



# Mapping **STATELESSNESS** in Lithuania



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# List of Abbreviations

- CAT** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CEDAW** Convention on the Elimination of All Forms of Discrimination Against Women
- CERD** Committee on the Elimination of Racial Discrimination
- CESCR** Committee on Economic, Social and Cultural Rights
- CRC** Convention on the Rights of the Child
- ECHR** European Convention on Human Rights
- ECN** European Convention on Nationality
- EU** European Union
- EUR** Euro
- FRC** Foreigners' Registration Centre
- ICCPR** International Covenant on Civil and Political Rights
- ICERD** International Convention on the Elimination of All Forms of Racial Discrimination
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- LTL** Lithuanian Litas
- NGO** Non-governmental organization
- OPT** Occupied Palestinian Territories
- RRNR** Regional Representation for Northern Europe
- RSFSR** Russian Soviet Federative Socialist Republic
- SBGS** State Border Guard Service
- SSR** Soviet Socialist Republic
- UK** United Kingdom
- UN** United Nations
- UNHCR** United Nations High Commissioner for Refugees
- USSR** Union of Soviet Socialist Republics

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# 1. Introduction

In November 2014, UNHCR launched a Global Campaign to End Statelessness in 10 Years. The strategy for the Campaign is set out in a Global Action Plan, which contains ten actions that need to be taken to end statelessness. States are encouraged to adopt National Action Plans that include those actions necessary to end statelessness in their own national contexts. In preparation for the Campaign, the UNHCR Regional Representation for Northern Europe (UNHCR RRNE) has, over the past three years, conducted statelessness mappings in each of the eight countries in the Northern Europe region. The mapping in Lithuania has been conducted by an independent consultant, Ms. Gintarė Eidimaitė, working under the supervision of the UNHCR Liaison Office in Lithuania and UNHCR RRNE. The methodology has comprised desk research, consultations with governmental and non-governmental stakeholders, as well as substantive interviews with 19 stateless persons residing in Lithuania. Draft versions of the mapping have also undergone an “expert vetting” by Prof.dr. Lyra Jakuleviciene, and been shared for comments with the Ministry of the Interior, the Office of the President of the Republic of Lithuania, and with the Migration Department at the Ministry of the Interior. UNHCR RRNE is very grateful for all the cooperation extended and for the valuable input, feedback and comments received throughout these consultation processes.

The information gathered through the mappings of statelessness in the Northern Europe countries, consolidated in reports like the current one, is aimed at raising awareness and providing a better understanding among the stakeholders of the situation of stateless persons in the countries concerned, and the extent to which the international standards in this area are implemented in law and practice. UNHCR thus hopes that the findings and recommendations contained in the reports will contribute to the ongoing dialogue between UNHCR, the Governments concerned, civil society, and other relevant actors on what steps may need to be taken at national level in order to bring the respective countries’ national legal frameworks, practice, and institutional capacities fully in line with the international standards in the area of prevention and reduction of statelessness and the protection of stateless persons. UNHCR, moreover, hopes that the reports can serve as a starting point for the development of National Action Plans to end statelessness in each of the countries.

The mapping of statelessness in Lithuania provides an overview and analysis of the numbers and basic demographic profiles of the persons who are stateless in Lithuania, and examines existing legislation and procedures governing the recognition of their status and their enjoyment of rights. The mapping highlights positive aspects of addressing statelessness, as well as current gaps and challenges, and suggests possible ways of improving the position of stateless persons in Lithuania. As the mapping was initiated in 2012, the statistics used for the analysis are generally derived from 2011 or earlier, though some of the data is more recent. Similarly, as the research was undertaken during the period when Lithuania adopted the Euro as its official currency, references are made to both the Lithuanian Litas and the Euro depending on the time the information was gathered. Where Lithuanian Litas is referred to, the Euro equivalent at the time of writing is also included.

The demographic section of this report consists mainly of quantitative analysis with some qualitative elements. The quantitative analysis includes a statistical overview and analysis as well as a review of the registration methods and practices. The identification methodology, i.e. how statelessness is determined and how stateless persons are identified in Lithuania is also looked into.



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

## 1.1 Executive summary

Lithuania is party to both the 1954 Convention and the 1961 Convention, as well as to the main international human rights instruments containing provisions of relevance to the prevention and reduction of statelessness, and the protection of stateless persons.

