the provision of Section 39 of the Nationality Act on the obligation of the applicant to provide information could not be interpreted in a way that determining and establishing paternity was required of the applicant. The court further stated that the Nationality Act does not contain specific provisions on determining paternity with regard to the determination of citizenship or with regard to application of *jus soli*, and held that under the circumstances of the case it could not be considered that the mother had not fulfilled her obligations under Section 39 of the Nationality Act. The court further held that the provision of Section 9 of the Nationality Act with regard to the secondary right of a child to acquire another nationality, could not in this case be interpreted in a way that the child would have had a secondary right to the nationality of Somalia. The aim to prevent statelessness, which is indicated in international treaties and in the Finnish Constitution and Nationality Act, was taken into consideration. Therefore, the child should be determined as a Finnish national according to the judgment.

This case illustrates that even though the Nationality Act leaves room for a child born in Finland to become stateless, this provision and possibility needs to be interpreted narrowly in order to prevent children born in Finland from becoming stateless.

Another case dealt with non-Finnish parents who had a nationality and a child who was born in Finland. The citizenship of the child was determined through the determination of citizenship status procedure. The parents were not granted international protection or any other type of residence permit in Finland. For acquisition of the parents' nationality at birth, registration of the child was required with the authorities of the country of origin of the parents. The parents refused to contact the embassy or consulate of their country of origin. As Migri did not consider the parents having a well-founded fear with regard to the authorities of their country of origin, it was expected of them to register the child with the authorities and the child was not considered to have right to Finnish nationality. Migri did however not consider the child as stateless but as "nationality not known."<sup>170</sup>

The UNHCR Guidelines on Statelessness No. 4 stipulate that the responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child is stateless but could acquire a nationality by registration with the State of nationality of a parent, or a similar procedure, immediately after the child is born and when the State of nationality has no discretion to refuse the grant of nationality.<sup>171</sup> Of relevance is also paragraph 39 in the UNHCR Handbook on Protection of Stateless Persons, which states the following: "The role of consular authorities merits particular consideration. A consulate may be the competent authority responsible for conducting the necessary step in a non-automatic mechanism. This occurs, for example, where a country's laws require children born to their nationals overseas to register with a consulate as a prerequisite for acquiring the nationality of the parents. As such, the consulate in the country of such a child's birth will be the competent authority and its position on his or her nationality will be decisive, assuming no subsequent mechanism has also to be considered. If an individual is refused such registration or is prevented from applying for it, he or she is not considered as a national for the purposes of Article 1(1)."

In light of the above, as long as the authorities of the country of nationality of the parents do not prevent or refuse the child to be registered, Finland does not have a responsibility to grant Finnish nationality to a child.

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<sup>170</sup> E-mail from Migri, August 2012.

<sup>171</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the Convention on the Reduction of Statelessness*, 21 December 2012, para. 24-26.



In such situations, Migri does, however, not always consider the child as stateless as also illustrated by the case above. Instead, Migri considers the child to be a national of one of the parents' countries of nationality or determines the nationality of the child to be "unknown" or "not known".<sup>172</sup> However, as the child does not automatically acquire the nationality of the parents and the necessary action to acquire the nationality is not taken by the parents, the child has not in fact acquired any nationality and effectively remains stateless. Regarding and registering the child as national of the parents' country of nationality or as of unknown or not known nationality is not logical or correct in light of Section 2 of the Nationality Act or Article 1 of the 1954 Convention.

Children born to stateless persons in Finland automatically acquire Finnish nationality. In three of the asylum cases from 2009 to 2011 which were reviewed, a child was born to stateless parents during the asylum procedure and the child acquired Finnish nationality in accordance with the nationality legislation of Finland. In two of these cases, the child's Finnish nationality was the only ground for granting a residence permit to the rest of the family: a residence permit was granted based on family ties to the child who had acquired Finnish nationality. In one case, the family was granted a residence permit based on subsidiary protection and therefore there was no need to grant a residence permit based on family ties.

The Finnish legislation and practice with regard to grant of nationality in cases of birth on the territory is in compliance with Finland's international obligations and provides for efficient prevention of statelessness.

#### **4.3.1.2 BIRTH OUTSIDE THE STATE'S TERRITORY**

Finnish nationality is always automatically acquired through a Finnish mother at birth by operation of law, regardless of being born in or outside of Finland. Nationality is also automatically acquired by operation of law from a Finnish father if the parents are married, regardless of where the child was born. If the parents are not married and the child is born outside the country but the father was a Finnish national at the time of the child's birth, the child can acquire Finnish nationality by declaration, provided that the paternity has been established. The procedure is explained below in section 4.3.4.2.

