

Mapping  
**STATELESSNESS**  
in Austria

“*Statelessness is as if a human being is not a human being, but a stone which is being shoved and tossed back and forth.*”

ALEKSEY (2014)<sup>1</sup>

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<sup>1</sup> Aleksey, stateless person interviewed for this study (name changed to protect privacy).

# Mapping **STATELESSNESS** in Austria



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Austria, January 2017

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Layout and design: BakOS DESIGN

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# Acknowledgements

This report was researched and written by Haleh Chahrokh in her previous capacity as consultant for UNHCR. Birgit Einzenberger and Christoph Pinter of the UNHCR Office in Austria initiated and supervised the project on behalf of UNHCR. Lilian Hagenlocher and Stephanie Sladek provided legal input.

The research team is grateful to all the stateless men and women who agreed to be interviewed for the project, shared their experiences, and gave permission for their asylum and immigration files to be analysed. Their contribution has been essential to the report. In order to protect their anonymity, their names have been changed. We are thankful to everyone who helped us come into contact with these individuals.

We would like to express our sincere appreciation to the numerous Austrian stakeholders who devoted their time and expertise to this study: representatives of the Ministry of the Interior; Statistics Austria; various other federal, provincial and regional authorities; non-governmental organizations; and several lawyers. They are too many to name here individually but are listed in Appendix 2.

The generous contribution of expertise and time given by Professor Gerard-René de Groot as well as advice and support from UNHCR colleagues Inge Sturkenboom, Joachim Stern and Delphine Drapeau is also greatly valued.

In 2016, UNHCR contracted the Institute on Statelessness and Inclusion to update and edit the draft report and we would like to thank Amal de Chickera and Peggy Brett for the excellent cooperation.

January 2017

# Abbreviations

- 1951 Refugee Convention** Convention relating to the Status of Refugees
- 1954 Convention** Convention relating to the Status of Stateless Persons
- 1961 Convention** Convention on the Reduction of Statelessness
- BAA** (former) Federal Asylum Office
- BFA** Federal Office for Immigration and Asylum
- CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
- CERD** Convention on the Elimination of All Forms of Racial Discrimination
- CJEU** Court of Justice of the European Union
- CRC** Convention on the Rights of the Child
- ECHR** European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECN** European Convention on Nationality
- ECSR** European Committee of Social Rights
- ESC** European Social Charter
- EUDO** European Union Democracy Observatory on Citizenship
- ICCPR** International Covenant on Civil and Political Rights
- ICESCR** International Convention on Economic, Social and Cultural Rights
- NGO** Non-governmental organization
- PACE** Parliamentary Assembly of the Council of Europe
- SFRY** Socialist Federal Republic of Yugoslavia
- UDHR** Universal Declaration of Human Rights
- UNGA** United Nations General Assembly
- UNHCR** United Nations High Commissioner for Refugees
- UNRWA** United Nations Relief and Works Agency for Palestinian Refugees in the Near East

# Executive Summary

This study was commissioned in the context of the United Nations High Commissioner for Refugees (UNHCR)'s mandate for the identification, prevention and reduction of statelessness and the protection of stateless people. It was conducted in the year marking the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention)<sup>2</sup> and in view of UNHCR's launch of a 10-year campaign to end statelessness by 2024.

Austria acceded to the 1954 Convention on 8 February 2008<sup>3</sup> and to the 1961 Convention on the Reduction of Statelessness (1961 Convention)<sup>4</sup> on 22 September 1972.<sup>5</sup> At a December 2011 ministerial meeting to mark the 60th anniversary of the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention)<sup>6</sup> and the 50th anniversary of the 1961 Convention, Austria pledged its readiness to review the implementation of the 1954 Convention with regard to procedures for the determination of statelessness on the basis of guidelines which were at that time being elaborated by UNHCR and have since been issued.<sup>7</sup> UNHCR hopes that this report will help inform that review.

Anecdotal evidence from UNHCR's involvement in resolving individual situations of statelessness and its engagement with stakeholders suggests that statelessness in Austria remains a hidden issue. In an attempt to gain a greater understanding of the situation, UNHCR undertook this research project. It included desk review, data collection and analysis as well as interviews with stakeholders from authorities, NGOs and lawyers' offices, and stateless or presumably stateless persons residing in Austria. The present report aims to give an overview of statelessness in Austria. It includes an analysis of existing data on stateless persons and compiles information on the causes and origins of statelessness in Austria. It describes the current practice regarding the determination of statelessness as well as the legal situation of stateless persons in Austria and assesses these against Austria's international obligations. In addition, it examines the Austrian legal framework and practice regarding the prevention and reduction of statelessness with a view of contributing to an understanding of how statelessness could be ended in Austria. By integrating case studies of the experiences of stateless persons living in Austria the report illustrates how children, men and women can become and / or remain stateless in Austria. Their stories also show the multiple challenges stateless persons face in their daily lives because of their lack of a nationality. Throughout the study the term "stateless person" is used in the sense defined in the 1954 Convention; a person who is "not considered as a national by any State under the operation of its law".<sup>8</sup>

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<sup>2</sup> United Nations General Assembly (UNGA), *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series (UNTS) vol. 360, p. 117, (1954 Convention), Article 1, available at: <http://www.refworld.org/docid/3ae6b3840.html>.

<sup>3</sup> The 1954 Convention entered into force in Austria on 8 May 2008.

<sup>4</sup> UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UNTS vol. 989, p. 175, (1961 Convention) available at: <http://www.refworld.org/docid/3ae6b39620.html>.

<sup>5</sup> The 1961 Convention entered into force in Austria on 13 December 1975.

<sup>6</sup> UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS vol. 189, p. 137, (1951 Refugee Convention), available at: <http://www.refworld.org/docid/3be01b964.html>.

<sup>7</sup> United Nations High Commissioner for Refugees (UNHCR), *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011*, October 2012, p. 51, available at: <http://www.refworld.org/docid/50aca6112.html>.

<sup>8</sup> 1954 Convention (footnote 2), Article 1(1).

It is difficult to find a reliable figure or even a good estimate of the total number of stateless persons in Austria. Statistics Austria's demographic information for 1 January 2016 records 11,628 persons registered as "stateless", "unknown nationality" or "undetermined nationality".<sup>9</sup> However, this figure relies on registration practice at the municipal level, gathered in the Central Register of Residents. Under Austrian law, every person establishing a residence must register with the responsible authority within three days. When registering the residence of individuals, the responsible authorities must record their nationality. If individuals have no proof of a particular nationality, they are to be registered as "stateless" or persons of "unknown nationality" or of "undetermined nationality", depending on their particular circumstances. There are several issues with these statistics. Various stakeholders acknowledged that in practice civil servants in the different municipalities may apply varying interpretations when registering persons under these categories. This is particularly likely due to the lack of a designated procedure to determine a person's stateless status. Moreover, some persons – especially those lacking a residence permit – may not register their residence. The other available statistical data, only records particular sub-groups of stateless persons (e.g. stateless persons holding residence permits or those in the asylum system).

More information is available about stateless persons in the asylum system. In the decade between 2005 and 2015, 2,467 stateless persons were recognized as refugees or were granted subsidiary protection in Austria. Of these 1,492 were granted international protection in 2015. Based on these figures, stateless beneficiaries of international protection status represent 21 per cent of the population recorded by Statistics Austria as "stateless", "unknown nationality" or "undetermined nationality" on 1 January 2016.

With regard to the protection of stateless persons, Austria's accession to the 1954 Convention is a welcome acknowledgement of the protection needs of stateless persons and Austria's obligations towards them. However, this study found inconsistencies and gaps in law, policy and practice which significantly limit the enjoyment of the rights enshrined in the 1954 Convention.

The status and rights of stateless persons currently depend largely on whether or not they qualify for a residence status because of their family status, length of stay in Austria or special professional qualifications. Since their status as stateless persons does not qualify them for a residence permit, stateless people who are in an irregular situation or whose applications for international protection have been rejected often receive an administrative decision to terminate their residence, envisaging their deportation to their country of previous residence. While living in an irregular situation, many stateless persons neither have the right to work nor receive any form of social support (including health insurance). They are also not issued with any identification documents, reinforcing their irregular status and putting them at risk of detention for the purpose of removal from the State. Only once it has been established that stateless persons cannot be returned to their country of previous residence or any other country with which they have a link, are they granted a so-called "tolerated stay" recognizing that they are not removable through no fault of their own. However, this "tolerated stay" is not a residence permit and has limited rights attached to it. Only two provincial legislations stipulate a legal entitlement to state basic welfare support and to receiving a respective decision by a responsible authority if that support is denied, withdrawn or reduced for persons who cannot be deported for legal or practical reasons. They are not permitted to work and are not issued with an identity document. Only after at least one year of "tolerated stay" does it become possible for these persons to acquire a residence permit (in this respect they are in the same situation as any other non-removable alien).

A dedicated statelessness determination procedure conducted by a specialised and preferably central authority and which complies with the guidelines for such procedures set out in UNHCR's *Handbook on Protection of Stateless Persons*,<sup>10</sup> would help resolve problems related to the identification and registration of stateless persons. Professionalising and harmonising the quality of procedures for the identification of stateless persons might also help in the development of appropriate solutions for the individuals concerned.

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<sup>9</sup> Statistik Austria, Statistik des Bevölkerungsstandes, 'Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit', 14 June 2016, available at: <http://goo.gl/vXKT9v>.

<sup>10</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>.

For migrants who are not stateless, confirming this fact may facilitate their acquisition of identity and travel documents. On the other hand persons whose stateless status is established should normally benefit from a residence status for stateless persons and protection under the 1954 Convention.

Identifying stateless persons and granting them basic rights allows them to fully participate in and contribute to Austrian society. This in turn reduces costs and security risks related to the marginalization of stateless persons. In the absence of a statelessness determination procedure it is doubtful that Austria will be able to fulfil its obligations under the 1954 Convention since that instrument assumes that those persons eligible for protection can be identified, just as the 1951 Refugee Convention assumes the identification of refugees (a position that has been accepted by Austria as well as other States).

With regard to the prevention of statelessness, UNHCR acknowledges that Austria played a pioneering role as one of the first five States Parties to the 1961 Convention, which contains a set of international obligations in this area. The Austrian Nationality Act consequently foresees important safeguards to prevent statelessness as a result of a renunciation, deprivation or revocation of Austrian citizenship. However a few gaps remain and may lead to new cases of statelessness arising in Austria. The most significant concerns the situation of children born stateless in Austria. The Nationality Act foresees a long waiting period (18 years) and additional requirements for their facilitated naturalization. In UNHCR's view, this is not fully in accordance with the 1961 Convention. It is also clearly at variance with subsequent developments in international human rights law, notably the Convention on the Rights of the Child (CRC).<sup>11</sup> Other provisions in Austrian law which can lead to statelessness relate *inter alia* to the deprivation of nationality (e.g. where Austrian citizens voluntarily enter the military service of another country) and the revocation of citizenship (e.g. because it was obtained by fraudulent means).

Facilitated naturalization for stateless persons represents a durable solution to statelessness. At present, however, stateless persons are treated like other non-nationals in this respect, although unlike foreigners, stateless persons cannot rely on the protection of another State and, according to the 1954 Convention, should receive more favourable treatment in naturalization proceedings.

In conclusion, the study finds that Austrian law and policy includes many important safeguards for the prevention of statelessness as well as some provisions for its reduction and the protection of stateless persons. However, both law and practice could be strengthened in all of these areas, and doing so would be both in the interests of the State and of individual stateless children, women and men.

UNHCR firmly believes that statelessness is largely avoidable and, with adequate political will, entirely solvable too. With this in mind, UNHCR launched, in 2014, a global campaign to end statelessness in ten years. This campaign aims to mobilise attention and support to address existing situations of statelessness and remedy weaknesses in laws and policy which allow new cases of statelessness to occur. The campaign has identified ten actions needed to end statelessness: resolving existing major situations of statelessness; ensuring that no child is born stateless; removing gender discrimination from nationality laws; preventing denial, loss or deprivation of nationality on discriminatory grounds; preventing statelessness in cases of State succession; granting protection status to stateless migrants and facilitating their naturalization; ensuring birth registration for the prevention of statelessness; issuing nationality documentation to those entitled to it; acceding to the UN Statelessness Conventions; and improving quantitative and qualitative data on stateless populations.

As this study highlights, in the Austrian context there is a particular need to act on Action 2: "Ensure that no child is born stateless", Action 6 "Grant protection status to stateless migrants and facilitate their naturalization" and Action 10 "Improve quantitative and qualitative data on stateless populations". In addressing these areas, the recommendations and advice provided by UNHCR's Global Action Plan to End Statelessness 2014-2024 may prove useful.<sup>12</sup>

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<sup>11</sup> UNGA, *Convention on the Rights of the Child*, 20 November 1989, UNTS vol. 1577, p. 3, (CRC) available at: <http://www.refworld.org/docid/3ae6b38f0.html>.

<sup>12</sup> UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>.

UNHCR makes the following key recommendations resulting from the research:

- 
- (i) **ESTABLISH AN ACCESSIBLE, FAIR AND EFFICIENT PROCEDURE TO DETERMINE STATELESSNESS** in accordance with the 1954 Convention and taking into account the international standards set out in UNHCR's *Handbook on Protection of Stateless Persons*;<sup>13</sup>
- 
- (ii) **DESIGNATE ONE CENTRALIZED AUTHORITY** to assess and take first instance decisions on statelessness. This would help to ensure transparency, develop specialization, and enable greater uniformity of decision making. Such an authority should have expertise in statelessness and nationality matters as well as the required financial and human resources. Provide that appeals against the decisions of this first instance body are considered by an independent body;
- 
- (iii) **PROVIDE GUIDANCE TO MUNICIPALITIES ON THE REGISTRATION** of stateless persons and persons of undetermined and unknown nationality; this guidance should take into account the 1954 Convention definition of a "stateless person" and comments on the interpretation and implementation of the Convention in the *UNHCR Handbook on Protection of Stateless Persons*;<sup>14</sup>
- 
- (iv) **IMPROVE COLLECTION OF STATISTICS** on the phenomenon of statelessness in Austria;
- 
- (v) **ENSURE THE EARLY AND CORRECT IDENTIFICATION OF STATELESS PERSONS AND SOLUTIONS** for situations where the State of purported nationality refuses to cooperate in return, referral to a stateless determination procedure should take place as early as possible, if the individual claims to be stateless or this comes to light during other procedures, for instance asylum or return procedures, or as a result of detention or during registration. In such circumstances, they should be referred either from or after – depending on the procedure – this procedure to the statelessness determination procedure;
- 
- (vi) **INCORPORATE A NEW GROUND OF RESIDENCE FOR STATELESS PERSONS** in the Austrian Asylum Act;
- 
- (vii) **FORESEE A RENEWABLE RESIDENCE PERMIT** with a validity of at least two years for each person recognized as being stateless unless it is clear that the stateless person enjoys the right of residence in another country and is able to return and live there with full respect for his or her human rights;
- 
- (viii) **ESTABLISH A LEGAL BASIS FOR THE AUTOMATIC ACQUISITION OF AUSTRIAN NATIONALITY AT BIRTH BY CHILDREN BORN ON AUSTRIAN TERRITORY WHO WOULD OTHERWISE BE STATELESS;**
- 
- (ix) **FACILITATE THE NATURALIZATION OF STATELESS PERSONS**, and implement Article 32 of the 1954 Convention. At a minimum reduce the number of years of lawful residence required for applying for naturalization to six and review existing barriers to naturalization for stateless persons such as proof of sufficient means of livelihood and the documentation requirements and ensure that these do not constitute an obstacle to stateless persons applying for naturalization. Regarding documentation requirements treat stateless persons in the same way as refugees in the process of acquiring Austrian nationality.

A full list of UNHCR's recommendations is given at the end of the report.

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<sup>13</sup> UNHCR, *Handbook on Protection of Stateless Persons* (Footnote 10).

<sup>14</sup> *Ibid.*

# 1. Introduction

“ *The right to a nationality is fundamental for the enjoyment in practice of the full range of human rights.*”<sup>15</sup>

1. All over the world, stateless persons face serious problems in all areas of their lives. They may be unable to obtain proof of their identity, to marry or to register their children. They may be unable to access their right to education, work or social welfare. They may be unable to open a bank account, register a mobile phone or travel. When living in an irregular situation, stateless persons may face deportation or prolonged and repeated detention. For this reason, the right to a nationality is enshrined as a fundamental human right in the 1948 Universal Declaration of Human Rights (UDHR) and subsequent international human rights treaties.<sup>16</sup>
2. Despite this recognition of the importance of nationality, it is estimated that there are at least 10 million stateless persons around the world.<sup>17</sup> Their exact number is not known because stateless people may not be counted in official statistics. Where stateless persons are included in the statistics, they are often included in undifferentiated categories such as “nationality unknown” or even under the general heading “aliens”.<sup>18</sup> An estimated 600,000 stateless persons live in Europe, with over 400,000 in the territory of the European Union, predominantly in the Baltic States.<sup>19</sup>
3. Austria is no exception to the phenomenon of statelessness. According to Statistics Austria, at the beginning of 2016, a total of 4,142 stateless persons, 543 individuals with unknown nationality and 6,943 persons with an undetermined nationality lived in Austria.<sup>20</sup> While these figures provide an indication of the stateless population, difficulties with the collection of accurate data mean that the exact scope of statelessness in Austria is unknown.
4. To protect persons who are stateless as well as to prevent statelessness from arising in the first place, the international community has concluded two major instruments: the 1954 Convention relating to

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<sup>15</sup> UNHCR, *Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality* (“Tunis Conclusions”), March 2014, para. 1, available at: <http://www.refworld.org/docid/533a754b4.html>.

<sup>16</sup> UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), (UDHR) Article 15: “Everyone has the right to a nationality”, available at: <http://www.refworld.org/docid/3ae6b3712c.html>; UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS vol. 660, p. 195, (CERD), Article 5(d)(iii), available at: <http://www.refworld.org/docid/3ae6b3940.html>; UNGA, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS vol. 999, p. 171, (ICCPR), Article 24(3), available at: <http://www.refworld.org/docid/3ae6b3aa0.html>; UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UNTS vol. 1249, p. 13, (CEDAW), Article 9, available at: <http://www.refworld.org/docid/3ae6b3970.html>; CRC (footnote 11), Article 7; UNGA, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I, (CRPD) Article 18, available at: <http://www.refworld.org/docid/4680cd212.html>.

<sup>17</sup> UNHCR, *UNHCR Mid-Year Trends 2015*, 2015, p.14 available at: <http://www.refworld.org/docid/568fbb8f4.html>.

<sup>18</sup> Frelick, B. and Lynch, M., ‘Statelessness: A forgotten human rights crisis’, *Forced Migration Review* 24, 2005, p. 66.

<sup>19</sup> UNHCR, *UNHCR Mid-Year Trends 2015*, (footnote 17), p.19. The figure for the EU was reached by adding the individual totals given for each of the EU States on pp.14-19.

<sup>20</sup> Statistik Austria, ‘Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit’ (footnote 9).

the Status of Stateless Persons (1954 Convention)<sup>21</sup> and the 1961 Convention on the Reduction of Statelessness (1961 Convention).<sup>22</sup>

5. Austria has acceded to both these Conventions, the 1954 Convention on 8 February 2008 and the 1961 Convention on 22 September 1972. Austria has also ratified the European Convention on Nationality (ECN).<sup>23</sup> In becoming party to these treaties, Austria has assumed obligations relating to the identification and protection of stateless persons living in Austria as well as for the prevention and reduction of statelessness with respect to persons under its jurisdiction. The present study reveals that while many of those obligations have been transposed into Austrian national law, some gaps nevertheless remain.
6. Globally as well as in Austria statelessness continues to be a relatively unknown phenomenon. The voices of stateless people are rarely heard and receive less attention than deserved, although recent efforts are beginning to draw attention to the issue.
7. The United Nations has mandated the United Nations High Commissioner for Refugees (UNHCR) to identify situations of statelessness, to protect the rights of stateless people and to promote the prevention and reduction of statelessness. On the occasion of the 60th anniversary of the 1954 Convention, UNHCR launched a 10-year campaign to end statelessness by 2024. This project is part of this renewed attention to statelessness. It aims to gain a better understanding of the phenomenon of statelessness in Austria by examining socio-demographic and legal aspects of statelessness, the protection of stateless persons and measures to prevent statelessness. The study also seeks to provide an understanding of how stateless people themselves experience their lives in Austria.
8. At a ministerial meeting to commemorate the 50th anniversary of the 1961 Convention, Austria pledged to “be ready to review its implementation of the Convention relating to the Status of Stateless Persons on the basis of the guidelines which are currently being elaborated by UNHCR”.<sup>24</sup> The present report seeks to provide an analysis of the mechanisms currently in place in Austria to determine and reduce statelessness and to assess them against Austria’s obligations under the 1954 and 1961 Conventions as well as its obligations under international human rights law. It may therefore assist with the pledged review of current practice.
9. UNHCR hopes the research will increase awareness of statelessness at all levels, promote synergies among relevant actors, help improve the identification, determination of statelessness status, reduction and prevention of statelessness in Austria as well as the legal framework on these issues and thereby strengthen the status of stateless children, women and men in Austria.

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<sup>21</sup> 1954 Convention (footnote 2). As of 21 June 2016, the 1954 Convention had 89 State Parties, see: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en).

<sup>22</sup> 1961 Convention (footnote 4). As of 21 June 2016, the 1961 Convention had 67 State Parties to the 1961 Convention, see: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en).

<sup>23</sup> Council of Europe (CoE), *European Convention on Nationality*, 6 November 1997, European Treaty Series (ETS) 166 (ECN), available at: <http://www.refworld.org/docid/3ae6b36618.html>.

<sup>24</sup> UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011* Geneva: 7–8 December 2011 (footnote 7), p. 51. UNHCR’s guidelines have now been published as UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10).



## 1.1 The structure of the report

10. This report lays out the purpose and methodology of the research into statelessness in Austria, presents all relevant findings, draws conclusions based on the available evidence and makes recommendations on how to improve the implementation of international and regional standards on statelessness including through amendments to national law.
11. The report is divided into eight chapters. This introduction provides a brief overview of the report, sets out the definitions used in the study and its scope and describes the methodology used in the research. Chapter 2 provides some background on statelessness as a global issue and UNHCR's work in this area. Chapter 3 provides a statistical analysis of the available data on statelessness in Austria. Based on the available information, it seeks cautiously to identify and describe Austria's stateless population. Chapter 4 details the interviews held with stateless persons in the course of this research. Chapter 5 provides an analysis of the current procedures relating to the determination of statelessness in Austria, in the absence of a designated statelessness status determination procedure. Chapter 6 looks at the status of stateless individuals and their access to human rights. Chapter 7 analyses the international, regional, and national legal framework for the prevention and reduction of statelessness. In each of chapters 5, 6 and 7 Austria's compliance with the relevant international standards is examined and recommendations are made on improving the implementation of these obligations. Chapter 8 makes some concluding remarks and collects the recommendations made throughout the report. Five appendices provide further statistics, lists of the stakeholders consulted during the preparation of the report and the stateless persons interviewed, a bibliography and a list of cases referred to in the report.

## 1.2 Scope of the report and definitions used

12. The question of who is stateless is elementary for understanding the scope and scale of statelessness in Austria. According to Article 1(1) of the 1954 Convention, a stateless person is someone "who is not considered as a national by any State under the operation of its law". The International Law Commission considers this definition customary international law.<sup>25</sup> The UNHCR *Handbook on Protection of Stateless Persons* sets out further guidance on interpreting this definition.<sup>26</sup> The present report uses the term stateless persons in this sense and focuses on stateless persons falling within this definition.<sup>27</sup> Due to difficulties with the identification of stateless persons the report also takes account of persons registered as being of unknown or undetermined nationality, since stateless persons may be registered under these categories.
13. Some stateless persons may not only fall under the scope of the 1954 Convention but also meet the definition of a refugee in the 1951 Refugee Convention.<sup>28</sup> When an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that the person is explicitly recognized as having both statuses, since the rights under the 1951 Convention and 1954 Convention are not identical. Moreover, there may be instances where refugee status ceases

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<sup>25</sup> International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, 2006, p. 49, available at: <http://www.refworld.org/docid/525e7929d.html>.

<sup>26</sup> UNHCR, *Handbook on the Protection of Stateless Persons* (footnote 10) para. 13ff.

<sup>27</sup> It therefore does not address the situation of 'de facto' stateless persons, i.e. those who legally possess a nationality but are denied the rights or protection generally associated with citizenship. For a full discussion of the concept of "de facto" statelessness and its relationship to the 1954 Convention see, UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para. 7.

<sup>28</sup> 1951 Refugee Convention (footnote 6), Article 1.

without the person having acquired a nationality, leaving them in need of international protection as a stateless person.<sup>29</sup> Since this study primarily aims to assess the situation in Austria in light of the 1954 and 1961 Conventions, it focuses on stateless persons who are not or no longer in the asylum procedure and who do not benefit from international protection as recognized refugees or subsidiary protection holders in Austria. However, where data is available on the number of stateless persons in the asylum system this is included.

14. Due to the short research period combined with limited existing data and lack of other information on statelessness in Austria, the present report does not claim to be comprehensive. Rather, it seeks to shed some light on a situation that has until now been largely neglected.
15. The terms “nationality” and “citizenship” are used interchangeably in this report.

## 1.3 Methodology

16. The methodology used for this study combined desk-based analysis of quantitative data and legal texts with stakeholder meetings and interviews with individuals. The research for this report was conducted in 2014. Where possible more recent legal and practical developments have been noted and the most recent statistical information (as of June 2016) included.

### 1.3.1 Quantitative data

17. It was not possible to gather new data on the stateless population as part of this research. The statistical information used is therefore drawn from existing sources, primarily population censuses and administrative data, including the Central Register of Residents. Additional data from the Ministry of the Interior was used to supplement these sources.
18. There are a number of difficulties with using this data to establish an overview of the stateless population in Austria. In particular three categories “stateless”, “unknown nationality” and “undetermined nationality” are used in many of the statistics. Stateless persons may be registered under any one of these categories and there appears to be little consistency in their use in practice. (See Chapter 3 for further discussion of these problems)

### 1.3.2 Legal research

19. Austrian legislation, policy and practice relating to stateless persons were examined in order to analyse Austria’s compliance with relevant international obligations. With respect to the 1961 Convention, the analysis of the European Union Democracy Observatory on Citizenship (EUDO) served as a useful starting point.<sup>30</sup>

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<sup>29</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para. 78.

<sup>30</sup> Stern, J. & Valchars, G., *Country Report: Austria*, EUDO Citizenship Observatory, revised and updated September 2013, (EUDO Report Austria) available at: <http://goo.gl/FEHKYD>.

20. The main national sources of law are the Austrian Nationality Act,<sup>31</sup> the Asylum Act,<sup>32</sup> the Aliens Police Act,<sup>33</sup> the Austrian Settlement and Residence Act<sup>34</sup> and related case-law from the Higher Administrative Court and the Constitutional Court.<sup>35</sup>
21. The international instruments against which Austrian law and practice in the area of statelessness were measured are the 1954 Convention and the 1961 Convention. Other relevant international instruments to which Austria is a State Party are also referred to. These include the UDHR,<sup>36</sup> the 1951 Refugee Convention,<sup>37</sup> the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>38</sup> the 1966 International Covenant on Civil and Political Rights (ICCPR),<sup>39</sup> the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>40</sup> the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>41</sup> and the 1989 Convention on the Rights of the Child (CRC).<sup>42</sup> Of the regional instruments reference is made to the ECN<sup>43</sup> the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession,<sup>44</sup> the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR),<sup>45</sup> and the European Social Charter (ESC).<sup>46</sup>

### 1.3.3 Meetings with stakeholders

22. The study benefited greatly from meetings with academics, representatives of ministries, provincial administrations, municipalities, the Ombudsman Board and NGOs with portfolios relating to statelessness (see APPENDIX II: Stakeholders consulted for this report for a list of these partners). In view of the limited available data, previous research and jurisprudence on statelessness, the experiences of these stakeholders provided particularly valuable insight into the situation of stateless persons in Austria.

<sup>31</sup> *Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985 – StbG)*, Federal Law Gazette No. 311/1985, available at: <https://goo.gl/Y9OXmz> (German), <http://goo.gl/ZaoSBC> (unofficial English translation).

<sup>32</sup> *Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 – AsylG 2005)*, Federal Law Gazette No. 100/2005, available at: <https://goo.gl/i7NdNj> (German), <http://goo.gl/mjo7UK> (unofficial English translation).

<sup>33</sup> *Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil (Fremdenpolizeigesetz 2005 – FPG)*, Federal Law Gazette No. 100/2005, available at: <https://goo.gl/XuFBvh> (German)

<sup>34</sup> *Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz – NAG)*, Federal Law Gazette No. 100/2005, available at: <https://goo.gl/wMB518> (German)

<sup>35</sup> Available online via the Legal Information System of the Republic of Austria, available at <https://www.ris.bka.gv.at>. For a list of the cases cited in this report see APPENDIX V: Case Law.

<sup>36</sup> UDHR (footnote 16).

<sup>37</sup> 1951 Refugee Convention (footnote 6).

<sup>38</sup> CERD (footnote 16).

<sup>39</sup> ICCPR (footnote 16).

<sup>40</sup> UNGA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>.

<sup>41</sup> CEDAW (footnote 16).

<sup>42</sup> CRC (footnote 11).

<sup>43</sup> ECN (footnote 23).

<sup>44</sup> CoE, *Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession*, 15 March 2006, CETS 200, available at: <http://www.refworld.org/docid/4444c8584.html>.

<sup>45</sup> CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5 (ECHR), available at: <http://www.refworld.org/docid/3ae6b3b04.html>.

<sup>46</sup> CoE, *European Social Charter (Revised)*, 3 May 1996, ETS 163 (ESC), available at: <http://www.refworld.org/docid/3ae6b3678.html>.

### 1.3.4 Interviews with stateless persons

23. In order to obtain a better understanding of the actual situation and problems of stateless persons in Austria, interviews were conducted with stateless or potentially stateless persons. There were some difficulties in identifying stateless persons, particularly stateless persons outside the asylum system, to be interviewed. The lawyers and NGOs contacted were mostly not able to search for stateless clients in their databases and most did not recall any recent contact with stateless persons. However, increasing numbers of stateless persons were identified and referred to UNHCR at the end of the research phase, suggesting an increase in awareness among some partners of the presence of such persons among their clients. A second difficulty was that some stateless persons did not wish to be interviewed due to their irregular residence situation and resulting concerns about exposure. Interviews could, therefore, only be conducted with twelve persons.
24. Where possible the immigration and other relevant administrative files of the twelve persons interviewed were also analysed. In eleven cases, at least one Austrian authority (Asylum Authority or Aliens Police Authority) had accepted the person's claim to be stateless. In the remaining case, there were concrete indications that the person was stateless, but no authority had undertaken sufficient investigations to establish this fact officially. For the sake of legibility, all the persons interviewed for this study are referred to as "stateless persons interviewed". None of the interviewees were asylum-seekers or benefitting from international protection at the time of the interview. The twelve individual stories are presented in more detail in the course of the report. The names of all participants have been changed to protect their anonymity. The interviews took place between November 2013 and April 2014. Where possible, information about changes in the situation of the interviewees since the interview has been included, but information has not been systematically updated since the interviews.
25. Given the small sample of twelve persons, these interviews cannot give a representative overview of the situation of the stateless population in Austria. Instead the information is illustrative, providing some insight into the very diverse profile of stateless persons in Austria and indicating the different ways in which their lives are affected by their statelessness.
26. In order to put the participants at ease during the interview, they were given the choice of venue. Interviews usually lasted no more than 1.5 hours. The participants signed a form indicating their voluntary participation in the research. The form also provided information about the project, the possibility for withdrawal of consent at any time and the standards of confidentiality and anonymity which would be applied. Finally, the form contained a request for the participants' permission to consult their administrative files. Interviews were semi-structured and followed (with due consideration of the individual's particular situation) a questionnaire covering themes such as causes of statelessness, administrative procedures in Austria, daily life and expectations for the future.

# 2. Statelessness Across the Globe and UNHCR's Engagement with Statelessness

## 2.1 Causes of statelessness

27. Statelessness can be caused by many factors. Three of the main causes of statelessness are the dissolution and separation of States and the transfer of territory between States, the technical operation of nationality laws and discrimination.<sup>47</sup>
28. Statelessness often arises in the context of State succession, in particular due to conflicting nationality laws between successor States and the renegotiation of who is considered a citizen by predecessor States. In Europe, the dissolution of the Soviet Union and of the Socialist Federal Republic of Yugoslavia (SFRY) left millions of people stateless. Many of these individuals and their descendants remain stateless or at risk of statelessness today.
29. Within the framework of international norms, States have the right to determine who they consider their citizens and have adopted a wide range of approaches in this regard. When the approaches taken by the nationality laws of different States conflict, individuals can be left stateless. For example, a person whose State of birth grants nationality by descent (*ius sanguinis*), but whose parents are nationals of a State that attributes nationality by birth on its territory (*ius soli*) will be able to claim neither nationality. Individuals may also become stateless where the operation of nationality laws cause them to lose an existing nationality, for instance due to prolonged absence from their country of (former) nationality.
30. Failure or inability to undertake administrative procedures can also lead to statelessness. For example, children born abroad may need to be registered with the representation of their parents' country in order to claim that nationality. More generally, lack of registration of children at birth – a pervasive problem in some countries – leaves many children without proof of when and where they were born, who their parents are, or where their parents are from. Not having a birth certificate does not automatically indicate a lack of citizenship, but in many countries, and in today's increasingly mobile world, not having proof of birth, origin or legal identity increases the risk of statelessness.
31. Discrimination is an underlying factor in many cases of statelessness, either as a result of direct discrimination on grounds of sex, race, religion, etc. in laws or as a consequence of the marginalization of minorities which creates barriers to accessing citizenship.

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<sup>47</sup> UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians N°22*, July 2014, pp. 29-42, available at: <http://www.refworld.org/docid/53d0a0974.html>.

## 2.2 UNHCR's engagement with statelessness

32. As the organization mandated by the United Nations to protect refugees, UNHCR has been involved in statelessness issues and with stateless persons since it began operations in 1951 due to the number of refugees affected by statelessness.<sup>48</sup> In this capacity, UNHCR was involved in the drafting of the 1954 Convention. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness (“1961 Convention”), namely to examine the cases of persons who claim the benefit of that Convention and to assist them in presenting their claims to the authorities under Article 11 of that Convention, UNHCR’s mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally by General Assembly Resolution 50/152 of 1995, which endorsed UNHCR Executive Committee Conclusion 78. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.
33. The fiftieth anniversary of the 1961 Convention in 2011 and the sixtieth anniversary of the 1954 Convention in 2014 provided a renewed impetus for the international community, supported by UNHCR, to address statelessness.<sup>49</sup> In November 2014 UNHCR launched a 10-year campaign to end statelessness by 2024. It seeks greater political commitment to resolve protracted situations of statelessness and to prevent new situations of statelessness due to State succession or arbitrary deprivation of nationality.<sup>50</sup>
34. UNHCR has also re-issued its guidance on the definition of a stateless person, procedures for determination of statelessness and the status of stateless persons under national law in the form of the *Handbook on Protection of Stateless Persons*.<sup>51</sup> UNHCR’s guidance concerning the prevention and reduction of statelessness continues to be dealt with in separate guidelines.<sup>52</sup>
35. The present study is a part of UNHCR’s endeavours to place statelessness issues at the centre of its advocacy work in Austria.

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<sup>48</sup> UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 6(A)(ii), available at: <http://www.refworld.org/docid/3ae6b3628.html>; and 1951 Refugee Convention, (footnote 6), Article 1(A)2. Both sources refer to stateless persons who meet the criteria of the refugee definition.

<sup>49</sup> Including the Ministerial Event in Geneva in December 2011 at which a number of States, including Austria made pledges. See, UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011* (footnote 7).

<sup>50</sup> UNHCR, *Special Report – Ending Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/572062254.html> and UNHCR, *Global Action Plan to End Statelessness*, (footnote 12).

<sup>51</sup> UNHCR *Handbook on Protection of Stateless Persons* (footnote 10).

<sup>52</sup> 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*, 21 December 2012, HCR/GS/12/04, available at <http://www.refworld.org/docid/50d460c72.html>.

# 3. A Demography of Statelessness in Austria

36. This chapter brings together existing statistical information on stateless persons in Austria, although gaps and flaws in the available data make it impossible to provide an accurate total. It sets out the challenges in mapping the stateless population, describes the evolution of statelessness in Austria, analyses the available data, and provides information on the causes of statelessness, the origin of stateless persons in Austria and their geographical distribution.

## 3.1 The challenges of mapping the stateless population in Austria

37. The main source for core demographic data is Statistics Austria, an independent, non-profit federal institution which is responsible for performing scientific services in the area of federal statistics. The Ministry of the Interior also collects and publishes data on migration and asylum-seekers. Although stateless persons are visible in these statistics, there are limitations to their use in mapping the stateless population as outlined below.

### 3.1.1 Stateless persons in the Central Register of Residents

38. Since 2002 the Central Register of Residents has been the main source of data on the size and structure of the Austrian population and the statistics produced by Statistics Austria.<sup>53</sup> The Central Register of Residents is compiled from registration data (including age, gender, country of birth, place of residence (political district/municipality) and nationality) collected by the registry offices in each municipality. The registry office must be notified of changes of status including acquisition, renunciation, loss or deprivation of nationality, which should also be recorded in the Central Register of Residence. The Central Register of Residents has three categories for the registration of persons who are found by the registry office not to be nationals of a particular country. These categories are “stateless”, “unknown nationality” and “undetermined nationality”. However, these categories are not defined in the internal decree regulating the handling of entries into the Central Register of Residents.<sup>54</sup>

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<sup>53</sup> Since 2002, the population register (POPREG), the database of Statistics Austria, is the major source of statistical information on the population in Austria. This statistical mirror database is in turn based on the Central Register of Residents (ZMR), the administrative database under the Ministry of the Interior, which comprises all persons registered as residents. Since 1 November 2015, also the Central Civil Status Register (ZPR – *Zentrales Personenstandsregister*) and the Central Citizenship Register (ZSR – *Zentrales Staatsbürgerschaftsregister*), became fully operational.

<sup>54</sup> Information provided to researchers by the Ministry of the Interior on 20 May 2014 and 8 July 2016.