While questions of citizenship and nationality maintain national prominence in Lithuania, statelessness is generally not perceived as an issue either by national authorities or by the public. International organizations and NGOs working in the area of human rights, migration and refugee issues report that they have rarely or never come across statelessness.

At the same time, Lithuania should be applauded for preventing a potentially significant statelessness problem after the dissolution of the Soviet Union, through the “zero option”, and through its continued implementation of a status regularization procedure, under which certain categories of stateless persons can have their citizenship restored, or acquire citizenship through a simplified procedure.

Quantitative and qualitative statistics on the stateless population in Lithuania could be improved. While the Residents’ Register and Migration Department database contain data on some stateless persons, others who could be stateless, such as persons with “unresolved” legal status and “unreturnable” persons, are not included in the statistics.

One reason for this gap could be attributed to the fact that Lithuania does not have a dedicated statelessness determination procedure, in which persons – including those who have arrived to Lithuania in a migratory context – could have their potential status as stateless determined. Consequently, there exists no special status for stateless persons, and those who would qualify as stateless pursuant to Article 1 of the 1954 Convention are not – on the basis of being stateless – entitled to the corresponding set of rights. Nonetheless, nationality or statelessness is assessed to a certain degree in asylum and removal procedures, as part of the establishment of the identity of the person concerned. If a stateless person is issued a residence permit on other grounds (than their status as stateless) in Lithuania, they are largely guaranteed the rights they would be entitled to under the 1954 Convention. There is, however, a need to amend some law and policy to ensure full compliance in the areas of access to social welfare, issuance of identity documents, access to legal aid and ensuring all stateless children access to primary education.

Participatory interviews carried out with a number of stateless persons in Lithuania reveal some of the challenges they experience in trying to find a solution to their situation. The majority of persons interviewed expressed a desire to become Lithuanian citizens, but said they were unable to afford the fees related to the procedure. Naturalization of stateless persons who are not of “Lithuanian origin” is not facilitated.

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

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

Lithuanian law has quite strong safeguards against statelessness with regard to persons born abroad to stateless permanent residents of Lithuania, foundlings, and in relation to loss, renunciation, and deprivation of Lithuanian nationality.

However, the legislation does not fully incorporate the requirements in Article 1 of the 1961 Convention, on the granting of nationality to children born on the territory who would otherwise be stateless. Available data shows that there are a number of children who have been identified as stateless, some of whom were born in Lithuania.

## 1.2 Statelessness across the globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least ten million stateless persons worldwide. The following sections look at the definition of a “stateless person,” the causes of statelessness, and the common consequences of being stateless.

### 1.2.1 Defining “a stateless person”

The definition of a “stateless person” is set forth in Article 1(1) of the 1954 Convention, which provides that a “stateless person” is “a person who is not considered as a national by any State under the operation of its law.” The International Law Commission has concluded that the Article 1(1) definition of a “stateless person” is part of customary international law.<sup>3</sup> The present report focuses on persons coming under this definition.<sup>4</sup>

The term “national” within the meaning of Article 1(1) refers to a formal bond between a person and a state, but it need not be an “effective” or “genuine” link.<sup>5</sup> The term “law” within the meaning of Article 1(1) “encompass[es] not just legislation, but also ministerial decrees, regulations, orders, judicial case law...and, where appropriate, customary practice.”<sup>6</sup> Establishing whether an individual is considered as a national of a state requires an analysis of both the text of that state’s laws, as well as their application to an individual’s case.<sup>7</sup> The letter of the law, as well as the practice, must be examined, as some states may not precisely adhere to the letter of the law or might even “[go] so far as to ignore its substance.”<sup>8</sup>

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<sup>3</sup> See the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, p. 49 (stating that the Article 1 definition can “no doubt be considered as having acquired a customary nature”), available at: <http://www.refworld.org/docid/525e7929d.html>

<sup>4</sup> The UNHCR *Handbook on Protection of Stateless Persons* explains that “persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as “de jure” stateless persons,” UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 7, (“*Handbook on Protection of Stateless Persons*”), available at: <http://www.refworld.org/docid/53b676aa4.html> Individuals who have a nationality but are outside the country of their nationality and are denied diplomatic and consular protection accorded to other nationals by their state of nationality have been referred to as “de facto” stateless. See UN High Commissioner for Refugees (UNHCR), *Expert Meeting – The Concept of Stateless Persons under International Law (“Prato Conclusions”)*, May 2010, pp. 5-8, available at: <http://www.refworld.org/docid/4ca1ae002.html>. The term “de jure” is not found in any international treaty and is not used in this report, yet it must be emphasized that the present report does not include “de facto” stateless persons.