The conditions for automatic acquisition of Finnish nationality for an adopted child have been brought as close as possible to the conditions set for a biologic child of a Finnish national. According to Section 10, a foreigner who is under 12 years of age and has been adopted and has at least one parent who is a Finnish national, acquires Finnish nationality through the adoption as of the date the adoption becomes valid in Finland.

Whereas the provisions of the Finnish legislation do not make particular references to stateless persons in this regard, they however ensure grant of nationality for a child born outside the territory, but with a parent being a Finnish national, including in cases where the child would otherwise be stateless. The Finnish legislation is thus in conformity with the requirements of the 1961 Convention (Article 4) and European Convention on Nationality (Article 6).

#### **4.3.1.3 FOUNDLINGS**

In accordance with the Nationality Act, a foundling is considered a Finnish national until it has been established that she or he is a national of another State. In order to avoid a conditional nationality situation to continue indefinitely, the child will keep the Finnish nationality after turning five years of age, regardless of what information on nationality follows from that moment. This is in compliance with the provisions of 1961 Convention (Article 2) and the European Convention on Nationality (Article 6) and the limitation of the possible loss of Finnish nationality only up to five years of age can be regarded as exceeding the requirements of the Conventions.

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<sup>172</sup> Migri does not have statistics and is unable to currently estimate how common such situations are. E-mail from Migri, 17 September 2012.

#### 4.3.1.4 BIRTH ON A SHIP OR AIRCRAFT

According to Section 8 of the Nationality Act, being born on a Finnish ship or aircraft in the territory of a foreign State or in international territory is equivalent to being born in Finland, which is compatible with Article 3 of the 1961 Convention.

### 4.3.2 Avoidance of statelessness upon change in civil status

Change of civil status does not have negative implications in terms of Finnish nationality. Finnish nationality cannot be revoked based on a change of civil status.

In accordance with Section 11 of the Nationality Act, a child who does not acquire Finnish nationality based on Section 9 or by declaration acquires Finnish nationality based on her or his parents' marriage as per the date of the marriage if the father was a Finnish national at the time of the birth and has been ever since, and the paternity has been established before the marriage. In case the paternity is only established after the marriage and the father is still a Finnish national, the child acquires Finnish nationality as of the date of the establishment of the paternity. If the father has died after the marriage was contracted, the child acquires Finnish citizenship as of the date when the paternity was established if the father was a Finnish citizen at the time of his death.

The Finnish legislation on avoidance of statelessness upon change in civil status is in compliance with the Article 5 of the 1961 Convention.

### 4.3.3 Avoidance of statelessness in the context of renunciation, loss or deprivation of nationality

The decision-making authority with regard to acquisition, loss, renunciation and deprivation of Finnish nationality is Migri.<sup>173</sup>

Section 5 of the Finnish Constitution states that a person can only be released from her or his Finnish nationality if the person has or will acquire the nationality of another state. The same principle is repeated in Section 4 of the Nationality Act, which states that the provisions of the Act on loss and release of nationality cannot be applied if the person as a consequence would become stateless.

Specific provisions on loss and retention of Finnish nationality are found in Chapter 5 of the Nationality Act. However, it should be noted that in accordance with Section 4 of the Act, these provisions cannot be applied if as a result the person would become stateless. The provisions are however briefly explained here in order to give a comprehensive picture of the Finnish nationality legislation in terms of renunciation and deprivation of nationality.

First of all, a child may be deprived of her or his Finnish nationality in accordance with Section 32 if the paternity of the father through whom the child acquired his or her Finnish nationality has been annulled. The Section states in detail that if the husband's paternity has been annulled or if a claim which has resulted in his paternity being annulled has been brought before the child has reached the age of five years, or if an established paternity (in case of parents who are not married to each other) has been annulled or if a claim which has resulted in the annulment of paternity has been brought within five years of establishing paternity, a decision may be made to the effect that the child loses the Finnish nationality which she or he has acquired on the basis the father's Finnish nationality. Such decision is however based on an overall consideration of the

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<sup>173</sup> Based on Section 3 of the Nationality Act.

child's situation and the deprivation is not automatic. In the assessment, particular account shall be taken of the child's age and ties with Finland.