39. According to a representative of the Ministry of the Interior, a person should be registered as “stateless” if they can prove that they do not hold any nationality. A civil servant would register a person as “stateless” when that person has renounced their previous nationality in order to be granted Austrian citizenship (which is extremely unlikely according to the Ministry of the Interior) or presents a passport issued by a State which is not recognized by Austria. Another example would be a person who could document the deprivation of their previous citizenship.<sup>55</sup>
40. A person should be registered as being of “undetermined nationality” when the documents provided to the registry office are conflicting or if their current nationality is not clearly identifiable from their documents.<sup>56</sup> In such cases, the person is instructed to submit the documents necessary for the clarification of their nationality within a time limit fixed by the registry office. If the person concerned does not submit the necessary documentation by the deadline, the registry office is obliged to initiate an administrative penalty procedure<sup>57</sup> which may lead to a fine of up to 360 Euros, unless the registry office reaches the conclusion that the person does not possess the required documents.<sup>58</sup>
41. The category “unknown nationality” should be used for persons who cannot prove their nationality but claim to be nationals of a particular State. The registry office should also instruct these persons to provide evidence of their nationality within a specified time limit.<sup>59</sup>
42. The research for the present report was only able to obtain information on the administrative practices of two municipalities. According to one official, a person is normally registered as “stateless” if they claim to have no nationality or for instance provide information about facts that allow for the deprivation of Austrian citizenship, such as having been a member of the French Foreign Legion. The category of “undetermined nationality” is mainly used for Austrian-born children of refugees. According to that official, the category “unknown nationality” is a historical one and no longer in use.<sup>60</sup>
43. Several other stakeholders observed that with 2,100 municipalities entering data into the Central Register of Residents it can be assumed that information is not always recorded correctly and consistently.<sup>61</sup> In particular in regions with less experienced civil servants it may be challenging to categorize a person correctly. Several stakeholders also pointed out that in these circumstances some stateless persons may be registered as being of “unknown nationality”, “undetermined nationality” or, in some cases as nationals of “Palestine”. This could be the case even if the person had been accepted as stateless by an Austrian authority.
44. The fact that foreigners are required to submit an official travel document in order to be registered, may present an additional barrier to the registration of stateless persons since they often lack documents. Furthermore, stateless persons in irregular situations may prefer to remain hidden. It is also possible that the Central Register of Residents continues to list for some time as stateless persons who have acquired a foreign nationality and still retains records of persons who have left Austria without de-registration.

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<sup>55</sup> Information provided to researchers by the Ministry of the Interior on 20 May 2014 and 8 July 2016.

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

<sup>57</sup> The obligation to initiate administrative penalty procedures is established in the *Austrian Registration Act*.

<sup>58</sup> Information provided to researchers by the Ministry of the Interior on 20 May 2014 and 8 July 2016.

<sup>59</sup> Information provided to researchers by the Ministry of the Interior on 20 May 2014.

<sup>60</sup> Information provided to researchers by a representative of the *Einwohner- und Wahlamt St. Pölten*.

<sup>61</sup> Information provided to researchers by a number of stakeholders contacted during the preparation of this report.



45. Where stateless persons are recorded, the Central Register of Residents does not distinguish between stateless asylum-seekers and refugees and other groups of stateless persons, which further limits its value in establishing the characteristics of the stateless population in Austria.

### **3.1.2 Stateless persons in migration statistics**

46. Statistics on the resident migrant population published by the Ministry of the Interior provide data on all persons with a residence permit under the Austrian Settlement and Residence Act. Their breakdown by nationality status includes the categories “stateless”, “undetermined nationality” and “unknown nationality”. Statistics Austria also publishes data on immigration and emigration, including a breakdown for the same three categories, but these figures are based on the registration of individuals in the Central Register of Residents. As with the general population figures drawn from the Central Register of Residents, it is therefore possible that some stateless persons recorded as having emigrated may in fact still be living in Austria, but without registering their residence.
47. The Ministry of the Interior also publishes annual figures on the number of asylum applications in Austria and the decisions in asylum cases, which include the two categories “stateless” and “undetermined nationality”. These figures provide an indication of the number of stateless persons applying for asylum, recognized as refugees, granted subsidiary protection or found not to need international protection.

### **3.1.3 Other sources of data on stateless persons in Austria**

48. Statistics on births, deaths and marriages, published by Statistics Austria, routinely indicate the nationality of the persons concerned and therefore provide some additional information on the stateless population.
49. Statistics Austria also publishes data on the number of naturalizations and the provisions under which the individual is naturalized, showing the number of stateless individuals whose situations are resolved by the granting of nationality.

### **3.1.4 Missing data and stateless persons missing from the statistical data**

50. In addition to the problems related to the identification and correct classification of individuals as stateless, certain categories of stateless persons are likely to be underrepresented or missing from the statistics. In particular stateless persons living irregularly in the country are not reflected in any statistics even if the authorities are aware of their presence. Those in an irregular migration situation may prefer to avoid registration in the Central Register of Residents, while individuals without residence permits are not included in the Ministry of the Interior statistics on foreign residents.
51. The asylum statistics indicate the number of stateless persons found not to need international protection who could not be deported for legal reasons and those for whom there was no bar to deportation, but information is not consistently available on whether the individuals in question were in fact deported.
52. While information is available on the number of naturalizations, no parallel data is available on the number of persons rendered stateless by deprivation of Austrian nationality.

## 3.2 The evolution of statelessness in Austria

53. After the end of World War I and the collapse of the Austro-Hungarian empire in 1918, individuals with the right of abode in a municipality (*Heimatrecht*) within the new borders of the Republic of German-Austria (*Deutsch-Österreich*) could acquire Austrian citizenship provided that they did not hold the citizenship of another signatory State (Italy, Poland, Romania, the Serbian-Croat-Slovene State or Czechoslovakia).<sup>62</sup> Members of an ethnic or linguistic minority in the municipality in which they enjoyed a *Heimatrecht* had the right to opt for nationality of the successor State “whose population spoke their language and belonged to the same ‘race’”.<sup>63</sup> The racial reference in this provision was used to prevent mostly Jewish refugees from acquiring Austrian citizenship.<sup>64</sup>
54. Many people did not possess *Heimatrecht* in the municipality they lived in at the end of the war as *Heimatrecht* had been acquired by descent or marriage or, after 1896, by legal entitlement after ten years of uninterrupted residence in a municipality if the person had not become a “financial burden” during that time.<sup>65</sup> As a result “statelessness was a major phenomenon throughout the interwar period. The laws that were passed in the new Republic did little to resolve these issues”.<sup>66</sup>
55. In 1933 the Citizenship Act was amended to allow deprivation of citizenship for political reasons.<sup>67</sup> By 1938, around 10,400 Austrian citizens had been denaturalized because they had allegedly conducted “anti-Austrian activities” or left the country without permission.<sup>68</sup>
56. Following the annexation of Austria by Nazi Germany in 1938, a new law allowed deprivation of citizenship of individuals living abroad if they were found to support “anti-German propaganda”.<sup>69</sup> The Nuremberg Race Laws of 1935, which provided *inter alia* that “A Jew cannot be a citizen of the

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<sup>62</sup> *Treaty of Saint-Germain-en-Laye of 10 September 1919* (*Staatsvertrag von Saint-Germain-en-Laye vom 10. September 1919*), StGBL 303/1920, entered into force 16 July 1920, Articles 64 and 70; Brandl, U., ‘Austrian Nationality Law’, in Nascimbene, B. (ed.), *Nationality Laws in the European Law*, Butterworths Law, September 1996, p. 64ff; Thienel, R., *Österreichische Staatsbürgerschaft*, Staatsdruckerei, 1989/1990, Vol. I, pp. 49-60 cited in EUDO Report Austria (footnote 30), p. 5.

<sup>63</sup> *Treaty of Saint-Germain-en-Laye* (footnote 62), Article 80.

<sup>64</sup> Bauböck, R., “*Nach Rasse und Sprache verschieden*” *Migrationspolitik in Österreich von der Monarchie bis heute*, IHS Political Science Series 31, March 1996, p. 4; Burger, H. & Wendelin, H., ‘Vertreibung, Rückkehr und Staatsbürgerschaft: Die Praxis der Vollziehung des Staatsbürgerschaftsrechts an den österreichischen Juden’ in Österreichische Historikerkommission (ed.), *Staatsbürgerschaft und Vertreibung*, Oldenbourg Wissenschaftsverlag, 10 December 2003, p. 239ff; Kolonovits, D., ‘Rechtsfragen des Wiedererwerbs der österreichischen Staatsbürgerschaft durch Opfer des Nationalsozialismus (Vertriebene) nach österreichischem Staatsbürgerschaftsrecht’ in Österreichische Historikerkommission (ed.), *Staatsbürgerschaft und Vertreibung*, Oldenbourg Wissenschaftsverlag, 10 December 2003, p. 29ff cited in EUDO Report Austria (footnote 30), p. 5; see also Burger, H., *Heimatrecht und Staatsbürgerschaft österreichischer Juden: Vom Ende des 18. Jahrhundert bis in die Gegenwart*, Böhlau Wien, 22 November 2013.

<sup>65</sup> *Heimatrechtsgesetz 1863* as amended 1896, Article 1.

<sup>66</sup> EUDO Report Austria (footnote 30), pp. 5-6.

<sup>67</sup> *Verordnung der Bundesregierung vom 16. August 1933, womit das Bundesgesetz vom 30. Juli 1925, BGBl. 285, über den Erwerb und den Verlust der Landes- und Bundesbürgerschaft abgeändert wird*, Federal Law Gazette 369/1933.

<sup>68</sup> EUDO Report Austria (footnote 30), p. 6, referring to: Davy, U. & Çinar, D., ‘Österreich’ in Davy, U. (ed.), *Die Integration von Einwanderern. Rechtliche Regelungen im europäischen Vergleich*, Campus Verlag, 19 February 2001, p. 567ff; Reiter, I., ‘Ausbürgerung. Politisch motivierter Staatsbürgerschaftsverlust im Austrofaschismus’ in *Juridikum* 4/2006, 2006, pp. 173-176; Reiter-Zatloukal, I., ‘Migration und politisch motivierter Staatsbürgerschaftsentzug im 20. Jahrhundert’ p. 80ff, in Dahlvik, J., Fassmann, H. & Sievers, W. (eds.), *Migration und Integration – wissenschaftliche Perspektiven aus Österreich – Jahrbuch 1/2011*, Vienna University Press, 7 December 2011.

<sup>69</sup> *Verordnung über die Aberkennung der Staatsangehörigkeit und den Widerruf des Staatsangehörigkeitserwerbes in der Ostmark vom 11. Juli 1939, GBfLÖ. 892/1939*. See also, Burger, H. & Wendelin, H., ‘Vertreibung, Rückkehr und Staatsbürgerschaft: Die Praxis der Vollziehung des Staatsbürgerschaftsrechts an den österreichischen Juden’ (footnote 64), p. 280. Burger, H., *Heimatrecht und Staatsbürgerschaft österreichischer Juden: Vom Ende des 18. Jahrhundert bis in die Gegenwart* (footnote 64).

Reich”<sup>70</sup> and subsequent discriminatory amendments to the citizenship law including the deprivation of nationality from all Jews outside the territory of the German Reich<sup>71</sup> were also applied in Austria.

57. In 1945, the Nationality Act of the re-established Austrian State provided that all those who held Austrian nationality on 13 March 1938 or would have acquired it by the operation of *ius sanguinis* in the intervening years were Austrian nationals. However, individuals who had left the country and acquired a new nationality were excluded (since this would have been grounds for loss of Austrian nationality).<sup>72</sup>
58. After the end of World War II “roughly one million displaced persons from Eastern Europe and the former Soviet Union [...] became stranded in Austria”.<sup>73</sup> Many of these persons had been deprived of their previous nationalities because of “collaboration” with the former German occupation force due to having acquired German citizenship<sup>74</sup> or because of “disloyalty” towards their non-German home country.<sup>75</sup> To address this situation and implement Article 34 of the 1951 Refugee Convention “displaced persons of German descent who were either stateless or whose citizenship status was unclear were granted the right to acquire Austrian citizenship by declaration and with reduced fees”.<sup>76</sup> By 1958 roughly 230,000 ethnic Germans had acquired Austrian citizenship by declaration.<sup>77</sup> Despite the 1951 Refugee Convention’s non-discrimination clause,<sup>78</sup> individuals who were not ethnic Germans did not benefit from this process and had to apply for naturalization.<sup>79</sup>
59. In 1973 an amendment to the Nationality Act, enabled survivors of the Holocaust and political emigrants who had re-established habitual residence in Austria to re-acquire citizenship by notification (*Anzeige*),<sup>80</sup> but it was only in 1993 that conditions were set for the reacquisition of citizenship by persons who had been forced to leave the country before 9 May 1945 because of (a well-founded fear of) persecution by the authorities of the Third Reich. The conditions attached to these re-acquisitions of nationality have, however, proved inaccessible for many of the concerned persons and their children.<sup>81</sup>

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<sup>70</sup> ‘The Reich Citizenship Law: First Regulation’, Article 4(1), available in Noakes, J., and Pridham, G., Documents on Nazism 1919-1945. Viking Press, February 1974, p. 463-467.

<sup>71</sup> *Elfte Verordnung zum Reichsbürgergesetz vom 25. November 1941*, RGBl. 133/1941.

<sup>72</sup> EUDO Report Austria (footnote 30), p. 8.

<sup>73</sup> *Ibid.*, p. 9.

<sup>74</sup> See, Strebel, H., ‘Das Gesetz zur Regelung von Fragen der Staatsangehörigkeit vom 22. Februar 1955’ in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Heidelberg Journal of International Law, Band/Volume 16, 1955, available at: [http://www.zaoerv.de/16\\_1955\\_56/16\\_1955\\_3\\_4\\_b\\_646\\_676\\_1.pdf](http://www.zaoerv.de/16_1955_56/16_1955_3_4_b_646_676_1.pdf) referencing the Czechoslovak Decree of 2 August 1945.

<sup>75</sup> *Ibid.*, referencing Polish Decree of 13 September 1946, No. 55 and Yugoslav laws of 1 July 1946, Article 35.

<sup>76</sup> EUDO Report Austria (footnote 30), p. 9 citing *Bundesgesetz betreffend den Erwerb der Staatsbürgerschaft durch Volksdeutsche*, Federal Law Gazette 142/1954. See also, Stern, J., ‘Ius Pecuniae – Staatsbürgerschaft zwischen ausreichendem Lebensunterhalt, Mindestsicherung und Menschenwürde’ in Dahlvik, J., Fassmann, H. & Sievers, W. (eds.), *Migration und Integration – wissenschaftliche Perspektiven aus Österreich – Jahrbuch 1/2011* (footnote 68), p. 68.

<sup>77</sup> See, Scheuringer, B., ‘Die Situation der sudetendeutschen Flüchtlinge in Oberösterreich seit 1945’ in *Nationale Frage und Vertreibung der Deutschen in der Tschechoslowakei – Fakten, Forschungen, Perspektiven aus dem Abstand von 50 Jahren*, Oberösterreichisches Landesarchiv, 2000, p. 147.

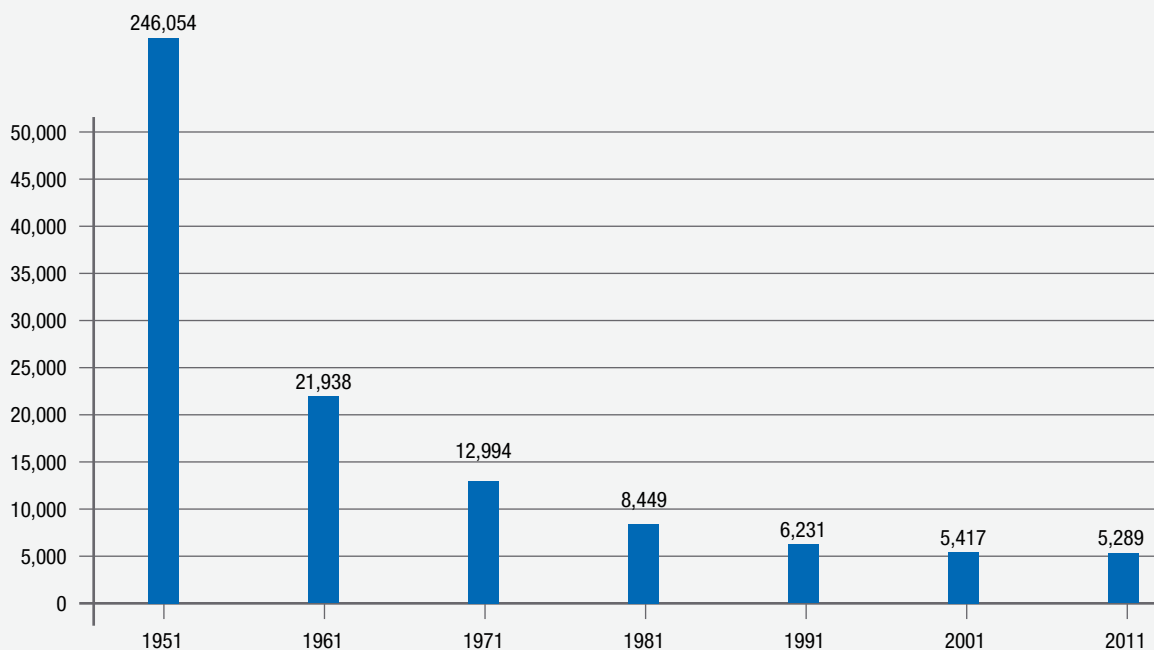
<sup>78</sup> 1951 Refugee Convention (footnote 6), Article 3 “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin”.

<sup>79</sup> EUDO Report Austria (footnote 30), p. 9, referring to Stieber, G. (1995), ‘Volksdeutsche und displaced persons’, in Heiss, G. & Rathkolb, O. (eds.), *Asylland wider Willen*, Dachs Verlag, 1995, p.149.

<sup>80</sup> EUDO Report Austria (footnote 30), p. 13.

<sup>81</sup> *Ibid.*, citing Kolonovits, D., ‘Rechtsfragen des Wiedererwerbs der österreichischen Staatsbürgerschaft durch Opfer des Nationalsozialismus (Vertriebene) nach österreichischem Staatsbürgerschaftsrecht’ (footnote 64), p. 183ff; Burger, H. & Wendelin, H. ‘Vertreibung, Rückkehr und Staatsbürgerschaft: Die Praxis der Vollziehung des Staatsbürgerschaftsrechts an den österreichischen Juden’ (footnote 64), p. 389ff.

**Figure 1:** Persons recorded as "stateless", "undetermined nationality" and "unknown nationality" in census data, 1951-2011



### 3.2.1 Evolution of the stateless population between 1951 and 2016

60. Existing data show a significant decrease in the number of stateless and potentially stateless persons registered in Austria since the 1950s with a slight increase in the recent past.
61. While this data might not be fully accurate, the overall trend and the scale of the decrease between 1951 and 2011 permits the conclusion that the number of stateless persons in Austria has been significantly reduced during the last sixty years. Changes to national legislation in many countries and the international and regional legal frameworks for the prevention and reduction of statelessness enacted since the 1950s may have contributed to this trend.
62. The data for 1951 to 2001<sup>82</sup> in Figure 1 is based on the population census conducted every ten years and therefore represents self-reporting by individuals of their nationality status. Figures from the Central Register of Residents, which reflect the number of people recorded by the registry offices as stateless, of undetermined nationality or of unknown nationality, provide more detailed information for the years after 2002. The discrepancies between these two sets of figures where they overlap demonstrate the difficulty in obtaining accurate information on the stateless population in Austria. However, both sets of figures show a similar trend with a decrease in the number of people in all three categories until 2008, after which they begin to increase. This may be due to an increase in the number of stateless asylum-seekers in recent years, but a comprehensive analysis into the reasons for this trend is not available and could not be undertaken within the scope of this study.

<sup>82</sup> Source: *Statistics Austria, Population Census 1951-2001, Register-based Census 2011, 'Population by nationality and gender 1951-2011'*. [Statistik Austria, Volkszählungen 1951 bis 2001, Registerzählung 2011, 'Bevölkerung nach Staatsangehörigkeit und Geschlecht 1951 bis 2011', 21 June 2013, available at: <http://goo.gl/hhvHFx>.

## 3.3 Current data on statelessness in Austria

### 3.3.1 Central Register of Residents

63. According to the latest available data from Statistics Austria a total of 4,142 stateless persons, 543 individuals with unknown nationality and 6,943 persons with an undetermined nationality were registered in the Central Register of Residents at the beginning of 2016.<sup>83</sup> This data includes an unknown number of stateless asylum-seekers, recognized refugees and beneficiaries of international protection.
64. These 11,628 people registered as stateless, of undetermined nationality or of unknown nationality in the Central Register of Residents amount to only 0.92 per cent of the registered foreign population in Austria at the start of 2016.<sup>84</sup>

### 3.3.2 Migration and Asylum Statistics

65. At the end of 2015, 595 stateless persons, 212 persons of undetermined nationality and 21 individuals with unknown nationality were recorded in the Settlement and Residence Statistics of the Ministry of the Interior.<sup>85</sup>
66. The Asylum Statistics published by the Ministry of the Interior show a considerable increase in the number of stateless persons applying for asylum from 253 in 2013 to 1,314 in 2014 and 2,235 in 2015.<sup>86</sup> While this reflects an overall increase in the number of asylum applications, it is interesting to note that in 2015 stateless persons were the seventh largest “nationality” group applying for asylum accounting for around 2.5 per cent of all asylum applications. In 2015 there were also 93 asylum applications by persons of undetermined nationality. This shows a similar pattern with an increase from 45 in 2014 and 19 in 2013.<sup>87</sup>
67. Reliable statistics on the number of stateless refugees and beneficiaries of subsidiary protection living in Austria are not available. However, by looking at the number of stateless persons granted such protection over the last ten years it is possible to produce a reasonable estimate. Based on these calculations 2,467 stateless refugees and beneficiaries of subsidiary protection were living in Austria at the end of 2015. This means that stateless persons constitute three per cent of the Austrian refugee population.<sup>88</sup>
68. In 2015, 1,372 stateless persons were granted international protection. Of these 1,333 were recognized as 1951 Refugee Convention refugees and 39 granted subsidiary protection. A further 56 stateless persons were granted humanitarian leave to remain.<sup>89</sup>

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<sup>83</sup> Statistik Austria, ‘Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit’ (footnote 9) (population figures) and Statistik Austria, BMI, Asylstatistik, ‘Asylanträge 2000-2015 nach Staatsangehörigkeit’, 17 June 2016, available at: <http://goo.gl/N0e1hn> (for figures on stateless asylum-seekers; the table reflects the overall number of asylum applications in the preceding year).

<sup>84</sup> According to the same source, the total foreign population at the start of 2016 was 1,267,674.

<sup>85</sup> Information provided to UNHCR by Ministry of the Interior, emails dated 16 March 2016 and 23 November 2016. These figures do not include asylum-seekers and persons benefiting from International Protection.

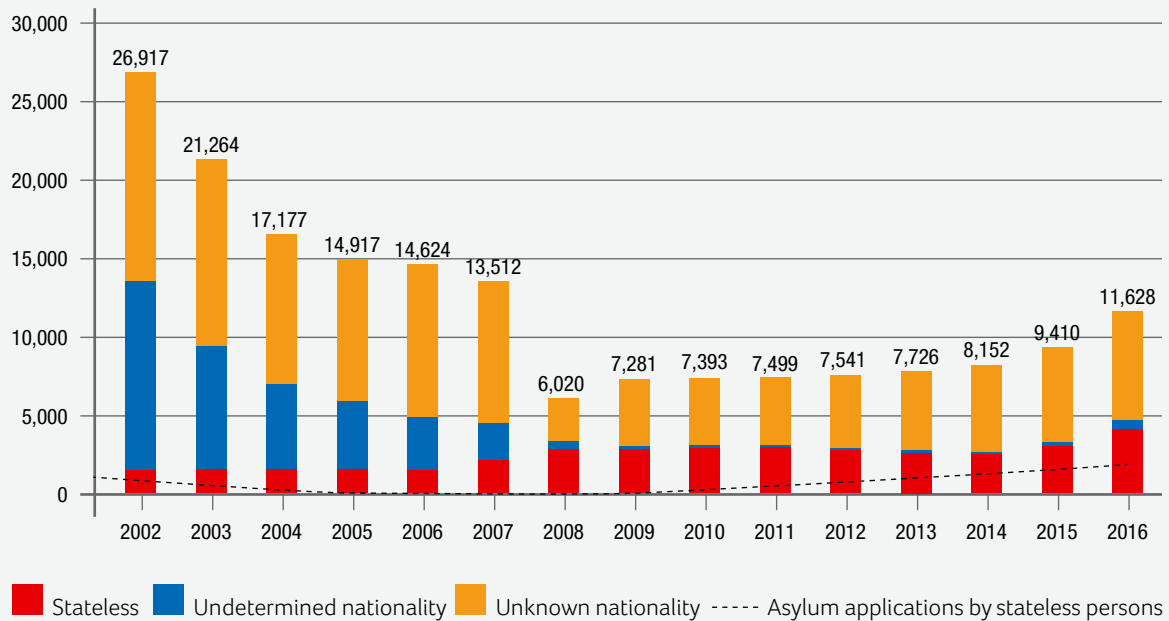
<sup>86</sup> Statistik Austria ‘Asylanträge 2000-2015 nach Staatsangehörigkeit’ (footnote 83).

<sup>87</sup> *Ibid.*

<sup>88</sup> The total refugee population in Austria at the end of 2015 was 72,216.

<sup>89</sup> Bundesministerium für Inneres (BMI), *Asylstatistik 2015*, available at: [http://www.bmi.gv.at/cms/BMI\\_Asylwesen/statistik/files/Asyl\\_Jahresstatistik\\_2015.pdf](http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/files/Asyl_Jahresstatistik_2015.pdf).

**Figure 2:** Persons recorded as "stateless", "undetermined nationality" and "unknown nationality" in the Central Register of Residents 2002-2016 and asylum applications by stateless persons



Source: Statistics Austria, Population Stock, 'Population at the start of the year since 2002 by nationality' and Ministry of the Interior, Asylum Statistics. [Statistik Austria, 'Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit' (footnote 9) (population figures) and Statistik Austria, BMI, Asylstatistik, 'Asylanträge 2000-2015 nach Staatsangehörigkeit'.

### 3.3.3 Other data on stateless persons in Austria

69. The following additional data on the stateless population in Austria were identified in the course of this research:

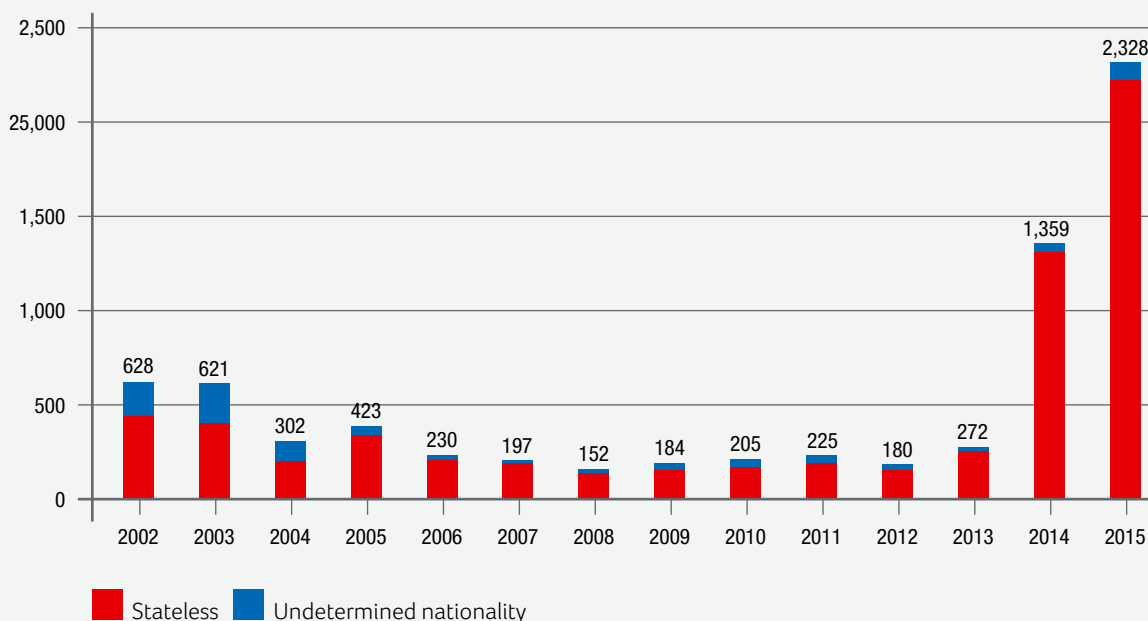
- **Births of stateless children:** Since the Austrian Nationality Act does not provide for otherwise stateless children to acquire Austrian nationality at birth, children who do not have access to another nationality will be stateless. Between 2002 and 2012 the births of 171 stateless children, 20 children of unknown nationality and 1,257 children of undetermined nationality were recorded in Austria.<sup>90</sup>
- **Deaths of stateless persons:** Between 2002 and 2012, 50 stateless persons who had been born in Austria and an additional 161 stateless persons who had been born in other States died in Austria.<sup>91</sup>
- **Acquisition of Austrian nationality:** Between 2005 and 2015, 479 stateless persons, 99 persons of undetermined nationality and 28 persons of unknown nationality were naturalized as Austrian citizens.<sup>92</sup> (See Chapter 7.6 for further details.)

<sup>90</sup> Statistics Austria, Vital Statistics, information provided to researchers by Statistics Austria, email dated 16 January 2014.

<sup>91</sup> *Ibid.*

<sup>92</sup> Statistik Austria, Statistik der Einbürgerungen, 'Eingebürgerte Personen seit 2005 nach bisheriger Staatsangehörigkeit', 16 February 2016, available at: <http://goo.gl/q0gmvZ>.

**Figure 3:** Persons recorded as "stateless" and "undetermined nationality" in the Ministry of the Interior Asylum Statistics 2002-2014



Source: Ministry of the Interior, Asylum Statistics. [Statistik Austria 'Asylanträge 2000-2015 nach Staatsangehörigkeit' (footnote 83).]

- Immigration and Emigration:** Since many stateless persons do not possess travel documents it is difficult for them to migrate regularly. This is reflected in the low number of stateless persons recorded in immigration and emigration figures. The number of persons of unknown or undetermined nationality recorded is also low (see Table 3 in APPENDIX I: Further statistics). Moreover, it should be noted that these figures are based on the registration of individuals in the Central Register of Residents. It is therefore possible that stateless persons recorded as having emigrated have in fact remained in Austria, but in an irregular situation.

**Table 1:** Immigration and emigration of stateless persons 2006-2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Immigration to Austria	114	131	110	111	130	113	121	191	685	1,361
Emigration from Austria	74	93	103	98	136	112	121	78	87	133
Migration Balance	40	38	7	13	-6	1	0	113	598	1,228

Source: Statistics Austria, Migration Statistics, 'Migration with foreign countries by nationality, 2006-2015'<sup>93</sup>

<sup>93</sup> Statistik Austria, Wanderungsstatistik, 'Wanderungen mit dem Ausland (Auswanderungen) 2006-2015 nach Staatsangehörigkeit'. 14 June 2016, available at: <http://goo.gl/sTUV8z>.

### 3.3.4 Observations from interviewed stakeholders

70. All stakeholders interviewed for this study reported that only few stateless persons had come to their attention. For instance, over the last few years the Austrian Ombudsman Board (*Volksanwaltschaft*) was approached for support by fewer than five stateless persons a year.<sup>94</sup> Migrant counselling organisations and lawyers also reported their impression that statelessness is numerically a small phenomenon in Austria. Similarly, the representative of the Ministry of the Interior interviewed for this report expressed the opinion that statelessness was generally not a “massive problem” in Austria.<sup>95</sup>

## 3.4 The profile of stateless persons in Austria

### 3.4.1 Main causes for statelessness and origin of stateless persons in Austria

#### 3.4.1.1 STATELESSNESS IN A NON-MIGRATORY CONTEXT

71. Persons made stateless by the historical developments described above (see Chapter 3.2) and/or their descendants may continue to be stateless. The research for this report identified persons whose ethnic German parents had fled to Austria after World War II and who, despite being born in Austria and residing there without interruption, have been stateless for their whole lives. This scenario seems reflected in the fact that among the stateless persons who died in Austria between 2002 and 2012 there were 50 who were born in Austria.<sup>96</sup>
72. Since the Austrian Nationality Act does not allow otherwise stateless children to acquire Austrian nationality at birth, children of stateless parents and parents who are unable to transmit their nationality are born, and may remain, stateless. In fact among countries of birth of stateless persons recorded in the Central Register of Residents, Austria ranked first at the start of 2015 and second at the start of 2016 with around an eighth of the registered stateless population having been born in Austria (see Table 3 in APPENDIX I: Further statistics),<sup>97</sup> although, as Figure 4 shows, the absolute number of children born stateless in Austria has been low in recent years.

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<sup>94</sup> Information provided to researchers by two representatives of the Austrian Ombudsman Board (*Volksanwaltschaft*), interviewed on 24 September 2013.

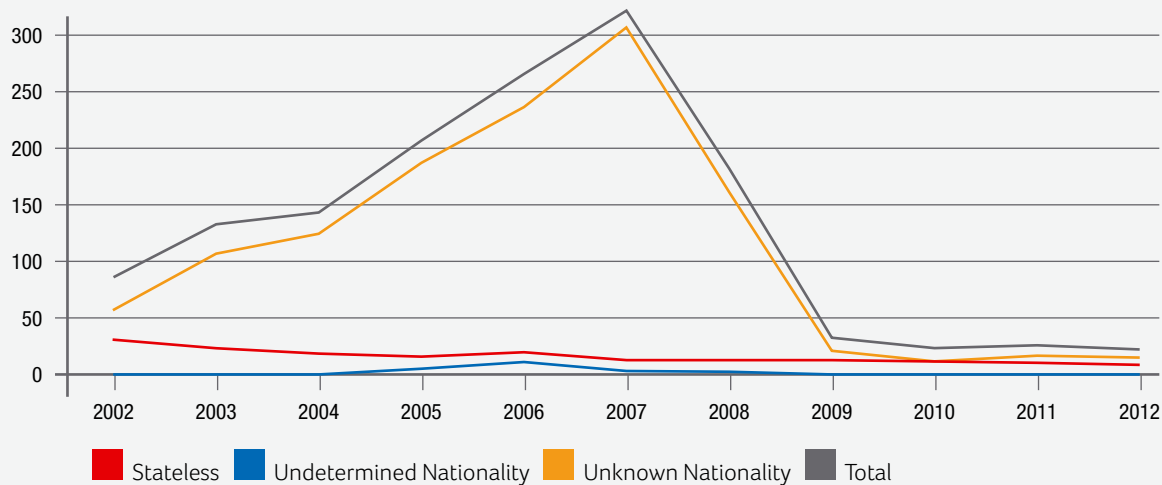
<sup>95</sup> Interview with a Ministry of the Interior official on 8 January 2014.

<sup>96</sup> Statistics Austria, Vital Statistics, information provided to researchers by Statistics Austria, email dated 16 January 2014.

<sup>97</sup> STATcube – Statistical Database of Statistics Austria (STATcube), Population at the beginning of the year since 1982, 'Time section: 2015-2016 and Country of birth by Nationality: Stateless'.



**Figure 4:** Live births of stateless children, children of undetermined nationality and children of unknown nationality 2002-2012



Source: Statistics Austria, Vital Statistics, Information provided to researchers on live births by citizenship of the child in Austria 2002-2012, email dated 16 January 2014

## Case of Hans and Claudia



Name: Hans and Claudia (brother and sister)\*

Age and sex: About 50 years, male and female

Country of birth: Austria

Length of stay in Austria: Whole life

Claimed cause of statelessness: Children of stateless parents

Status at time of interview: Hans was stateless, but had an unlimited residence permit;  
Claudia had Austrian citizenship

Hans and Claudia were both born in Austria. Their parents were of Sudeten German and Transylvanian origin and had fled to Austria in 1945, where they had been recognized as refugees. Both lost their previous nationalities (Polish, Romanian) in 1946. According to Hans, his father could not naturalize in Austria because he had been issued a residence ban due to a minor criminal offense soon after the war. Hans and Claudia used to have refugee passports like their parents. Hans was told by his mother that, at the time, there were inquiries in the communities about stateless persons and that one could sign up to receive citizenship. But while their mother reportedly signed up in the 1960s, she never received citizenship. When she inquired again at the end of the 1960s, she was told that no application from her had been received. She did not (re-) apply because of the high costs involved. Their father applied for Austrian citizenship at the beginning of the 1980s, but passed away before a decision was taken.

Claudia was able to naturalize as an Austrian citizen, but Hans and his two brothers have not been able to naturalize since they do not meet all the requirements for naturalization, despite having lived their whole lives in Austria.

\* Names changed to protect privacy.

### 3.4.1.2 STATELESSNESS IN A MIGRATORY CONTEXT

73. Statelessness can also arise in a migratory context and, indeed, seven out of eight stateless persons registered in the Central Register of Residents were born outside Austria.<sup>98</sup> In addition, 16 per cent of the persons registered as being of undetermined nationality and 56 per cent of those registered as being of unknown nationality were born abroad.<sup>99</sup> The countries which are the most frequent places of birth of stateless persons are also those which have been the origin of the largest groups of asylum-seekers in recent years (see Table 3 in APPENDIX I: Further statistics). This data supports the information garnered from interviews with stakeholders who indicated that many of the cases of statelessness that they were aware of related to the dissolution and separation of States in Europe, notably the Soviet Union and the SFRY.
74. A review and analysis of the former Asylum Court's practice regarding stateless asylum-seekers in the year 2012 found that most stateless asylum-seekers were Syrian Kurds or Palestinians. Other countries of origin of applicants who claimed to be stateless were Egypt, Lebanon, Mongolia, and the Republics of the former Soviet Union, notably Armenia, Azerbaijan, Georgia, Ukraine and Uzbekistan.<sup>100</sup> This analysis identified only one case of an asylum-seeker who had voluntarily renounced their nationality rendering themselves stateless, although this may have been a bigger problem in the past.<sup>101</sup>
75. There have also been cases of individuals becoming stateless in the process of naturalization, because they had renounced their former citizenship as required under the Austrian Nationality Act, but had not received Austrian nationality because in the interim they had ceased to meet the requirements for naturalization (See Chapter 7.5.6).
76. Statelessness may also occur as a result of conflicting nationality laws. This is particularly likely to affect children born to foreign nationals in Austria who cannot acquire one of their parents' nationalities. Since a number of States discriminate against women with regard to the transmission of nationality to children, foreign mothers are particularly likely to face this problem.<sup>102</sup> An NGO counsellor mentioned to researchers the case of a child born out of wedlock to an Iranian mother and an Austrian father. At that time the child was unable to acquire Austrian nationality from the father and, since under Iranian law the mother could not transmit nationality, the child was stateless.<sup>103</sup>
77. While no cases were identified during the research, statelessness could also affect children born in Austria to recognized refugees and asylum-seekers. These groups may theoretically be able to pass on their nationality to their children, but in practice it may be difficult for the children to prove their right to the nationality, for instance, if their parents' country of origin normally requires births to be registered with the consular authorities in order to document the existence and nationality of the child. Since the consular authorities are by their nature representatives of the persecutory State fled by the refugees, such requirements may cause problems for refugees and leave their children vulnerable to statelessness due to lack of documentation.