<sup>5</sup> UNHCR *Handbook on Protection of Stateless Persons*, para. 54 and fn. 38.

<sup>6</sup> *Ibid*, para. 22.

<sup>7</sup> *Ibid*, para. 23, and fn. 12 (citing Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws).

<sup>8</sup> *Ibid*, para. 24.

A person's nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.<sup>9</sup> This means that, for the determination of whether a person is stateless, it is not relevant that the person is in the process of naturalizing or has the option to acquire the nationality of a given state. Accordingly, if, at the time of the determination, the person is in the process of losing, being deprived of, or renouncing a nationality, the person is still a national.<sup>10</sup> Furthermore, the 1954 Convention does not permit states to exclude from protection persons who have voluntarily renounced their nationality.<sup>11</sup>

## 1.2.2 Causes of statelessness

Statelessness can be caused by numerous factors. Some of these factors are of a legal technical nature, where statelessness is caused by gaps in nationality laws or conflicts of nationality laws. States determine their own nationality laws, within certain limited restrictions imposed by international human rights law. The two principal legal frameworks governing states' nationality rules are *jus sanguinis* (citizenship by descent) and *jus soli* (citizenship by birth in the territory).

Conflicts in these laws are one of several types of conflict of law situations that can render a child stateless. For example, a child born in the territory of a *jus sanguinis* state to parents with nationality of a *jus soli* state would encounter problems obtaining any nationality if the national legislation of the two states relevant here do not contain provisions that would allow such a child to obtain citizenship.

Statelessness can also occur later in life. Some legal systems provide for mechanisms of automatic loss of nationality, for example after a long absence from the territory. Some states require that a person renounce his or her nationality before acquiring the nationality of that State. Withdrawal of nationality can also lead to statelessness if there is no adequate safeguard in place to prevent statelessness.

Another major cause of statelessness relates to the dissolution and separation of States, disputes about borders, transfer of territory between States, and the creation of new states. In the period of decolonization, groups of persons may have been left out of the initial body of citizens under the nationality legislation of the newly independent state. In Europe, many people were left stateless after the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia.

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

Discrimination on the ground of gender can also be a cause of statelessness. In some nationality laws, women are not able to pass their nationality onto their children. Moreover, women may lose their nationality upon marriage or upon dissolution of the marriage. The impossibility for women to transmit their nationality to their children is especially problematic in cases where children are born out of wedlock or where the father is unknown, has passed away, has left, is stateless or is a foreigner who is unable to transmit his own nationality or who is unwilling to take the necessary administrative steps to do so. 27 States still discriminate against women in their laws with regard to transmission of nationality to their children, the majority of which can

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<sup>9</sup> UNHCR *Handbook on Protection of Stateless Persons*, para. 50.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, para. 51 and fn. 34 (distinguishing, but not discussing, voluntary renunciation from failure to comply with formalities).

be found in Africa, Asia and in the Middle East.<sup>12</sup> Further, laws that discriminate against children born out of wedlock, for example by making it more difficult for them to acquire their father's nationality, can also contribute to statelessness.

### 1.2.3 Consequences of statelessness

Most stateless persons encounter many difficulties in every aspect of daily life. Often, stateless persons do not enjoy basic human rights protection. Even though the enjoyment of fundamental human rights is not formally dependent on citizenship status, many States extend human rights protection to their nationals only.

Stateless parents may experience difficulties obtaining a birth certificate for their children. Generally, stateless persons have problems obtaining personal identification documents. Without such documents, they have problems enjoying their basic rights.

Specifically, stateless persons may face obstacles accessing education or health care services, entering the labor market, traveling abroad, or owning land or other property. Stateless persons may not be able to open a bank account, inherit wealth, or get legally married. Being socially and economically excluded, stateless persons are vulnerable to abuse and destitution, and many stateless populations belong to the most marginalized and vulnerable groups worldwide.