In its judgment 10/0303/5<sup>174</sup> from 2010, the Administrative Court of Helsinki upheld the prevention of statelessness and the best interest of the child above the effects of annulment for the retention of Finnish nationality. The child was born in Finland to a woman who was a national of Kenya and whose husband was a national of Finland. The child acquired Finnish nationality through the husband at birth. The paternity of the husband was however annulled when the child was less than one year old. Migri decided that the child would lose its Finnish nationality as a result of the annulment and determined its nationality as "unknown". Migri based its decision on the grounds that the mother had resisted the paternity to be established and had not taken any actions for the child to acquire Kenyan nationality. The mother appealed the decision stating that the child could not acquire Kenyan nationality without the paternity having been established and that she did not know the father of the child. The Administrative Court stated that since the child's nationality was unknown there was a risk that the child would be stateless. The court ruled that considering Section 4 of the Nationality Act, according to which a person cannot be deprived of her or his Finnish nationality if she or he as a result would become stateless, the best interest of the child and the international treaties on rights of the child which are binding on Finland, the child must be considered as a Finnish national.

Finnish nationality may also be lost if it has been acquired based on false information. Section 33 states that if a person has provided such false or misleading information on her or his person or other false or misleading information the knowledge of which would have resulted in refusing Finnish nationality, or withheld such a relevant circumstance which would have had the same effect, she or he may lose the Finnish nationality. This is only applicable if the person had acquired Finnish nationality on application or by declaration. If a child has acquired Finnish nationality together<sup>175</sup> with a person who has given false information, a decision on loss of nationality may also be made with regard to the child. A child however cannot lose its Finnish nationality if the other parent (with whom the child did not initially acquire its Finnish nationality) is a Finnish national.

Even in this situation, loss of nationality is not automatic. Section 33 states that the decision must be based on an overall consideration of the person's situation. Further, if the proceedings concerning a loss of citizenship have not commenced before more than five years have passed since a decision was made on the application or declaration for the acquisition of Finnish nationality, a decision on the loss of citizenship cannot be made.

A Finnish citizen, who also holds a citizenship of another State, may lose her or his Finnish citizenship when she or he turns 22 if she or he is found not to have a sufficient connection with Finland. Section 34 lays down the requirements for determining whether a sufficient connection exists.<sup>176</sup>

A person may be released from Finnish citizenship on application, which shall state why the applicant wishes to be released from Finnish citizenship.<sup>177</sup> A decision to release the applicant of Finnish citizenship will not have immediate effect if the applicant is not yet a citizen of another State at the time of the decision. In such a case, the entry into force of the decision requires that the applicant produces a report on the acquisition of citizenship of another state within the time limit mentioned in the decision. After the report on the

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<sup>174</sup> *Helsingin Hallinto-oikeus*, 10/0303/5, 16.04.2010, available at <http://www.finlex.fi>

<sup>175</sup> According to the Government Bill 28/2003, detailed justification of Section 33, the child would have acquired its Finnish nationality on the basis of the application or declaration made by its parent or guardian in which the child was included or which the parent or the guardian made on behalf of the child.

<sup>176</sup> This is the case when the person was born in Finland and his or her municipality of residence is in Finland when she or he reaches the age of 22 years; if the person's municipality of residence has been in Finland or she or he has been permanently resident and domiciled in another Nordic country for a minimum of seven years before she or he has reached the age of 22 years; based on certain actions of the person after having turned 18 but before turning 22, like giving notice in writing to a Finnish diplomatic mission or a consulate or the Local Register Office of her or his wish to retain Finnish nationality, applying or having already been issued with a Finnish passport, completing or conducting military or civil service in Finland or having acquired Finnish nationality by application or declaration.

<sup>177</sup> Section 35 of the Nationality Act.

acquisition of citizenship of another State has been produced, Migri issues a certificate stating that the requirement to be released from Finnish citizenship has been met.

In conclusion, in particular considering Section 5 of the Finnish Constitution and Section 4 of the Nationality Act, the national legal provisions on loss, renunciation and deprivation can be considered to provide for sufficient measures for prevention of statelessness and are in compliance with Finland's international treaty obligations.

## 4.3.4 Reduction of statelessness

### 4.3.4.1 NATURALIZATION

Conditions for naturalization are laid down in Section 13 of the Nationality Act. Most of these are the same for stateless persons as for any other foreigners, but are briefly described here in order to provide a complete picture of how stateless persons can be naturalized in Finland.