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<sup>98</sup> STATcube, Population at the beginning of the year since 1982, 'Time section: 2016 and Country of birth by Nationality: Stateless'. 3,650 of the 4,142 recorded stateless persons were born abroad.

<sup>99</sup> STATcube, Population at the beginning of the year since 1982, 'Time section: 2016 and Country of birth by Nationality: Undetermined and unknown nationality'. 1,142 of the 6,943 recorded as undetermined and 306 of the 543 persons of unknown nationality were born abroad.

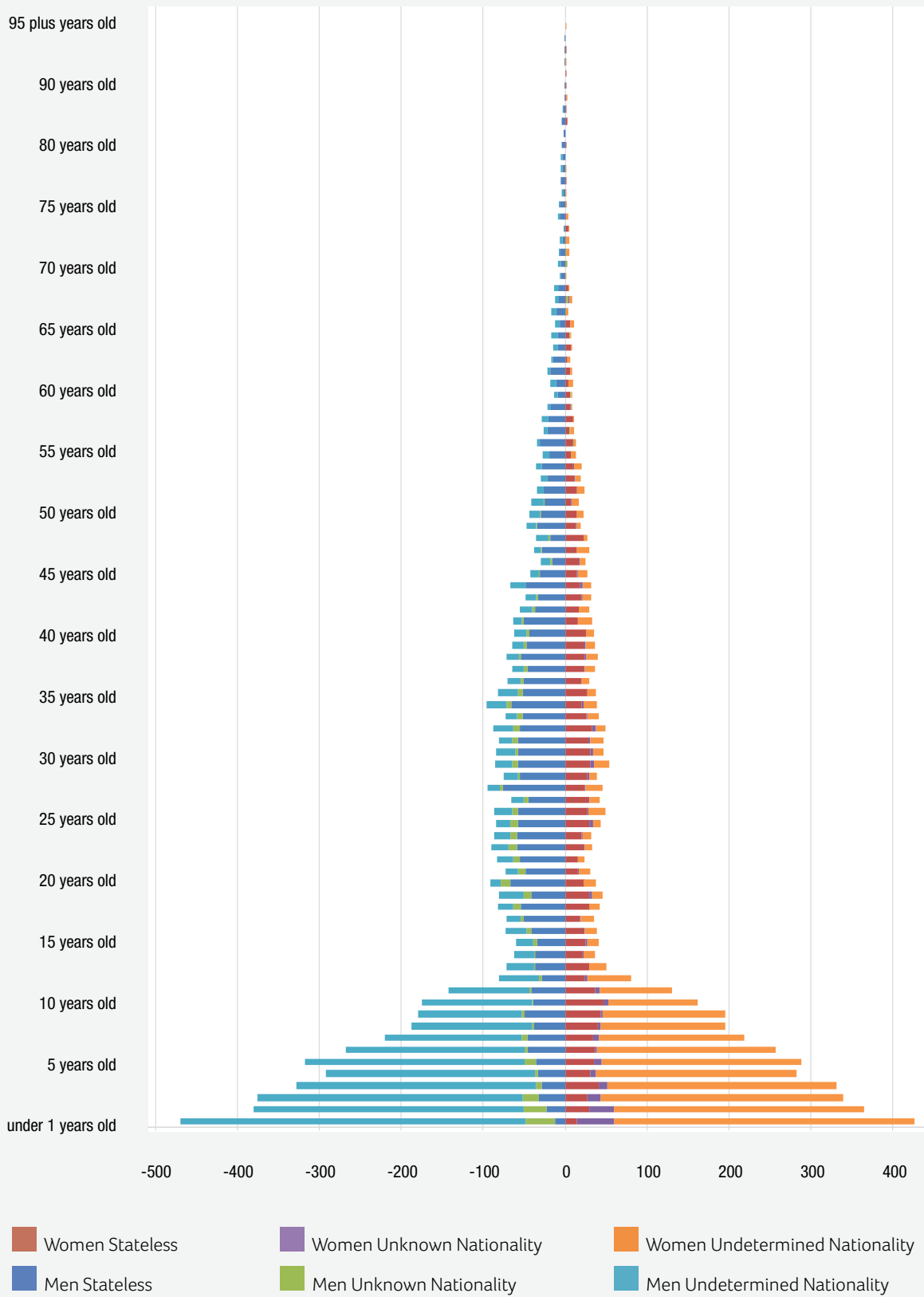
<sup>100</sup> Karger, B., *Die Praxis des Asylgerichtshofs in Bezug auf staatenlose Asylsuchende*, 22 May 2013.

<sup>101</sup> In an interview for this report on 8 January 2014 a Ministry of the Interior official mentioned having this problem with Georgian nationals prior to 2011. See also, UNHCR, *Belgium Statelessness Mapping Report*, October 2012, available at: <http://www.refworld.org/docid/5100f4b22.html>, para 141 and footnote 125.

<sup>102</sup> See UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2016*, 8 March 2016, available at: <http://www.refworld.org/docid/56de83ca4.html> for a list of States which do not permit women to transmit nationality to their children.

<sup>103</sup> Information provided to researchers by an NGO representative on 18 April 2014.

**Figure 5:** Stateless persons, persons of unknown nationality and persons of undetermined nationality by age on 1 January 2016



Source: STATcube – Statistical Database of Statistics Austria, 'Population at the beginning of the year since 1982, Time section, Sex and Nationality by Age in Single Years'

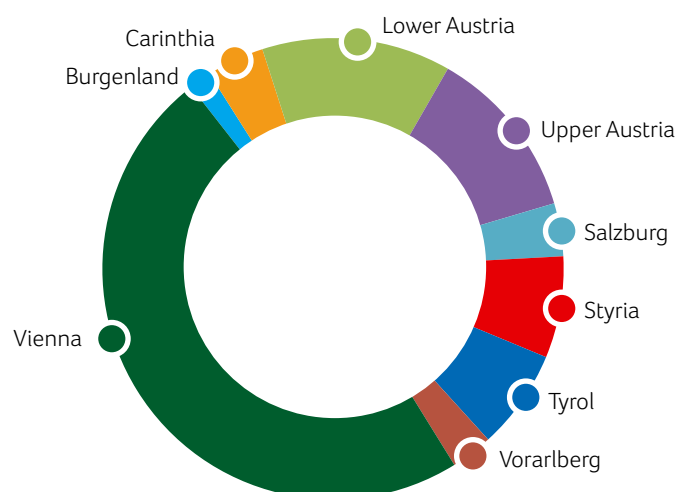
### 3.4.2 Age and sex of stateless persons in Austria

78. The age-sex pyramid for stateless persons, persons of undetermined nationality and persons of unknown nationality registered in the Central Register of Residents shows that a slight majority of this population group is male (6,668) compared to 4,960 women and girls. The age group most represented among both sexes are children below five years of age, largely due to the number of such children with undetermined nationality.<sup>104</sup> This group is followed by men between 25 and 49 years of age. Altogether, children below the age of 14 constitute nearly 60 per cent of all persons recorded under one of the categories of potentially stateless persons in the Central Register of Residents. This contrasts with the asylum-seeking population in Austria where over recent years around one third of those recorded as stateless have been children.<sup>105</sup>

### 3.4.3 Geographical distribution of stateless persons in Austria

79. Almost 50 per cent of Austria's stateless population lives in Vienna,<sup>106</sup> followed by the provinces of Upper and Lower Austria. These are Austria's three most populous provinces. The majority of stateless persons live in cities, with two-thirds of the registered stateless population living in Austria's four biggest cities Vienna, Graz, Linz and Salzburg (see Table 4 in APPENDIX I: Further statistics).<sup>107</sup>

**Figure 6:** Stateless persons (including refugees and asylum-seekers) by province at the start of 2016



Source: STATcube – Statistical Database of Statistics Austria, Population at the beginning of the year since 1982, 'Bundesland by Time section: 2016 by Nationality: Stateless'

<sup>104</sup> This may indicate that a large number of children are initially recorded as being of undetermined nationality and subsequently have their status resolved.

<sup>105</sup> Eurostat, 'Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)' 18 March 2016. According to these figures, between 2010 and 2015, 36% of stateless asylum applicants in Austria were children.

<sup>106</sup> Vienna is not only the Austrian capital but also one of its nine provinces.

<sup>107</sup> An exception to this trend is the political district of Baden, but the relatively high number of stateless persons there may be due to the location of the largest initial reception centre for asylum-seekers in this district.

## 3.5 Conclusions and Recommendations

### 3.5.1 Conclusions

80. For the present report the available statistical information was examined with the objective of identifying and estimating as accurately as possible the size of the stateless population in Austria. However, as in other countries,<sup>108</sup> it has not been possible to establish an accurate statistical overview of the stateless population. A major challenge in mapping the stateless population is that mostly only those legally resident in Austria and persons who applied for international protection are recorded in the statistics. Stateless persons living irregularly in Austria are therefore mainly invisible in the data. An additional difficulty is risk of mis-categorization or inconsistent categorization of stateless persons, for instance, whether individuals in a particular situation are classified as “stateless”, “unknown nationality” or “undetermined nationality” in the Central Register of Residents may vary by municipalities. This problem affects almost all the data sets examined in this chapter.
81. Despite the difficulty in establishing a reliable estimate of the stateless population, it is clear that the number of stateless persons resident in Austria is small compared to the number of asylum-seekers, refugees and other groups of foreigners; as of 1 January 2016 only 0.92 per cent of the foreign population registered in the Central Register of Residents were recorded as being stateless, of undetermined nationality or of unknown nationality. The available statistical information agrees with the assessments of stakeholders that statelessness in Austria mainly occurs in a migratory context. However, the fact that the Austrian Nationality Act does not allow otherwise stateless children to acquire Austrian citizenship at birth contributes to the existence of a significant domestic stateless population with one in eight stateless persons registered in the Central Register of Residents having been born in Austria.
82. Overall, the number of stateless persons in Austria has reduced considerably over the past 60 years, but has begun to increase again in recent years, perhaps due to an increase in the number of stateless asylum-seekers entering Austria.

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<sup>108</sup> See, for instance, UNHCR, *Mapping Statelessness in Belgium* (footnote 101); UNHCR and Asylum Aid, *Mapping Statelessness in the United Kingdom*, 22 November 2011, available at <http://www.refworld.org/docid/4ecb6a192.html>; UNHCR, *Mapping Statelessness in the Netherlands*, November 2011, available at <http://www.refworld.org/docid/4eef65da2.html>.

## 3.5.2 Recommendations

83. Given the various challenges in establishing a full picture of the stateless population in Austria identified in this chapter, UNHCR presents the following recommendations. Their aim is to ensure the availability of an accurate overview of the stateless population in Austria and thereby to contribute to its protection as well as the prevention and reduction of statelessness:
- 1) Improve collection of statistics on the phenomenon of statelessness in Austria;
  - 2) Identify the main difficulties encountered by different municipalities in registering persons as “stateless”, of “undetermined nationality” or of “unknown nationality”. The research should also encompass challenges faced in the registration of children’s nationality;
  - 3) Review the nationality categories currently used by municipalities and other authorities, paying particular attention to those that may include stateless persons such as “unknown nationality” and “Palestinian”;
  - 4) Provide guidance to municipalities on the registration of stateless persons and persons of undetermined and unknown nationality; this guidance should take into account the 1954 Convention definition of a “stateless person” and comments on the interpretation and implementation of the Convention in the UNHCR *Handbook on Protection of Stateless Persons*;<sup>109</sup>
  - 5) Train staff of the municipalities’ registry offices to ensure that the guidance is known and effectively implemented;
  - 6) Create a central focal point to whom officials can refer with questions related to registering nationality or the use of the categories “stateless”, “undetermined nationality” and “unknown nationality”;
  - 7) Ensure that persons registered in the Central Register of Residents have their status automatically changed to “stateless” whenever an authority or court recognizes them as such;<sup>110</sup>
  - 8) Develop means of recording and processing data on backgrounds and profiles of stateless persons;
  - 9) Raise awareness among authorities, NGOs and other actors in order to ensure that the specific needs of stateless persons receive appropriate attention.

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<sup>109</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), paras 13ff.

<sup>110</sup> If a statelessness determination procedure is created it should have sole responsibility for determining statelessness and the designation in the Central Register of Residents should be updated to reflect its decision.

# 4. The Face of Statelessness

84. Little information has so far been available on the actual lives of stateless persons. This chapter seeks to give an insight into the situation of stateless persons living in Austria based on information gathered through interviews with 12 stateless women and men. All interviewees were asked about their views on their situation and the challenges they face. Their stories demonstrate how lack of nationality results in an accumulation of problems and how uncertainty in many parts of their lives affect the enjoyment of human rights. This and the feeling of not belonging anywhere have negative impact on their wellbeing as well as on those of their families. These individual perspectives are intended to complement the report's analysis of relevant data, legislation and practice. The recommendations emerging from the interviews are reflected in the relevant thematic chapters.

## 4.1 Participatory interviews with affected persons in Austria

85. Despite the challenges associated with identifying stateless persons for interviews (see Chapter 1.3.4) more than 20 stateless persons were identified as meeting the relevant parameters, including ensuring reasonable diversity of origin, cause of statelessness and demographic characteristic. Of these, 12 persons agreed to be interviewed. While this small sample cannot provide a representative picture of the situation of stateless persons in Austria, a number of common themes emerged from the interviews, suggesting that these are recurring issues.

86. All but one of the interviewees had been declared stateless by either the Asylum or Aliens Police Authorities. In the one remaining case there are good reasons to believe that the individual is stateless, but this has not been officially determined. Such uncertainty is one effect of the lack of a statelessness determination procedure.<sup>111</sup>

87. The profiles of the twelve persons interviewed were as follows:

- Ten interviewees were male and two female;
- In terms of age, two were in their 20s, five in their 30s and five were over 45;
- Four persons were born stateless in Austria, three of whom had lived in Austria for their entire lives. The fourth person had been born in Austria, moved to Macedonia with his family and then returned to Austria.
- Seven persons had moved to Austria less than five years before their interview;
- In terms of geographical origin, of the nine interviewees with migrant backgrounds, three were Palestinians who had previously lived in the West Bank, Jordan and Libya. The other six were from the former Soviet Union (today's Uzbekistan, Latvia and Russian Federation) and Turkey;
- Seven of the nine interviewees with a migrant background had arrived in Austria irregularly;
- All those with a migrant background had applied for asylum in Austria;

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<sup>111</sup> For the sake of legibility, all interviewees are referred to as "stateless persons interviewed" throughout this report.

- At the time of interview two had acquired Austrian citizenship, one had an unlimited residence permit, one had a limited residence permit with access to the labour market by virtue of being married to an Austrian, one had a Red-White-Red Card Plus (see Chapter 6.1.3.2.3), four were in a situation of “tolerated stay” and three were rejected asylum-seekers;
- By May 2016, two of the rejected asylum-seekers had received residence permits and the third was in a situation of “tolerated stay”, two of those who had been in a situation of “tolerated stay” had received residence permits and one had reunited with his extended family in Sweden.

88. The interviews were semi-structured. All participants were asked about the impact of statelessness on their daily life; their legal situation; the situation of their children (if applicable); and their hopes and expectations for the future. Participants born abroad were also encouraged to speak about their reasons for leaving their previous country of residence. The insights into their lives are summarized below. In addition, the stories of these 12 individuals are provided in more detail at relevant parts throughout the report. (See Chapter 1.3.4 for more details of the methodology of the interviews).

## 4.2 Reasons for leaving their countries of origin

89. Among the interviewees with a migrant background, most gave unbearable living conditions as the reason for having left their country of origin or habitual residence. Some claimed that they had faced discrimination as members of an ethnic minority. For example, a couple of Meshketian Turkish ethnicity had escaped from the territory of today’s Uzbekistan after riots. Others mentioned that they had been arrested, interrogated, and even tortured in their countries of origin. However, it should be pointed out that these claims were not considered to be credible in the determination of their asylum claims and it was beyond the scope of this study to look into the reasoning of these decisions.

## 4.3 Lives marked by uncertainty and precariousness

90. While all interviewees testified that their lives in Austria have been marked by uncertainty and precariousness, their residence status had a major impact on the effects of statelessness on their personal lives. Stateless persons holding a long-term or permanent residence permit enjoy a number of rights which are often comparable to those of EU citizens, including being eligible for State support. In contrast, stateless persons without a residence permit have limited rights and, in particular, are not permitted to work. Depending on their particular situation they may have access to basic welfare support from the State. On the other hand, two interviewees who were born in Austria to ethnic German parents displaced after World War II stated that they had always been perceived as Austrians and “one of us”, including by authorities and employers. Their residence status and entitlements had only recently been questioned.



### 4.3.1 Uncertain residence status

91. All the interviewees with a migrant background had applied for asylum at some point in their stay in Austria, but their applications had been rejected and they had not been granted any form of international protection. Had a statelessness determination procedure existed, some of them might not have applied for asylum. One participant (who was born in Austria where he had spent most of his life and thus established his family and private life) reported that, even though he clearly did not qualify for international protection, he was advised by an official from a State authority to apply for asylum as this seemed to be his only chance to (at least temporarily) regularize his stay.
92. After the final rejection of their asylum applications, these individuals, including those recognised as stateless by the authorities, found themselves in a situation of unlawful residence. For example, the Palestinian interviewees had been determined to be stateless in the asylum procedure, but this did not result in permission to remain in Austria, since statelessness is not currently grounds for issuing a residence permit.
93. Some of the interviewees had remained in Austria in an irregular situation for several years. These included individuals whom the authorities later recognized could not be deported. In some instances the fact that the persons could not be deported was recognized through a decision on their “tolerated stay” and the issuing of a “tolerated stay” card. This is, however, not a residence permit.<sup>112</sup> In the case of six persons final proceedings to terminate their residence (expulsion order pursuant to the Asylum Act or residence ban), had been conducted. Later on, three of them obtained a residence permit and three more a “tolerated stay”. The interviewees observed that after being granted a residence permit or naturalized as Austrian citizens a source of constant worry disappeared, so that they could finally start looking to the future.
94. A major problem highlighted by the stateless persons was being required to prove their lack of nationality. They outlined the practical difficulties which they faced in trying to gather evidence (e.g. due to lack of cooperation by the embassies of their countries of birth or former residence).

### 4.3.2 Limited access to social and economic rights

95. While in the asylum system, interviewees were housed in reception facilities for asylum-seekers and benefited from basic welfare support. After the final negative decision on their asylum claims this support ceased and was resumed only when the authorities had established that their deportation was impossible for legal or practical reasons. Some stateless persons reported that they had been without state assistance for several months, but at the same time were not permitted to work. While some were able to stay with friends, others faced significant obstacles in securing housing.
96. Many of the interviewees who did not have residence permits were particularly concerned about what they considered their enforced idleness. They advocated for access to the labour market in order to earn their own livelihood and to contribute to society. One man, who had to rely on the support of his parents, who themselves lived on little income, said:

“*The most difficult aspect of statelessness is the lack of a normal life. One cannot work, one does not have any income. One lives here, but cannot do anything. [...] I have already been struggling with this situation since 2006. [...] I survive. [...] A real life – I do not have.*”<sup>113</sup>

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<sup>112</sup> However, after a year of “tolerated stay” a person can apply for a residence permit so this status can provide a first step towards regularizing their status.

<sup>113</sup> Stateless person interviewed for this study.

## 4.4 Hopes for the future

97. The participants' hopes and expectations for the future varied depending on their situation. Those living in Austria irregularly generally hoped to obtain lawful residence and so cease to live in fear and uncertainty resulting from their irregular residence status. Those who had not (yet) been granted a "tolerated stay", were hoping first for a positive decision on that question.
98. All the interviewees expressed a desire to be able to live what they called a normal life. They referred to their wishes to earn their living, to have health insurance, to be able to marry, to found a family, to travel and to vote. They wanted to be accepted as human beings who are part of and able to contribute to society.
99. The wish to acquire Austrian nationality was particularly strong among those who were born and raised in Austria. They had always considered themselves as "natives" and wished to be "official" Austrian citizens. One participant with a migrant background hoped to be able to naturalize soon so that he could vote, but also so that he could travel and visit his family in his country of former nationality (which he was unable to do with his Alien's Passport which is not valid for the country of former nationality).

# 5. Determination of Statelessness

100. This chapter analyses the current administrative and judicial procedures relating to the determination of statelessness and Austria's compliance with international standards and obligations in this respect.

## 5.1 Austria as a State Party to the 1954 Convention

101. Austria made one reservation when acceding to the 1954 Convention, namely that she shall be bound by Article 27 of the Convention (issuance of identity papers) only with regard to stateless persons staying lawfully in its territory. At the same time, Austria made one declaration, according to which it will fulfil its obligation under Article 28 by issuing Alien's Passports to stateless persons lawfully staying in its territory.<sup>114</sup>

102. Pursuant to the Austrian legislation concerning accession to the 1954 Convention, the latter does not have direct legal effect but has to be fulfilled by the adoption of national laws. At the time of accession, several national laws already contained special provisions on stateless persons.<sup>115</sup> However, according to an assessment by EUDO "not one single paragraph in any law has been amended thus far in order to make the [1954] Convention a 'living instrument'".<sup>116</sup>

103. Moreover, at present no specific legislation regulates the determination of statelessness or the rights to be accorded to persons recognized or seeking recognition as stateless persons.

## 5.2 A stateless determination procedure as integral aspect of the 1954 Convention

104. Like the 1951 Refugee Convention, the 1954 Convention sets out the rights and obligations of persons to whom it applies but is silent on the mechanism to identify and determine whether or not a person falls within its scope. However, as UNHCR's *Handbook on Protection of Stateless Persons* notes, it is "implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment to comply with their Convention commitments".<sup>117</sup>

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<sup>114</sup> 1954 Convention. Reservations and declarations available at: <https://goo.gl/cRsDYA>.

<sup>115</sup> The relevant provisions of these laws are discussed at the appropriate points in this report.

<sup>116</sup> EUDO Report Austria (footnote 30) p. 36

<sup>117</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 8.

105. To assess whether a person is eligible for protection under the 1954 Convention, a procedure for determining statelessness is a practical necessity. Only through such a procedure can a State clarify whether someone is stateless and so entitled to protection under the 1954 Convention. The lack of an effective determination mechanism therefore has harmful effects for both stateless persons and the State itself.<sup>118</sup>
106. In 2014, the Parliamentary Assembly of the Council of Europe (PACE) called on States to:
- “ [...] establish statelessness determination procedures in line with the guidelines of [...] UNHCR and avoid refusing to recognise a person as stateless when his or her situation meets the definition of a stateless person as set out in Article 1 of the Convention relating to the Status of Stateless Persons, in particular through the introduction of ‘alternative’ definitions of statelessness at the national level.”<sup>119</sup>
107. A number of countries, including several EU Member States,<sup>120</sup> have established determination and protection frameworks specific to stateless persons, which enable stateless persons to claim protection on the basis of their statelessness. While these procedures vary considerably from country to country, the majority are under the control of the immigration service and attach residence rights to the recognition of statelessness. In all these countries the number of applications for a determination of statelessness is low, in comparison with migration figures.<sup>121</sup> In some States, courts have also recognized the need for a statelessness determination procedure.<sup>122</sup>
108. The determination of statelessness is not specifically addressed by international human rights law. However, it has been clearly established that stateless persons are covered by the provisions of international and regional human rights instruments. Furthermore, a study of the work of the ECHR has determined that the fact of statelessness is relevant to the implementation of various rights under the ECHR and that in some instances the failure to determine statelessness will be a central factor in the finding of a violation. On this basis, it has been argued that the ECHR can also be considered to require States to have a mechanism for determining statelessness.<sup>123</sup>

<sup>118</sup> European Network on Statelessness (ENS), *Statelessness Determination and the Protection Status of Stateless Persons*, 2013, p. 5-6, available at: <http://www.refworld.org/docid/53162a2f4.html>.

<sup>119</sup> Council of Europe: Parliamentary Assembly (PACE), *Access to nationality and the effective implementation of the European Convention on Nationality*, 9 April 2014, Resolution 1989 (2014), para. 5.2.2 available at: <http://www.refworld.org/docid/5346951a4.html>.

<sup>120</sup> As of May 2016, France, Hungary, Italy, Latvia, Spain and the United Kingdom of Great Britain and Northern Ireland had dedicated statelessness determination procedures, while in April 2016 Greece adopted a law providing for the creation of such a procedure. The existence of such procedures was noted by the Justice and Home Affairs Council of the European Union which also encouraged States to share good practice with regard to statelessness. European Union Justice and Home Affairs Council, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, 4 December 2015, 893/15, available at: <http://goo.gl/uHoZCv>.

<sup>121</sup> See also UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>.

<sup>122</sup> *X v. The Mayor and City Council Members of the City of Utrecht*, 201302776/1/A3, The Netherlands, Council of State (Raad van State), 21 May 2014.

<sup>123</sup> European Network on Statelessness, *Strategic Litigation: An obligation for statelessness determination under the European Convention on Human Rights?*, 2014, Discussion paper 09/14, available at: <http://goo.gl/R6QG2L>.

## 5.3 Austrian national legal framework and practice to date with respect to statelessness determination

### 5.3.1 Legal framework

109. Since Austria does not have specific legislation providing for the determination of statelessness and the rights to be accorded to recognized stateless persons, various authorities and courts competent to decide on different legal issues relevant to stateless persons have to determine if a person is stateless. However, the recognition of a person's statelessness by one authority or court is not binding on other authorities or courts.
110. The current situation in Austria with respect to the 1954 Convention is reminiscent of the years following the ratification of the 1951 Refugee Convention when the establishment of a designated refugee status determination procedure was not seen as a necessity. In the 13 years before Austria enacted its first Asylum Act the question of whether or not a person was a Convention refugee had to be decided by authorities dealing with particular legal matters, such as the issuance of a passport or the initiation of expulsion proceedings.<sup>124</sup>

### 5.3.2 Practice

111. In the absence of specific legal criteria for the determination of statelessness, different authorities and courts (and perhaps even officials and judges within the same authority or court) may apply different standards, which could lead to different outcomes in comparable cases.
112. Establishing a person's nationality is a central question for the asylum procedure.<sup>125</sup> It is relevant to consider the practice in these proceedings since stateless persons in a migratory context are likely to apply for international protection. The most comprehensive information available on practice in determining statelessness is an analysis of the former Asylum Court (*Asylgerichtshof*) jurisprudence regarding stateless asylum-seekers in the year 2012.<sup>126</sup>
113. The study of the (then) Asylum Court's practice found that in 66 cases the statelessness of the appellant was determined in the context of a judgement on international protection.<sup>127</sup> In most of these cases, asylum-seekers had submitted documentary evidence from their former countries of habitual residence, such as birth certificates or United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) registration cards. In at least one case, a confirmation was requested and obtained from UNRWA through the Austrian embassy in the country of former habitual

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<sup>124</sup> The explanatory remarks to the first *Austrian Asylum Act* of 1968 attest that its adoption aimed to remedy the lack of a legal entitlement to a refugee status determination decision.

<sup>125</sup> Information provided to researchers by the Federal Office of Immigration and Asylum by written statement dated 14 May 2014. See also, Verwaltungsgerichtshof (Higher Administrative Court), 2008/01/0020, 19 March 2009, regarding the duty of the Asylum Authority to establish *ex officio* the real country of origin of the asylum-seeker if this is feasible due to concrete indications during the procedure also without the cooperation of the asylum-seeker; Asylgerichtshof (Asylum Court), D3 406.439-1/2009, 20 May 2009, regarding the need to investigate *ex officio* the nationality separate from the ethnic group and the country of last habitual residence.

<sup>126</sup> Karger, B., *Die Praxis des Asylgerichtshofs in Bezug auf staatenlose Asylsuchende*, 22 May 2013.

<sup>127</sup> Of these 66 stateless applicants, half (33) were "Palestinians" (17 of whom came from Lebanon, 6 from Iraq, 2 from Syria and 8 from the Occupied Palestinian Territories). 26 stateless persons were members of the Kurdish ethnic group and came from Syria (17), the Russian Federation (7), Azerbaijan (1) and Georgia (1). Of the remaining seven cases, several were also members of ethnic minorities. These persons came from: Ukraine/Belarus/Georgia, Armenia (Azeri), India/Bhutan, Serbia, Russian Federation (Greek), Former Yugoslavia (Roma), unknown.

residence. Many Kurds from Syria had submitted documents confirming their legal status as foreigners in Syria while another applicant had submitted an official document confirming his renunciation of Georgian nationality. Only in one case, had the court accepted that the person was stateless based solely on the applicant's statements and because these were consistent with information on their country of origin. In one case, concerning an asylum-seeker from the former Soviet Union, the (then) Asylum Court relied on a legal expert opinion on the nationality legislation in Armenia, Azerbaijan, Ukraine and Russia, commissioned by the first instance, the results of which confirmed the applicant's claim to be stateless.

114. In 47 further cases, indications of statelessness arose or the applicants claimed to be stateless.<sup>128</sup> In most of these cases the (then) Asylum Court found that the appellant had a particular nationality,<sup>129</sup> but in 17 cases no nationality or statelessness could be determined and the claim of statelessness therefore remained unresolved.
115. A legal representative interviewed for this study regretted that a claim of statelessness was often not accorded particular attention and not investigated unless the applicant claimed persecution on account of statelessness, since judges considered the possible statelessness irrelevant if the States of previous habitual residence and possible nationality were the same.<sup>130</sup>
116. Despite this, the study of the (former) Asylum Court's jurisprudence demonstrates that the bodies dealing with asylum applications already have some experience assessing applicants' nationality status. However, the data protection principles<sup>131</sup> relevant to refugee status determination mean that it may not be possible to fully examine a person's nationality status, including statelessness, within the course of the asylum procedure.
117. As the following case on p. 47 shows, individuals may also be recognized as stateless by other authorities.
118. Irrespective of which authority or court examines a person's nationality status, the burden of proof placed on persons claiming to be stateless seems to be high. For instance, in only one of the 47 cases analysed in the study of the jurisprudence of the Asylum Court where statelessness was contested an expert opinion had been commissioned in the course of the asylum procedure.<sup>132</sup>
119. Another example is the case of a Vietnamese asylum-seeker who claimed to have lost his Vietnamese citizenship *ex lege* because of having fled the Sino-Vietnamese conflict and/or of having resided abroad for more than 30 years. On the basis of an expert legal opinion commissioned by the first instance authority that such cases were subject to a revocation procedure and thus required an individual decision by the Vietnamese authorities, the (then) Asylum Court concluded in 2009 that the applicant's claimed statelessness was unsubstantiated because he had not submitted a revocation decision. The Court did not consider whether a revocation decision taken by the Vietnamese authorities would be accessible to persons concerned by it. In the same case, the Aliens Police rejected the application for an Alien's Passport, demanding proof of the revocation of the applicant's former nationality. The Higher Administrative Court, however, ruled in connection with the complaint against the denial of an Alien's Passport that as the relevant authority had not considered whether it would have been

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<sup>128</sup> These included applicants from Mongolia, Lebanon, Egypt, Syrian Arab Republic and countries that had been part of the former Soviet Union, notably from Armenia, Azerbaijan, Georgia, Ukraine and Uzbekistan.

<sup>129</sup> Armenia, Azerbaijan, Bangladesh, Georgia, Iraq, Lebanon, Mongolia, Russian Federation, Syrian Arab Republic, Ukraine and Uzbekistan.

<sup>130</sup> Information provided to researchers by an NGO legal counsellor in Vienna.

<sup>131</sup> In particular the fact that information on the identity of asylum-seekers should not be shared with the authorities of their country of origin.

<sup>132</sup> Karger, B., Die Praxis des Asylgerichtshofs in Bezug auf staatenlose Asylsuchende, 22 May 2013.



## Case of Guljan and Osman

Name: Guljan and Osman\*

Age and sex: Both in their 30s, female and male

Country of birth: Former Soviet Union/current Uzbekistan (Meshketian Turks)

Claimed cause of statelessness: Prolonged absence from Uzbekistan and no documents to prove their identity and origin

Length of stay in Austria: 2-4 years

Status at time of interview: Rejected asylum-seekers (By May 2016 both had residence permits)

Guljan and Osman, who are married and have two children, are cousins of Meshketian Turkish origin. They were both born in the former Soviet Union in the territory of today's Uzbekistan. After riots in 1989, in which their parents were killed, Guljan and Osman (who were still minors at the time) moved with their grandfather to what is now Azerbaijan, where they remained for about 20 years. In 1996, they married according to Islamic rites, but were not able to officially register their marriage due to their irregular status in Azerbaijan. Their children were born at home and their births were not registered because – as they stated – every time they came into contact with authorities or the police, they had to pay bribes. In April 2009, they moved to the Russian Federation where they stayed for two years, but were unable to legalize their stay. Guljan, Osman and their two minor children arrived in Austria irregularly more than two years before they were interviewed and applied for asylum. They have no documents from any of their countries of former habitual residence.

The (former) Federal Asylum Office (BAA) rejected their asylum application, established that they were Uzbek nationals and ordered their expulsion to Uzbekistan. This rejection was later confirmed by the (former) Asylum Court. With regard to their nationality, the (former) Asylum Court did not consider it possible to conclude that Guljan and Osman had no possibility of re-acquiring Uzbek citizenship (if they have lost it) since they claimed in their interview with the (then) BAA to have had Uzbek birth certificates. Their claim during the appeal procedure that they never had any form of identity document was thus not deemed credible. Moreover, the (then) Asylum Court found that they could certainly be traced in the birth records of their country of origin and must therefore be able to receive identity documents and be able to return to Uzbekistan. However, when Osman addressed the Uzbek embassy in Austria he was told that he and his wife could only have applied for Uzbek nationality up to the age of 16 and that it was too late to do so by then.

Since they did not have any travel documents, the family was unable to leave Austria, but they were regularly punished with fines of up to EUR 2,500 for their unlawful stay. However, with the support of their legal representative they successfully appealed the fines. The (then) Independent Administrative Tribunal even determined that Guljan and Osman were ethnic Meshketian Turks who had no nationality and concluded that as they would not be allowed to enter any other State and showed willingness to cooperate with the Austrian authorities to clarify their status they should not be penalized for their irregular stay in Austria.

\* Names changed to protect privacy.

possible for him to obtain the proof required, the lack of proof could not in itself justify the assumption that the appellant was Vietnamese citizen.<sup>133</sup> Moreover, the Court stressed that the authority should have examined why the Vietnamese embassy did not issue a return certificate. While the refusal to issue such a document would not necessarily mean that the person in question was stateless, it could be an indication of statelessness. The decision was therefore overturned in light of procedural flaws and inadequate reasoning.

120. Unfortunately, a comprehensive analysis of the practice of the former Aliens Police is not available and the new process under the Federal Office for Immigration and Asylum (BFA) has not yet been in place long enough to allow for a useful analysis. However, the BFA reported that in cases of unknown or undetermined nationality attempts are made to identify nationality. This could be done through commissioning language analyses or through research by the Austrian Country of Origin Information Unit on citizenship legislation of States with which the individual has a link (such as countries of nationality of the parents).<sup>134</sup>
121. With regard to procedural standards, as early as 1997, the Higher Administrative Court observed the need to clarify the conduct of a personal hearing in cases of possible statelessness.<sup>135</sup> In this case the applicant claimed that his father was stateless at the time of his birth and that he had acquired Austrian citizenship *ex lege* based on his mother's Austrian citizenship. The Higher Administrative Court ruled that the relevant authority had not sufficiently investigated available evidence insofar as it did not question the father to verify the applicant's claim. It therefore overturned the decision due to a failure to follow due process.

## 5.4 Conclusions and recommendations

### 5.4.1 Conclusions

122. The 1954 Convention to which Austria is a State Party establishes the international legal definition of a stateless person and enumerates the rights to which such individuals are entitled. While the Convention is silent as to how stateless persons are to be identified, it is implicit in the 1954 Convention that States Parties must be able to identify stateless persons within their jurisdiction in order to guarantee them the enjoyment of the rights to which they are entitled.<sup>136</sup> Despite its 2011 pledge to review the implementation of the 1954 Convention with regard to the need for a statelessness determination procedure on the basis of the UNHCR guidelines,<sup>137</sup> Austria has not yet introduced a statelessness determination procedure or designated a competent authority to review the need for such a procedure.
123. In the absence of a dedicated statelessness determination procedure, all authorities that have to decide on claims related to statelessness have to make their own assessment and take their own decisions on the status of the individual, with a resulting risk of inconsistent practice. In this respect the situation is similar to that for refugees, before the introduction of a refugee status determination procedure, which was recognised as necessary for this reason as well as the fact that if concerned individuals were not identified their protection could not be guaranteed.

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<sup>133</sup> Verwaltungsgerichtshof (Higher Administrative Court), 2013/21/0111, 20 December 2013.

<sup>134</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>135</sup> Verwaltungsgerichtshof (Higher Administrative Court), 96/01/0511, 03 December 1997.

<sup>136</sup> UNHCR, *Handbook on Protection of Stateless Persons* (Footnote 10), para 8.

<sup>137</sup> UNHCR, *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011* (Footnote 7), p. 51.



124. Among the bodies which may have cause to determine an individual's statelessness, the ones deciding on applications for international protection have gained some experience in assessing a person's nationality as they need to make such assessments in order to properly examine asylum claims. They might therefore be a suitable authority to administer a statelessness determination procedure covering the cases of persons who do not apply for asylum. Such a procedure could also help reduce costs associated with failed attempts at removal, the detention of stateless persons, and the payment of welfare to persons currently excluded from access to the labour market.
125. The development of a procedure for determining statelessness as quickly and efficiently as possible and the introduction of a residence permit for those recognized as stateless would immediately alleviate many of the human rights challenges which stateless persons with a migratory background currently face in Austria. A proper identification process would not only ensure that Austria's obligations under the 1954 Convention are met, but would also bring a number of benefits to the State. An efficient statelessness determination procedure has the potential to help the efficient operation of immigration control. If such a procedure was in place it would allow the government to identify those who could and could not be removed and to recognize when the failure of consular authorities to provide documentation is the result of the statelessness of the person in question. If such a procedure allows the regularization of stateless persons without legal residence in another State where their human rights would be respected, it would also provide a reason for individuals who believe they are stateless to cooperate with re-documentation processes.