Also, stateless persons may be detained for prolonged or repeated periods because they have no identity documents or because they are considered to be illegal aliens, yet there is no country to which they can be returned.

## 1.3 The international and regional legal framework

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

The 1954 Convention guarantees to persons who are stateless the enjoyment of a minimum set of rights, while the 1961 Convention provides a set of safeguards for states to include in their nationality laws to ensure that statelessness be avoided. The 1954 Convention entered into force in 1960 and has 86 State Parties.<sup>13</sup> The 1961 Convention entered into force in 1975 and has 65 State Parties at the time of publication.<sup>14</sup>

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons*, which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary, and others working on statelessness. The *Handbook* addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level. UNHCR's *Guidelines on Statelessness No. 4*<sup>15</sup> address the prevention of statelessness at birth under the 1961 Convention.

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<sup>12</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>.

<sup>13</sup> UN Treaty Collection database, available at: <https://goo.gl/5w3hiK>.

<sup>14</sup> UN Treaty Collection database, available at: <https://goo.gl/FnjkoP>.

<sup>15</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* ("UNHCR Guidelines on Statelessness No. 4"), 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>.

Developed on the basis of consultations with international experts and a broad range of stakeholders, the Handbook and the Guidelines will be used in the present report to elaborate upon the obligations under the Conventions.

Other international human rights instruments contain provisions relevant to issues relating to nationality and statelessness. Instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of Racial Discrimination (ICERD) contain provisions on the right to a nationality, on equal treatment of men and women, and on the prohibition of discrimination.

In addition to these instruments, the 1951 Convention Relating to the Status of Refugees expressly applies to stateless persons who otherwise meet the definition of a refugee, as does the 1967 Protocol by implication.<sup>16</sup> That is to say that, although not all stateless persons are refugees, a stateless person can be a refugee and, if so, the protection afforded refugees by the 1951 Convention and the 1967 Protocol apply to such a stateless person.

At the European regional level, the Council of Europe has adopted two instruments of particular relevance to the question of statelessness. The European Convention on Nationality entered into force in 2000 and currently has 20 State Parties.<sup>17</sup> In its Article 4, the European Convention on Nationality states that the rules on nationality of each State Party shall be based on, among others, the principle that statelessness shall be avoided. While broader in scope, covering a range of questions relating to the acquisition and loss of nationality, this instrument contains safeguards similar to those found in the 1961 Convention. Article 6(2) of the European Convention on Nationality, provides a safeguard against statelessness at birth similar, though not identical, to that of the 1961 Convention. In addition, Article 7 of the European Convention on Nationality, on the loss of nationality *ex lege* or at the initiative of a State Party, contains a safeguard against statelessness, as well.

The European Convention on the Avoidance of Statelessness in Relation to the Succession of States entered into force in 2009 and currently has six State Parties.<sup>18</sup> It establishes rules for the acquisition of nationality with a view to preventing statelessness in the context of state succession. In addition to these two specific instruments, the European Convention on Human Rights (ECHR) is also increasingly relevant to the prevention of statelessness and the protection of stateless persons. Although the ECHR does not explicitly protect the right to a nationality, the European Court of Human Rights has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.<sup>19</sup> Furthermore, the ECHR sets out rights to be enjoyed by all persons within a state's jurisdiction, whether they are the state's own nationals, foreign nationals or stateless persons.

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<sup>16</sup> See Art 1(A)(2) of the 1951 Convention Relating to the Status of Refugees for the definition of the term "refugee".

<sup>17</sup> Number provided by the Council of Europe's Treaty Office as of March 2015, available at: <http://goo.gl/k7bvWl>.

<sup>18</sup> Number provided by the Council of Europe's Treaty Office as of March 2015, available at: <http://goo.gl/C5CWl5>.

<sup>19</sup> See *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <http://www.refworld.org/docid/509ea0852.html>.