Section 6 of the Nationality Act lays down a precondition for naturalization; the identity of the applicant must have been reliably established. Clarification about the identity can be provided with relevant documents but also by other means of credible information. The Government Bill specifically states that establishing the person's identity cannot only depend on documents that the person presents, as there are persons, e.g. refugees, from whom it is not reasonable to expect that they have documents that would prove their identity. No particular reference is made in the Government Bill to stateless persons.

The first condition for granting of Finnish citizenship on application is that the applicant has reached the age of 18 years or has married before that. Secondly, the applicant must have been permanently resident and domiciled in Finland (*period of residence*) either for the last five years without interruption (continuous period of residence) or for seven years after reaching the age of 15 years, with the last two years without interruption (accumulated period of residence). For stateless persons, only four years of continuous residence or six years of accumulated residence is required. This only applies to persons who are involuntarily stateless. The positive exception is in line with the Article 32 of the 1954 Convention. The fact that the exception is only available for involuntarily stateless persons can also be considered as being in line with international standards on possible different consequences and rights for voluntarily and involuntarily stateless persons.<sup>178</sup>

Thirdly, the applicant must not have committed any punishable act nor have had restraining order issued against her or him (integrity requirement). The fourth condition is that the applicant should not have materially failed to provide maintenance or to meet her or his pecuniary obligations under public law and the fifth one that she or he can provide a reliable account of her or his livelihood. Finally, the applicant must have satisfactory oral and written skills in the Finnish or Swedish language, or instead of oral skills similar skills in the Finnish or Finland-Swedish sign language. A shorter period of residence requirement, four years of continuous residence or six years of accumulated residence, is provided for persons who fulfil the language skills requirement. An exception from the language skills requirement can be made if the person has a permanent and full-time job in Finland conducting of which is unreasonably difficult without Finnish nationality, if the person is 65 years or older and has a refugee status or has been granted subsidiary protection or humanitarian protection, if the person cannot fulfil the language skills requirement because of her or his health situation or sensory or speech defect or if there are other important reasons. Furthermore, an exception from the language skills requirement can be made for an illiterate person or a person of over 65 years of age if the person has basic oral Finnish or Swedish language skills or has regularly participated in Finnish or Swedish language education.

According to Section 13 (3), no one may be naturalized regardless of meeting the requirements for naturalization, if there are well-founded reasons for suspecting that the naturalization will jeopardize the

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<sup>178</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 51 and 162.

security of the State or public order, or if the main purpose of acquiring citizenship is to take advantage of the benefit related to Finnish citizenship without aiming to settle in Finland, or if naturalization conflicts with the best interests of the State for some other reason on the basis of an overall consideration of the applicant's situation.

Some exceptions can be made for children who are co-applicants for naturalizations in accordance with Section 23. Exceptions from the general period of residence and the language skills requirement can be made for co-applicants who are under 15 years old and at the time of the decision-making resident and domiciled in Finland. For co-applicants over 15 years of age exceptions can be made from the general period of residence requirement but only if the co-applicant has been permanently resident and domiciled in Finland for the last four years without interruption or a total of six years since reaching the age of seven years, with the last two years without interruption.

In some situations, which are regulated in Section 24, a child can be naturalized on her or his own; a child may be granted Finnish citizenship on an application made by her or his guardian if the person who has made the application is a Finnish citizen and the child lives with this person or there are other weighty reasons. In the Government Bill, a reference is made to the best interests of the child.<sup>179</sup> The same exceptions as for children who are co-applicants can be made when a child is naturalized on her or his own.

The Nationality Act provides for expeditious processing of nationality applications of stateless persons in line with Article 32 of the 1954 Convention. However, in practice, this is not realized, mainly due to queues in processing naturalization applications.<sup>180</sup>

Article 32 of the 1954 Convention also encourages States to reduce the costs of nationality applications for stateless persons. Finland has so far not chosen to implement lower fees for stateless persons; the Government Bill of the Nationality Act makes a rather laconic reference to this by stating that stateless persons cannot necessarily be assumed to be in a worse economic position than applicants generally.<sup>181</sup>

#### 4.3.4.2 OTHER MODES

Finnish nationality can be acquired by declaration in a number of situations. According to Government Bill of the Nationality Act, the declaration procedure is provided for persons who are considered to have the right to Finnish nationality. These persons have a possibility to acquire Finnish citizenship in a simpler manner than through naturalization by application. In the declaration procedure the authority does not have any discretion: if the conditions laid down in the law are met, nationality is always granted. On the other hand, if even one condition is not met, nationality cannot be granted by declaration. Each type of declaration has its own specific conditions.<sup>182</sup> Declaration procedure is generally open for stateless persons too as long as the person meets the specific conditions.