## 5.4.2 Recommendations

126. UNHCR makes the following recommendations which would allow for better tailored protection measures, improving statistical awareness of the scope of the issue, enhancing Austria's ability to fulfil its obligations under the 1954 Convention and enhancing the efficient operation of immigration control:
- 1) Establish an accessible, fair and efficient procedure to determine statelessness in accordance with the 1954 Convention and taking into account the international standards set out in UNHCR's *Handbook on Protection of Stateless Persons*;<sup>138</sup>
  - 2) Designate one centralized authority to assess and take first instance decisions on statelessness. This would help to ensure transparency, develop specialization, and enable greater uniformity of decision making. Such an authority should have expertise in statelessness and nationality matters as well as the required financial and human resources. Provide that appeals against the decisions of this first instance body are considered by an independent body;
  - 3) Determine statelessness in accordance with the 1954 Convention and the UNHCR *Handbook on Protection of Stateless Persons*, in particular:
    - a. With regard to the standard of proof, provide that it is only necessary to consider nationality in relation to States with which an individual applicant has relevant links (in particular by birth, descent, marriage or habitual residence). The appropriate standard of proof to be applied should be one of "reasonable degree" of likelihood that the individual is not considered a national by any State;<sup>139</sup>
    - b. All parties involved in determination processes should share and collaborate in the administration of the burden of proof. While individuals are obliged to cooperate in establishing relevant facts, they will often face challenges accessing evidence and

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<sup>138</sup> UNHCR, *Handbook on Protection of Stateless Persons* (Footnote 10).

<sup>139</sup> *Ibid.*, para 91-2.

documentation needed to prove their absence of nationality. They should, thus, not bear sole responsibility for establishing relevant facts;<sup>140</sup>

- c. Ensure that legal aid is available to stateless persons seeking to have their status recognized and provide free legal aid to those without financial means;<sup>141</sup>
- 4) Refer possible cases of statelessness promptly to the competent determining authority and make available information and appropriate counselling on the statelessness determination procedure to persons concerned;
- 5) Refrain from removing an individual from their territory pending the outcome of the determination process;
- 6) To ensure the early and correct identification of stateless persons and solutions for situations where the State of purported nationality refuses to cooperate in return, referral to a stateless determination procedure should take place as early as possible, if the individual claims to be stateless or this comes to light during other procedures, for instance asylum or return procedures, or as a result of detention or during registration. In such circumstances, he or she should be referred either from or after – depending on the procedure – this procedure to the statelessness determination procedure;
- 7) Ensure that officials responsible for determining statelessness are trained in international, regional and national law regarding statelessness, nationality law and practice in principle countries of origin of applicants claiming to be stateless. Similarly, it is recommended that organisations or persons entrusted with provision of legal aid be trained in statelessness matters;
- 8) When a designated statelessness determination procedure is set up, the responsible authority and court(s) should publish statistics annually, including data on the country of birth and previous nationality of applicants.

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<sup>140</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 89-90.

<sup>141</sup> *Ibid.*, para 71.

# 6. The Status of Persons Recognized as Stateless and of Those Seeking Recognition

127. While Chapter 5 addressed the determination of statelessness, this chapter examines the status of stateless persons and their access to rights in Austria. A full consideration of access to all of the rights covered by the 1954 Convention and human rights law is outside the scope of this study, instead a small number of rights of particular significance to stateless persons are considered. On the basis of the available information, the chapter also analyses to what extent Austria complies with its obligations under the 1954 Convention in this respect.

## 6.1 Relevant provisions under international law

### 6.1.1 The 1954 Convention

128. The Preamble to the 1954 Convention states that the aim of the Convention is “to assure stateless persons the widest possible exercise of [...] fundamental rights and freedoms” and “to regulate and improve the status of stateless persons by an international agreement”.<sup>142</sup> It provides stateless persons with a range of rights but also sets out their obligations, notably to abide by the laws of the country in which they find themselves (Article 2). For some rights the Convention requires States Parties to treat stateless persons in the same way as nationals. In other cases it requires stateless persons to be treated in the same way as foreigners generally or to benefit from the most favourable treatment available to foreigners.

129. The 1954 Convention recognizes that stateless persons may have a greater or lesser degree of attachment to the country they are in. It therefore provides for rights to be extended to stateless persons on a gradual, conditional scale. Some provisions apply to all stateless persons within the jurisdiction of the State,<sup>143</sup> other rights are conditional on the stateless person being “lawfully in”, “lawfully staying in” or “habitually resident” in the State.

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<sup>142</sup> 1954 Convention (Footnote 2), preamble.

<sup>143</sup> These are the rights to personal status, property, access to courts, rationing, public education, administrative assistance and facilitated naturalization. Freedom of religion and the right to identity papers are protected for all those physically within the territory of the State.

130. Stateless persons are considered to be “lawfully in” the State when their presence is (temporarily or permanently) authorized by the State, either through explicit permission or through the absence of a prohibition.<sup>144</sup> In the Austrian context, persons with a “tolerated stay” should be considered to be “lawfully in” the country. To be “lawfully staying in” a State requires a greater duration of presence in the country, but does not require permanent residence. Stateless persons who have been granted a residence permit would fall within this category.<sup>145</sup> “Habitual residence” requires a stable, factual residence in the State. It covers those stateless persons who have been granted permanent residence, but also applies to individuals without a residence permit who are settled in a country, having been there for a number of years and have an expectation of on-going residence there.<sup>146</sup>
131. The standard of treatment of stateless persons under the 1954 Convention is almost identical to that foreseen in the 1951 Refugee Convention for refugees.<sup>147</sup> The 1951 Refugee Convention can therefore serve as a reference when interpreting the 1954 Convention.

## 6.1.2 International and regional human rights law

132. The 1954 Convention does not operate in isolation. Stateless persons are also protected by the provisions of international human rights law, some of which replicate rights found in the 1954 Convention, while others provide for a higher standard of treatment or for rights not found in the 1954 Convention at all.
133. Most of Austria’s obligations under human rights law stem from ratification of international and regional human rights instruments. These rights generally apply to everyone within the territory or jurisdiction of the State and therefore do not depend on nationality or immigration status.<sup>148</sup> Moreover, non-discrimination is a general principle of human rights law and includes the prohibition of discrimination on grounds of nationality. However, legitimate differentiation may be permitted for groups who are in a materially different position. Thus, States may explore affirmative action measures to help particularly vulnerable groups of stateless persons.<sup>149</sup>
134. At the international level, a number of the human rights treaty bodies have highlighted in their General Comments the application of human rights to non-nationals, including stateless persons, as well as noting the particular vulnerability of stateless persons to violation of their rights under the relevant treaties.<sup>150</sup>

<sup>144</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), paras 134-135. The rights extended to persons lawfully in a State relate to self-employment, freedom of movement within the State and protection from expulsion.

<sup>145</sup> *Ibid.*, paras 136-137. The rights extended to persons lawfully staying in the State are those to freedom of association, work, practice liberal professions, access public housing, public relief, labour and social security rights, and travel documents.

<sup>146</sup> *Ibid.*, paras 138-139. The rights extended once a stateless person is habitually resident in the State are those relating to the protection of artistic rights and intellectual property and rights pertaining to access to Courts, including legal assistance and assistance in posting bond or paying security for legal costs.

<sup>147</sup> The rights only differ with regard to four articles: Article 33 (protection against *refoulement*) and Article 31 (protection against penalties for illegal entry) of the 1951 Refugee Convention have no corresponding provision in the 1954 Convention. With regard to the right of association and the right to wage-earning employment the 1951 Convention stipulates a more favourable treatment (“most favourable treatment accorded to nationals of a foreign country in the same circumstances” versus “not less favourable than that accorded to aliens generally in the same circumstances” in the 1954 Convention; compare Articles 15 and 17 of both Conventions).

<sup>148</sup> See, for instance, UN Human Rights Committee, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, CCPR/C/GC/15, available at: <http://www.refworld.org/docid/45139acfc.html>.

<sup>149</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 140.

<sup>150</sup> See for instance, UN Human Rights Committee, General Comment 15 (footnote 153); CESCR, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <http://www.refworld.org/docid/4a60961f2.html>; CEDAW, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html>.

135. The ICCPR and the ECHR are the most significant treaties for the protection of stateless persons from deportation or expulsion. In both, the prohibition on torture<sup>151</sup> is considered to include a prohibition on *refoulement*, i.e. an individual cannot be returned to a country where there are substantial grounds for believing that they will be subjected to torture or inhuman or degrading treatment or punishment. Both treaties also protect the right to privacy and family life,<sup>152</sup> which has been used to prevent the expulsion of individuals where this would have a disproportionate impact on their family life.
136. The European Committee of Social Rights (ECSR) has published a statement of interpretation on the rights of stateless persons under the ESC,<sup>153</sup> clarifying its application to stateless persons.<sup>154</sup> The ECSR also observes that stateless persons tend to be vulnerable to abuse, poverty and marginalization and may, in practice, face discrimination in accessing housing, health care, education, employment, social protection and freedom of movement.

## 6.1.3 The right to a residence status on statelessness grounds

### 6.1.3.1 THE 1954 CONVENTION

137. The 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, but granting such permission would fulfil the object and purpose of the treaty.<sup>155</sup> Without a right to remain, the individual is in an insecure situation and may be prevented (in fact or law) from enjoying the rights guaranteed by the 1954 Convention and human rights law. The granting of a residence permit is of particular importance to stateless persons since they cannot solve problems arising from irregular residence by returning to the State of which they are a national, as other foreigners in this situation generally can. In this context, it should be remembered that Article 6 of the 1954 Convention provides that stateless persons cannot be asked to fulfil requirements which by their nature they are incapable of fulfilling.
138. It is therefore recommended that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interest of stability. Such permits are to be renewable and should provide the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.<sup>156</sup> The only circumstances in which granting a residence permit for a shorter period is reasonable are when the stateless person can realistically and reasonably be expected to seek admission/readmission to another State to obtain protection consistent with the standards of the 1954 Convention or seek re-acquisition of a previous nationality through a simple, rapid and non-discretionary procedure that is a mere formality. In the event the individual is not able to obtain admission/readmission to another State or re-acquire their former nationality, the State should grant them the same status as other stateless persons.<sup>157</sup>

<sup>151</sup> ICCPR (footnote 16), Article 7; ECHR (footnote 45), Article 3.

<sup>152</sup> ICCPR (footnote 16), Article 17; ECHR (footnote 45), Article 8.

<sup>153</sup> ESC (footnote 46).

<sup>154</sup> European Committee of Social Rights (ECSR), 'Statement of interpretation on the rights of stateless persons under the European Social Charter' in *Activity Report 2013*, July 2014, pp. 35-36 available at: <https://goo.gl/crl4W6>.

<sup>155</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para. 147. This is reflected in the practice of States with statelessness determination procedures, who generally grant residence rights to individuals found to be stateless.

<sup>156</sup> *Ibid.*, para 148.

<sup>157</sup> *Ibid.*, paras 159-160, where the acceptable parameters of this exception are discussed in detail.

### 6.1.3.2 AUSTRIAN LEGISLATION AND PRACTICE

139. In Austria, there is no legal basis for granting a residence permit on grounds of statelessness and the enjoyment of rights by stateless persons is subject to the same requirements as other foreigners, including conditions relating to legal stay or residence status. This poses problems for persons who enter the country irregularly (as the majority of the stateless persons with a migratory background interviewed for this study did) or are in an irregular situation.<sup>158</sup> Stateless persons can only be exempted from the requirement to produce documents that are normally required but are not available to them, such as passports and birth certificates.<sup>159</sup>
140. Stateless persons who apply for asylum (like all other asylum-seekers) have the right to remain in Austria, benefit from basic welfare support and have access to a range of rights while their asylum claim is being determined. However, once they are found not to be eligible for any form of international protection, stateless persons lose any right to remain in the country and normally cease to have access to any of these rights or services. They may even be fined for unlawful residence (as the case of Guljan and Osman on p. 47 illustrates). However, if the authorities determine that they cannot be deported, the person should have access to basic welfare support (see Chapter 6.1.8.2.2), but they are not permitted to engage in wage-earning employment. Stateless persons who do not have the legal possibility to return to their country of origin or receive protection from another State may be trapped in a legal limbo for months.<sup>160</sup>

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#### 6.1.3.2.1 CERTIFICATION OF A PERSON'S NON-REMOVABILITY THROUGH A "TOLERATED STAY" DECISION/CARD

141. The legal concept of "tolerated stay" (also referred to as temporary leave to remain) was first introduced through the Aliens Law Amendment Act 2009 which entered into force on 1 January 2010. The Aliens Law Amendment Act 2015, which entered into force on 20 July 2015, contained significant amendments to the requirements and procedures in connection with "tolerated stay".<sup>161</sup>
142. According to Article 46a of the Aliens Police Act a stateless person, like any other foreigner with an irregular residence status, shall be granted a "tolerated stay" in the federal territory notably if their deportation appears to be impossible for practical reasons not attributable to them unless, following a decision pursuant to Article 61 of the Aliens Police Act, the responsibility of another country still exists or that country acknowledges its responsibility. According to Article 46a(3), reasons attributable to the individual shall in all cases exist if: they conceal their identity; they fail to comply with a summons for the purpose of clarifying their identity or procuring a replacement travel document or they do not cooperate in the steps necessary to obtain a replacement travel document or frustrate the taking of such steps.<sup>162</sup>
143. If the required conditions exist, the BFA shall, *ex officio* or upon application, issue a "tolerated stay" card (also referred to as temporary admission card). Temporary leave to remain may be granted by the BFA in conjunction with conditions which should be communicated by the BFA to the alien by

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<sup>158</sup> In this context it is important to remember that their lack of documentation often makes it impossible for stateless persons to enter a country legally.

<sup>159</sup> Information provided to researchers by the Ministry of the Interior on 23 November 2016.

<sup>160</sup> Some of the stateless persons interviewed for this report had been in this situation for up to a year.

<sup>161</sup> *Bundesgesetz, mit dem das BFA-Einrichtungsgesetz, das BFA-Verfahrensgesetz, das Asylgesetz 2005, das Fremdenpolizeigesetz 2005, das Niederlassungs- und Aufenthaltsgesetz und das Grundversorgungsgesetz – Bund 2005 geändert werden (Fremdenrechtsänderungsgesetz 2015 – FrÄG 2015)*, Federal Law Gazette No. 70/2015, available at: [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2015\\_I\\_70/BGBLA\\_2015\\_I\\_70.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2015_I_70/BGBLA_2015_I_70.html).

<sup>162</sup> Aliens Police Act (footnote 33), Article 46(a).

procedural order during the procedure. A ruling on the temporary leave to remain, in particular with respect to its duration, shall be given in the administrative decision concluding the procedure. Where the practical obstacles hindering deportation cease to exist the “tolerated stay” is terminated.

144. “Tolerated stay” is granted upon the issue of the card unless the existence of the required conditions had already been established by a final ruling at an earlier time. In this case, temporary leave to remain shall be deemed granted from the time when the ruling became final.
145. In its analysis of the draft bill in the context of the public consultations period for the Aliens Law Amendment Act 2015, UNHCR appreciated the newly foreseen possibility for an application for “tolerated stay”. It emphasized that in view of the lack of a procedure for the determination of statelessness, “tolerated stay” and the possibility to obtain a residence permit after a certain period of time are often the only possibility for stateless persons in Austria to enjoy their rights under the 1954 Convention. At the same time, UNHCR regretted that the “tolerated stay” would in future only be valid upon the issue of the card or a final ruling and not with the existence of the required conditions as this will lead to an even longer protection gap for stateless persons.<sup>163</sup>
146. Since 1 January 2014, the BFA has been the authority responsible for deciding whether or not a person fulfils the requirements for “tolerated stay” and issuing “tolerated stay” cards. The BFA specified that it differentiates between persons whose nationality is undetermined or unknown because (i) the person refused to provide information or to cooperate, (ii) the person does not know certain facts regarding their origin or (iii) the consular representation of the country of presumed nationality have not identified the person.<sup>164</sup> Little information is currently available about the practice of the BFA in this respect. One NGO reported good practice, but others have complained of delays and other problems with the procedures.<sup>165</sup>
147. Before 2014 decisions on “tolerated stay” were under the authority of the Aliens Police. According to NGO legal counsellors the practice of these authorities varied from one district to the next regarding the duration of the procedure as well as the requirements and likelihood of having a “tolerated stay” certified, but the procedures generally took a long time. Several legal counsellors suggested that the low number of grants of “tolerated stay” were due to the high threshold of substantiation required to prove that a person was not-removable for no fault of their own. They gave examples of the authorities reproaching persons claiming to be stateless for the failure to bring all the necessary documents with them from their country of previous residence to Austria<sup>166</sup> or arguing that they had concealed their identity and were therefore not eligible for “tolerated stay”.<sup>167</sup> They also generally did not observe any difference in treatment between stateless persons and other foreigners in these procedures.
148. The case of Guljan and Osman (see p. 47) illustrates the long delays that can occur in reaching a decision; at the time of the interview for this study they had already been waiting eight months for a decision on whether or not they qualified for a “tolerated stay”.
149. Available statistics show that there have only been a small number of decisions on “tolerated stay” for stateless persons or persons of unknown nationality in recent years.

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<sup>163</sup> UNHCR, *UNHCR-Analyse des Entwurfs für das Fremdenrechtsänderungsgesetz 2015*, 23 March 2015, available at: <http://goo.gl/TNER6r>.

<sup>164</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>165</sup> Information provided to researchers by NGOs.

<sup>166</sup> Information provided to researchers by a legal counsellor based in Vienna, interviewed on 17 April 2014.

<sup>167</sup> Information provided to researchers by an NGO legal counsellor in December 2013.



## Case of Igor

Name: Igor\*

Age and sex: Mid-50s, male

Country of birth: Former Soviet Union

Claimed cause of statelessness: Dissolution of the USSR

Length of stay in Austria: More than 10 years

Status at time of interview: “Tolerated stay” (Since the interview Igor has obtained a “special protection” residence permit, valid for one year.)

Igor was born a Soviet national in what is now the Russian Federation. At the age of two, he moved with his parents (both Soviet nationals) to Riga (at that time also part of the USSR), where he grew up and lived until his mid-30s. Igor married a Soviet woman and they had a child who acquired Soviet citizenship at birth.

Igor first came to Austria in 1990 and applied for asylum. His asylum claim was rejected, but he was granted a migrant work permit. In 1994 he returned to Riga, which was by then the capital of Latvia. Due to the dissolution of the USSR, Igor’s travel and identity documents were no longer valid. He tried to obtain new documents and acquire Latvian citizenship. He claims that these requests were refused since as the child of a Russian civil servant he was considered a descendant of the occupiers and thus *persona non grata*. He therefore returned to Austria before the end of 1994 and has lived there ever since.

Igor was not able to regularize his stay as no legal provision foresaw the granting of a residence permit on the basis of statelessness. He therefore remained in Austria irregularly, with no chance of obtaining valid identity documents or permission to work and unable to leave Austria, since he did not have a travel document and was not authorized to enter another country. “Under such circumstances every step you do is illegal, regardless if you try to work or to keep yourself busy with something. Consequently, it was just a question of time when I was punished by law.” According to Igor, he did not receive any form of social assistance and therefore resorted to criminal activities since he could not see any other way to secure a living: “When one is not allowed to work for so many years, is not allowed to leave the country, but one also has to eat and sleep, one inevitably gets in conflict with the law.”

As a result of two criminal convictions he was issued a temporary residence ban. However, the Aliens Police Authority had already accepted that he was stateless, since the Russian embassy had not provided him with a travel document. Due to further criminal convictions he was eventually issued an unlimited residence ban. After his release from prison, Igor was detained pending deportation but released after two months since he could not be deported. At the beginning of 2006, after further prison sentences, Igor applied for the withdrawal of the unlimited residence ban, which was refused. His request for an Alien’s Passport was also refused on the grounds that it would endanger public order and security.

In 2008, for the first time, Igor began receiving basic welfare support. In 2010, he was granted “tolerated stay” and in January 2011 the Aliens Police Authority lifted the unlimited residence ban. In 2012 Igor tried to voluntarily return to Latvia with the assistance of an NGO. However, he could not get an appointment at the Latvian embassy and thus could not acquire a travel document. He was also unable to get a Russian travel document; he pointed out he had in any case only lived there during the first two years of his life. At the beginning of 2013 a NGO legal counsellor filed another application for a residence permit on his behalf. In 2015 he was granted a special protection residence permit under Article 57 of the Asylum Act.

At the time of his interview Igor’s residence was still only “tolerated”; he was not yet entitled to stay in Austria. “With this tolerated stay card I can’t do anything apart from proving my identity, e.g. to receive registered letters. It is impossible to live a life so to say. Because without a residence status, you do not exist at all, except when you are under arrest – then you are officially recorded again.”

\* Name changed to protect privacy.



**Table 2:** Grants of "tolerated stay" (*Duldungen*) between 2014 and May 2016

Nationality	2014	2015	2016 <sup>168</sup>
Stateless	23	11	3
Unknown Nationality	1	0	0

Source: Information provided to researchers by the BFA, email dated 27 June 2016

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#### 6.1.3.2.2 THE LEGAL STATUS OF PERSONS WITH A "TOLERATED STAY"

150. "Tolerated stay" is not considered a lawful stay or residence<sup>169</sup> and so does not entail any of the rights associated with lawful residence. The "tolerated stay" card is not an official identification document and only serves as proof of identity for procedures before the BFA and controls by police (thus sparing persons concerned from arrest for clarifying the status of their removal proceedings, possible pre-deportation detention and fines for unlawful residence). "Tolerated stay" also provides the person with an opportunity to regularize their stay in Austria as after one year they can apply for a residence permit.

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#### 6.1.3.2.3 REQUIREMENTS FOR OBTAINING A RESIDENCE STATUS

151. An individual who is granted a "tolerated stay" can apply for a "special protection" residence permit after one year under the provisions of Article 57 paragraph 1, sub-section 1 of the Asylum Act. The conditions for granting this permit are that the person has a clean criminal record and does not pose a threat to the public or the security of the Republic of Austria.<sup>170</sup> If the individual meets these conditions they will be issued with a "special protection" residence permit valid for one year. This can be renewed provided that the person still meets all of the qualifying conditions.

152. Once a person has held a "special protection" residence permit for one year, the BFA must check *ex officio* if they fulfil the criteria for obtaining a "Red-White-Red – Card Plus" and notify the relevant authorities accordingly. To be eligible for this card the person must have enough income, health insurance, housing and a specified level of German language skills. The card provides a residence title for one year and unrestricted access to the labour market.<sup>171</sup> The residence permit can be renewed and after the second renewal is valid for three year periods.

153. A person who permanently cannot be expelled because their removal would be in violation of the right to a private and family life (ECHR Article 8) and whose situation is unlikely to change, would normally qualify for a residence permit under Article 55 of the Asylum Act. After one year such a person is issued with a "Red-White-Red – Card Plus".

154. Applicants for a residence permit are generally required to submit a passport, but the Austrian Settlement and Residence Act allows this requirement to be waived in some circumstances.<sup>172</sup> A Constitutional Court case in 2011 confirmed that this provision could apply to stateless persons:

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<sup>168</sup> January to May.

<sup>169</sup> Aliens Act (footnote 33), Article 31(1a) sub section 3.

<sup>170</sup> Asylum Act (footnote 32), Article 57(1), subsection 1. Under Article 60 of that act individuals with an outstanding deportation decision or whose residence would conflict with the public interest are excluded.

<sup>171</sup> *Ibid.*, Article 59(4) in conjunction with Article 60(2).

<sup>172</sup> Settlement and Residence Act (footnote 34)

“ Apart from that, certain hardship cases can be avoided particularly in a synopsis with the residence rights regime of the Settlement and Residence Act. Stateless persons are per se not placed in a worse position with regard to residence rights than third country nationals. The relevant provisions of the Settlement and Residence Act allow in a coherent and interlocked system for remedy of the residence rights deficiencies. Particularly by way of Article 19 paragraph 8, sub-section 3 of the [then] Settlement and Residence Act, not providing lacking documents, including passports, [...] can be remedied. The right of residence in Austria to which the foreign person is entitled, does not get lost in such a case, also in the event that the person concerned becomes stateless (for whatever reasons).”<sup>173</sup>

155. According to a representative of the Ministry of the Interior, most of the lawfully residing stateless persons in Austria hold long-term or permanent residence permits.<sup>174</sup>

## 6.1.4 Protection from expulsion and removal

### 6.1.4.1 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

156. The 1954 Convention provides that States Parties shall not expel stateless persons lawfully in their territory save on grounds of national security or public order.<sup>175</sup> As noted above, the principle of *non-refoulement* has been established as part of customary international law<sup>176</sup> as well as being enshrined in international<sup>177</sup> and regional<sup>178</sup> human rights treaties as part of the absolute prohibition of torture, cruel, inhuman or degrading treatment. As a universal right which is not subject to limitation or derogation it also protects stateless persons and persons whose nationality is undetermined or unknown.

157. International and regional human rights bodies have also found that individuals may not be removed from a State where this would have a disproportionate impact on their right to family life. The Human Rights Committee has found a violation of Article 17 of the ICCPR in cases involving persons irregularly in the State who had family members with a right to remain in that State,<sup>179</sup> as well as in cases involving the proposed deportation of individuals for national security reasons.<sup>180</sup> Similarly the European Court of Human Rights has found violations of Article 8 of the ECHR despite the applicant's irregular immigration situation.<sup>181</sup>

158. Under Article 12(4) of the ICCPR no-one may be deprived of the right to enter their own country. The term “own country” is broader than country of nationality and, for stateless persons, would include

<sup>173</sup> Verfassungsgerichtshof (Constitutional Court), G154/10, 29 September 2011.

<sup>174</sup> Information provided to researchers by the Ministry of the Interior on 30 October 2013.

<sup>175</sup> 1954 Convention (footnote 2), Article 31.

<sup>176</sup> See, ‘Resolution IV of the Final Act of the United Nations Conference on the Status of Stateless Persons’, included in published text of the 1954 Convention (footnote 2).

<sup>177</sup> ICCPR (footnote 16), Article 7 and UN Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, CCPR/C/GC/20, available at: <http://www.refworld.org/docid/453883fb0.html>.

<sup>178</sup> ECHR (footnote 45), Article 3.

<sup>179</sup> UN Human Rights Committee, *Winata v. Australia*, CCPR/C/72/D/930/2000, 16 August 2001.

<sup>180</sup> UN Human Rights Committee, *Leghaei and others v. Australia*, CCPR/C/113/D/1937/2010, 26 March 2015.

<sup>181</sup> European Court of Human Rights, *Butt v. Norway*, Application No. 47017/09, 4 December 2012.

a country with which the individual has a strong connection.<sup>182</sup> The Human Rights Committee has found that this right would be violated by the deportation of a person who has been resident in a particular State since childhood and has few connections to another State.<sup>183</sup> In *Warsame v. Canada* the fact that the person would be prohibited from re-entering the State due to the normal operation of immigration laws was also considered relevant.<sup>184</sup>

#### 6.1.4.2 AUSTRIAN LEGISLATION AND PRACTICE

159. In general a stateless person can be removed in cases where a readmission agreement exists with that person's State of habitual residence, unless there are legal obstacles such as the prohibition of *refoulement* or an infringement of the right to family or private life in Austria.<sup>185</sup> Readmission agreements usually include third-country nationals and stateless persons who stayed in the readmitting country.<sup>186</sup> The representative from the Ministry of the Interior interviewed for this study explained the process as follows: If a removable person declares that they had lived a certain period of time (whether legally or irregularly) in another country with which a readmission agreement has been concluded, that country is asked to readmit the person concerned. In the case of stateless persons, all countries with which a person has links (for instance a person's country of birth) would be requested to take the person back. If no State with which the person has a link authorizes the readmission of the person, they can normally not be expelled<sup>187</sup> (and would, thus, qualify for a residence permit under the Settlement and Residence Act; see Chapter 6.1.3.2).
160. According to the BFA, which has been in charge of removal procedures since 2014, its decisions on returns and expulsions of stateless persons depend on the circumstances of the individual case.<sup>188</sup> Where a country of habitual residence can be determined, the BFA would – in view of the extensive obligations of States with regard to stateless persons – approach that country for readmission in the same manner as for nationals of that State.<sup>189</sup>
161. In a precedent-setting judgement of March 2014, the Austrian Constitutional Court found that the expulsion of a stateless person who was born and had resided exclusively in Austria would violate ECHR Article 3.<sup>190</sup> The Court held that the expulsion of a person who had no ties to another State (due to their statelessness and lack of habitual residence in another State) would violate their human dignity since it would deprive them of any legal basis for their existence at a time when they were unable to establish a legal existence elsewhere. The Court therefore ruled that the expulsion of complainant should in light of Article 31 of the 1954 Convention at least be declared temporarily inadmissible for a reasonable period of time that would allow the complainant to acquire the nationality of his parents. If, despite reasonable efforts, he was unable to acquire the nationality of another state, the expulsion of the complainant would be permanently inadmissible.

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<sup>182</sup> UN Human Rights Committee, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/GC/27, para. 20, available at: <http://www.refworld.org/docid/45139c394.html>.

<sup>183</sup> See for instance, UN Human Rights Committee, *Nystrom v Australia*, CCPR/C/102/D/1557/2007, 18 July 2011.

<sup>184</sup> UN Human Rights Committee *Warsame v Canada*, CCPR/C/102/D/1959/2010, 21 July 2011.

<sup>185</sup> Information provided to researchers by the Ministry of the Interior on 8 January 2014.

<sup>186</sup> See, for instance, Austria's readmission agreements with Bosnia and Herzegovina, Kosovo, Latvia, Macedonia, Montenegro and Serbia.

<sup>187</sup> Information provided to researchers by the Ministry of the Interior on 8 January 2014.

<sup>188</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>189</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>190</sup> Verfassungsgerichtshof (Constitutional Court), U2131/2012, 6 March 2014.

162. In principle, a decision on an asylum application includes consideration of the admissibility of returning the person to their country of origin in the event of a negative decision.<sup>191</sup> Any return decision should specify to which State(s) the return of the person concerned is admissible, unless the person concerned did not cooperate in establishing their nationality (in which case the country of destination is not specified). Since establishing the asylum-seeker's nationality is a central preliminary question for the decision regarding eligibility for international protection (see Chapter 5.3.2), the conclusion reached in assessing the asylum claim is not generally revisited when considering the enforcement of a return decision. Therefore, if a foreigner is determined to be stateless (as opposed to of unknown nationality) in the asylum decision, the person should be assumed to be stateless for the removal procedure as well.<sup>192</sup>
163. Which States are requested to readmit a person depends on the individual case.<sup>193</sup> It might, for instance, be a country of former habitual residence, the State which – based on e.g. a language analysis – is considered the likely country of origin or, depending on the applicable nationality legislation, the country of birth or country of the person's parents' nationality. If in the course of attempts to obtain substitute travel documents, it emerges that the person in question is not stateless but in fact holds the nationality of a country which was not the previous country of habitual residence, a new return decision (to the country of nationality) would be issued.
164. According to official statistics, only few persons found to be stateless or of unknown nationality have actually been deported over recent years.

**Table 3:** Deportations (*Abschiebungen*) by nationality between 2014 and May 2016

Nationality	2014	2015	2016 <sup>194</sup>
Stateless	1	7	1
Unknown Nationality	0	2	0

Source: Information provided to researchers by the BFA, email dated 27 June 2016.<sup>195</sup>

## 6.1.5 Detention pending deportation

### 6.1.5.1 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

165. The 1954 Convention does not address the issue of pre-deportation detention, but the Member States of UNHCR's Executive Committee have called on States "not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law".<sup>196</sup> Under human rights law the prohibition of arbitrary detention requires that detention must serve a legitimate purpose, be provided for in national law and not be disproportionate to its intended purpose.<sup>197</sup>

<sup>191</sup> Asylum Act (footnote 32), Article 10.

<sup>192</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>193</sup> Information provided to researchers by the Federal Office for Immigration and Asylum (BFA) by written statement dated 14 May 2014.

<sup>194</sup> January to May only.

<sup>195</sup> Before 2014 the Ministry of the Interior was responsible for deportations.

<sup>196</sup> UNHCR ExCom, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) – 2006, available at: <http://www.refworld.org/docid/453497302.html>.

<sup>197</sup> ICCPR (footnote 16), Article 9 and UN Human Rights Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 12, available at: <http://www.refworld.org/docid/553e0f984.html> and ECHR (footnote 45), Article 5.

166. The detention of asylum-seekers, including stateless asylum-seekers, should be the exception rather than the norm and only used as a measure of last resort where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful objective pursued by detention.<sup>198</sup> While international law does not prohibit detention as part of an expulsion process, the duration of such detention must be limited and in any case it remains legitimate only so long as there is a reasonable expectation that the expulsion will be carried out;<sup>199</sup> the detention of individuals who cannot be deported, including stateless persons who are in their “own country” (see Chapter 6.1.4.1), will be arbitrary.
167. Stateless persons are particularly vulnerable to prolonged or indefinite detention in expulsion procedures, since they lack a country of nationality which would be required to readmit them.<sup>200</sup> Furthermore a stateless person who has not had their statelessness recognized may be detained for a prolonged period before it can be established that no other State will admit them.<sup>201</sup> For this reason, statelessness determination procedures are an important mechanism to reduce the risk of prolonged and/or arbitrary detention.<sup>202</sup>

### 6.1.5.2 AUSTRIAN LEGISLATION AND PRACTICE

168. A representative of the Ministry of the Interior interviewed for this study said that detention pending deportation could only be imposed if it was necessary to secure an expulsion procedure or a removal from the country. Issuing a detention order therefore generally depends on whether or not a person can be removed to another country rather than on their nationality status.<sup>203</sup>
169. Statistics on the nationality of persons taken into pre-deportation detention are only available from 2012, but from these it appears that only a small number of stateless persons and persons of unknown nationality have been detained for the purpose of removal. An NGO legal counsellor expressed the view that incidents of detention of stateless persons have become less frequent following Higher Court jurisprudence clarifying that detention is only admissible as a matter of last resort.<sup>204</sup>

<sup>198</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, para. 2, available at: <http://www.refworld.org/docid/503489533b8.html>. On detention of stateless persons, including those awaiting determination of their status, see UNHCR, *UNHCR Brief on Statelessness and Detention Issues*, 27 November 1997, available at: <http://www.refworld.org/docid/4410638fc.html>; The Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, 10 July 2012, available at: <http://www.refworld.org/docid/5034f9ef2.html>. For a discussion of international human rights standards on detention, including their application to stateless persons see, UN Human Rights Committee, *General Comment no. 35* (footnote 197).

<sup>199</sup> See for instance European Union, *Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, para 16, available at: <http://goo.gl/b1NPGF>; UN Human Rights Committee, *General Comment no. 35* (footnote 197), para 18; European Court of Human Rights, *Auad v. Bulgaria*, Application No. 46390/10, 11 October 2011.

<sup>200</sup> European Court of Human Rights, *Kim v. Russian Federation*, Application No. 44260/13, 17 July 2014 (the applicant was detained with a view to deportation, as the authorities believed he was an Uzbek national; even after the refusal of the Uzbek authorities to issue a travel document he remained in detention for almost six months); European Court of Human Rights, *Auad v. Bulgaria* (footnote 199); European Court of Human Rights; *Amie and others v Bulgaria*, Application No. 58149/08, 12 February 2013 (concerning the expulsion of stateless refugees). In para. 77 the Court noted in particular UNHCR’s position that “the enforcement of expulsion measures against refugees – the Court would add, especially ones who are stateless – may involve considerable difficulty and even prove impossible because there is no readily available country to which they may be removed”.

<sup>201</sup> European Court of Human Rights, *Harabi v The Netherlands*, Application No. 10798/84, 5 March 1986 (failure to correctly identify the applicant as stateless led to his being repeatedly detained and deported between Belgium and the Netherlands).

<sup>202</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 115; See also, ENS, *Protecting stateless persons from arbitrary detention – A regional toolkit for practitioners*, December 2015, available at: <http://www.refworld.org/docid/5729b69e4.html>.

<sup>203</sup> Interview with a Ministry of the Interior official on 8 January 2014.

<sup>204</sup> Information provided to researchers by a legal counsellor based in Vienna, interviewed on 17 April 2014.

**Table 4:** Pre-deportation detention by nationality, 2012-2013

Nationality	2012	2013 <sup>205</sup>
Total	4,566	3,999
of whom asylum-seekers	831	725
Stateless	10	7
Unknown Nationality	11	6
“Palestinian”	4	0

Source: Ministry of the Interior, Reply to parliamentary request No. 169/J of 5 December 2013, 30 January 2014.<sup>206</sup>

170. No further information, such as the length of detention and the reasons for ending the detention (successful removal or release) is available on these cases.

## 6.1.6 The right to identity papers, administrative assistance and travel documents

### 6.1.6.1 INTERNATIONAL LEGAL FRAMEWORK

171. Article 27 of the 1954 Convention requires States to “issue identity papers to any stateless person in their territory who does not possess a valid travel document”. At the time of accession, Austria made a reservation to Article 27 to the effect that it would only implement this provision with regard to stateless persons staying lawfully in its territory.<sup>207</sup> Article 25 further provides: “When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities”. Furthermore Article 28 stipulates that “Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory”. The State can refuse to issue documents for compelling reasons of national security or public order. Austria has made a declaration to the effect that it will apply Article 28 by issuing Alien’s Passports to stateless persons lawfully staying in its territory.<sup>208</sup>

172. Access to documentation is not addressed as a separate right under human rights law, but may in some instances be derived from other rights. For instance, the Human Rights Committee has mentioned the importance of access to documentation for the exercise of the right to freedom of movement.<sup>209</sup>

### 6.1.6.2 AUSTRIAN LEGISLATION AND PRACTICE

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#### 6.1.6.2.1 ALIEN’S PASSPORT

173. As indicated in Austria’s declaration on Article 28 of the 1954 Convention, the Aliens Police Act entitles stateless persons lawfully staying in Austria to an Alien’s Passport (*Fremdenpass*),<sup>210</sup> which serves as proof of identity and permits travel abroad.

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<sup>205</sup> January to November only.

<sup>206</sup> Available at: [http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_00185/imfname\\_339317.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00185/imfname_339317.pdf).

<sup>207</sup> 1954 Convention. Reservations and declarations (footnote 114).