Apart from the situations described in Section 9, when a child automatically acquires Finnish nationality at birth through a Finnish father, acquisition of Finnish nationality through a Finnish father is also possible in situations described in Section 26. Section 26 is a complementary provision to Section 9 and states that if a person does not acquire Finnish nationality in accordance with Section 9, she or he can however acquire Finnish nationality by declaration (as opposed to automatic acquisition in the situations described in Section 9) in two situations. Firstly, a person acquires Finnish nationality by declaration if her or his father was a Finnish citizen when she or he was born, and she or he was born in Finland and paternity was established only after he or she had reached the age of 18 years or married before that. Secondly, a person acquires Finnish nationality if her or his father was a Finnish citizen when she or he was born, and she or he was born outside

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<sup>179</sup> Government Bill, *hallituksen esitys* 235/2002, detailed justification of Section 24 and 23.

<sup>180</sup> Meeting with Migri, 1 August 2012.

<sup>181</sup> Government Bill, *hallituksen esitys* 235/2002, detailed justifications of Section 20.

<sup>182</sup> Government Bill, *hallituksen esitys* 235/2002.

Finland and paternity has been established. Thus, Section 26 ensures gender equality in conveying nationality to a child of a Finnish parent.

Section 27 concerns adopted children. While an adopted child who is under the age of 12 at the time of the adoption acquires Finnish nationality automatically from her or his Finnish parent, an adopted child who is above the age of 12 at the time of the adoption acquires Finnish nationality by declaration if at least one parent is a Finnish national and the adoption is valid in Finland.

Section 28 contains specific provisions for young persons for acquisition of nationality by declaration. A person who has reached the age of 18 but not 23 years may acquire Finnish nationality by declaration if she or he is and has been permanently resident and domiciled in Finland for a minimum of 10 years in all, with a minimum of two years without interruption before making the declaration, and if she or he has not been sentenced to imprisonment.

However, if the applicant was born in Finland, the required period of residence is six years only. If the applicant has been permanently resident and domiciled in the other Nordic countries before making the declaration, this residence is considered as equivalent to residence in Finland, but only for the five years before the declaration was made and only to the extent that the period of residence occurred before the age of 16 years.

According to Section 29, a former Finnish national can acquire Finnish nationality by declaration. There are two exceptions to this; a former Finnish national who has lost her or his Finnish nationality because of the annulment of paternity from the man through whom the person had acquired her or his Finnish nationality (Section 32) cannot re-acquire Finnish nationality by declaration and neither can a person who has lost her or his Finnish nationality on the basis of having provided false information (Section 33).

Finally, a national of another Nordic country who has turned 18 years and who has acquired her or his nationality through a procedure other than naturalization, may acquire Finnish nationality by declaration if he or she is and has been permanently resident and domiciled in Finland for the last five years, and if she or he has not been sentenced to imprisonment during this period.

## 4.4 Conclusions and recommendations

The Finnish legislation on acquisition, loss, renunciation and deprivation of nationality is comprehensive and detailed. The various situations are to a very large extent governed by law. The provisions on acquisition of nationality are gender equal and non-discriminatory. Prevention and reduction of statelessness is recognized as one of the main principles of nationality legislation and several references are made to statelessness in the Nationality Act and its preparatory work. The decisions on acquisition, loss and deprivation of Finnish nationality are also subject to judicial review by the Administrative Courts and the Supreme Administrative Court, which provides strong additional safeguards against statelessness; Finland's international obligations on prevention of statelessness and on the rights of the child have been repeatedly enshrined in case law. It can therefore be concluded that in terms of preventing statelessness, the Finnish nationality regime is efficient.

The Finnish legislation provides for an automatic acquisition of Finnish nationality for children born in Finland who would otherwise remain stateless. Complicated situations however arise due to the provision for withholding this right from children who have a secondary right to another nationality and the distinction between voluntary and involuntary statelessness in the Nationality Act. Reluctance of parents to take actions for a child born in Finland to acquire a nationality that the child would have a right to, and the consequent denial of grant of Finnish nationality, leads to situations where the child remains stateless. While these situations are unfortunate, Finland does not have a responsibility under international law to grant Finnish nationality at birth to the child under these circumstances. However, as the child effectively remains stateless she or he should be regarded and registered in Finland as such, and not as having the parents' nationality or

as of “unknown” nationality, and accorded with the rights stateless persons are entitled to. The time that the child remains stateless should be limited to the minimum considering in particular the best interest of the child.

Moreover, stateless persons residing in Finland have the possibility to become nationals through naturalization. A shorter period of residence requirement than generally is provided for stateless persons. However, making the expeditious processing of the naturalization applications of stateless persons provided for in the law a reality, and implementing a reduced fee for the naturalization applications made by stateless persons, would serve as additional measures towards reducing statelessness in Finland and at the same time, would ensure full implementation of Article 32 of the 1954 Convention.

# 5. Concluding remarks and recommendations

The nationality legislation of Finland is comprehensive in terms of preventing statelessness when it comes to acquisition of Finnish nationality by descent, stateless children born in Finland and loss, renunciation and deprivation of Finnish nationality. Particularly commendable is the automatic grant of Finnish nationality for children born in Finland who would otherwise be stateless regardless of their residence status in Finland. Further, the determination of citizenship status procedure in place is generally well functioning and provides a solid framework, in particular in light of the interpretation of the purposes of the procedure formed by the jurisprudence, within which determination of statelessness can be undertaken and further developed.

However, certain gaps in determining and defining statelessness, ensuring that stateless persons can enjoy the rights they are entitled to, as well as in compiling and maintaining data and statistics on stateless people have been identified. Therefore, in order to facilitate Finland's full compliance with its obligations under the 1954 and 1961 Conventions and to ensure that stateless persons are able to enjoy the rights to which they are entitled, UNHCR makes the following suggestions and recommendations. The recommendations, rather than making any suggestions for fundamental changes, aim at improving the current framework.

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**IT IS RECOMMENDED THAT SOME ASPECTS OF THE DETERMINATION OF CITIZENSHIP STATUS PROCEDURE ARE FURTHER DEVELOPED** to better address the specific questions related to determination of statelessness. An unduly high standard of proof should not be imposed in the procedure, as it may prevent statelessness from being recognized and may thus frustrate the object and purpose of the 1954 Convention. The procedure should adopt an approach which better takes into account the challenges inherent in establishing statelessness. In particular, the burden of proof should be shared between the applicant and Migri, bearing in mind that the 1954 Convention only requires a negative to be proven, i.e. that the person is not considered as a national by any State under the operation of its law. Persons concerned have a responsibility to cooperate in establishing the facts but may face challenges accessing relevant documents and other evidence needed to prove the absence of their nationality.

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**IT IS RECOMMENDED TO IMPROVE THE CONSISTENCY OF DETERMINING STATELESSNESS DURING THE ASYLUM PROCEDURE.** Given the inconsistencies identified in the course of the mapping and the fact that there are generally challenges in determining citizenship in the asylum procedure, a review of the procedure, including the cooperation and coordination between the Asylum Unit and the Nationality Unit of Migri may be needed. In this context, further internal guidelines setting out the roles and responsibilities of the relevant authorities may be required.

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**IT IS RECOMMENDED TO USE THE CATEGORY “UNKNOWN NATIONALITY” WITH CAUTION AND IN GENERAL LIMIT ITS USE AS FAR AS POSSIBLE,** in order to avoid gaps in the identification of statelessness and ensure that stateless persons can enjoy the rights to which they are entitled. When “unknown nationality” is the initial assessment of the situation, further efforts should be made to assess the individual's nationality status and resolve it as quickly as possible. Currently, a relatively large population



whose nationality remains unknown is registered in the Finnish Population Information System. Therefore, the provision of the Nationality Act, which sets out an obligation to make efforts to determine the nationality of those who have a home municipality in Finland, but whose nationality has been recorded as unknown, should be applied more efficiently.

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**IT IS RECOMMENDED TO FURTHER EXAMINE THE USE OF THE RESPECTIVE CATEGORIES “UNKNOWN NATIONALITY” AND “NATIONALITY NOT KNOWN”** in order to limit the situations when a person’s nationality is regarded as unknown and ensure a consistent and understandable presentation of statistics and other information. These two categories sound very similar and have also in practice been used in very similar types of cases, which make it difficult to understand the rationale behind using two such similar, yet distinct definitions. “Unknown nationality” has been defined in the legislation while “nationality not known” has not been defined. Whether it is desirable to use a definition not provided for in the Nationality Act, particularly for defining many situations, should also be assessed.