<sup>208</sup> *Ibid.*

<sup>209</sup> UN Human Rights Committee, *CCPR General Comment No. 27*, para.9 (footnote 182).

<sup>210</sup> Aliens Police Act (footnote 33), Article 88(2).

174. Other stateless persons (and persons with undetermined nationality) without a valid travel document may apply for an Alien's Passport, but this will only be issued if it is considered to be in the interest of the Republic of Austria.<sup>211</sup> The Alien's Passport will be refused if "certain facts justify the assumption that" the person intends to use it to evade criminal prosecution or the execution of a sentence, to violate customs regulations, to violate provisions of the Addictive Drugs Act, to engage in the smuggling of persons, or where "the alien's residence abroad would pose a threat to internal or external security of the Republic of Austria".<sup>212</sup> An Alien's Passport will also be refused if "the alien has failed, without good cause, to answer a summons for the exercise of identification procedures, in which he is informed of such consequence, or does not take part in the same".<sup>213</sup> The BFA, which has been the body responsible for issuing Alien's Passports since 2014, informed UNHCR that the issuance of a travel document for a stateless person without lawful stay would hardly ever be in the interest of the Republic.<sup>214</sup> An official of the Ministry of the Interior reported that, in the past, persons who had committed administrative offenses (including unlawful residence), were refused an Alien's Passport.<sup>215</sup> The number of Alien's Passports issued in recent years has been relatively low.

**Table 5:** Alien's Passports (Fremdenpässe) issued between 2014 and May 2016

Nationality	2014	2015	2016 <sup>216</sup>
Stateless	241	259	139
Unknown Nationality	1	4	2

Source: Information provided to researchers by the BFA, email dated 27 June 2016.

175. An Alien's Passport is not valid for the State of former habitual residence.<sup>217</sup> Although exceptions to this rule are permitted on humanitarian grounds in some cases.<sup>218</sup> This geographical limitation was a major concern for one of the stateless persons interviewed for this study, who regretted that he could not use his Alien's Passport to visit his family in his former country of habitual residence.

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#### 6.1.6.2.2 IDENTITY CARD FOR FOREIGNERS

176. Stateless persons who are refused an Alien's Passport (or have their Alien's Passport revoked) on the aforementioned security grounds, can be issued with an "identity card for foreigners", which serves as a proof of identity, but does not permit travel abroad.<sup>219</sup>

177. Only stateless persons holding an Austrian residence permit are issued with an identity card, in line with Austria's reservation to Article 27 of the 1954 Convention (See Chapter 6.1.6.1).

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<sup>211</sup> Aliens Police Act (footnote 33), Article 88(2), Article 88(1)(1).

<sup>212</sup> *Ibid.*, Article 92(1)(5).

<sup>213</sup> *Ibid.*, Article 92(2).

<sup>214</sup> In light of Austria's reservation to Article 27 of the 1954 Convention, that provision is not seen as creating such an interest or an obligation to issue an aliens passport to such persons.

<sup>215</sup> Interview with a Ministry of the Interior official on 8 January 2014.

<sup>216</sup> January to May.

<sup>217</sup> Aliens Police Act (footnote 33), Article 91(2).

<sup>218</sup> *Ibid.*, Article 91(3).

<sup>219</sup> *Ibid.*, Article 94a.

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### 6.1.6.2.3 CARD FOR “TOLERATED STAY”

178. A person who is in a situation of “tolerated stay” (see Chapter 6.1.3.2.1), should be issued with a card documenting this fact (*Karte für Geduldete*). In contrast to the “identity card for foreigners”, a card for “tolerated stay” does not prove identity (except for procedures before the BFA) but only documents the individual’s non-removability.
179. The cases of several interviewed stateless persons revealed the hardship of being undocumented in Austria:



## Case of Rami

Name: Rami\*

Age and sex: 20s, male

Country of birth: Jordan (Palestinian)

Claimed cause of statelessness: Descendant of Palestinian refugees

Length of stay in Austria: 3-4 years

Status at time of interview: “Tolerated stay”

Rami was born in Jordan. While he was in high school, his family moved to Hebron, West Bank, where he lived until 2006. He studied radiology in Egypt and then returned to the West Bank where he worked in a radiology centre until he faced private problems. In 2011 he travelled to Austria. His parents and siblings live in the West Bank, except for one sibling who is in Saudi Arabia. Rami has an identity document issued by the Palestinian Authority, a UNRWA registration card, a birth certificate, school and university certificates, but no passport.

Upon arrival in Austria Rami applied for asylum. His application was rejected in 2013 and he was issued with an expulsion order. Both the former BAA and the then Asylum Court had accepted that he was a stateless Palestinian with habitual residence in the West Bank. On advice of a lawyer, Rami made representations to the Aliens Police Authority in the Province of Carinthia, which, four months later, certified his “tolerated stay” as his deportation is impossible on factual grounds.

Rami reported facing a lack of rights in Austria since the negative decision in his asylum procedure: “The problem was that I had to spend more than four months without any identity document as they had taken away my asylum-seekers card. I was told [...] two weeks after the second instance negative decision that I had to leave the asylum-seeker accommodation immediately. I then stayed with friends.” Until he received the “tolerated stay” card, he faced difficulties with police controls on the street and with registering his new address in the Central Register of Residents. He also had problems retrieving money transfers from his family at the post office as he could not produce an identity card or passport. Rami still lives with friends in Vienna: “If I want to make a contract for a flat, the owner would not give me the flat. I am lucky, because my friend has a flat. Sometimes I think: if my friend would not have one, what can I do? With this card [for tolerated stay] I cannot do anything. I think this card is for nothing?” Being stateless feels like being homeless to Rami.

\* Name changed to protect privacy.





## Case of Aleksey

Name: Aleksey\*

Age and sex: 50s, male

Country of birth: Soviet Union (Ukraine), Russian ethnicity

Claimed cause of statelessness: Prolonged absence from Uzbekistan without registration  
(statelessness has not yet been recognized by an authority)

Length of stay in Austria: 5–7 years

Status at time of interview: Granted residence on humanitarian grounds: “Red-White-Red – Card Plus”

Aleksey was born in the former Soviet Union in what is now Ukraine to ethnic Russian parents, both of whom were nationals of the former USSR. Aleksey was born out of wedlock and within a few months of his birth his mother relocated to Tashkent, Uzbekistan with him. Until 1991 Aleksey was citizen of the USSR and then became a citizen of Uzbekistan. In May 1999 he travelled to Germany on a visa and from there moved on to Switzerland where he lived as an asylum-seeker for three and a half years. He was deported to Uzbekistan, but then moved to Ukraine where he received a residence permit until 2008. From Ukraine he came via the Slovak Republic and Hungary to Austria irregularly and applied for asylum in May 2009. Aleksey believes that he was deprived of his Uzbek citizenship during his stay in Switzerland, as he had discredited Uzbekistan in another country and had been out of the country for more than five years.\*\* He stated that a court order to this effect had been issued.

The (former) BAA considered that Aleksey was still a citizen of Uzbekistan, but the (former) Asylum Court referred the case back to it and stressed that it was necessary to deal with the Uzbek and Ukrainian citizenship laws to determine Aleksey’s nationality. While his case was pending on appeal, he married his current wife, who is a recognized refugee and has a minor daughter from her previous marriage. In April 2013, Aleksey’s asylum application was rejected a second time and he again appealed the decision. However, on instruction of the judge he later on withdrew his appeal and the (former) Asylum Court decided that his expulsion was permanently inadmissible on the basis of ECHR Article 8. However, the (former) Asylum Court confirmed the (former) BAA’s finding that Aleksey was a national of Uzbekistan.

For Aleksey getting a residence permit has been more important than his nationality status, but not having a travel document affects his daily life. As a self-employed truck driver, he needs a travel document in order to be able to cross borders. He explained that “every transport company wants to see a passport”. His requests for the issuance of a passport to the Uzbek embassy have so far been unsuccessful. His area of work is thus limited. However, Aleksey at least managed to obtain an Austrian driving license (on the basis of an Uzbek and a Swiss driving licence) so that he can now rely on it when asked to prove his identity. Nevertheless: “I need documents only to live, for practical matters. If I got papers, I could contribute more to Austria than now without. Why? I am now at the end of my 50s, I would not get any other job anymore.”

\* Name changed to protect privacy.

\*\* Under Article 21 of the *Uzbek Nationality Act*, Uzbek citizens residing abroad should register with the competent consular institution within five years. Failing to comply with this obligation without good reasons for a period over 5 years leads to loss of citizenship.

## 6.1.7 The right to gainful employment

### 6.1.7.1 INTERNATIONAL LEGAL FRAMEWORK

180. With respect to the right to engage in wage-earning employment, the 1954 Convention states that “Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.<sup>220</sup> It further encourages State Parties to give sympathetic consideration to assimilating the rights of all stateless persons to those of nationals in this regard.
181. The right to work is also protected by Article 6 of the ICESCR and Article 1 of the ESC and covered by the non-discrimination principles in those treaties. The Committee on Economic Social and Cultural Rights in its General Comment on the right to work stressed the importance of the right to work to the dignity of the individual as well as their survival and social and economic inclusion.<sup>221</sup> This echoes the regrets of stateless persons interviewed for this study.

### 6.1.7.2 AUSTRIAN LEGISLATION AND PRACTICE

182. Austria has not specifically addressed the question of wage-earning employment for stateless persons. Unlike recognized refugees, stateless persons are not, as such, exempted from the Aliens Employment Act.<sup>222</sup> The ability of stateless persons to engage in lawful employment therefore largely depends on factors unrelated to their statelessness, such as the type of residence permit they have (persons with certain permits are exempt from the Aliens Employment Act) or their family situation (spouses of Austrian nationals have full access to the labour market). For those who require a work permit, whether or not one is issued depends largely on whether or not a person who has a stronger legal status in Austria (e.g. an Austrian or EU national or a person with an unlimited residence permit) is available for the job.
183. A basic requirement for a work permit to be issued is possession of a residence permit,<sup>223</sup> which excludes many stateless persons, including those with “tolerated stay”, who are not issued with residence permits. The lack of a residence permit on account of stateless status therefore severely limits stateless persons’ ability to access their right to work.
184. Many stateless persons interviewed in the course of this study stressed the fact that they had been forced into idleness and longed for the opportunity to be able to work, to earn their living and to contribute to society. The case of Hashem on p. 67 is one such example.
185. The most recent employment-related statistical information available comes from the 2011 register-based census. This shows that only 28 per cent of stateless persons are in employment, while 37 per cent are not recorded as employed, unemployed or in education. Among stateless women over half (370 out of 731) are in this “other” category without a clear employment status. The low rate of employment reflects the challenges that stateless persons face in accessing their right to work.

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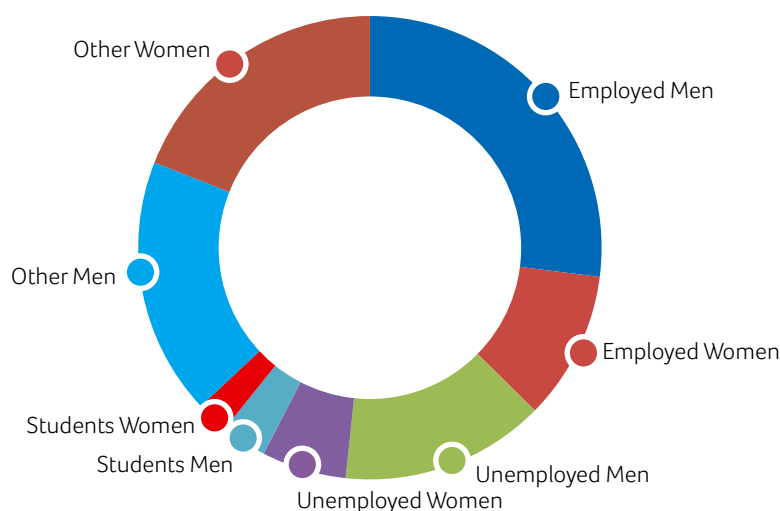
<sup>220</sup> 1954 Convention (footnote 2), Article 17(1). See chapter 6.1.1 for UNHCR’s interpretation of the term “lawfully staying”.

<sup>221</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, para. 1, available at: <http://www.refworld.org/docid/4415453b4.html>.

<sup>222</sup> *Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird (Ausländerbeschäftigungsgesetz – AuslBG)* Federal Law Gazette No. 218/1975 (Aliens Employment Act), available at: <http://goo.gl/3buBEi>.

<sup>223</sup> *Ibid.*, Article 4(1)(1).

**Figure 7:** Employment Status of Stateless Persons



Source: Statistics Austria, Register-based Census 2011

## Case of Hashem



Name: Hashem\*

Age and sex: Early 30s, male

Country of birth: Libya (Palestinian)

Claimed cause of statelessness: Descendant of Palestinian refugees

Length of stay in Austria: 7-10 years

Status at time of interview: "Tolerated stay" (By May 2016 Hashem had joined members of his extended family in Sweden.)

Hashem was born in Libya to Palestinian parents, who had been born in Lebanon. His family later moved to Syria, but he stayed in Libya with an aunt in order to finish school. After school Hashem did a computer programming training and then worked as a driver. He never tried to obtain Libyan citizenship as that was not possible. He has no papers relating to his stay or work in Libya (other than a driving license). He claimed that this was common and no problem in Libya at the time: "Only when I came to Austria, I realized that as a Palestinian I am considered stateless". He left Libya due to personal problems and had initially planned to join members of his extended family in Scandinavia.

Upon his arrival in Austria, Hashem applied for asylum. He first falsely claimed to originate from Lebanon and provided a false name. His case for international protection was twice referred back to the first instance by the appeal body, before finally being rejected after more than nine years. In its ruling the former Asylum Court found that Hashem was stateless.

Hashem feels that he lost ten years of his life: "I could never work officially in Austria all these years. This is a big problem for me. [...] During the time when I received no financial support, I tried so many things to get financial help, but the answer was always negative. [...] I ask you one question: Can you live without work? Without money? [...] Nobody can, this is very difficult."

According to Hashem, the combination of a lack of financial means and having no right to work made him accept an offer of work from a person who turned out to be an imposter (his role was to find persons interested in booking a flight from this person for which he received a commission) and assistance from a friend (who gave him food from the supermarket where she worked), both of which were unlawful. As a result, he was sentenced to two prison terms of 15 and 10 months on parole for theft and fraud. These convictions presented a bar to Hashem obtaining a residence permit, although he could not be removed to his country of former habitual residence for reasons outside his control. Without a residence permit he has no right to work.

\* Name changed to protect privacy.

## 6.1.8 The right to health insurance, social assistance, unemployment benefits, pensions

### 6.1.8.1 INTERNATIONAL LEGAL FRAMEWORK

186. Article 23 of the 1954 Convention guarantees stateless persons lawfully staying in a State Party the same treatment as nationals with respect to public relief and assistance. Article 24(1)(b) likewise entitles them the same treatment as nationals as regards social security in respect of legal provisions for work-related injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme.
187. The right to social security is also protected by Article 9 of the ICESCR and Articles 12 to 14 of the ESC. The Committee on Economic, Social and Cultural Rights explicitly addresses the situation of non-nationals including stateless persons in its General Comment on the right to social security, noting in particular that such persons should have reasonable access to health care and family support.<sup>224</sup>

### 6.1.8.2 AUSTRIAN LEGISLATION AND PRACTICE

188. Stateless persons are not, as such, privileged with regard to access to health insurance, social assistance, unemployment benefits and pensions. Their enjoyment of such rights is dependent on their residence status; in some cases the issuing of a residence permit is dependent on proof that the individual has sufficient income not to be a burden on the State.

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#### 6.1.8.2.1 MINIMUM WELFARE SUPPORT

189. The minimum welfare support system (*Bedarfsorientierte Mindestsicherung*) is intended to apply to Austrian nationals and other persons holding a permanent legal residence status in Austria<sup>225</sup> and thus only benefits stateless persons with a permanent residence permit.

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#### 6.1.8.2.2 BASIC WELFARE SUPPORT

190. Basic welfare support is intended primarily for asylum-seekers and therefore covers stateless persons while they are in the asylum system. Recipients of basic welfare support are entitled to accommodation in suitable lodgings, provision of adequate food, monthly pocket money (EUR 40 per month) for persons in organized lodgings, sickness insurance, benefits for the acquisition of necessary clothing and payment of travelling expenses required for school attendance and the supply of school requisites for pupils.<sup>226</sup> During the admissibility phase of asylum procedures it is provided by the Federal State. During the regular asylum procedure it is provided by the provinces.<sup>227</sup>

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<sup>224</sup> CESCR, *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, para 37, available at: <http://www.refworld.org/docid/47b17b5b39c.html>.

<sup>225</sup> *Agreement between the Federal Government and the provincial governments pursuant to Article 15a of the Federal Constitution, concerning minimum welfare support*, Article 4(3).

<sup>226</sup> *Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich (Grundversorgungsvereinbarung – Art. 15a B-VG)*, Federal Law Gazette 80/2004, 15 July 2004 (Basic Welfare Support Agreement – Article 15a of the Federal Constitution), available at: <http://goo.gl/WZ8NkA> (German), <http://goo.gl/7oYmSE> (unofficial English Translation), Article 6.

<sup>227</sup> *Ibid.*

191. Rejected asylum-seekers and persons in an irregular situation, including stateless persons under such circumstances, as such have no legal entitlement to basic welfare support. The Basic Welfare Support Agreement and all nine provincial laws concerning basic welfare support include persons who are not entitled to stay in Austria but cannot be deported for legal or practical reason in the target group.<sup>228</sup> Also under all provincial laws, respective support can be denied, withdrawn or reduced if persons concerned do not cooperate in Aliens Police proceedings. However only under the provincial legislation of two provinces persons who are not entitled to stay in Austria but cannot be deported for legal or practical reasons are legally entitled to basic welfare support and to receiving a respective decision by a responsible authority if that support is denied, withdrawn or reduced.<sup>229</sup> In the remaining seven provinces, the legislation does not stipulate an entitlement to basic welfare support. However, in line with High Court jurisprudence, persons who cannot be deported for legal or practical reason in those provinces should receive basic welfare support if and in so far it is being granted to other foreigners in the same situation. Moreover, one provincial law stipulates that persons concerned have no entitlement to support if the Aliens Police Authority has not issued a determination or notification regarding their non-removability or where the non-removability was culpably achieved by the person concerned (e.g. through their behaviour during a deportation, the necessary cooperation for the process of obtaining a travel document and the immediate readiness to leave Austria after a final procedure to terminate their residence).<sup>230</sup>
192. Another difficulty may arise in proving eligibility under this provision especially for the timeframe until the BFA indicates that the person cannot be deported.
193. Legal counsellors reported that in almost all provinces persons who were (probably) stateless were routinely dismissed from basic welfare support following a final negative asylum decision.<sup>231</sup> This reflects the experience of the stateless persons interviewed in the course of this research who reported being deprived of basic welfare support immediately after receiving their final negative asylum decision and subsequently living in destitution for periods of several weeks or months and in exceptional cases up to a year. Generally, the number of stateless persons receiving basic welfare support is small, only 1,995 as of 2 May 2016, of whom 77 per cent (1,531) are asylum-seekers.<sup>232</sup>
194. In a judgement of 27 February 2013, the Higher Administrative Court clarified the circumstances under which it must generally be found that aliens “cannot be deported for legal or practical reasons”.<sup>233</sup> The Court decided that the refusal of a person to comply with their obligation to leave the country is not, in itself, grounds for withdrawing basic welfare support and this support should not be conditional on the individual proving that they cannot acquire a travel document. However, it also ruled that the person must fulfil their obligations to cooperate with the removal procedure. In the specific case it considered only the lack of a travel document prevented the enforcement of the deportation and the persons in question could have removed this obstacle by addressing the consular authority of their country of origin when asked to do so. In these circumstances the Court considered that they had not cooperated with the removal procedure. The Court concluded that if a person fails both to take steps to acquire a travel document and to cooperate in the determination of his or her identity, they can be found to no longer be in need of basic welfare support.
195. The fact that the applicants in this case claimed to be stateless was not taken into consideration by the Higher Administrative Court as they had given a nationality in their asylum procedures and not

<sup>228</sup> *Ibid.*, Article 2(1)(2) and Article 2(1)(4); similar provisions have been included in the nine provincial basic welfare legislations.

<sup>229</sup> *Burgenland Basic Welfare Support Act*, Article 3(2) and Article 4(b); *Vorarlberg Basic Welfare Support Act*, Article 7(1) and (6)

<sup>230</sup> *Lower Austria Basic Welfare Support Act*, Article 3(2)4(a).

<sup>231</sup> Information provided to researchers by various stakeholders.

<sup>232</sup> Information provided to UNHCR by the Ministry of the Interior, email dated 2 May 2016.

<sup>233</sup> *Verwaltungsgerichtshof* (Higher Administrative Court), 2011/01/0005, 27 February 2013.

provided any evidence of their lack of nationality. Therefore the judgement does not address under which circumstances and at which stage stateless persons should be found not to be removable for legal or practical reasons.

196. From the perspective of many of the interviewed stateless persons one of the most worrying consequences of dismissal from basic welfare support had been the withdrawal of medical insurance without which only access to emergency medical care is guaranteed. Some had experienced a delay in being re-registered to receive basic welfare support even after they had been granted a “tolerated stay”, particularly if they had moved to another province in the interim. Several said that they had experienced health problems during the time when they were not covered by health insurance and had to incur debts (with friends) in order to be able to receive necessary treatment. Khalil’s story provides further insights:



## Case of Khalil

Name: Khalil\*

Age and sex: Mid-20s, male

Country of birth: Occupied Palestinian Territory (West Bank)

Claimed cause of statelessness: Descendant of Palestinian refugees

Length of stay in Austria: 1-2 years

Status at time of interview: Rejected asylum-seeker (By May 2016 Khalil had a “tolerated stay”.)

Khalil was born in the West Bank, where his family still lives, and completed school there. While attending university he began to fear persecution for his engagement in political activities and so left for Austria, where he applied for asylum. He has an identity document issued by the Palestinian Authority, a UNRWA registration card and a birth certificate. Khalil’s asylum application was rejected in 2013 and he was issued with an expulsion order. Both the (then) BAA and the (former) Asylum Court had accepted that he was a stateless Palestinian.

On the advice of a legal counsellor, Khalil suggested to the Aliens Police Authority that as his deportation was not possible for reasons of fact for which he was not responsible, they certify that his stay was “tolerated”. He also applied for a “tolerated stay” card in December 2013. In 2014, he was informed that his file had been transferred to the new Federal Office for Immigration and Asylum (BFA) which had taken over responsibility for such procedures. The BFA informed him that they would first inquire with the Palestinian representation in Vienna whether he could obtain a Palestinian travel document to facilitate his removal.

After the final negative decision on his asylum application, Khalil lost basic welfare support. Until then, he had benefited from that support from the province of Lower Austria receiving medical insurance as well as EUR 320 per month to cover food and rent of a private apartment. In the absence of a residence permit, he is not allowed to work and is, thus, destitute. Khalil is most worried about his irregular status and the withdrawal of medical insurance. He had to cancel a scheduled dental root amputation operation because he could not cover the costs himself. As a result of the pain from this untreated problem, he regularly has to take pain relief medication and has difficulties when eating. In the month before he was interviewed, Khalil had no longer been able to pay the rent and had been given notice to leave his apartment.

\* Name changed to protect privacy.

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### 6.1.8.2.3 UNEMPLOYMENT BENEFITS

197. In general under Austrian law a person who has the right to work and has previously been in insured employment for the relevant qualifying period is eligible for unemployment benefits if they are unemployed through no fault of their own and willing to work. This means that a person who for whatever reason does not currently have a right to work is generally not able to access unemployment benefits even if they have previously been in insured employment.
198. A case before the Higher Administrative Court addressed a stateless person's right to unemployment benefits on the basis of Article 24 of the 1954 Convention.<sup>234</sup> The Chamber of Labour which supported the stateless person in bringing the case highlighted that he had previously been treated as an Austrian citizen and had been naturalized shortly after his statelessness had been recognized. The Chamber considered the stateless person's residence lawful, arguing that he could not otherwise have been naturalized so quickly.
199. On 20 March 2014 the Court found that the person in question had no right to unemployment benefits for the period before his naturalization took effect since at that point he did not have the right to work in Austria (being neither an Austrian citizen nor having a residence permit) and therefore did not fulfil the criteria for receiving unemployment benefits under Austrian law. The Court also concluded that the complainant could not rely directly on Article 24 of the 1954 Convention since this is not directly applicable but has to be implemented through national laws. The Court dismissed the complainant's argument that he should be considered to have been lawfully staying in Austria while his application for naturalization was processed and therefore be eligible for unemployment benefits in this period.<sup>235</sup>
200. The case of Peter illustrates the problem:

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<sup>234</sup> Verwaltungsgerichtshof (Higher Administrative Court), 2013/08/0004, 20 March 2014.

<sup>235</sup> *Ibid.*, para 2.3. This conclusion appears to have been based on a misreading of the UNHCR Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person (now incorporated into UNHCR *Handbook on Protection of Stateless Persons* (footnote 10)), para 69 which says "[t]here is no basis in the Convention for requiring that applicants for statelessness determination be lawfully within a State".

## Case of Peter



Name: Peter\*

Age and sex: 50s, male

Country of birth: Austria

Claimed cause of statelessness: Born in Austria out of wedlock to a stateless mother and an Austrian father

Length of stay in Austria: Whole life

Status at time of interview: Austrian citizen (naturalized one and a half years earlier)

Peter was born in Austria. His mother was of Romanian origin and came to Austria after World War II without any papers. Peter was born out of wedlock and his birth certificate records his father as unknown. According to Peter, his father was an Austrian citizen who died a few years after his birth. His mother, who never applied for Austrian citizenship, struggled to provide for her three sons. During Peter's childhood, nobody took care





## 6.1.9 The right to education

### 6.1.9.1 INTERNATIONAL LEGAL FRAMEWORK

201. Article 22 of the 1954 Convention provides that States Parties shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education, without any condition of lawful presence or stay. In addition, the Article provides that with respect to education other than elementary education stateless persons should be accorded treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.<sup>236</sup>
202. Under human rights law the right to education is protected by Articles 13 and 14 of the ICESCR and Articles 28 and 29 of the CRC. Both treaties stress that education should be available to all.<sup>237</sup>

### 6.1.9.2 AUSTRIAN LEGISLATION AND PRACTICE

203. Each child living in Austria – irrespective of legal status and nationality – is obliged to attend schooling for a period of nine school years beginning with the first of September following the child's sixth birthday. While public schools are in principle free of charge, coverage of any travel expenses (for pupils who live too far away to walk to school) and the costs for buying school requisites may be an issue for parents without (sufficient) income or social support.
204. Following completion of their ninth year of schooling, young people in general have the option of professional training in the form of an apprenticeship, of entering the workforce or of continuing their education at a secondary school. For stateless children with no residence permit or a weak residence status, access to an apprenticeship or a regular job will in practice often be illusory as a work permit is required in such circumstances.
205. At the university level, the Austrian Ombudsman Board has been recommending a legal amendment on an equal treatment of stateless persons with Austrian nationals as far as access to student allowances (*Studienbeihilfe*) is concerned.<sup>238</sup> So far this recommendation has not been implemented.<sup>239</sup> The number of stateless students at Austrian universities remains low, with only 96 stateless students registered at public universities for the 2014/2015 winter semester.<sup>240</sup>

## 6.1.10 Other rights

206. This chapter had focused on stateless persons' right to remain in Austria, their documentation and access to employment and social assistance because these are among the most pressing concerns for stateless persons. However, access to many other rights is also restricted or complicated by statelessness.

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<sup>236</sup> 1954 Convention (footnote 2), Article 22.

<sup>237</sup> See also, CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html>.

<sup>238</sup> Volksanwaltschaft (Austrian Ombudsman Board), *Bericht über die Tätigkeit der Volksanwaltschaft im Jahr 2001 an den Nationalrat und den Bundesrat*, May 2002, p. 49ff, available at: <http://volksanwaltschaft.gv.at/downloads/5elqn/pb25.pdf>.

<sup>239</sup> Volksanwaltschaft (Austrian Ombudsman Board), *Bericht der Volksanwaltschaft an den Nationalrat und Bundesrat 2012*, February 2013, p. 221, available at: [http://volksanwaltschaft.gv.at/downloads/q3at/Jahresbericht\\_2012.pdf](http://volksanwaltschaft.gv.at/downloads/q3at/Jahresbericht_2012.pdf).

<sup>240</sup> STATcube, Students at public universities, 'Semester by all students and nationality: stateless'.

207. For example, some of the stateless persons interviewed for this study faced difficulties exercising their right to marry,<sup>241</sup> due to their lack of documentation and, in particular, the need to obtain a certificate documenting the lack of impediment to marriage (*Ehefähigkeitszeugnis*) from the registry office of their country of origin. Where there are considerable difficulties in producing these certificates the Civil Status Act (*Personenstandsgesetz*) allows the marriage to go ahead without the documentation. However, legal counsellors reported that the practices of the civil registration authorities varied greatly in this respect. Stateless persons interviewed for this study who had reported respective difficulties said that they had to abandon their plans when they were informed of the legal requirements. None of them mentioned having been informed about the possibility of waiving this requirement.<sup>242</sup>

## 6.2 Conclusions and recommendations

### 6.2.1 Conclusions

208. Austrian legislation does not currently recognize statelessness as a ground for granting a right to residence. As a result even someone determined to be stateless by the authorities may be irregularly present in Austria. Stateless persons in an irregular situation are in a precarious position and often unable to access the rights guaranteed by the 1954 Convention and international human rights law (an experience reflected in the stories of the stateless persons interviewed for this study). In particular, they may be at risk of deportation or detention for expulsion procedures despite their lack of a realistic and reasonable opportunity of finding protection in another country. For these reasons granting a right to residence to stateless persons is regarded as an important means of fulfilling the object and purpose of the 1954 Convention.<sup>243</sup>

209. While the recognition of a stateless person's non-removability may provide a pathway to regularization, the lack of access to rights for persons in a situation of "tolerated stay" and the fact that they must have been in a situation of "tolerated stay" for at least a year before they can be issued a residence permit are problematic. Moreover, until the certification of their "tolerated stay" persons concerned regularly find themselves in a legal limbo and without any support or the possibility to fend for themselves. The March 2014 decision of the Austrian Constitutional Court that expulsion of a stateless person with no ties to another State would violate ECHR Article 3 is a welcome development, although the specificities of the case may mean that it is unlikely to materially alter the situation of most stateless persons in Austria.<sup>244</sup> However, in UNHCR's view it is clear that in such a case the expulsion should be found permanently inadmissible and the status of the person regularized through the issuing of a residence permit.

210. As this chapter has shown, the current legislation and practice are not an adequate response to the situation of stateless persons and, in particular, often fail to allow for the specificities of the situation of stateless persons compared to other migrants.

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<sup>241</sup> The right to marry and found a family is guaranteed, *inter alia*, by ICCPR (footnote 16) Article 23 and ECHR (footnote 45) Article 12.

<sup>242</sup> For birth certificates, passports, documentation of children and former marriages as well as the certificate of lack of impediment.

<sup>243</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 147.

<sup>244</sup> Verfassungsgerichtshof (Constitutional Court), U2131/2012, (footnote 190).

## 6.2.2 Recommendations

211. UNHCR makes the following recommendations with respect to the status of stateless persons in Austria:

- 1) Incorporate a new ground of residence for stateless persons in the Austrian Asylum Act;
  - a. Foresee a renewable residence permit with a validity of at least two years for each person recognized as being stateless unless it is clear that the stateless person enjoys the right of residence in another country and is able to return and live there with full respect for his or her human rights;
  - b. Foresee that applicants in the proposed statelessness determination procedure have a right to remain in Austria for the duration of that procedure. The applicants for statelessness status should be accorded the same standards of treatment as asylum-seekers;
- 2) Exempt all recognized stateless persons from the obligation to apply for a work permit;
- 3) Collect and analyse decisions on deportation detention, “tolerated stay” and residence permits on humanitarian grounds (including a breakdown as to how many had previously lived on a “tolerated stay”) regarding stateless persons and persons of unknown nationality;
- 4) Ensure that the particular situation of stateless persons is taken into account in any proceedings related to deportation;
- 5) Ensure that all stateless persons in Austria are treated in accordance with the provisions of the 1954 Convention and international human rights law and that their access to the rights contained in these treaties are not limited in law or practice, for instance due to lack of or difficulty obtaining documentation.

# 7. The Prevention and Elimination of Statelessness

212. Prevention of statelessness involves addressing the causes of statelessness so that new cases of statelessness are avoided. This can include measures to close gaps in nationality legislation, to promote birth registration, and to improve access to documentation and the determination or confirmation of nationality. The most effective way of preventing statelessness is by including adequate safeguards in laws and administrative frameworks to ensure that situations of statelessness do not arise.
213. Reduction of statelessness involves finding solutions to enable stateless persons to acquire a nationality, including through legal reforms allowing groups of stateless persons to acquire a nationality and individual naturalization.
214. This chapter examines the international, regional, and national legal frameworks that aim to prevent and reduce statelessness and analyses the extent to which Austria meets its international obligations in this regard.

## 7.1 General legal framework

215. The international community has recognized the need to prevent and reduce statelessness in the context of conflict prevention, conflict resolution, post-conflict reconciliation, and displacement, and as part of the protection of human rights of individuals. The “right to a nationality” is enshrined in several international legal instruments. Article 15 of the UDHR declares, “[e]veryone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.” The aspiration of Article 15 has been given more concrete form by the 1961 Convention and reiterated by human rights treaties, for instance in Article 7 of the CRC,<sup>245</sup> while the 1954 Convention obliges States to facilitate the assimilation and naturalization of stateless persons.<sup>246</sup> These universal instruments are complemented by a number of regional treaties.<sup>247</sup> As a result of State practice, such as ratification of relevant treaties and adoption by consensus of resolutions, the prohibition of arbitrary deprivation of nationality and the related principle that statelessness should be prevented have become norms of customary international law.<sup>248</sup>

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<sup>245</sup> See also CERD (footnote 16), Article 5(d)(iii), ICCPR (footnote 16), Article 24(3); CEDAW (footnote 16), Article 9; CRPD (footnote 16), Article 18.

<sup>246</sup> 1954 Convention (footnote 2), Article 32.

<sup>247</sup> In particular, the ECN (footnote 23).

<sup>248</sup> UNHCR, *Tunis Conclusions*, (footnote 15), para 2.

## 7.1.1 The 1961 Convention

216. The 1961 Convention is the only universal instrument that elaborates clear, detailed and concrete safeguards to prevent statelessness. It establishes rules for States Parties on acquisition, renunciation, loss and deprivation of nationality in cases where a person would otherwise be left stateless and specifies the nationality to which a person falling under the scope of its acquisition provisions is entitled. It aims to prevent statelessness, particularly at birth, which should lead to a reduction in statelessness over time. However, the Convention does not absolutely prohibit the deprivation of nationality that renders a person stateless.
217. Austria is one of only seven States Parties to the 1961 Convention that has made use of the right to retain disloyalty or conduct seriously prejudicial to the interests of the State as grounds for deprivation of nationality when this would result in statelessness.<sup>249</sup>

## 7.1.2 The 1954 Convention and reduction of statelessness through naturalization

218. No matter how extensive the rights granted to a stateless person, they are not the equivalent of the protection that result from possessing a nationality. Protecting stateless persons by assuring them full enjoyment of their rights under the 1954 Convention and human rights law should, thus, be seen as an interim response. Ultimately, the reduction of statelessness by acquisition of nationality must remain the goal.
219. Article 32 of the 1954 Convention obliges State Parties to facilitate, “as far as possible”, the assimilation and naturalization of stateless people living on their territory, that is, their integration into the economic, social, and cultural life of the country and their naturalization. States Parties must “in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”.<sup>250</sup>

## 7.1.3 International human rights standards

220. Starting with the UDHR, international human rights instruments have recognized the right to a nationality,<sup>251</sup> asserting in particular the prohibition of discrimination in this respect<sup>252</sup> and the right of children to acquire a nationality.<sup>253</sup> The fact that international human rights law recognizes the right of every person to a nationality assists the interpretation of the Statelessness Conventions, which must be “read and interpreted in light of developments in international law, in particular international human rights law”.<sup>254</sup> At the same time, the more specific focus and greater detail of the Statelessness Conventions can make them a useful tool for identifying means to implement these human rights standards.

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<sup>249</sup> In line with 1961 Convention (footnote 4), Article 8. See, UNHCR, *Tunis Conclusions*, (footnote 15), para 65.

<sup>250</sup> 1954 Convention (footnote 2), Article 32.

<sup>251</sup> UDHR (footnote 16), Article 15.

<sup>252</sup> CERD (footnote 16), Article 5(d)(iii): States should guarantee “the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” in the enjoyment of the right to a nationality. See also CEDAW (footnote 16), Article 9; CRPD (footnote 16), Article 18.

<sup>253</sup> ICCPR (footnote 16) Article 24(3); CRC (footnote 11), Article 7.

<sup>254</sup> UNHCR, *Guidelines on Statelessness No. 4* (footnote 52), para 8.

221. Article 7 of the CRC also guarantees the right of the child to be registered at birth. While not an intrinsic part of access to nationality, and therefore omitted from the treaties on nationality and statelessness, birth registration is an important tool in guaranteeing the rights of everyone to a nationality. In particular it provides documentation of the place of birth and parentage of the child which may be necessary to prove a right to nationality, whether based on birth or descent.

## 7.1.4 Regional law relating to statelessness

222. The Council of Europe has adopted two conventions relating to the prevention of statelessness: the 1997 ECN<sup>255</sup> and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.<sup>256</sup> These two regional instruments complement and build on the obligations contained in the 1961 Convention.

223. The ECN lays out principles<sup>257</sup> and rules with the aim of making acquisition of a new nationality and recovery of a former nationality easier. It provides that nationality can only be lost (*ex lege* or at the initiative of the State Party) for a limited number of reasons which are listed exhaustively and (with one exception) prohibits the withdrawal of nationality if this would expose an individual to statelessness.<sup>258</sup> The ECN also regulates procedures governing applications for nationality, aiming to ensure that they are just, fair and open to appeal<sup>259</sup> and requires States Parties to facilitate the acquisition of their nationality for stateless persons “lawfully and habitually resident on its territory”.<sup>260</sup>

224. The 2006 Convention on the Avoidance of Statelessness in relation to State Succession builds on the provisions in the ECN on cases of State succession<sup>261</sup> by developing more detailed rules on this subject.