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**IT IS RECOMMENDED TO PROVIDE SPECIALIZED TRAINING ON NATIONALITY LAW AND PRACTICE**, as well as on international and European standards on statelessness for officials responsible for making citizenship status determinations. More generally, it is recommended to undertake awareness raising initiatives regarding the existence of the determination of citizenship status procedure for relevant civil society organizations.

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**IT IS RECOMMENDED THAT DATA AND STATISTICS ON ALL IMMIGRATION PROCEDURES BE RECORDED AND MAINTAINED** in the Population Information System and in the Register of Aliens in such a way that they reflect the actual stateless population in Finland, disaggregated by age, gender, origin and birth. This will help to better assess the situation of the stateless population and understand the scope of the problem.

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**IT IS RECOMMENDED THAT RECOGNITION OF STATELESSNESS SHOULD IN PRINCIPLE RESULT IN THE ISSUANCE OF A RESIDENCE PERMIT.** However, it is acknowledged that in some cases it may not be appropriate to do so, for example where a stateless person enjoys the right of residence in another State and is able to return and live there with full respect for her or his human rights. A residence permit provided to a stateless person, whether the basis of it is statelessness as such or some other ground, should always be of such nature that it enables full enjoyment of the rights set in the 1954 Convention. Issuing permits of a temporary nature to stateless persons in the Finnish context should therefore be avoided.

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**IT IS RECOMMENDED THAT FINLAND REVIEWS ITS RESERVATIONS TO THE 1954 CONVENTION WITH THE VIEW TO LIFTING THEM**, not least since some of them may no longer be relevant in light of developments following Finland’s accession to the Convention in 1968, and the current nationality legislation. At the same time, legislative provisions on the rights of stateless persons, in particular with regard to the right to social security for stateless persons whose stay in Finland is regarded as lawful but other than permanent, as well as with regard to right to an identity document, should be reviewed in order to ensure full compliance with the 1954 Convention.

# Annex 1: Asylum decisions 2005-2011

**Table 12:** Asylum decisions (2005)<sup>183</sup>

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	0	0	0	12
Subsidiary Protection	6	4	0	141
Individual compassionate grounds	5	0	0	159
Family tie	1	0	0	26
Temporary permit	2	0	0	259
<b>GRANTS, TOTAL</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>597</b>
Rejection	2	0	0	251
Safe country of origin	0	0	0	71
Dublin	13	0	3	1355
Manifestly unfounded	1	0	0	796
<b>REJECTIONS, TOTAL</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>2472</b>
Annulled	1	0	0	370
<b>GRANTS %</b>	45,2%	100%	0%	17,4%
<b>TOTAL ALL DECISIONS</b>	<b>31</b>	<b>4</b>	<b>3</b>	<b>3439</b>

**Table 13:** Asylum decisions (2006)

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	0	0	0	38
Subsidiary Protection	0	0	0	85
Individual compassionate grounds	2	0	1	163
Family tie	4	0	0	33
Temporary permit	0	0	0	299
<b>GRANTS, TOTAL</b>	<b>6</b>	<b>0</b>	<b>1</b>	<b>618</b>
Rejection	0	0	0	248
Safe country of origin	0	0	0	8
Dublin	11	0	3	873
Manifestly unfounded	4	0	0	352
<b>REJECTIONS, TOTAL</b>	<b>28</b>	<b>0</b>	<b>0</b>	<b>1481</b>
Annulled	0	0	2	287
<b>GRANTS %</b>	17,6%	0	16,7%	25,9%
<b>TOTAL ALL DECISIONS</b>	<b>34</b>	<b>0</b>	<b>6</b>	<b>2386</b>

<sup>183</sup> The Finnish versions of the asylum decision statistics of Migri have been used, available at <http://goo.gl/OL5gIC>. The different categories of permits and rejections grounds used by Migri has been followed; the use of the categories has changed to some extent during the years.

**Table 14:** Asylum decisions (2007)

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	0	0	0	68
Subsidiary protection	0	0	0	496
Individual compassionate grounds	4	2	1	228
Family tie	0	0	0	38
Temporary permit	0	0	0	30
<b>GRANTS, TOTAL</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>860</b>
Rejection	2	0	0	302
Safe country of origin	1	0	0	33
Dublin	4	1	1	320
Manifestly unfounded	1	0	1	306
<b>REJECTIONS, TOTAL</b>	<b>8</b>	<b>1</b>	<b>2</b>	<b>961</b>
Annulled	0	0	1	135
<b>GRANTS %</b>	33,3%	66,7%	25%	44%
<b>TOTAL ALL DECISIONS</b>	<b>12</b>	<b>3</b>	<b>4</b>	<b>1956</b>

**Table 15:** Asylum decisions (2008)

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	1	0	0	89
Subsidiary protection	3	0	2	484
Individual compassionate grounds	1	1	5	149
Family tie	1	0	1	25
Temporary permit	0	0	0	38
<b>GRANTS, TOTAL</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>785</b>
Rejection	0	0	3	238
Safe country of origin	0	0	0	84
Dublin	3	2	0	500
Manifestly unfounded	0	0	13	189
<b>REJECTIONS, TOTAL</b>	<b>3</b>	<b>2</b>	<b>16</b>	<b>1011</b>
Annulled	3	0	9	99
<b>GRANTS %</b>	50%	33,3%	24%	39,3%
<b>TOTAL ALL DECISIONS</b>	<b>12</b>	<b>3</b>	<b>33</b>	<b>1995</b>

**Table 16:** Asylum decisions (2009)

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	0	0	0	116
Need of protection	0	0	0	312
Humanitarian protection	0	1	0	365
Subsidiary protection	0	0	0	432
Individual compassionate grounds	5	0	9	107
Family tie	7	0	0	22
Temporary permit	0	1	3	19
<b>GRANTS, TOTAL</b>	<b>12</b>	<b>2</b>	<b>12</b>	<b>1373</b>
Rejection	1	1	11	388
Safe country of origin	0	0		444
Dublin	6	1	4	1488
Manifestly unfounded	0	0	31	248
<b>REJECTIONS, TOTAL</b>	<b>7</b>	<b>2</b>	<b>46</b>	<b>2568</b>
Annulled	4	1	3	394
<b>GRANTS %</b>	<b>52,2%</b>	<b>40%</b>	<b>19,7%</b>	<b>31,7%</b>
<b>TOTAL ALL DECISIONS</b>	<b>23</b>	<b>5</b>	<b>61</b>	<b>4335</b>

**Table 17:** Asylum decisions (2010)

Decision	Stateless	Unknown	Not known	All nationalities
Refugee	3	0	0	181
Subsidiary protection	1	0	2	644
Humanitarian protection	0	0	1	654
Individual compassionate grounds	2	1	8	220
Family tie	1	0	1	26
Temporary permit	0	0	0	2
Other	2	0	3	57
<b>GRANTS, TOTAL</b>	<b>9</b>	<b>1</b>	<b>15</b>	<b>1784</b>
Rejection	9	1	10	1139
Safe country of origin	8	0	0	658
Dublin	14	1	41	1117
Manifestly unfounded	1	0	33	604
<b>REJECTIONS, TOTAL</b>	<b>32</b>	<b>2</b>	<b>84</b>	<b>3428</b>
Annulled	9	2	20	624
<b>GRANTS %</b>	<b>18%</b>	<b>25%</b>	<b>12,6%</b>	<b>30,6%</b>
<b>TOTAL ALL DECISIONS</b>	<b>50</b>	<b>4</b>	<b>119</b>	<b>5837</b>

**Table 18:** Asylum decisions (2011)

Decision	Stateless	Unknown	Not known	All nationalities <sup>184</sup>
<b>Refugee</b>	2	0	3	169
<b>Subsidiary protection</b>	5	0	4	714
<b>Humanitarian protection</b>	5	0	2	143
<b>Other</b>	2	0	1	245
<b>GRANTS, TOTAL</b>	<b>14</b>	<b>0</b>	<b>9</b>	<b>1271</b>
<b>Rejection</b>	7	0	16	650
<b>Safe country of origin</b>	1	0	0	66
<b>Dublin</b>	11	0	16	766
<b>Manifestly unfounded</b>	1	0	1	408
<b>REJECTIONS, TOTAL</b>	<b>20</b>	<b>0</b>	<b>33</b>	<b>1890</b>
<b>Annulled</b>	12	0	6	406
<b>GRANTS %</b>	30,4%	N/A	18,8%	35,6%
<b>TOTAL ALL DECISIONS</b>	<b>46</b>	<b>0</b>	<b>48</b>	<b>3567</b>

Source: Migri, [http://www.migri.fi/about\\_us/statistics/statistics\\_on\\_asylum\\_and\\_refugees](http://www.migri.fi/about_us/statistics/statistics_on_asylum_and_refugees)

<sup>184</sup> Total of all nationalities, including stateless persons and persons with not known/unknown nationality.





# STATELESSNESS



**UNHCR Regional Representation  
for Northern Europe**  
Stockholm, November 2014