225. Austria is a party to both of these Council of Europe treaties,<sup>262</sup> but at the time of accession made 11 reservations to the ECN and three declarations. The reservations relate to the right of otherwise stateless children born in Austria to acquire nationality, facilitated naturalization for stateless persons and refugees, grounds for deprivation of nationality, renunciation of nationality, and the inclusion of the fathers of children born out of wedlock in the term “parents”.<sup>263</sup>

226. The ECHR does not specifically include a right to acquire a nationality. However, the European Court of Human Rights has considered access to nationality under its provisions on family life (Article 8) and non-discrimination (Article 14).<sup>264</sup>

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<sup>255</sup> ECN (footnote 23).

<sup>256</sup> Convention on the Avoidance of Statelessness in Relation to State Succession (footnote 44).

<sup>257</sup> ECN (footnote 23), Article 4(a)–(c): “The rules on nationality of each State Party shall be based on the following principles: a. everyone has the right to a nationality; b. statelessness shall be avoided; c. no one shall be arbitrarily deprived of his or her nationality”.

<sup>258</sup> *Ibid.*, Article 7. The exception is where the acquisition of nationality was the result of fraud.

<sup>259</sup> *Ibid.*, Articles 10–13.

<sup>260</sup> *Ibid.*, Article 6(4)(g).

<sup>261</sup> *Ibid.*, Articles 18–20.

<sup>262</sup> Austria ratified the 1997 European Convention on Nationality on 17 September 1998, which entered into force for Austria on 1 March 2000. The Convention on State Succession was ratified on 23 September 2010 and entered into force on 1 January 2011.

<sup>263</sup> CoE, ECN, List of declarations made with respect to treaty No. 166, available at <http://goo.gl/bSfLgc>.

<sup>264</sup> European Court of Human Rights, *Genovese v Malta*, Application No. 53124/09, 11 October 2011.

## 7.1.4.1 THE AUSTRIAN LEGAL FRAMEWORK

227. The acquisition, attribution, renunciation, loss and deprivation of Austrian nationality are regulated by the Austrian Nationality Act of 1985<sup>265</sup> which has since been repeatedly amended.<sup>266</sup> The citizenship law is a federal competence, but the Provinces are responsible for its implementation. Other legal sources regulating acquisition and loss of Austrian citizenship are the Decree on Nationality<sup>267</sup> and a Decree on the Citizenship Test.<sup>268</sup>
228. The material provisions of the Austrian Nationality Act can be found in its Section II (acquisition and attribution of nationality, Articles 6-25), Section III (loss and deprivation of nationality, Articles 26-36) and Section VI (acquisition of citizenship by notification, Articles 57-59).
229. Acquisition of Austrian citizenship at birth is based on the *ius sanguinis* principle (by descent). Foreign nationals and stateless persons may acquire Austrian citizenship either by discretionary naturalization (by way of a “discretionary decision” of the responsible authority – *Ermessensentscheidung*) or by naturalization through legal entitlement (*Rechtsanspruch*). As a general rule, foreign nationals seeking naturalization under the “ordinary” (discretionary naturalization) procedure must have had their principal residence in Austria without interruption for at least ten years (Austrian Nationality Act Article 10(1)).<sup>269</sup> Birth in Austria reduces the waiting period to six years of residence.<sup>270</sup> Foreigners entitled to naturalization include stateless persons born in Austria who fulfil the requirements under Article 14 of the Austrian Nationality Act as well as persons with 30 years of main domicile in Austria, under certain conditions.<sup>271</sup>
230. In addition to residence, applicants must regularly meet the following requirements in order to be attributed Austrian nationality: clean criminal record; not having “on more than one occasion been convicted by a final judgment of a serious infraction which, in particular, undermines Austrian legal values, [...] or of a serious infringement of the 2005 Aliens Police Act, the Settlement and Residence Act (NAG), FLG I No. 100/2005, the Border Control Act (GrekoG), FLG No. 435/1996, or the Aliens Employment Act (AuslBG), FLG No. 218/1975”; no proceedings to terminate their residence in Austria; affirmative attitude towards the Republic of Austria and being no danger to public law, order and security including any other public interest; regular income; and no dependency on social assistance benefits during a specified period preceding the application unless they are permanently unable to secure their livelihood for reasons beyond their control (in particular due to disability or chronic and severe diseases as certified by a medical expert), knowledge of German language and basic knowledge of the democratic system and the history of Austria and of the Province in which they are applying (some exemptions from the last two requirements are foreseen, notably for children below 14 years).<sup>272</sup>
231. The provisions and safeguards of the Austrian Nationality Act relating to the prevention and reduction of statelessness are discussed in detail below.

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<sup>265</sup> Austrian Nationality Act (footnote 31).

<sup>266</sup> As of June 2016, the most recent amendment of relevance to the prevention and reduction of statelessness was published in Federal Law Gazette 188/2013.

<sup>267</sup> *Staatsbürgerschaftsverordnung* 1985 (Decree on Nationality of 1985), Federal Law Gazette No. 329/1985.

<sup>268</sup> *Staatsbürgerschaftsprüfungs-Verordnung* (Decree on the Citizenship Test), Federal Law Gazette II No. 138/2006.

<sup>269</sup> Including at least five years as a settled resident.

<sup>270</sup> Austrian Nationality Act (footnote 31), Article 11a(4)3.

<sup>271</sup> *Ibid.*, Articles 14 and 12(1)1(a).

<sup>272</sup> *Ibid.*, Article 10.

## 7.2 Children born to Austrian parents

### 7.2.1 International and regional legal framework

232. Article 1(3) of the 1961 Convention provides that “a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless”.
233. In light of the aim to reduce statelessness and of the principle of gender equality set out in the ICCPR<sup>273</sup> and other human rights treaties, this provision should be read as applying to children born in the territory of a State Party to fathers who are nationals of that State.<sup>274</sup> This provision should also be read in conjunction with the prohibition on discrimination on grounds of birth and, for children, due to the status of their parents. The safeguard it provides should thus not be limited to children born in wedlock.<sup>275</sup>
234. In this context it is also useful to refer to the ECN, which provides for the acquisition of nationality *ex lege* by “children one of whose parents possesses, at the time of birth of these children, the nationality of that State Party [...]”.<sup>276</sup> National laws should also determine procedures for cases where parenthood is established through recognition, court order or similar procedures. More recently, the Committee of Ministers of the Council of Europe has recommended that States provide for the acquisition of nationality by right of blood (*ius sanguinis*) by children without any restriction which would result in statelessness.<sup>277</sup>

### 7.2.2 Austrian legislation and practice

235. Children born to an Austrian mother and children born in wedlock to an Austrian father acquire Austrian nationality at birth without exception or additional requirements.<sup>278</sup>
236. A 2013 amendment introduced a special provision that children born abroad acquire Austrian nationality at birth if an Austrian national is regarded as mother or father under the law of their country of birth and if the child would otherwise be left stateless.<sup>279</sup> This provision was initially introduced to provide for the situation of children born by surrogate mothers, but is worded so that it covers all children of Austrian parents born abroad.
237. The 2013 amendment also introduced new rules on the acquisition of citizenship at birth by children born out of wedlock to Austrian fathers. Under Article 7 a child born out of wedlock to an Austrian father now acquires Austrian nationality at birth if fatherhood has been established before or within

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<sup>273</sup> ICCPR (footnote 16), Articles 2 and 3.

<sup>274</sup> The text of the Convention reflects the number of States whose nationality laws discriminated on grounds of gender in 1961 and therefore the particular need to ensure that mothers could transmit nationality.

<sup>275</sup> UNHCR, *Guidelines on Statelessness No 4* (footnote 52), para 15 with reference to the ruling of the European Court of Human Rights, *Genovese v. Malta* (footnote 277).

<sup>276</sup> ECN (footnote 23) Article 6(1)(a).

<sup>277</sup> CoE: Committee of Ministers, *Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009, CM/Rec(2009)13, para 1, available at: <http://www.refworld.org/docid/4b83a76d2.html>.

<sup>278</sup> Austrian Nationality Act (footnote 31), Article 7.

<sup>279</sup> *Ibid.*, Article 7(3).



eight weeks of birth. This change was made in response to jurisprudence from the European Court of Human Rights<sup>280</sup> and the Austrian Constitutional Court.<sup>281</sup>

238. These new provisions will reduce the risk that children born out of wedlock to Austrian fathers become stateless if their mother is stateless or cannot transmit her nationality to the child. However, the short deadline of eight weeks for the establishment of fatherhood creates a risk that some children will be left stateless due to delays in establishing paternity. If paternity is established at a later stage, there are more conditions for the acquisition of Austrian nationality.<sup>282</sup> No data is currently available on the number of stateless children born out of wedlock to Austrian fathers, but the practical implications of the eight-week deadline for establishing paternity deserve further investigation. In light of these limitations, UNHCR does not consider that Austria's legislation is fully in line with the international standards outlined above.

## 7.3 Children born otherwise stateless in Austria

239. Most people acquire their nationality at birth and the right of the child to a nationality is recognized in the CRC.<sup>283</sup> Furthermore a newborn child will usually only have a connection to a small number of States, making determinations of nationality a simpler process than for adults. This means that guaranteeing children have access to a nationality from birth is one of the most efficient means of addressing statelessness,<sup>284</sup> as it not only ensures that the child will not be stateless, but also helps to break the intergenerational cycle of statelessness.<sup>285</sup>

### 7.3.1 International and regional legal framework

240. One of the aims of the 1961 Convention is to prevent statelessness at birth. Its Article 1 gives a child who would otherwise be stateless the right to acquire the nationality of his or her State of birth, although the State may decide whether this is done automatically or requires the child to apply. The grant of nationality on application may also be subject to one or more of four conditions.<sup>286</sup> Austria has chosen to require stateless children to apply for nationality and made the grant of nationality subject to all the conditions permitted by the 1961 Convention.<sup>287</sup>

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<sup>280</sup> European Court of Human Rights, *Genovese v. Malta* (Footnote 264).

<sup>281</sup> Verfassungsgerichtshof (Constitutional Court), G 66/12 and others, 29 November 2012. The Austrian Constitutional Court annulled the denial of citizenship to children of Austrian fathers born out of wedlock by stating that the provisions requiring bi-national parents to be married at the time of birth were discriminatory under Articles 8 and 14 of the ECHR. The Court largely followed the European Court of Human Rights' legal opinion in the case of *Genovese v. Malta*. However, the Constitutional Court also pointed out that there was an important difference between "legitimate" and "illegitimate fathers" which would provide a valuable reason to justify that children born out of wedlock did not acquire citizenship at birth automatically but that in certain cases children could be required to apply for naturalization, especially if the declaration or recognition of paternity did not take place immediately after birth.

<sup>282</sup> The child can in such case, pursuant to Article 12(2) of the Nationality Act (footnote 31), only acquire Austrian citizenship if fatherhood is established and the child is either a lawful resident in Austria at the time of application or the father has been permanently and lawfully residing abroad for at least 12 months and provided also that the award of citizenship would not significantly impair the international relations of the Republic of Austria and that on the basis of the child's conduct hitherto, the child guarantees that he or she has a positive attitude towards the Republic and neither represents a danger to law and order and public safety nor endangers other public interests as stated in Article 8(2) of the ECHR.

<sup>283</sup> CRC (footnote 11), Article 7.

<sup>284</sup> Vonk, O., Vink, M. & de Groot, G., *Protection against Statelessness: Trends and regulations in Europe*, EUDO Citizenship Observatory, May 2013, p. 39, available at: [http://eudo-citizenship.eu/images/docs/eudocit\\_vink\\_degroot\\_statelessness\\_final.pdf](http://eudo-citizenship.eu/images/docs/eudocit_vink_degroot_statelessness_final.pdf).

<sup>285</sup> ENS, *Childhood Statelessness in Europe: Issues, Gaps and Good Practices*, April 2014, p. 2, available at <http://www.refworld.org/docid/5343a45f4.html>.

<sup>286</sup> 1961 Convention (footnote 4), Article 1(2).

<sup>287</sup> EUDO Report Austria (footnote 30), p. 35.

241. Article 6(2) of the ECN includes a similar provision on the right of an otherwise stateless child to the nationality of the State in which they were born. In this respect, Austria made a declaration indicating that it maintained the additional conditions permitted by the 1961 Convention, including providing a limited timeframe in which individuals can apply for naturalisation after turning eighteen:

“to retain the right to grant an alien nationality only if he:

1. was born in the territory of the Republic and has been stateless since birth;
2. has had his ordinary residence in the territory of the Republic for a period of not less than ten years, of which a continuous period of not less than five years must precede the granting of nationality;
3. has not been convicted with final effect by a domestic court for certain offences [...];
4. has neither been sentenced with final effect by a domestic nor a foreign court to imprisonment of five or more years; [...]
5. applies for naturalisation after completing the age of eighteen and not later than two years after attaining majority”.<sup>288</sup>

242. In interpreting the provisions of both the 1961 Convention and the ECN, it is useful to refer to the CRC, which has been ratified by all parties to the 1961 Convention.<sup>289</sup> Article 7 of the CRC sets out that every child has the right to acquire a nationality<sup>290</sup> and links this, in Article 7(2) to the prevention of statelessness. Article 8 of the CRC provides that every child has the right to preserve his or her identity, including nationality. These provisions of the CRC must be implemented in a way consistent with its general principles, which include non-discrimination (Article 2) and the obligation that in all actions concerning children the best interests of the child is a primary consideration (Article 3).

243. In UNHCR’s view it follows from Articles 2, 3 and 7 of the CRC that a child must not be left stateless for an extended period of time, but should acquire a nationality at birth or as soon as possible after birth,<sup>291</sup> since it is unlikely to be in the best interest of the child to remain stateless. Furthermore, the early years of a child’s life are crucial for development, including in relation to the child’s identity, of which nationality is a part.<sup>292</sup> This suggests that where nationality is acquired by application, it should be possible to apply shortly after birth. States Parties are encouraged to accept such applications free of charge, as the requirements permitted by the 1961 Convention do not include payment of a fee. Moreover, indirect costs, such as for authentication of documents, must not constitute an obstacle to making an application.<sup>293</sup>

244. In view of the developments in human rights law, the PACE passed a resolution calling on States to prevent the statelessness of children at birth through safeguards under national law that ensure the automatic acquisition of nationality for children born in the territory who would otherwise be stateless. In this context, States should “envisage procedures for mandatory registration of newborn babies of stateless parents as nationals of the country of birth, the only exception being when parents provide proof of immediate acquisition of the nationality of another State”.<sup>294</sup>

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<sup>288</sup> CoE, ECN, List of declarations made with respect to treaty No. 166 (footnote 263).

<sup>289</sup> In fact the CRC has near universal ratification, lending particular weight to its provisions. For a list of States Parties see <https://goo.gl/7T5vtM>.

<sup>290</sup> See also ICCPR (footnote 16), Article 24(3), and CRPD (footnote 16), Article 18(2).

<sup>291</sup> UNHCR, *Guidelines on Statelessness No. 4* (footnote 52), para. 11. This analysis is based in particular on the conclusion that it will never be in a child’s best interest to remain stateless. A similar position is taken by Council of Europe High Commissioner for Human Rights, Human Rights Comment, ‘Governments should act in the best interest of stateless children’, 15 January 2013, available at: <http://goo.gl/vAFGiW>.

<sup>292</sup> ENS, *Childhood Statelessness in Europe* (footnote 285), p. 7.

<sup>293</sup> UNHCR *Guidelines on Statelessness No 4* (footnote 52), para 54.

<sup>294</sup> PACE, *Access to nationality and the effective implementation of the European Convention on Nationality* (footnote 119), para 5.2.7.

## 7.3.2 Austrian legislation and practice

245. Since under Austrian law nationality is acquired under the *ius sanguinis* principle (see above), children born to stateless parents or parents who cannot confer their nationality on their children<sup>295</sup> become stateless at birth. Children born to Austrian fathers out of wedlock may in some cases also be stateless if they cannot acquire the nationality of their mother (see Chapter 7.2.2).
246. All children born in Austria (including stateless children) can qualify for discretionary naturalization after six years of residence in the country, subject to the normal conditions for naturalization.
247. For children born stateless in Austria, Article 14 of the Nationality Act provides for the granting of nationality on application with reduced requirements. While in most respects this is in line with Austria's obligations under the 1961 Convention, the age limit of 20 does not correspond to that prescribed by Article 1(2)(a) of the Convention, which requires a period "ending not earlier than at the age of twenty-one years".
248. As a result of the current legislation children born stateless in Austria may only be able to find a durable solution after having reached adulthood. This is not in line with the CRC and is at variance with the principle of the best interests of the child which has become part of Austrian constitutional law.<sup>296</sup> Furthermore, a stateless person who fails to apply for naturalization within the two-year-window will be subject to the normal requirements for naturalization even if they were born and have lived their whole life in Austria.<sup>297</sup>
249. The cases of three persons interviewed in the course of this study demonstrate the need for legal improvements in this field. They were all born in Austria as children of persons displaced in the aftermath of World War II and remained stateless for several decades. (See the cases of Hans and Claudia on p. 33 and of Peter on p. 71.)
250. Data on the stateless population and naturalization provide further evidence of the need for a revision of the law:
- Children continue to be born stateless in Austria every year. While the number is not large (171 children between 2002 and 2012),<sup>298</sup> it indicates that statelessness at birth is a persistent phenomenon in Austria.
  - A number of persons spend their whole lives in Austria without ever acquiring a nationality. This is demonstrated by the fact that between 2002 and 2012 the deaths of 50 stateless persons who had been born in Austria were recorded.<sup>299</sup>
  - According to the official statistics in the last ten years not a single person has benefited from the provisions for facilitated naturalization for stateless persons born in Austria.<sup>300</sup>

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<sup>295</sup> For instance, because the respective nationality laws do not allow persons residing abroad to transmit their nationality.

<sup>296</sup> *Bundesverfassungsgesetz über die Rechte von Kindern* (Federal Constitutional Law on the Rights of Children), Federal Law Gazette No. 4/2011, available at: <https://goo.gl/F3C1wX>.

<sup>297</sup> During the consultations around amending the Nationality Act in 2013 UNHCR and the Province of Lower Austria both proposed amending the law to provide for facilitated naturalization for stateless persons who were born and had spent their entire lives in Austria. See, *Amt der Niederösterreichischen Landesregierung, Änderung des Staatsbürgerschaftsgesetzes 1985*, 12 March 2013, available at: <http://goo.gl/ojLXAY>.

<sup>298</sup> Statistics Austria, Vital Statistics, information provided to researchers by Statistics Austria, email dated 16 January 2014.

<sup>299</sup> *Ibid.*

<sup>300</sup> Statistik Austria, Statistik der Einbürgerungen, 'Eingebürgerte Personen im Inland seit 2004 nach dem Rechtsgrund', 16 February 2016, available at: <http://goo.gl/4EqbNF>. In fact it appears that only one person has been naturalized under this provision since 1981. STATcube, Naturalizations, 'Naturalizations by grounds for naturalization: Article 14 and time: 1981-2015'.

251. In order to fully comply with its obligations under the 1961 Convention, Austria should provide parents of children born stateless with detailed information about the possibility of the child acquiring Austrian nationality, the related conditions and how to apply.<sup>301</sup> However, an official from a provincial government pointed out that this obligation would be difficult to implement in the Austrian context without infringing on data protection laws.<sup>302</sup>
252. A number of persons born stateless in Austria have, however, been naturalized under other provisions of the Nationality Act:

**Table 6:** Naturalizations of Austrian-born persons, 2005-2015

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total	10,090	7,754	5,001	3,830	3,065	2,342	2,392	2,538	2,720	2,853	2,944
Stateless	41	20	14	22	21	13	10	16	18	20	22
Undetermined Nationality	5	3	3	5	4	2	1	1	0	0	1
Unknown Nationality	7	3	4	6	5	1	1	1	2	0	0

Source: STATcube – Statistical Database of Statistics Austria, Naturalizations, 'Naturalizations by Place of birth: Austria and former Nationality: stateless, undetermined, unknown and Time section: 2005-2015'

## 7.4 Foundlings

### 7.4.1 International and regional legal framework

253. Foundlings are children who are found abandoned. According to Article 2 of the 1961 Convention, they must be assumed to have been born within the territory of the State in which they are found of parents possessing the nationality of that State. On this basis they would normally acquire the nationality of the country in which they were found. Similarly, Article 6(1)(b) of the ECN provides that nationality should be granted to foundlings who would otherwise be stateless.
254. A problem with these provisions is the lack of clarity over the precise definition of a foundling and, in particular, the age range covered by the term. The 1961 Convention does not provide a definition of “foundling” and the ordinary understanding of the term used in each of the five authentic texts (English, French, Spanish, Russian and Chinese) suggests a different interpretation. The ECN in contrast defines a foundling as “new-born infants found abandoned in the territory of a State with no known parentage or nationality”.<sup>303</sup>
255. The practice of States reflects the difficulties associated with the term, with some limiting the granting of nationality to foundlings who are very young (12 months or younger), while the majority set a higher age limit and in some cases apply the provision to all children under the age of majority.<sup>304</sup> Austria, in a declaration to Article 6 of the ECN stated that the right to be considered nationals by descent would apply only to foundlings under the age of six months.<sup>305</sup>

<sup>301</sup> UNHCR, *Guidelines on Statelessness No. 4*, (footnote 52), para 53-54.

<sup>302</sup> Official of the Office of the Provincial Government of Lower Austria, interviewed on 7 November 2013.

<sup>303</sup> CoE, *Explanatory Report to the European Convention on Nationality ETS 166*, 6 November 1997, para 48, available at: <https://goo.gl/C9ESOL>.

<sup>304</sup> UNHCR, *Guidelines on Statelessness No 4*, (footnote 52), para 57.

<sup>305</sup> CoE, ECN, List of declarations made with respect to treaty No. 166 (footnote 263).

256. In general a more generous interpretation of the term, ideally including all children under the age of majority, should be preferred in view of the object and purpose of the 1961 Convention and the established right of the child to a nationality. At a minimum, children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth should be covered by the safeguards relating to foundlings.<sup>306</sup>

## 7.4.2 Austrian legislation and practice

257. Article 8 of the Nationality Act foresees that “until proof to the contrary, a person under the age of six months found on the territory of the Republic is regarded as national by descent”.

258. While this provision is in line with Austria’s declaration under the ECN, it does not fully reflect the scope of Article 2 of the 1961 Convention (to which Austria has not entered a parallel declaration or reservation). When it comes to the treatment of foundlings, the Austrian legislation is, therefore, at variance with these standards.<sup>307</sup>

259. Stakeholders from provincial governments, consulted for this study, were only aware of a few cases involving foundlings and agreed that a more flexible legal provision could be envisaged.<sup>308</sup> An example of the problems caused by the current legislation is the case of a child who was estimated to be about three years old when found. The child therefore could not benefit from Austrian nationality by descent as a foundling but had to establish the required years of lawful residence before being able to apply for discretionary naturalization.<sup>309</sup>

## 7.5 Loss and deprivation of nationality

260. The 1961 Convention distinguishes between “loss of nationality” which is the result of the automatic operation of law and “deprivation of nationality” where the withdrawal of a nationality is initiated by the authorities of the State.<sup>310</sup> One implication of this distinction is that States may not provide for the automatic loss of nationality for grounds which the Convention lists under the provisions on deprivation of nationality and therefore which it considers should require a positive decision of the authorities to activate. The ECN by contrast does not distinguish between legitimate grounds for loss of nationality and legitimate grounds for deprivation of nationality. However, it provides an exhaustive list of the grounds on which nationality may be withdrawn by either mechanism.

261. Both the 1961 Convention<sup>311</sup> and the ECN<sup>312</sup> seek to prevent statelessness as a result of loss of nationality. In general deprivation of nationality which results in statelessness will be arbitrary as

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<sup>306</sup> UNHCR, *Guidelines on Statelessness No. 4*, (footnote 52), para 58. This is also the position taken by the Committee of Ministers of the Council of Europe which has recommended that States take a flexible and child-protection oriented approach to the definition of foundlings, calling on States to treat children found abandoned on their territory with unknown parentage, as far as possible, as foundlings with respect to the acquisition of nationality. See CoE: Committee of Ministers, *Recommendation CM/Rec(2009)13*, para 9 (footnote 277).

<sup>307</sup> A recent EUDO report reached the same conclusion. See, EUDO, *Protection against Statelessness: Trends and regulations in Europe* (footnote 284), p. 48.

<sup>308</sup> Official of the Office of the Provincial Government of Lower Austria, interviewed on 7 November 2013; two officials from the Office of the Provincial Government of Upper Austria, interviewed on 28 January 2014.

<sup>309</sup> Official of the Office of the Provincial Government of Lower Austria, interviewed on 7 November 2013.

<sup>310</sup> UNHCR *Tunis Conclusions*, (footnote 15), para 9.

<sup>311</sup> 1961 Convention (footnote 4), Article 8(1).

<sup>312</sup> ECN (footnote 23). Article 7(3).

the impact on the individual far outweighs the interests that the State seeks to protect.<sup>313</sup> Both treaties therefore set out a general principle that loss or deprivation of nationality should not result in statelessness. A small number of exceptions are permitted: under the ECN withdrawal of nationality acquired by fraud; under the 1961 Convention, deprivation of nationality acquired by fraud, loss of nationality by a naturalized person who lives abroad for an extended period, loss of nationality by a person born abroad and not resident in the State after majority, and (if the State makes a declaration to this effect) deprivation of nationality for actions inconsistent with the duty of loyalty to the State of nationality or formal declaration of allegiance to another State. In light of the object and purpose of the treaties and the prohibition of arbitrary deprivation of nationality under international human rights law these provisions must be interpreted in a restrictive manner.<sup>314</sup>

262. Austria's legislation on loss of nationality is in line with international standards since the Nationality Act provides for *ex lege* loss of citizenship only in two circumstances which cannot result in statelessness; acquisition of another nationality or renunciation of nationality by dual nationals.<sup>315</sup> However, Austria has reserved the right to deprive individuals of nationality in certain situations even where this may result in statelessness.

## 7.5.1 Acquisition of nationality by fraud

### 7.5.1.1 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

263. Both, the 1961 Convention and the ECN permit States to deprive an individual of their nationality even if that deprivation would render them stateless, when the nationality was acquired as a result of deception or of providing false information.<sup>316</sup>
264. However, the principle of proportionality must be observed when applying this exception. This has been confirmed by the Court of Justice of the European Union (CJEU) in its judgment in the case of *Rottmann v. Freistaat Bayern*.<sup>317</sup> In this case the Court was asked to consider whether a deprivation of nationality rendering the individual stateless was prohibited under European Union Law since the individual would also cease to be a European Union citizen (as he would not be a citizen of an European Union Member State) and therefore would lose the rights and freedoms associated with European Union citizenship. The Court concluded that:

“*the legitimacy, in principle, of a decision withdrawing naturalisation on account of deception remain, in theory, valid when the consequence of that withdrawal is that the person in question loses, in addition to the nationality of the Member State of naturalisation, citizenship of the Union. In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.*”<sup>318</sup>

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<sup>313</sup> UNHCR, *Tunis Conclusions*, (footnote 15), para 23.

<sup>314</sup> *Ibid.*

<sup>315</sup> Austrian Nationality Act (footnote 31), Articles 27–30 and 37–38.

<sup>316</sup> 1961 Convention (footnote 4), Article 8(2); ECN (footnote 23), Article 7(3).

<sup>317</sup> Court of Justice of the European Union, *Rottmann v. Freistaat Bayern*, C-135/08, 2 March 2010, available at: <http://www.refworld.org/docid/4be130552.html>.

<sup>318</sup> *Ibid.*, paras 54–55.

265. The judgement goes on to clarify that in assessing proportionality the national court should take into account, *inter alia*, the gravity of the offence committed compared to the consequences that the withdrawal of nationality entails for the person concerned in the light of European Union law and, if relevant, for the members of his family.

#### 7.5.1.2 AUSTRIAN LEGISLATION AND PRACTICE

266. Article 24 of the Nationality Act allows the deprivation of Austrian nationality through a resumption of the previous proceedings for the granting of nationality<sup>319</sup> when the nationality was fraudulently obtained, by use of a forged document, false testimony or any other act punishable under criminal law, even if the person concerned becomes stateless as a result of this decision.

267. The principle of proportionality is not an explicit part of the relevant legal provisions, but the Higher Administrative Court has repeatedly referred to the CJEU judgement in the case of *Rottmann v. Freistaat Bayern* and ruled that the principle of proportionality must be considered in procedures relating to the deprivation of nationality.<sup>320</sup>

### 7.5.2 Annulment of paternity

#### 7.5.2.1 INTERNATIONAL LEGAL FRAMEWORK

268. The 1961 Convention does not specifically prohibit loss of nationality as a result of annulment of paternity, but, in UNHCR's view, when this leads to statelessness, this is covered by the provisions of Article 5 which require safeguards against statelessness where this might occur as a result of a change of personal status, bearing in mind that the list of situations in which this might occur in Article 5 is not exhaustive. A situation in which the family relationship which constituted the basis of a child's acquisition of nationality was registered erroneously should also be considered as a change of personal status covered by the safeguards in this article. Such errors might include the erroneous recording of the identity of the parent (relevant for *ius sanguinis* acquisition of nationality) or where it is discovered, after acquisition of nationality by an *ex lege* extension of naturalization from a parent to a child, that no family relationship has in fact ever existed between the parent and the child.<sup>321</sup>

#### 7.5.2.2 AUSTRIAN LEGISLATION AND PRACTICE

269. Article 59 of the Nationality Act provides for the acquisition of Austrian nationality with retroactive effect from the date of birth for persons who as the result of a determination of paternity realize that they had been mistakenly found to be Austrians by descent and who inform the authorities accordingly.

270. No similar provision exists with respect to the annulment of paternity in the case of a child awarded nationality as a family member of a person who is later determined not to be the child's parent. However, these cases are covered by the prohibition on resumption of the proceedings for the award of citizenship where it would render a person stateless.<sup>322</sup>

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<sup>319</sup> Based on the *General Administrative Procedures Act*. As a result of the resumption of the proceedings the decision to grant nationality retroactively loses legal force and the application for naturalization must be re-examined.

<sup>320</sup> See for instance, Verwaltungsgerichtshof (Higher Administrative Court), 2011/01/0251, 26 June 2013.

<sup>321</sup> UNHCR, *Tunis Conclusions*, (footnote 15), paras 33, 37-39.

<sup>322</sup> Austrian Nationality Act (footnote 31), Article 24. The only exception to this prohibition is in cases where the nationality was obtained by fraud.

## 7.5.3 Loss of nationality by spouse or parent

### 7.5.3.1 INTERNATIONAL LEGAL FRAMEWORK

271. Article 6 of the 1961 Convention stipulates that loss of nationality shall be conditional upon the possession or acquisition of another nationality if the law of a State Party provides for the loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality.

### 7.5.3.2 AUSTRIAN LEGISLATION AND PRACTICE

272. In general the loss of nationality by a spouse or child of a person targeted by a deprivation of nationality would be covered by the prohibition on resumption of the proceedings for the award of citizenship where it would render a person stateless.<sup>323</sup> However, that safeguard includes an exception for cases where nationality was obtained by fraudulent means. Any loss of nationality of an anchor person who was naturalised extends to spouses or children benefiting from naturalisation as family members. The Nationality Act foresees no exception to this rule of general administrative procedural law. The deprivation of nationality thus extends to family members who acquired nationality on the basis of their family relationship even if they themselves had acquired nationality *bona fide*. Such cases will regularly lead to statelessness as acquisition of Austrian nationality normally requires the renunciation of one's previous nationality. This provision is therefore not in line with the 1961 Convention. It also foresees no proportionality assessment as required under European Union law.

## 7.5.4 Voluntary military or other service for a foreign country

### 7.5.4.1 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

273. Under the 1961 Convention, a country may retain the right to deprive someone of their citizenship even if this would lead to statelessness on the ground that, inconsistently with their duty of loyalty to the country, the person has rendered or continued to render services to, or received or continued to receive emoluments from, another country. If it wishes to apply this exception a State must specify that it retains this ground for deprivation of nationality at the time of signature, ratification or accession to the Convention. In this context, Austria has made the following declarations:

“ Austria declares to retain the right to deprive a person of his nationality, if such person enters, on his own free will, the military service of a foreign State.

*Austria declares to retain the right to deprive a person of his nationality, if such person being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria.”<sup>324</sup>*

274. Austria is the only Contracting State to the 1961 Convention that retains the right to deprive a person of their citizenship if they voluntarily enter the military service of a foreign State.

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<sup>323</sup> Austrian Nationality Act (footnote 31), Article 24. The only exception to this prohibition is in cases where the nationality was obtained by fraud.

<sup>324</sup> Declarations and Reservations to the 1961 Convention on the Reduction of Statelessness, As of 20 September 2006, available at: <http://www.unhcr.org/416113864.pdf>.



275. The ECN permits loss or deprivation of nationality for “voluntary service in a foreign military force” and “conduct seriously prejudicial to the vital interests of the State Party”, although such deprivation may not result in statelessness.<sup>325</sup> As with the 1961 Convention, on ratification of the ECN, Austria declared that it retained the right to deprive of nationality a national who “being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of the Republic of Austria” or who “voluntarily enters the military service of a foreign State”.<sup>326</sup>

#### 7.5.4.2 AUSTRIAN LEGISLATION AND PRACTICE

276. As indicated in the declarations to the 1961 Convention and the ECN, the Austrian Nationality Act stipulates that “[a] national who voluntarily enters the military service of a foreign country shall be deprived of nationality”<sup>327</sup> and that “A national in the services of a foreign country shall be deprived of nationality, unless article 32 already applies, if the national through his behaviour severely damages the interests or the reputation of the Republic”.<sup>328</sup>

277. The Nationality Act had initially provided for automatic loss (*ex lege*) of nationality for persons who had entered the military service of a foreign country.<sup>329</sup> This Act was amended after UNHCR pointed out that the 1961 Convention allows the deprivation but not the loss of nationality on this ground<sup>330</sup> and entered into force in its current version on 1 July 2011.

278. Information from the Municipal Department for Immigration and Citizenship in Vienna indicates that no deprivations of nationality pursuant to Article 32 of the Nationality Act had taken place in that Province in the first two and a half years following the law amendment. Also determination procedures under the former automatic loss provision had occurred relatively frequently, with estimates of several dozen a year.<sup>331</sup> A Ministry of the Interior representative was aware of a few cases of statelessness as a result of persons having joined a foreign army in the context of the war in the Former Yugoslavia.<sup>332</sup> Similarly, other stakeholders had only dealt with few cases of persons who had lost Austrian citizenship for serving in the military of another State, predominantly the French Foreign Legion, and became stateless as a result.<sup>333</sup> A representative of the Austrian Ombudsman Board who had come across a handful of such cases said that the persons concerned were unable to reintegrate in Austria, as a result of their status as aliens and resulting restrictions under the aliens law including limited access to the labour market.<sup>334</sup>

279. In contrast, no cases of deprivation of nationality for serving a foreign country in a context other than in its armed forces were found during the research.

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<sup>325</sup> ECN (footnote 23), Article 7(1)(c) and (d).

<sup>326</sup> CoE, ECN, List of declarations made with respect to treaty No. 166 (footnote 263).

<sup>327</sup> Austrian Nationality Act (footnote 31), Article 32

<sup>328</sup> *Ibid.*, Article 33(1).

<sup>329</sup> Nationality was not withdrawn but it was retroactively determined that the loss had already occurred with the day of entry into the foreign army.

<sup>330</sup> UNHCR, *UNHCR-Analyse des Entwurfs einer Novelle zum Asylgesetz 2005, Fremdenpolizeigesetz 2005, Niederlassungs- und Aufenthaltsgesetz und Staatsbürgerschaftsgesetz 1985*, 27 January 2011, p. 31, available at: <http://www.refworld.org/pdfid/5059a2132.pdf>.

<sup>331</sup> Information provided to researchers by MA 35, Municipal Department for Immigration and Citizenship, Vienna, email dated 24 February 2014.

<sup>332</sup> Interview with a Ministry of the Interior official on 8 January 2014.

<sup>333</sup> An official of the Province of Lower Austria, interviewed on 7 November 2013, remembered two or three such cases.

<sup>334</sup> Information provided to researchers by a representative of the Austrian Ombudsman Board (*Volksanwaltschaft*), interviewed on 24 September 2013.

## 7.5.5 Treatment as an Austrian citizen in error

### 7.5.5.1 INTERNATIONAL LEGAL FRAMEWORK

280. The 1961 Convention does not explicitly address the situation of individuals who are not in fact citizens but have been assumed to be and therefore treated as citizens by the authorities, including those competent to certify citizenship. However, reading the 1961 Convention in conjunction with the definition of a stateless person in Article 1 of the 1954 Convention and customary international law permits the conclusion that an administrative act establishing that such persons are no longer regarded as nationals may be considered an act of deprivation of nationality.<sup>335</sup>
281. Similarly, the UNHCR Tunis Conclusions state that “Articles 5-8 of the 1961 Convention would apply where it is discovered or alleged after a reasonable period of possession of a nationality that the conditions for acquisition of that nationality were not fulfilled”.<sup>336</sup>
282. Some academics have reached the same conclusion, referring to this as “quasi-loss” of nationality and arguing that it should fall under the protection rules of Article 5(1) of the 1961 Convention on the loss of nationality as a consequence of change in personal status. If this were the case, protection mechanisms in relation to loss (such as the proportionality test) would apply. For European Union Member States, the general principles of European Union law, such as equality and the protection of legitimate expectations could thus also be relevant to such cases.<sup>337</sup>

### 7.5.5.2 AUSTRIAN LEGISLATION AND PRACTICE

283. For more than three decades the Austrian Ombudsman Board has been raising cases of persons who were erroneously regarded as Austrian citizens by public authorities and suggested establishing a legal basis for a fast and non-bureaucratic naturalization of these persons.<sup>338</sup> Some of these persons had been issued proof of Austrian citizenship (*Staatsbürgerschaftsnachweis*) or Austrian passports. Some had also completed the mandatory military service. An example of this situation is the case of N.N:

N.N. has been living in Austria and was considered an Austrian since his birth. He was issued a proof of Austrian citizenship by the district administration (*Bezirkshauptmannschaft*) Wels-Land and appeared in the registers as an Austrian national. He was therefore required to undertake mandatory military service in the Austrian Federal Armed Forces. At the age of 65, it turned out that he had never acquired Austrian citizenship either through descent or through naturalization. As he did not meet the income requirements of the Nationality Act despite receiving a pension, he could not be naturalized at that point.<sup>339</sup>

284. In response to this gap, an amendment to the Nationality Act, which entered into force in August 2013, introduced a legal provision for persons treated erroneously as Austrian citizens by public authorities. Article 57 now provides for the acquisition of nationality by notification on the basis of treatment as an Austrian citizen in error for reasons beyond the control of the individual concerned. However, this provision is limited to individuals who have been considered citizens in error for a period of at least 15 years. An exception is provided for those who have completed their mandatory military

<sup>335</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para 45.

<sup>336</sup> UNHCR *Tunis Conclusions*, (footnote 15), para 14.

<sup>337</sup> De Groot, G. & Wautelet, P., *Reflections on quasi-loss of nationality in comparative, international and European perspective*, CEPS Papers in Liberty and Security in Europe No.66, August 2014, available at: <https://goo.gl/qysNjr>.

<sup>338</sup> See, for instance, Volksanwaltschaft (Austrian Ombudsman Board), 1984 Parliamentary Report.

<sup>339</sup> Volksanwaltschaft (Austrian Ombudsman Board), *Bericht der Volksanwaltschaft an den Nationalrat und Bundesrat 2011*, February 2012, p. 161, available at: <http://goo.gl/L9nFSG>.

service or alternative civil service.<sup>340</sup> Moreover, the provision can only be invoked within six months of being informed by the responsible authority of the erroneous character of the treatment as Austrian citizen and the deadline for naturalization through notification. Persons erroneously treated as Austrian nationals before entry into force of the law amendment had until 31 January 2014 to notify the citizenship authority in order to be eligible for naturalization under Article 57.<sup>341</sup>

285. Between August 2012, when the new provision entered into force, and February 2014 nine notifications were received in the Province of Vienna.<sup>342</sup> In 2014 three notifications under Article 57 were received in Vorarlberg<sup>343</sup> while in 2015 four notifications were received, three in Lower Austria and 1 in Upper Austria.<sup>344</sup> In the first quarter of 2016 no notifications under this provision had been recorded.<sup>345</sup>

## 7.5.6 Renunciation of a foreign nationality in the context of the Austrian naturalization process

### 7.5.6.1 INTERNATIONAL LEGAL FRAMEWORK

286. International law does not prohibit States from requiring renunciation of previous nationality as part of naturalization procedures. However, a State Party to the 1961 Convention which requires applicants for naturalization to have renounced their former nationality and gives an assurance that the naturalization will be granted upon submission of proof of renunciation of the foreign nationality, is under the “implicit obligation under the 1961 Convention that once issued, assurances may not be retracted on the grounds that conditions of naturalization are not met, thereby rendering the person stateless”.<sup>346</sup>

### 7.5.6.2 AUSTRIAN LEGISLATION AND PRACTICE

287. Since the Austrian Nationality Act generally seeks to prevent dual citizenship, persons applying for naturalization are normally required to renounce their previous citizenship. Persons not undertaking the necessary actions to do so, even though these would be possible and reasonable, or who wilfully try to keep their former nationality may not be awarded Austrian citizenship.<sup>347</sup>

288. Once the authorities have established that the applicant fulfils all other conditions for naturalization, a person seeking to naturalize is given a guarantee that Austrian citizenship will be granted (*Einbürgerungszusicherung*), subject to the applicant proving the renunciation of his or her previous citizenship within two years.<sup>348</sup> However, once the applicant has renounced their original nationality, the authority re-examines whether all the requirements for naturalization are (still) fulfilled. If this is not the case, the application for naturalization is rejected.

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<sup>340</sup> Austrian Nationality Act (footnote 31), Article 57(3).

<sup>341</sup> *Ibid.*, Article 64a(19).

<sup>342</sup> Information provided to researchers by the Municipal Department for Immigration and Citizenship, Vienna, MA 35, email dated 24 February 2014.

<sup>343</sup> Statistics Austria, Naturalisation statistics, information provided to researchers by Statistics Austria, email dated 16 June 2016

<sup>344</sup> Information provided to researchers by the Ministry of the Interior, email dated 20 May 2016 and confirmed by Statistics Austria, Naturalisation statistics, Statistics Austria email dated 16 June 2016.

<sup>345</sup> STATcube, Naturalizations, 'Reporting quarter: 1, Quartel 2016 by Article of nationality law (in detail): Article 57'.

<sup>346</sup> UNHCR, *Tunis Conclusions* (footnote 15), para 45.

<sup>347</sup> Austrian Nationality Act (footnote 31), Article 10(3).

<sup>348</sup> *Ibid.*, Article 20.

289. The Austrian Constitutional Court, in a judgement of 29 September 2011, found this to be at variance with the Constitution and annulled the provision.<sup>349</sup> It argued that the different grounds for revoking the naturalization guarantee had to be treated differently. In the particular case at issue, a woman who had renounced her former citizenship upon receipt of a naturalization guarantee had lost her job for no fault of her own before acquiring Austrian nationality and therefore no longer met the income requirement for naturalization. The Constitutional Court found it problematic that a loss of one's job after renunciation of one's former nationality (as required for naturalization) but before attribution of Austrian citizenship could result in cases of persons no longer being able to engage in lawful employment (and thus be precluded from naturalization).
290. As a result of this decision, the Nationality Act was changed in 2013. Loss of means of subsistence during the period between the receipt of the guarantee and the actual naturalization is no longer grounds for revocation of the naturalization guarantee. However, the naturalization guarantee is still to be revoked if any of the other requirements for naturalization no longer apply.<sup>350</sup> The case of Mladen illustrates how this can result in statelessness:



## Case of Mladen

Name: Mladen\*

Age and sex: Late-30s, male

Country of birth: Austria

Claimed cause of statelessness: Renunciation of previous citizenship in order to acquire Austrian nationality which was then not granted due to a criminal conviction

Length of stay in Austria: Whole life (except for eight years as a child)

Status at time of interview: "Tolerated stay" (By May 2016 Mladen had received a residence permit under Article 55 of the Asylum Act since he could not be deported due to his family life in Austria.)

Mladen was born in Austria as a citizen of the SFRY to parents of the same nationality. As a toddler he moved with his parents to the SFRY but eight years later the whole family moved back to Austria where Mladen has been living ever since. After the dissolution of the SFRY, Mladen and his parents became citizens of the former Yugoslav Republic of Macedonia. In Austria, Mladen used to have a residence permit on family grounds and a certificate of exemption (*Befreiungsschein*) granting him full access to the labour market.

Mladen's mother applied for Austrian citizenship for herself and her two children in 1996. However, there was some difficulty with renouncing Mladen's Macedonian citizenship at that point. Consequently, only his mother and sister were awarded Austrian citizenship at that time.

In 1997 Mladen applied for Austrian citizenship independently and, after receiving a naturalization guarantee, renounced his Macedonian citizenship. This renunciation became effective in September 1997. However, shortly before he should have been awarded Austrian citizenship, Mladen, who was a drug addict at the time, committed an aggravated robbery and a burglary. The naturalization guarantee was therefore withdrawn because Mladen no longer fulfilled the requirement of a clean criminal record. As a result Mladen has been stateless since 1997.

\* Name changed to protect privacy.

<sup>349</sup> Verfassungsgerichtshof (Constitutional Court), G154/10, 29 September 2011.

<sup>350</sup> Austrian Nationality Act (footnote 31), Article 20(2).

## 7.6 Naturalization of stateless persons

### 7.6.1 International and regional legal framework

291. Article 32 of the 1954 Convention obliges State Parties to facilitate, as far as possible, the assimilation and naturalization of stateless people living on their territory, by in particular making “every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”. This reflects the understanding that the ultimate solution to the anomaly of statelessness is to ensure access to nationality for stateless persons.
292. Similarly, Article 6(4) of the ECN requires States to facilitate the naturalization of stateless persons lawfully and habitually resident on their territory. However, on ratification, Austria declared that it would “retain the right not to facilitate the acquisition of its nationality for stateless persons [...] lawfully and habitually resident on its territory [...] for this reason alone”.<sup>351</sup>
293. A recent resolution of the PACE calls on States to “adopt legislation that facilitates the recognition of nationality via registration and/or facilitated naturalization of stateless persons on their territory; provide for access to information, free legal aid and appeal procedures to stateless persons seeking naturalisation”.<sup>352</sup> A number of States<sup>353</sup> have laws in place on facilitated naturalization of stateless persons, in which they “seem to acknowledge a heightened responsibility for securing a nationality for stateless persons”.<sup>354</sup>

### 7.6.2 Austrian legislation and practice

294. The Nationality Act does not contain a facilitated naturalization procedure specifically for stateless persons, although some of the groups for which it does provide facilitated naturalization may include stateless persons. For instance, the residency requirement and other conditions may be waived in the case of a person who, prior to 1945, had the nationality of one of the successor States of the Austro-Hungarian Empire or who was stateless, had their principal residence in the federal territory, and had to leave the country because of persecution.<sup>355</sup> The only more general provision for a facilitated naturalization concerns persons born stateless in Austria (see Chapter 7.3), which has, however, not been applied at all during the last ten years.<sup>356</sup> Stateless persons can only be exempted from the requirement to produce documents that are normally required for the naturalization procedure but are not available to them, such as passports and birth certificates.<sup>357</sup>
295. In the absence of a facilitated naturalization procedure, stateless persons can normally apply for naturalization only after ten years of legal residence.<sup>358</sup> The requirement of legal residence is at variance with the 1954 Convention under which the right to facilitated naturalization (Article 32) is triggered when an individual is subject to the jurisdiction of a State and is not conditional upon lawful presence or residence.<sup>359</sup>

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<sup>351</sup> CoE, ECN, List of declarations made with respect to treaty No. 166 (footnote 263).

<sup>352</sup> PACE, *Access to nationality and the effective implementation of the European Convention on Nationality* (footnote 119), para. 5.2.3-5.2.4.

<sup>353</sup> These include Germany, Hungary, the former Yugoslav Republic of Macedonia, the Netherlands, and Poland.

<sup>354</sup> EUDO, *Protection against Statelessness: Trends and regulations in Europe*, (footnote 284), p. 66.

<sup>355</sup> Austrian Nationality Act (footnote 31), Article 10(4)(2).

<sup>356</sup> EUDO Report Austria (footnote 30), p. 35.

<sup>357</sup> Information provided to researchers by the Ministry of the Interior on 23 November 2016.

<sup>358</sup> Six years in case of exemplary integration in Austria. See, Austrian Nationality Act (footnote 31), Article 11(a).

<sup>359</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10), para. 133.



## Case of Sabri

Name: Sabri\*

Age and sex: 30s, male

Country of birth: Turkey

Claimed cause of statelessness: Desertion from military service

Length of stay in Austria: 1-2 years

Status at time of interview: Limited right of residence with unrestricted access to the labour market as spouse of Austrian national

Sabri was born in Turkey and grew up as a Turkish citizen. He lost his citizenship, and therefore became stateless, in 2004 due to deserting military service\*\* a few years earlier. Sabri lived under the radar in Turkey and then in Iraq, Syria and Lebanon before returning to Turkey and applying, unsuccessfully, to regain his Turkish citizenship. During this time he only had a residential registration, which did not entitle him to work or study. Sabri's parents and siblings continue to be Turkish citizens and still live in Turkey. While in Turkey Sabri met and married his Austrian wife. He applied for family reunification in Austria and was granted a residence permit as a relative of an Austrian citizen which allowed him to join his wife in Austria.

Sabri has learnt German, has a job and, at the time of the interview, was about to complete his certificate of lower secondary education (*Hauptschulabschluss*). He applied for and received an Alien's Passport as a lawfully residing stateless person. However, Sabri wishes to become an Austrian national for various reasons: "It is a feeling of unease, not to belong anywhere like every human being. [...] As a stateless person, I have even more fear than others [of the rise of xenophobia in Europe], because I cannot go home like others: there is no alternative. [...] It also makes me very sad that I could not participate in the national elections. I would really like to be able to vote, I was politically active all my life. This is important to me. I will also not be able to participate in the Viennese municipal elections, although I would really like to shape my immediate living environment because I see Austria as the centre of my life." Another important reason for him for wishing to become an Austria citizen is the fact that he is not allowed to travel to Turkey (his country of former habitual residence)\*\* on his Alien's Passport, although he would very much like to visit his elderly parents there. As spouse of an Austrian citizen, he will be able to benefit from more favourable naturalisation requirements, in particular a reduced residence period of six years.

\* Name changed to protect privacy.

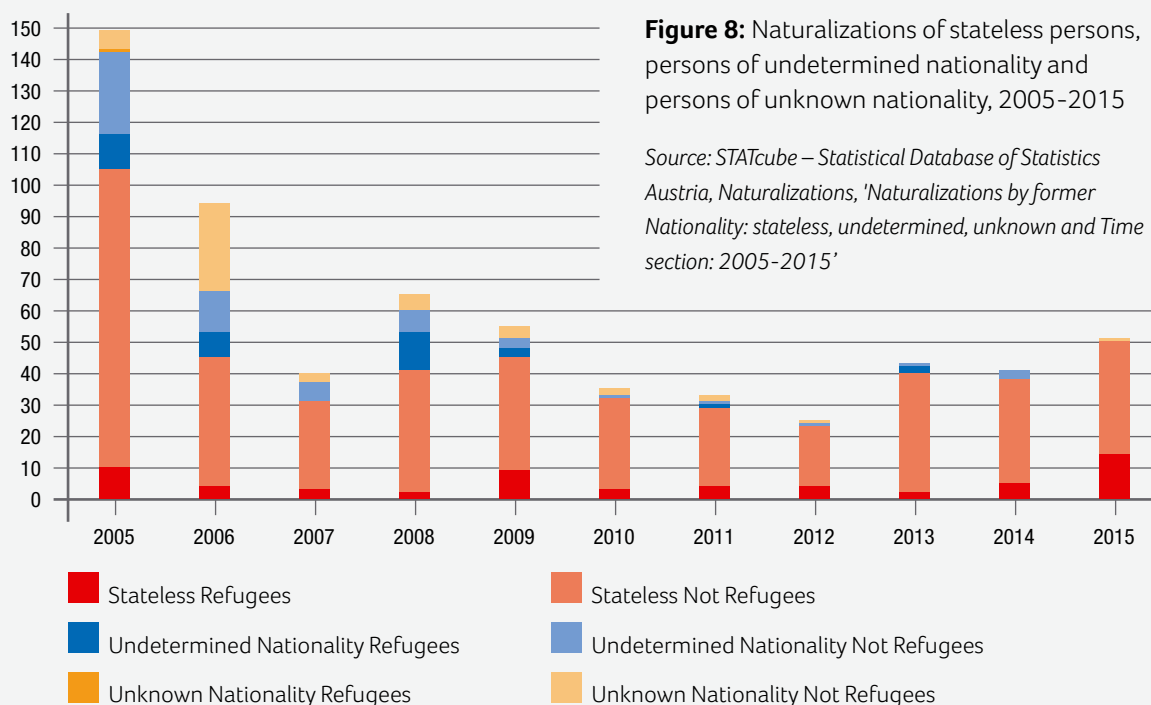
\*\* Turkish Citizenship Law, Law No. 403, 11 February 1964, Article 25, available at: <http://www.refworld.org/docid/4496b0604.html>.

\*\* Aliens Police Act (footnote 33), Article 91(2).

296. With regard to refugees, the "lack of protection by the country of origin" has been declared a "special reason" for facilitating naturalization after less than ten years of residence.<sup>360</sup> However, due to the absence of a corresponding provision for stateless persons, the Higher Administrative Court argued in several decisions that even if statelessness entails the lack of protection by the country of origin, statelessness alone is not a sufficient condition for facilitated naturalization; furthermore, the Court found that statelessness is not an indicator of "advanced assimilation" that would justify the reduction of the general residence requirement of ten years.<sup>361</sup>

<sup>360</sup> Explanatory Remarks to amendment of the Nationality Act. It is stated that this preferential treatment is necessary in order to comply with Article 34 of the 1951 Refugee Convention and Article 6(4) of the ECN.

<sup>361</sup> EUDO Report Austria (footnote 30), p. 35. See, for instance Verwaltungsgerichtshof (Higher Administrative Court), 94/01/0744, 29 January 1997; Verwaltungsgerichtshof (Higher Administrative Court), 95/01/0620, 19 March 1997.



297. The importance of facilitated naturalization for stateless persons is illustrated by Sabri's story, which demonstrates the practical and psychological importance of facilitated naturalization even for someone in a strong legal position as spouse of an Austrian national.

298. Statistics on naturalizations are published by Statistics Austria, based on data provided by the provincial governments. These statistics record the legal basis of the naturalization and the former nationality of the person concerned. The statistics include the three categories "stateless", "unknown nationality" and "undetermined nationality", but there are indications that these categories are used differently by different officials. The responsible official in one Province, for instance, reported that the categories "unknown" and "undetermined" did not occur in naturalization statistics as nationality had to be clarified before naturalization since Austria does not, as a general rule, allow dual citizenship.<sup>362</sup> An official from another province reported that all persons recorded as stateless in naturalization statistics were recognized refugees who had been accepted as stateless in the asylum procedure. The same source stated that in cases of claimed statelessness without evidence the authority would aim to identify the citizenship status in an investigation procedure.<sup>363</sup> The figures should only be seen as an indication of the number of stateless persons naturalized and the grounds for this naturalization.

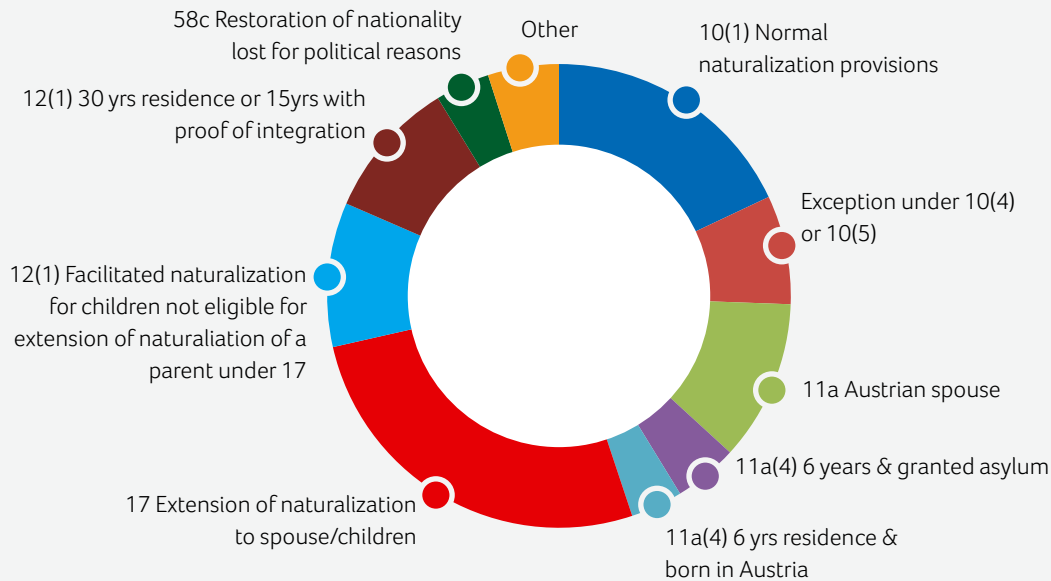
299. Nevertheless it is clear from Figure 8 above that there has been a significant decrease in naturalizations since 2005, with a particular low point in 2012 when only 23 stateless persons were naturalized along with one person of undetermined nationality and one of unknown nationality.<sup>364</sup> Only 13 per cent of the stateless persons naturalized over the past ten years have been recognized refugees.

<sup>362</sup> Information provided by an official of the Office of the Provincial Government of Lower Austria on 16 December 2013.

<sup>363</sup> Information provided by officials from the Office of the Provincial Government of Upper Austria on 28 January 2014 and 31 August 2016.

<sup>364</sup> This corresponds to a general decrease in naturalizations from 35,417 in 2005 to 7,107 in 2012 and 8,265 in 2015. Statistics Austria, Statistik der Einbürgerungen, 'Eingebürgerte Personen seit 2005 nach bisheriger Staatsangehörigkeit', 16 February 2016, available at: <http://goo.gl/UFczKn>.

**Figure 9:** Reason for grant of nationality to stateless persons and persons with undetermined or unknown nationality, 2005-2015



Source: STATcube – Statistical Database of Statistics Austria, Naturalizations, 'Naturalizations by legal grounds for naturalization and time: 2005-2015' (according to the Articles of the Nationality Act)

300. Looking at the grounds on which stateless persons, persons of undetermined nationality and persons of unknown nationality have been naturalized, it is striking that just under 30 per cent were the result of naturalizations being extended to the spouse and children of the person naturalized and a further 11 per cent had access to facilitated naturalization because of their marriage to an Austrian. A quarter were naturalized under the standard provisions (or the regular exceptions permitted under the Article 10 of the Nationality Act) while eight per cent were naturalized only after having spent 30 years in Austria.

## 7.7 Conclusions and recommendations

### 7.7.1 Conclusions

301. This chapter has examined the international and regional legal framework on the prevention and reduction of statelessness and Austria's compliance with these obligations.

302. The Austrian Nationality Act provides a number of important safeguards for the prevention of statelessness. However, certain provisions need to be modified to bring it fully in line with the 1961 Convention and other regional and international standards on statelessness, in particular to ensure comprehensive safeguards against statelessness at birth. Austria should also recognize that stateless persons, like refugees, do not possess the protection of any other State and provide for facilitated naturalization on that basis.



## 7.7.2 Recommendations

303. In order to allow Austria to further strengthen its commitment to international standards in terms of prevention and reduction of statelessness, UNHCR recommends:

- 1) Establish a legal basis for the automatic acquisition of Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless (i.e. unless the child can acquire the citizenship of one of their parents immediately after birth through a non-discretionary procedure such as consular registration, declaration, the right of option, or other similar procedures);
- 2) If Austria intends to maintain an application procedure for otherwise stateless children born in Austria to acquire Austrian nationality, allow this application procedure to start as soon as possible after birth;
- 3) Where within a reasonable time of the child's birth no evidence is available of the child's nationality ensure that their parents or legal guardians are informed of their responsibilities and the possibilities to facilitate a child's access to nationality and, if appropriate be referred to a legal counselling organization which can assist them;
- 4) If the preceding recommendations are not taken up, as a minimum amend Article 14 paragraph 1(5) of the Austrian Nationality Act to be in line with the 1961 Convention as follows: "applies for naturalization after the age of 18 years and not later than three years after having attained majority";
- 5) Expand the scope of the provision on foundlings in the Nationality Act by amending Article 8(1) as follows: "until proven otherwise, a child found on the territory of the Republic is regarded as national by descent". Should that not be possible, ensure that this provision at least covers all children who are not old enough or who do not have the physical, mental, intellectual or sensory capacities to communicate accurately information pertaining to the identity of their parents or their place of birth;
- 6) Amend Article 7 of the Nationality Act to ensure that children born out of wedlock to Austrian fathers acquire Austrian nationality upon establishment of fatherhood (irrespective of the date of that decision) with retroactive effect as of their date of birth;
- 7) Explicitly reflect the proportionality test in the Nationality Act in cases relating to the deprivation of nationality for fraud, as has already been accepted in regional and national jurisprudence;
- 8) Amend Article 57 of the Nationality Act to ensure that persons treated as Austrian citizens in error continue to be considered Austrian citizens, regardless of the period for which they were erroneously treated as such by the authorities;
- 9) Replace the requirement of a person's renunciation of their former nationality for naturalization as an Austrian citizen by a conditional renunciation of that nationality with retroactive effect as of the attribution of Austrian citizenship;
- 10) Facilitate the naturalization of stateless persons and implement Article 32 of the 1954 Convention. At a minimum, reduce the number of years of lawful residence required for applying for naturalization to six and review existing barriers to naturalization for stateless persons such as proof of sufficient means of livelihood and the documentation requirements and ensure that these do not constitute an obstacle to stateless persons applying for naturalization. Regarding documentation requirements, treat stateless persons in the same way as refugees in the process of acquiring Austrian nationality;
- 11) Reduce as far as possible the costs for naturalization by stateless persons in line with Article 32 of the 1954 Convention and ensure that indirect costs, such as for authentication of documents, do not constitute an obstacle to applying for such individuals;
- 12) Provide for access to information and legal advice for stateless persons seeking naturalization and provide assistance to stateless persons who seek to take administrative demarches with the diplomatic representations or authorities of their country of origin;
- 13) Review its reservations and declarations concerning the prevention and reduction of statelessness to the 1961 Convention and the ECN with the view of enhancing Austria's support to UNHCR's initiative to end statelessness by 2024.

# 8. Conclusions and Recommendations

304. In a world of nation states, statelessness is an anomaly with wide ranging effects on the lives of those affected. Statelessness prevents individuals from enjoying all their human rights, makes them vulnerable and infringes on their human dignity. While some stateless persons are refugees, others are not and, in some cases, remain stateless despite being born and living all their lives in one country. In light of this, international and regional treaties have established the objective of preventing and eliminating statelessness and, in the meantime, protecting stateless persons.
305. Notwithstanding the importance of protecting the rights of stateless people, the only truly adequate response to statelessness is its eradication through the naturalization of stateless persons and measures to ensure that new cases of statelessness do not occur. In 2014, UNHCR therefore launched a Global Action Plan to End Statelessness in ten years.<sup>365</sup>
306. In general, the situation of stateless persons in Austria is not well documented and there is limited awareness of the problem. The available statistics and data do not provide a comprehensive overview of the problem due to limitations in their scope and collection. In particular the lack of a statelessness determination procedure makes the recording of individuals as stateless erratic and means that there is little consistency between different datasets.
307. Austria is a State Party to the 1954 and 1961 Statelessness Conventions and to several other instruments which directly or indirectly require that it includes and protects stateless persons within its national legal framework and to uphold the right to a nationality. These include the Convention on the Rights of the Child and the European Convention on Nationality. Furthermore, the right to a nationality and the prohibition of arbitrary deprivation of nationality are part of customary international law due, *inter alia*, to their inclusion in the Universal Declaration of Human Rights.
308. In order to fully implement these standards, statelessness issues should be given higher priority and further action should be taken by the government and by civil society. Moreover, greater co-operation and exchange of information, including with international counterparts, would help to raise awareness and resolve statelessness issues. In dealing with statelessness in Austria, it is the identification of stateless persons that is the most challenging area and one which has serious repercussions for stateless persons' ability to access their rights under the 1954 Convention. There is no explicit obligation under the 1954 Convention for State Parties to put in place a determination procedure. Nevertheless, without some form of determination mechanism it is difficult to see how States Parties can fulfil their obligations under the 1954 Convention. UNHCR therefore considers the creation of a statelessness determination procedure to be a practical consequence of ratification of the 1954 Convention. In this UNHCR's interpretation of the 1954 Convention parallels the generally accepted interpretation of the 1951 Refugee Convention as requiring a refugee status determination procedure if States Parties are to fully implement its provisions by ensuring that refugees are identified and protected.

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<sup>365</sup> The campaign sets out ten goals to achieve this objective through addressing existing situations of statelessness and ensuring that new cases do not occur. Up to date information on the campaign is available from the website <http://www.unhcr.org/ibelong>.

309. A number of common themes emerged from interviews with stateless persons in the course of this research. One was the extent to which statelessness impacts all aspects of life: from access to health care and social benefits to contact with family to access to employment. Another was the importance of a legal status and right of residence both as a matter of legal protection against expulsion and as a mark of their inclusion in society. Finally, the stateless persons interviewed for this study stressed their desire to contribute to society; they wished to work, vote and be part of the community not only to have access to the rights and benefits of nationals.

## 8.1 Recommendations

310. This chapter collects the recommendations made throughout this report. Taken together these recommendations should help Austria to fully implement and comply with its obligations under the 1954 and 1961 Statelessness Conventions as well as the relevant human rights instruments. In implementing these recommendations, reference should be made to the UNHCR *Handbook on Protection of Stateless Persons*<sup>366</sup> and UNHCR's other guidance on statelessness issues.

### 8.1.1 The documentation and recording of stateless persons

311. The following recommendations aim to improve the documentation of the stateless population in Austria through better and more accurate statistics:

- 1) Improve collection of statistics on the phenomenon of statelessness in Austria;
- 2) Identify the main difficulties encountered by different municipalities in registering persons as “stateless”, of “undetermined nationality” or of “unknown nationality”. The research should also encompass challenges faced in the registration of children’s nationality;
- 3) Review the nationality categories currently used by municipalities and other authorities, paying particular attention to those that may include stateless persons such as “unknown nationality” and “Palestinian”;
- 4) Provide guidance to municipalities on the registration of stateless persons and persons of undetermined and unknown nationality; this guidance should take into account the 1954 Convention definition of a “stateless person” and comments on the interpretation and implementation of the Convention in the UNHCR *Handbook on Protection of Stateless Persons*;
- 5) Train staff of the municipality registry offices to ensure that the guidance is known and effectively implemented;
- 6) Create a central focal point to whom officials can refer with questions related to registering nationality or the use of the categories “stateless”, “undetermined nationality” and “unknown nationality”;
- 7) Ensure that people registered in the Central Register of Residents have their status automatically changed to “stateless” whenever an authority or court recognizes them as such;<sup>367</sup>
- 8) Develop means of recording and processing data on backgrounds and profiles of stateless persons;
- 9) Raise awareness among authorities, NGOs and other actors in order to ensure that the specific needs of stateless persons receive appropriate attention.

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<sup>366</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10).

<sup>367</sup> If a statelessness determination procedure is created it should have sole responsibility for determining statelessness and the designation in the Central Register of Residents should be updated to reflect its decision.

## 8.1.2 The determination of statelessness

312. In light of the current practice with regard to the determination of statelessness and the government's pledge in December 2011 to be ready to review the implementation of the 1954 Convention relating to the Status of Stateless Persons on the basis of the UNHCR guidelines, UNHCR makes the following recommendations to strengthen existing practice and ensure the fair and efficient determination of statelessness in Austria both under existing arrangements and in the future:

- 10) Establish an accessible, fair and efficient procedure to determine statelessness in accordance with the 1954 Convention and taking into account the international standards set out in UNHCR's *Handbook on Protection of Stateless Persons*,<sup>368</sup>
- 11) Designate one centralized authority to assess and take first instance decisions on statelessness. This would help to ensure transparency, develop specialization, and enable greater uniformity of decision making. Such an authority should have expertise in statelessness and nationality matters as well as the required financial and human resources. Provide that appeals against the decisions of this first instance body are considered by an independent body;
- 12) Determine statelessness in accordance with the 1954 Convention and the UNHCR *Handbook on Protection of Stateless Persons*, in particular:
  - a. With regard to the standard of proof, provide that it is only necessary to consider nationality in relation to states with which an individual applicant has relevant links (in particular by birth on the territory, descent, marriage or habitual residence). The appropriate standard of proof to be applied is one of "reasonable degree" of likelihood that the individual is not considered a national by any State,<sup>369</sup>
  - b. All parties involved in determination processes should share and collaborate in the administration of the burden of proof. While individuals are obliged to cooperate in establishing relevant facts, they will often face challenges accessing evidence and documentation needed to prove their absence of nationality. They should thus not bear sole responsibility for establishing relevant facts;<sup>370</sup>
  - c. Ensure that legal aid is available to stateless persons seeking to have their status recognised and provide free legal aid to those without financial means;<sup>371</sup>
- 13) Refer possible cases of statelessness promptly to the competent determining authority and make available information and appropriate counselling on the statelessness determination procedure to persons concerned;
- 14) Refrain from removing an individual from their territory pending the outcome of the determination process;
- 15) To ensure the early and correct identification of stateless persons and solutions for situations where the State of purported nationality refuses to cooperate in return, referral to a stateless determination procedure should take place as early as possible, if the individual claims to be stateless or this comes to light during other procedures, for instance asylum or return procedures, or as a result of detention. In such circumstances, they should be referred either during or after – depending on the procedure – this procedure to the statelessness determination procedure;
- 16) Ensure that officials responsible for determining statelessness are trained in international, regional and national law regarding statelessness, nationality law and practice in principal countries of origin of applicants claiming to be stateless. Similarly, it is recommended that

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<sup>368</sup> UNHCR, *Handbook on Protection of Stateless Persons* (footnote 10).

<sup>369</sup> *Ibid.*, para 91-92.

<sup>370</sup> *Ibid.*, para. 89-90.

<sup>371</sup> *Ibid.*, para 71.

organizations or persons entrusted with the provision of free legal aid be trained in statelessness matters;

- 17) When a designated statelessness determination procedure is set up, the responsible authority and court(s) should publish statistics annually, including data on the country of birth and previous nationality of applicants.

### **8.1.3 The status of persons recognized as stateless and of those seeking recognition**

313. UNHCR makes the following recommendations with a view to allowing Austria to uphold its international obligations vis-à-vis stateless persons:

- 18) Incorporate a new ground of residence for stateless persons in the Austrian Asylum Act;
  - a. Foresee a renewable residence permit with a validity of at least two years for each person recognized as stateless unless it is clear that the stateless person enjoys the right of residence in another country and is able to return and live there with full respect for his or her human rights;
  - b. Foresee that applicants in the proposed statelessness determination procedure have a right to remain in Austria for the duration of the procedure. The applicants for statelessness status should be accorded the same standards of treatment as asylum-seekers;
- 19) Exempt all recognized stateless persons from the obligation to apply for a work permit;
- 20) Collect and analyse decisions on deportation detention, “tolerated stay” and residence permits on humanitarian grounds (including a breakdown as to how many had previously lived on a “tolerated stay”) regarding stateless persons and persons of unknown nationality;
- 21) Ensure that the particular situation stateless persons is taken into account in any proceedings related to deportation;
- 22) Ensure that all stateless persons in Austria are treated in accordance with the provisions of the 1954 Convention and international human rights law and that their access to the rights contained in these treaties are not limited in law or practice, for instance due to lack of or difficulty obtaining documentation.

### **8.1.4 The prevention and reduction of statelessness**

314. In view of Austria’s accession to the 1961 Convention and in order to allow Austria to improve its commitment to international standards in terms of prevention and reduction of statelessness, including notably in the context of reform of the nationality law, UNHCR makes the following recommendations:

#### **8.1.4.1 SAFEGUARDS AGAINST STATELESSNESS AT BIRTH**

- 23) Establish a legal basis for the automatic acquisition of Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless (unless the child can acquire the citizenship of one of their parents immediately after birth through a non-discretionary procedure such as consular registration, declaration, the right of option, or other similar procedures);
- 24) If Austria intends to maintain an application procedure for otherwise stateless children born in Austria to acquire Austrian nationality, allow this application procedure to start as soon as possible after birth;
- 25) Where within a reasonable time of the child’s birth no evidence is available of the child’s nationality ensure that their parents or legal guardians are informed of their responsibilities and the possibilities to facilitate a child’s access to nationality and, if appropriate be referred to a legal counselling organization which can assist them;

- 26) If the preceding recommendations are not taken up, as a minimum amend Article 14 paragraph 1(5) of the Austrian Nationality Act to be in line with the 1961 Convention as follows: “applies for naturalization after the age of 18 years and not later than three years after having attained the age of majority”;
- 27) Expand the scope of the provision on foundlings in the Nationality Act by amending Article 8(1) as follows: “until proven otherwise, a child found on the territory of the Republic is regarded as national by descent”. Should that not be possible, ensure that this provision at least covers all children who are not old enough or who do not have the physical, mental, intellectual or sensory capacities to communicate accurately information pertaining to the identity of their parents or their place of birth;
- 28) Amend Article 7 of the Nationality Act to ensure that children born out of wedlock to Austrian fathers acquire Austrian nationality upon establishment of fatherhood (irrespective of the date of that decision) with retroactive effect as of their date of birth;

#### 8.1.4.2 SAFEGUARDS IN CASE OF LOSS AND DEPRIVATION OF NATIONALITY

- 29) Amend Article 57 of the Nationality Act, to ensure that persons treated as Austrian citizens in error continue to be considered Austrian citizens, regardless of the period for which they were erroneously treated as such by the authorities;
- 30) Explicitly reflect the proportionality test in the Nationality Act in cases relating to the deprivation of nationality for fraud, as has already been accepted in regional and national jurisprudence;
- 31) Replace the requirement of a person’s renunciation of their former nationality for naturalization as an Austrian citizen by a conditional renunciation of that nationality with retroactive effect as of the attribution of Austrian citizenship;

#### 8.1.4.3 FACILITATED ACCESS TO NATIONALITY FOR STATELESS PERSONS

- 32) Facilitate the naturalization of stateless persons, and implement Article 32 of the 1954 Convention. At a minimum reduce the number of years of lawful residence required for applying for naturalization to six and review existing barriers to naturalization for stateless persons such as proof of sufficient means of livelihood and the documentation requirements and ensure that these do not constitute an obstacle to stateless persons applying for naturalization. Regarding documentation requirements, treat stateless persons in the same way as refugees in the process of acquiring Austrian nationality;
- 33) Reduce as far as possible the costs for naturalization by stateless persons in line with Article 32 of the 1954 Convention and ensure that indirect costs, such as for authentication of documents, do not constitute an obstacle to applying for such individuals;
- 34) Provide for access to information and legal advice for stateless persons seeking naturalization and provide assistance to stateless persons who seek to take administrative demarches with the diplomatic representations or authorities of their country of origin;
- 35) Review reservations and declarations concerning the prevention and reduction of statelessness to the 1961 Convention and the ECN with the view of enhancing Austria’s support to UNHCR’s initiative to end statelessness by 2024.

# Appendix I:

## Further Statistics

**Table 1:** Persons recorded as "stateless", "undetermined nationality" and "unknown nationality" in the Central Register of Residents 2002–2016

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Stateless	1,492	1,563	1,540	1,521	1,497	2,097	2,826	2,834	2,916	2,887	2,722	2,553	2,484	3,068	4,142
Undetermined nationality	12,058	7,789	5,427	4,359	3,362	2,400	512	212	192	189	189	182	166	258	543
Unknown nationality	13,367	11,912	10,210	9,037	9,765	9,015	2,682	4,235	4,285	4,423	4,630	4,991	5,502	6,084	6,943
Total	26,917	21,264	17,177	14,917	14,624	13,512	6,020	7,281	7,393	7,499	7,541	7,726	8,152	9,410	11,628

Source: Statistics Austria, Population Stock, 'Population at the start of the year since 2002 by nationality'<sup>372</sup>

**Table 2:** Immigration and emigration of persons of unknown and undetermined nationality 2006–2015

		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Unknown Nationality	Immigration to Austria	336	18	21	16	14	13	19	9	93	396
	Emigration from Austria	245	22	13	9	9	4	9	8	11	24
	Migration Balance	91	-4	8	7	5	9	10	1	82	372
Undetermined Nationality	Immigration to Austria	6	196	258	92	48	46	58	64	98	115
	Emigration from Austria	11	71	80	109	83	79	65	61	76	85
	Migration Balance	-5	125	178	-17	-35	-33	-7	3	22	30

Source: Statistics Austria, Migration Statistics, 'Migration with foreign countries by nationality, 2006–2015'<sup>373</sup>

<sup>372</sup> Statistik Austria, Statistik des Bevölkerungsstandes. 'Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit', 14 June 2016, available at: [goo.gl/EJXVHb](http://goo.gl/EJXVHb).

<sup>373</sup> Statistik Austria, Wanderungsstatistik, 'Wanderungen mit dem Ausland (Auswanderungen) 2006–2015 nach Staatsangehörigkeit', (footnote 93).

**Table 3:** Stateless population by country of birth for the 20 most common countries of birth, 2005-2016

Country of Birth	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total	1,521	1,497	2,097	2,826	2,834	2,916	2,887	2,722	2,553	2,484	3,068	4,142
Syrian Arab Republic	45	52	72	81	102	116	138	150	148	172	477	1134
Unknown	62	79	95	46	44	44	41	47	70	41	344	791
Austria	376	353	401	447	471	499	513	510	503	512	490	492
Russian Federation	70	65	252	515	529	605	592	506	430	391	347	323
Afghanistan	23	22	180	320	294	278	253	223	199	239	244	225
Occupied Palestinian Territories	13	22	23	32	43	53	55	62	64	73	100	102
Iraq	36	36	58	94	94	101	99	82	82	71	72	102
Iran (Islamic Republic of)	55	57	82	132	147	146	141	128	124	113	116	97
Kosovo	101	97	112	136	141	128	112	102	93	86	92	83
Azerbaijan	17	20	23	44	43	52	51	58	49	53	52	59
Armenia	16	17	20	41	45	45	43	44	40	45	50	55
Lebanon	48	46	39	78	70	71	57	54	55	48	48	55
Serbia	83	77	86	100	89	81	78	63	61	52	51	47
Romania	86	82	76	68	66	58	57	60	56	56	48	42
Turkey	35	26	39	61	62	69	63	60	60	48	44	41
Georgia	8	8	21	36	30	32	34	35	33	35	33	36
Israel	17	25	29	28	32	28	32	35	30	27	31	28
Somalia	0	1	25	47	39	35	55	52	37	30	23	25
Germany	23	20	24	31	32	27	26	27	28	23	23	19
China	7	7	11	16	16	20	22	19	18	21	19	19

Source: STATcube – Statistical Database of Statistics Austria, Population at the beginning of the year since 1982, 'Country of birth by Time section: 2005-2016 and Nationality: Stateless'



**Table 4:** Political Districts with a stateless population greater than 10 on 1 January 2016

Political District or Viennese Municipal District	Number of Stateless Persons	Stateless Persons as % of Population	Political District or Viennese Municipal District	Number of Stateless Persons	Stateless Persons as % of Population
Vienna 10 <sup>th</sup> district, Favoriten	255	0.13	Kufstein	27	0.03
Vienna 21 <sup>st</sup> district, Floridsdorf	163	0.10	Oberwart	26	0.05
Vienna 12 <sup>th</sup> district, Meidling	158	0.17	Zell am See	25	0.03
Vienna 2 <sup>nd</sup> district, Leopoldstadt	134	0.13	Vienna suburbs	24	0.02
Vienna 16 <sup>th</sup> district, Ottakring	131	0.13	Bruck-Mürzzuschlag	24	0.02
Graz urban area	119	0.04	Kirchdorf an der Krems	23	0.04
Vienna 15 <sup>th</sup> distr., Rudolfshheim-Fünfhaus	118	0.15	Rohrbach	23	0.04
Vienna 20 <sup>th</sup> district, Brigittenau	107	0.12	Salzburg surroundings	23	0.02
Innsbruck rural area	102	0.06	Hartberg-Fürstenfeld	23	0.03
Baden	97	0.07	Murtal	23	0.03
Vienna 11 <sup>th</sup> district, Simmering	95	0.10	Imst	23	0.04
Linz urban area	91	0.05	Lienz	23	0.05
Vienna 19 <sup>th</sup> district, Döbling	90	0.13	Waidhofen an der Thaya	22	0.08
Vienna 22 <sup>nd</sup> district, Donaustadt	86	0.05	Sankt Johann im Pongau	22	0.03
Vienna 23 <sup>rd</sup> district, Liesing	81	0.08	Dornbirn	21	0.02
Vienna 14 <sup>th</sup> district, Penzing	79	0.09	Urfahr surroundings	19	0.02
Vienna 3 <sup>rd</sup> district, Landstraße	77	0.09	Wels rural area	19	0.03
Vöcklabruck	75	0.06	Weiz	19	0.02
Innsbruck urban area	71	0.05	Schwaz	19	0.02
Salzburg urban area	68	0.05	Gmünd	17	0.05
Linz rural area	62	0.04	Bludenz	17	0.03
Vienna 9 <sup>th</sup> district, Alsergrund	61	0.14	Bruck an der Leitha	16	0.04
Vienna 7 <sup>th</sup> district, Neubau	59	0.18	Südoststeiermark	16	0.02
Villach urban area	55	0.09	Lilienfeld	15	0.06
Vienna 4 <sup>th</sup> district, Wieden	55	0.17	Freistadt	15	0.02
Vienna 5 <sup>th</sup> district, Margareten	51	0.09	Wolfsberg	14	0.03
Bregenz	50	0.04	Horn	14	0.04
Sankt Pölten urban area	46	0.09	Mistelbach	14	0.02
Mödling	45	0.04	Güssing	13	0.05
Vienna 18 <sup>th</sup> district, Währing	44	0.09	Sankt Veit an der Glan	13	0.02
Vienna 13 <sup>th</sup> district, Hietzing	42	0.08	Eferding	13	0.04
Klagenfurt urban area	40	0.04	Graz surroundings	13	0.01
Vienna 8 <sup>th</sup> district, Josefstadt	39	0.16	Liezen	13	0.02
Amstetten	38	0.03	Korneuburg	12	0.02
Neunkirchen	36	0.04	Tulln	12	0.02
Perg	36	0.05	Spittal an der Drau	11	0.01
Vienna 17 <sup>th</sup> district, Hernals	36	0.06	Gänserndorf	11	0.01
Wiener Neustadt urban area	35	0.08	Krems rural area	11	0.02
Vienna 6 <sup>th</sup> district, Mariahilf	35	0.11	Ried im Innkreis	11	0.02
Feldkirch	33	0.03	Reutte	11	0.03
Sankt Pölten rural area	31	0.03	Völkermarkt	10	0.02
Wels urban area	30	0.05	Krems an der Donau urban area	10	0.04
Leibnitz	30	0.04	Scheibbs	10	0.02
Gmunden	29	0.03	Tamsweg	10	0.05
Braunau am Inn	27	0.03			

Source: STATcube – Statistical Database of Statistics Austria, Population at the beginning of the year since 1982, 'Politischer Bezirk / Wiener Gemeindebezirk by Nationality: Stateless and Time section: 2016' (percentages calculated based on the total population from the same source)

**Table 5:** Reason for grant of nationality to stateless persons and persons with undetermined or unknown nationality, 2005–2015

Grounds for Naturalization (provisions in Nationality Act)	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
10(1) 10 yrs residence	31	17	8	6	7	10	10	1	4	7	8	109
10(4)Z1 Restoration of nationality	0	0	2	3	1	0	0	1	0	0	1	8
10(4)Z1/(5)Z4 4 yrs residence & entitled to asylum	7	4	0	0	1	0	0	0	0	0	0	12
10(4)Z1/(5)Z6 6 yrs residence & born in Austria	2	1	0	0	0	0	0	0	0	0	0	3
10(4)Z1/(5) 4 yrs residence & other exception	7	9	2	0	3	0	0	0	0	0	0	21
10(4)Z2 pre-1945 nationality of Austro-Hungarian successor State	0	0	0	0	0	0	1	0	0	0	0	1
10(6) Extraordinary grant due to benefit to State	0	0	0	1	0	0	0	0	0	0	0	1
11a Austrian spouse	26	8	3	6	5	2	1	4	7	4	2	68
11a(4)Z1 6 yrs residence & entitled to asylum	0	0	9	4	0	2	1	1	1	2	7	27
11a(4)Z3 6 yrs residence & born in Austria	0	0	5	3	0	3	1	2	1	3	4	22
11a(6) 6 yrs residence, proof of language skill & integration	0	0	0	0	0	0	0	0	1	0	3	4
11b Adopted children under 14 years	0	0	0	0	0	0	0	0	1	2	0	3
12(1)Z1(a) 30 yrs residence	9	7	4	8	1	2	0	4	6	4	4	49
12(1)Z1(b) 15 yrs residence & proof of integration	4	1	1	0	2	0	1	0	1	0	0	10
12 Z2 Restoration of nationality after 1 yr residence	2	0	0	0	0	0	0	0	0	0	0	2
12(1)Z3 Ineligible for extension of naturalization of a parent	9	1	10	7	8	6	8	5	5	1	1	61
12(2) Child under 14 born out of wedlock to an Austrian father	0	0	0	0	0	0	0	0	2	12	5	19
14 Born stateless in Austria	0	0	0	0	0	0	0	0	0	0	0	0
57 Treatment as a national in error	0	0	0	0	0	0	0	0	0	0	1	1
58c Restoration of nationality lost for political reasons	3	3	5	4	3	2	1	1	0	0	1	23
64a(19) Treatment as a national in error (before entry into force of Art. 57)	0	0	0	0	0	0	0	0	0	1	0	1
16 Extension of naturalization to spouse	10	2	2	0	1	2	0	0	1	1	2	21
17 Extension of naturalization to children	39	16	14	13	8	6	9	6	13	4	12	140

Source: STATcube – Statistical Database of Statistics Austria, Naturalizations, 'Naturalizations by grounds for naturalization and time: 2005–2015'

# Appendix II: Stakeholders Consulted for this Report

## Academics

Dr. Hannelore Burger, academic, historian, University of Vienna

Dr. Joachim Stern, lecturer at the University of Vienna and UNHCR

Dr. Martin Stiller, academic, lawyer

Mag. Gerd Valchars, academic, political scientist, University of Vienna

## Authorities

Antidiscrimination Office Styria, Graz

Austrian Ombudsman Board (*Volksanwaltschaft*)

Chamber of Labour Upper Austria, Linz

City of Linz, Population and Civil Registry Authority (*Einwohner- und Standesamt*), Aliens Law Department

City of Vienna, Municipal Department for Immigration and Citizenship, MA 35

District administration Linz-Land, Security and Traffic Department

District administration Wels-Land

Federal Office for Immigration and Asylum (BFA)

Ministry for Family and Youth, Division I/6 – Family Law policy and Children’s Rights, Federal Ombudsman for Children and Young Adults

Ministry of the Interior, Department for Aliens Police and Border Control (II/3), Department for Basic Welfare Support and Federal Care (III/9), Department for Residence, Civil Registration and Citizenship (III/4) and Department for Register Services and Communication and Information Technology Budget (IV/2/d)

Office of the Provincial Government of Lower Austria, Interior Administration Group, Citizenship and Elections Department

Office of the Provincial Government of Upper Austria, Directorate of Interior and Municipal Affairs, Citizenship, Aliens Law

Provincial police directorate Lower Austria, Department for border police, aliens police measures and execution of administrative detention and Department for security and administrative police

Provincial police directorate Upper Austria, Department for riot police (*Einsatzpolizei*), border and aliens police

Statistics Austria, Directorate Population, Social Statistics, Unit “Demography, Health, Labour Market”

## Attorneys

Mag. Robert Bitsche, Vienna

Dr. Julia Ecker, Vienna

Mag. Wilfried Embacher, Vienna

Mag. Clemens Lahner, Vienna

Mag. Andreas Lepschi, Vienna

Dr. Bernhard Rosenkranz, Salzburg

## Non-governmental organizations

Amber Med, Vienna

*Association Frauentreffpunkt* (women's meeting point), Salzburg

Association Human Rights Austria (Verein Menschenrechte Österreich, VMÖ)

Association Omega, transcultural centre for psychological and physical health and integration, Graz

*Association PIVA – Projektgruppe Integration von Ausländerinnen und Ausländern* (integration of foreigners), Villach

### CARITAS:

Carinthia, Counselling and assistance, Klagenfurt

Lower Austria: Refugee Counselling, St. Pölten, Asylum and Integration, Wiener Neustadt

Salzburg, legal counselling

Styria, Integration for Migrants, Graz

Upper Austria, Refugee Assistance, Linz

Vienna, Migration Centre

Vorarlberg, Assistance of migrants and refugees, Feldkirch

### DIAKONIA REFUGEE SERVICE:

Innsbruck, *NARA Tirol* (counselling on residence issues) and *Unabhängige Rechtsberatung Tirol* (Independent Legal Counselling Tyrol)

Salzburg, *ARGE Rechtsberatung* (work partnership legal counselling)

Traskirchen, *ARGE Rechtsberatung* (work partnership legal counselling)

Vienna, *ARGE Rechtsberatung* (work partnership legal counselling) coordination

Villach, *ARGE Rechtsberatung* (work partnership legal counselling)

*FLUCHTpunkt* – Assistance, Counselling, Intervention for refugees, project of the association arge Schubhaft, Innsbruck

*Helping Hands*, Vienna, Austria

*Integrationshaus*, Vienna

*ISOP, Innovative Sozialprojekte* (innovative social projects), Graz

*Migrare*, Centre for migrants Upper Austria, Linz

*Platform for Human Rights*, Salzburg

*Volkshilfe* Upper Austria, Help for refugees and migrants, legal advice, Linz

*Zebra, Intercultural Centre of Counselling and Therapy*, Graz

# Appendix III: Participating Individual Persons

The following 12 stateless and potentially stateless persons were interviewed between December 2013 and April 2014 within the framework of this study. Their names have been changed to protect their anonymity. They are referred to in this report by their pseudonym and/or assigned number. A short summary of their stories can be found on the pages of this report cited in brackets.

## Participants

1. Hans / Austria (p. 33)
2. Claudia / Austria (p. 33)
3. Guljan / Meshketian Turks (Uzbekistan/Azerbaijan) (p. 47)
4. Osman / Meshketian Turks (Uzbekistan/Azerbaijan) (p. 47)
5. Igor / Latvia, Russia (former Soviet Union) (p. 56)
6. Rami /Palestinian (West Bank, Jordan) (p. 64)
7. Aleksey / Uzbekistan (p. 65)
8. Hashem / Palestinian (Libya) (p. 67)
9. Khalil / Palestinian (West Bank) (p. 70)
10. Peter / Austria (p. 71)
11. Mladen / Macedonia (p. 92)
12. Sabri / Turkey (p. 94)

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# STAATENLOSIGKEIT in Österreich



# Staatenlosigkeit in Österreich

## Zusammenfassung der Erhebungen und Empfehlungen von UNHCR

Die vorliegende Studie wurde im Zusammenhang mit dem Mandat des Flüchtlingshochkommissars der Vereinten Nationen (UNHCR) zur Identifizierung, Verhinderung und Verminderung der Staatenlosigkeit und zum Schutz Staatenloser in Auftrag gegeben. Sie wurde im Jahr des 60. Jahrestags des Übereinkommens von 1954 über die Rechtsstellung der Staatenlosen („Übereinkommen von 1954“)<sup>1</sup> und vor dem Hintergrund des Starts einer 10-jährigen Kampagne von UNHCR zur Beendigung der Staatenlosigkeit bis zum Jahr 2024 durchgeführt.

Österreich trat dem Übereinkommen von 1954 am 8. Februar 2008<sup>2</sup> und dem Übereinkommen von 1961 zur Verminderung der Staatenlosigkeit („Übereinkommen von 1961“)<sup>3</sup> am 22. September 1972<sup>4</sup> bei. Auf einem Ministertreffen im Dezember 2011 zum 60. Jahrestag des Abkommens von 1951 über die Rechtsstellung der Flüchtlinge („Genfer Flüchtlingskonvention“)<sup>5</sup> und zum 50. Jahrestag des Übereinkommens von 1961 erklärte Österreich seine Bereitschaft, die Umsetzung des Übereinkommens von 1954 in Bezug auf die Verfahren zur Feststellung der Staatenlosigkeit auf Grundlage der Richtlinien, die UNHCR damals ausarbeitete und die seither veröffentlicht wurden, zu überprüfen.<sup>6</sup> UNHCR hofft, dass der vorliegende Bericht Informationen für diese Überprüfung liefert.

Aus der Tätigkeit von UNHCR im Zusammenhang mit der Lösung einzelner Fälle von Staatenlosigkeit und seiner Zusammenarbeit mit im Bereich der Staatenlosigkeit tätigen Organisationen und Institutionen haben sich Hinweise ergeben, dass Staatenlosigkeit in Österreich noch immer ein verstecktes Problem ist. UNHCR hat dieses Forschungsprojekt durchgeführt, um sich ein besseres Bild von der Situation zu machen. Es umfasste neben einer Literaturrecherche und der Sammlung und Analyse von Daten auch Gespräche mit verantwortlichen VertreterInnen von Behörden, Nichtregierungsorganisationen und Rechtsanwaltskanzleien sowie mit Staatenlosen oder vermuteten Staatenlosen mit Wohnsitz in Österreich.

Der vorliegende Bericht soll einen Überblick über die Staatenlosigkeit in Österreich geben. Er enthält eine Analyse der vorhandenen Daten über Staatenlosigkeit und eine Zusammenstellung von Informationen über die Ursachen und Wurzeln der Staatenlosigkeit in Österreich. Er beschreibt die derzeit geübte Praxis zur Feststellung der Staatenlosigkeit und die rechtliche Situation von Staatenlosen in Österreich und beurteilt sie im Lichte der von Österreich eingegangenen internationalen Verpflichtungen. Ferner werden

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<sup>1</sup> Generalversammlung der Vereinten Nationen (UNGA): *Übereinkommen über die Rechtsstellung der Staatenlosen*, 28. September 1954, Vereinte Nationen, Vertragssammlung (UNTS), Band 360, S. 117 (Übereinkommen von 1954), Artikel 1, abrufbar unter <http://www.refworld.org/docid/3ae6b3840.html>.

<sup>2</sup> Das Übereinkommen von 1954 trat in Österreich am 8. Mai 2008 in Kraft.

<sup>3</sup> UNGA, *Übereinkommen zur Verminderung der Staatenlosigkeit*, 30. August 1961, UNTS Band 989, S. 175, (Übereinkommen von 1961), abrufbar unter <http://www.refworld.org/docid/3ae6b39620.html>.

<sup>4</sup> Das Übereinkommen von 1961 trat in Österreich am 13. Dezember 1975 in Kraft.

<sup>5</sup> UNGA, *Abkommen über die Rechtsstellung der Flüchtlinge*, 28. Juli 1951, UNTS Band 189, S. 137 (Genfer Flüchtlingskonvention), abrufbar unter <http://www.refworld.org/docid/3be01b964.html>.

<sup>6</sup> Flüchtlingshochkommissar der Vereinten Nationen (UNHCR), *Ministerial Intergovernmental Event on Refugees and Stateless Persons – Pledges 2011*, Oktober 2012, S. 51, abrufbar unter <http://www.refworld.org/docid/50aca6112.html>.

die rechtlichen Rahmenbedingungen und die Praxis in Bezug auf die Verhinderung und Verminderung von Staatenlosigkeit in Österreich überprüft, um zu einem besseren Verständnis darüber zu gelangen, wie Staatenlosigkeit in Österreich beendet werden kann. Durch die Miteinbeziehung von Fallstudien über die Erfahrungen von in Österreich lebenden Staatenlosen beschreibt der Bericht, wie Kinder, Frauen und Männer in Österreich staatenlos werden bzw. staatenlos bleiben können. Ihre Schilderungen zeigen auch die zahlreichen Herausforderungen auf, mit denen Staatenlose in ihrem täglichen Leben konfrontiert sind, weil sie keine Staatsangehörigkeit besitzen. Der Begriff „Staatenlose/r“ wird in der gesamten Studie im Sinne der Definition aus dem Übereinkommen von 1954 verwendet und beschreibt eine Person, „die kein Staat aufgrund seines Rechtes als Staatsangehörigen ansieht“.<sup>7</sup>

Es ist schwierig, eine verlässliche Zahl oder auch nur eine realistische Schätzung für die Gesamtzahl der Staatenlosen in Österreich zu finden. In der Statistik des Bevölkerungsstandes der Statistik Austria zu Jahresbeginn 2016 sind 11.628 Personen als „staatenlos“, mit „unbekannter Staatsangehörigkeit“ oder mit „ungeklärter Staatsangehörigkeit“ registriert.<sup>8</sup> Diese Zahl beruht jedoch auf der Meldepraxis auf Gemeindeebene, die im Zentralen Melderegister erfasst wird. Nach österreichischem Recht muss sich jede Person, die in Österreich Unterkunft nimmt, innerhalb von drei Tagen bei der zuständigen Behörde anmelden. Bei der Anmeldung muss die zuständige Behörde die Staatsangehörigkeit der Person vermerken. Personen, die keine Staatsangehörigkeit nachweisen können, sind, abhängig von ihren jeweiligen Umständen, als „staatenlos“ oder als Personen „mit unbekannter Staatsangehörigkeit“ bzw. mit „ungeklärter Staatsangehörigkeit“ einzutragen. Diese Statistiken werfen mehrere Fragen auf. Verschiedene Akteure haben festgestellt, dass Bedienstete in den verschiedenen Gemeinden die betreffenden Begriffe in der Praxis unterschiedlich auslegen können, wenn sie Personen diesen Kategorien zuordnen. Das ist vor allem deshalb wahrscheinlich, weil kein festgelegtes Verfahren zur Feststellung des Staatenlosenstatus einer Person existiert. Außerdem melden manche Personen ihren Wohnsitz vielleicht nicht an, vor allem dann, wenn sie keine Aufenthaltsgenehmigung haben. Die anderen vorhandenen Daten beziehen sich lediglich auf spezielle Untergruppen von Staatenlosen (z. B. Staatenlose mit Aufenthaltsgenehmigung oder Staatenlose im Asylsystem).

Mehr Informationen sind über Staatenlose im Asylsystem vorhanden. In den 10 Jahren zwischen 2005 und 2015 wurde in Österreich im Fall von 2.467 Staatenlosen ihr Flüchtlingsstatus anerkannt bzw. subsidiärer Schutz gewährt. 1.492 von ihnen erhielten 2015 internationalen Schutz. Diese Zahlen zeigen, dass staatenlose Personen mit internationalem Schutz 21 Prozent jener Bevölkerungsgruppe ausmachen, die die Statistik Austria in ihrer Statistik per 1. Januar 2016 als „staatenlos“, als mit „unbekannter“ Staatsangehörigkeit oder mit „ungeklärter“ Staatsangehörigkeit führt.

Was den Schutz staatenloser Personen betrifft, ist der Beitritt Österreichs zum Übereinkommen von 1954 eine begrüßenswerte Anerkennung des Schutzbedürfnisses Staatenloser und der Verpflichtungen Österreichs ihnen gegenüber. Allerdings weist die Studie auf Unstimmigkeiten und Lücken in der Rechtslage, der Politik und der Praxis hin, welche die Ausübung der im Übereinkommen von 1954 verankerten Rechte deutlich einschränken.

Die Rechtsstellung und die Rechte Staatenloser hängen zurzeit weitgehend davon ab, ob sie aufgrund ihres Familienstandes, der Dauer ihres Aufenthalts in Österreich oder besonderer beruflicher Qualifikationen Anspruch auf einen Aufenthaltstitel haben. Da ihr Status als Staatenlose keinen Anspruch auf eine Aufenthaltsgenehmigung begründet, wird gegen Staatenlose, die sich in einer irregulären Situation befinden oder deren Anträge auf internationalen Schutz abgelehnt wurden, oft eine aufenthaltsbeendende Maßnahme erlassen, welche ihre Rückführung in das Land, in dem sie sich zuletzt aufgehalten haben, vorsieht. Viele Staatenlose, die in einer irregulären Situation leben, dürfen keine Arbeit annehmen und erhalten keinerlei soziale Unterstützung (sie verfügen auch über keine Krankenversicherung). Zudem

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<sup>7</sup> Übereinkommen von 1954 (siehe Fußnote 1), Artikel 1 (1).

<sup>8</sup> Statistik Austria, Statistik des Bevölkerungsstandes, „Bevölkerung zu Jahresbeginn seit 2002 nach detaillierter Staatsangehörigkeit“, 14. Juni 2016, abrufbar unter <http://goo.gl/VWJ0zr>.



wird ihnen kein Identitätsdokument ausgestellt, was ihre irreguläre Situation verstärkt und sie der Gefahr aussetzt, in Schubhaft genommen zu werden. Erst wenn festgestellt wurde, dass Staatenlose nicht in das Land ihres letzten Aufenthalts oder in irgendein anderes Land, zu dem sie in Beziehung stehen, zurückgeführt werden können, wird die Duldung ihres Aufenthalts festgestellt. Mit der Duldung wird anerkannt, dass die Abschiebung aus tatsächlichen, vom Fremden nicht zu vertretenden Gründen unmöglich erscheint“. Die Duldung bewirkt, dass der Aufenthalt hingenommen wird, begründet aber kein Aufenthaltsrecht und geht mit nur beschränkten Rechten einher. So sieht das Recht von nur zwei Bundesländern einen Rechtsanspruch auf Grundversorgung vor bzw. auf Ausstellung eines Bescheids einer zuständigen Behörde, wenn Personen, die aus rechtlichen oder praktischen Gründen nicht abgeschoben werden können, diese Unterstützung nicht gewährt, eingeschränkt oder entzogen wird. Geduldete dürfen nicht arbeiten und erhalten kein Identitätsdokument. Erst nach mindestens einem Jahr der Duldung besteht für diese Personen die Möglichkeit, eine Aufenthaltsgenehmigung zu erlangen (diesbezüglich sind sie allen anderen nicht abschiebbaren Fremden gleichgestellt).

Ein eigenes Verfahren zur Feststellung der Staatenlosigkeit, das von einer mit entsprechender Fachkompetenz ausgestatteten, möglichst zentralen Behörde durchgeführt wird und die Richtlinien für derartige Verfahren aus dem UNHCR *Handbuch über den Schutz staatenloser Personen*<sup>9</sup> einhält, würde mithelfen, Probleme der Identifizierung und Registrierung von Staatenlosen zu lösen. Eine Professionalisierung und Harmonisierung der Qualität der Verfahren zur Identifizierung Staatenloser könnte auch zur Entwicklung geeigneter Lösungen für die Betroffenen beitragen. Für Migranten, die nicht staatenlos sind, könnte die Bestätigung dieser Tatsache den Erwerb von Identitäts- und Reisedokumenten erleichtern. Andererseits sollten Personen, deren Rechtsstellung als Staatenlose festgestellt wurde, gemäß dem Übereinkommen von 1954 in der Regel einen Aufenthaltstitel für Staatenlose und Schutz erhalten.

Die Identifizierung von Staatenlosen und die Gewährung grundlegender Rechte ermöglicht es ihnen, uneingeschränkt an der österreichischen Gesellschaft teilzuhaben und sich in sie einzubringen. Das verringert die Kosten und Sicherheitsrisiken, die mit der Ausgrenzung Staatenloser verbunden sind. Ohne ein Verfahren zur Feststellung der Staatenlosigkeit wird Österreich wahrscheinlich nicht in der Lage sein, seinen Verpflichtungen aus dem Übereinkommen von 1954 nachzukommen, da dieses Rechtsdokument von der Annahme ausgeht, dass Personen, die Anrecht auf Schutz haben, identifiziert werden können, so wie die Genfer Flüchtlingskonvention die Identifizierung von Flüchtlingen voraussetzt (ein Standpunkt, dem sich Österreich sowie andere Staaten angeschlossen haben).

Was die Verhinderung von Staatenlosigkeit betrifft, würdigt UNHCR die Vorreiterrolle, die Österreich als einer der ersten fünf Vertragsstaaten des Übereinkommens von 1961, das einen Katalog internationaler Verpflichtungen in diesem Bereich enthält, gespielt hat. Das österreichische Staatsbürgerschaftsgesetz sieht dementsprechend wichtige Schutzvorkehrungen zur Verhinderung von Staatenlosigkeit aufgrund eines Verlusts – einschließlich durch Verzicht und Entzug – der österreichischen Staatsbürgerschaft vor. Dennoch bestehen weiterhin gewisse Lücken, die zu neuen Fällen von Staatenlosigkeit in Österreich führen können. Die wichtigste davon betrifft die Lage von Kindern, die in Österreich staatenlos zur Welt kommen. Das Staatsbürgerschaftsgesetz schreibt eine lange Wartezeit (18 Jahre) und zusätzliche Voraussetzungen für ihre erleichterte Einbürgerung vor. UNHCR ist der Auffassung, dass dies nicht in voller Übereinstimmung mit dem Übereinkommen von 1961 steht. Es steht auch im Widerspruch zu späteren Entwicklungen in den internationalen Menschenrechtsnormen, insbesondere zum Übereinkommen über die Rechte des Kindes („Kinderrechtskonvention“)<sup>10</sup>. Andere Bestimmungen im österreichischen Recht, durch die Staatenlosigkeit entstehen kann, betreffen unter anderem den Verlust der Staatsbürgerschaft (z. B. wenn österreichische Staatsbürger freiwillig in den Militärdienst eines anderen Landes eintreten) und die Wiederaufnahme eines Verleihungsverfahrens (z. B. weil sie erschlichen wurde).

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<sup>9</sup> UNHCR, *Handbuch über den Schutz staatenloser Personen*, 30. Juni 2014, abrufbar unter <http://www.refworld.org/docid/53b676aa4.html>.

<sup>10</sup> UNGA, *Übereinkommen über die Rechte des Kindes*, 20. November 1989 (Kinderrechtskonvention), abrufbar unter <https://goo.gl/sr8mCi>.

Die erleichterte Einbürgerung für Staatenlose stellt eine dauerhafte Lösung für Staatenlosigkeit dar. Derzeit werden Staatenlose in dieser Hinsicht jedoch wie andere Nicht-Staatsbürger behandelt, obwohl Staatenlose sich im Gegensatz zu Ausländern nicht auf den Schutz eines anderen Staates berufen können und gemäß dem Übereinkommen von 1954 ihre Einbürgerung soweit wie möglich erleichtert werden soll.

Die Studie kommt zu dem Schluss, dass die österreichischen Gesetze und politischen Konzepte viele wichtige Schutzmaßnahmen im Hinblick auf die Verhinderung von Staatenlosigkeit sowie einige Bestimmungen zu ihrer Verminderung und zum Schutz Staatenloser enthalten. Jedoch könnte sowohl die Rechtslage als auch die Praxis in all diesen Bereichen verstärkt werden, was sowohl im Interesse des Staates als auch in dem der betroffenen staatenlosen Kinder, Frauen und Männer wäre.

UNHCR ist der festen Überzeugung, dass Staatenlosigkeit weitgehend vermeidbar und, mit entsprechendem gutem Willen, auch lösbar ist. Deshalb startete UNHCR 2014 eine weltweite Kampagne zur Beendigung der Staatenlosigkeit binnen zehn Jahren. Mit dieser Kampagne soll auf bestehende Situationen von Staatenlosigkeit aufmerksam gemacht und um Unterstützung für ihre Lösung geworben werden. Ferner sollen Schwachstellen in Gesetzeslage und Politik beseitigt werden, die es möglich machen, dass neue Fälle von Staatenlosigkeit entstehen. Die Kampagne nennt zehn Maßnahmen, die notwendig sind, um Staatenlosigkeit zu beenden: Lösung bestehender Situationen von Staatenlosigkeit größeren Ausmaßes; Gewährleistung, dass kein Kind staatenlos geboren wird; Beseitigung von Geschlechterdiskriminierung aus Staatsbürgerschaftsgesetzen; Verhinderung der Verweigerung, des Verlusts oder des Entzugs der Staatsbürgerschaft aus diskriminierenden Gründen; Verhinderung von Staatenlosigkeit in Fällen der Staatennachfolge; Gewährung des Schutzstatus für staatenlose Migranten/Migrantinnen und Erleichterung ihrer Einbürgerung; Gewährleistung der Geburtenregistrierung zur Vermeidung von Staatenlosigkeit; Ausstellung von Staatsbürgerschaftsurkunden für anspruchsberechtigte Personen; Beitritt zu den UN-Übereinkommen gegen Staatenlosigkeit; und Verbesserung von Quantität und Qualität der Daten über staatenlose Bevölkerungsgruppen.

Wie die vorliegende Studie betont, bedarf es im österreichischen Kontext vor allem besonderer Anstrengungen zu Maßnahme 2 „Gewährleistung, dass kein Kind staatenlos geboren wird“, zu Maßnahme 6 „Gewährung des Schutzstatus für staatenlose Migranten/Migrantinnen und Erleichterung ihrer Einbürgerung“ und Maßnahme 10 „Verbesserung von Quantität und Qualität der Daten über staatenlose Bevölkerungsgruppen“. Bei der Befassung mit diesen Bereichen können sich die im Globalen Aktionsplan 2014-2024 von UNHCR zur Beendigung der Staatenlosigkeit enthaltenen Empfehlungen und Ratschläge als nützlich erweisen.<sup>11</sup>

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<sup>11</sup> UNHCR, *Global Action Plan to End Statelessness*, 4. November 2014, abrufbar unter <http://www.refworld.org/docid/545b47d64.html>.

## UNHCR gibt aufgrund der Erkenntnisse aus dieser Untersuchung folgende zentrale Empfehlungen ab:

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- (i) **SCHAFFUNG EINES ZUGÄNLICHEN, FAIREN UND EFFIZIENTEN VERFAHRENS ZUR FESTSTELLUNG DER STAATENLOSIGKEIT** im Einklang mit dem Übereinkommen von 1954 und unter Berücksichtigung der internationalen Standards aus dem UNHCR *Handbuch über den Schutz staatenloser Personen*<sup>12</sup>;
- 
- (ii) **SCHAFFUNG DER ZUSTÄNDIGKEIT EINER ZENTRALEN BEHÖRDE**, die für die Beurteilung und erstinstanzliche Entscheidung in Fragen von Staatenlosigkeit zuständig ist. Dadurch kann die Transparenz der Entscheidungsfindung gewährleistet, Fachkompetenz entwickelt und die Einheitlichkeit der Entscheidungen verbessert werden. Diese Behörde sollte über Fachwissen in Fragen der Staatenlosigkeit und der Staatsbürgerschaft sowie über die erforderlichen finanziellen und personellen Ressourcen verfügen. Es ist Vorsorge zu treffen, dass Rechtsmittel, die gegen Entscheidungen dieser erstinstanzlichen Behörde eingelegt werden, von einer unabhängigen Stelle geprüft werden;
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- (iii) **ANLEITUNG DER GEMEINDEN HINSICHTLICH DER REGISTRIERUNG VON STAATENLOSEN** und von Personen mit unbekannter bzw. ungeklärter Staatsangehörigkeit; dabei sollten die Definition eines/einer „Staatenlosen“ aus dem Übereinkommen von 1954 und die im *UNHCR Handbuch über den Schutz staatenloser Personen*<sup>13</sup> enthaltenen Kommentare zur Auslegung und Umsetzung des Übereinkommens berücksichtigt werden;
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- (iv) **VERBESSERUNG DER SAMMLUNG STATISTISCHER DATEN** über das Phänomen der Staatenlosigkeit in Österreich;
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- (v) Um die **FRÜHZEITIGE UND KORREKTE IDENTIFIZIERUNG STAATENLOSER** zu gewährleisten **UND LÖSUNGEN FÜR SITUATIONEN** zu finden, in denen der Staat der behaupteten Staatsangehörigkeit die Zusammenarbeit bei der Rückführung verweigert, sollte so schnell wie möglich ein Verfahren zur Feststellung des Staatenloseneigenschaft eingeleitet werden, wenn der/die Betroffene behauptet, staatenlos zu sein, oder wenn sich dieser Umstand im Zuge eines anderen Verfahrens, zum Beispiel eines Asylverfahrens oder beim Vollzug aufenthaltsbeendender Maßnahmen bzw. einem entsprechenden Versuch, oder als Ergebnis von Haft oder bei der Anmeldung bei der Meldebehörde herausstellt. In diesen Fällen sollten sie entweder aus oder nach diesem Verfahren – je nach Art des Verfahrens – in das Verfahren zur Feststellung der Staatenloseneigenschaft weiterverwiesen werden;
- 
- (vi) **AUFNAHME EINES NEUEN AUFENTHALTSTITELS FÜR STAATENLOSE** in das österreichische Asylgesetz;
- 
- (vii) **EINFÜHRUNG EINER VERLÄNGERBAREN AUFENTHALTSGENEHMIGUNG** mit einer Gültigkeitsdauer von mindestens zwei Jahren für jede Person, die als staatenlos anerkannt wird, sofern nicht feststeht, dass der/die Staatenlose ein Aufenthaltsrecht in einem anderen Staat genießt und unter uneingeschränkter Achtung seiner/ihrer Menschenrechte dorthin zurückkehren und dort leben kann;

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<sup>12</sup> UNHCR, *Handbuch über den Schutz staatenloser Personen* (siehe Fußnote 9).

<sup>13</sup> Ebd.

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(viii) **SCHAFFUNG EINER RECHTSGRUNDLAGE FÜR DEN AUTOMATISCHEN ERWERB DER ÖSTERREICHISCHEN STAATSBÜRGERSCHAFT BEI GEBURT FÜR KINDER, DIE IM ÖSTERREICHISCHEN STAATSGEBIET ZUR WELT KOMMEN UND ANDERNFALLS STAATENLOS WÄREN;**

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(ix) **ERLEICHTERUNG DER EINBÜRGERUNG VON STAATENLOSEN** und Umsetzung des Artikels 32 des Übereinkommens von 1954. Zumindest sollte die für den Antrag auf Einbürgerung erforderliche Anzahl von Jahren des rechtmäßigen Aufenthalts auf sechs herabgesetzt werden und bestehende Hemmnisse für die Einbürgerung von Staatenlosen, wie etwa des Nachweises des hinreichend gesicherten Lebensunterhalts und der Dokumentationserfordernisse, überprüft sowie gewährleistet werden, dass diese kein Hindernis für Staatenlose, die die Einbürgerung beantragen, darstellen. Hinsichtlich der Dokumentationserfordernisse sollten Staatenlose Flüchtlingen, die die österreichische Staatsbürgerschaft beantragen, gleichgestellt sein.

Eine vollständige Liste der UNHCR-Empfehlungen findet sich am Ende der in englischer Sprache erstellten Langfassung des Berichts.