# 2. The face of statelessness in Lithuania

## 2.1 Introduction

While questions of citizenship and nationality maintain national prominence in Lithuania,<sup>20</sup> statelessness is generally not perceived as an issue either by national authorities or by the public. There has heretofore been no research attempting to define the socio-demographic profile of the stateless population or their protection needs. There are no studies regarding the causes and demographics of statelessness in Lithuania, nor have there been prior assessments of the existing national legal and administrative framework to reduce and prevent statelessness. The reasons why some people did not or could not acquire the citizenship of the Lithuanian Soviet Socialist Republic (SSR) and, later, of the Republic of Lithuania, have not been researched before. The present report discusses examples that illustrate some of those reasons.<sup>21</sup> There are no specialized organizations in Lithuania that work specifically on statelessness. International organizations and NGOs working in the area of human rights, migration and refugee issues report that they have rarely or never come across statelessness.<sup>22</sup> Most NGOs work on the basis of EU or government-funded projects, which currently do not prioritize stateless persons as a target group. Specific activities to reduce and prevent statelessness or to promote the rights of stateless persons in Lithuania do not appear in their plans, apparently due to lack of expertise and funding.

Moreover, it is a challenge to get in contact with stateless persons in Lithuania. Stateless persons comprise a very heterogeneous group in Lithuania. Geographically they are widely dispersed and find themselves in different social situations. Some, such as stateless persons living in the Roma settlement in Vilnius or irregular migrants detained at the Foreigners' Registration Centre (FRC), are easy to find because they are geographically concentrated and come into contact with authorities and NGOs. Most, however, have their status as stateless persons rendered invisible by other social factors. Stateless persons in Lithuania, be they undocumented residents, incarcerated persons, or those with permanent residence permits who lead relatively comfortable lives, are thus difficult to establish contact with.

Finally, mapping the exact size of the stateless population in Lithuania is also difficult because the Statistics Department of Lithuania and the Migration Department under the Ministry of the Interior have reported different numbers of stateless persons. Furthermore, they ostensibly include only those stateless persons who hold residence permits. Stateless irregular migrants, asylum-seekers and persons with an "unresolved"

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<sup>20</sup> The most pressing and politicized question in this area has been the issue of dual citizenship, which is not generally allowed under the country's Constitutional provisions but has been heavily lobbied for by the Lithuanian diaspora since the restoration of independence. The issue has been revived in light of large numbers of emigrating people in recent years. For more information, see Kūris, E. "Country Report: Lithuania", *EUDO Citizenship Observatory Country Reports* (2010), p. 3-4, 31-32, 38-45.

<sup>21</sup> See section 2.2.2 on the origin of stateless persons and causes of statelessness.

<sup>22</sup> In August and September 2012, the researcher met in person or communicated by e-mail with representatives from UNHCR, the International Organization for Migration (IOM), Lithuanian Centre for Human Rights (LCHR), Lithuanian Red Cross (LRC), Human Rights Monitoring Institute (HRMI), Roma Community Centre (RCC), Caritas and Tolerant Youth Association (TYA). Only the HRMI, LRC and the RCC had worked with several stateless persons as part of their general activities.

legal status are thus not included in the official number of stateless persons in Lithuania.<sup>23</sup> The official annual reports of respectively the Statistics Department and the Migration Department as well as additional information provided by the representatives of the Ministry of the Interior to the author of the study are the key sources of data referred to in the present report. Additional inquiries into the methodology behind the figures were also made by the author in all meetings with national authorities held in the course of the study.

## 2.1.1 Historical background

On 16 February 1918, Lithuania declared independence. It adopted the Provisional Law on Citizenship of Lithuania on 9 January 1919. Article 1 of the Provisional Law stated that those considered to be citizens of Lithuania were (1) persons whose parents and grandparents had resided in Lithuania for some time and who had either always lived in Lithuania or had returned to live there; (2) persons who had resided in Lithuania for at least ten years before 1914 and either owned property or had a permanent job; (3) children of a citizen of Lithuania; (4) wives and widows of a citizen of Lithuania; (5) children of an unmarried Lithuanian citizen if they had not been adopted by a foreign national; (6) aliens who were newly accepted as citizens of Lithuania through the process of naturalization. This law was valid for more than two decades before a Law on Citizenship was adopted on 8 August 1939.

The Department of Citizens' Protection summarized the practice of the application of the Provisional Law to the Minister of Interior in 1929 as follows: "as conferring of citizenship upon a foreigner is in part a question of personal discretion, apart from the fulfilling of the conditions outlined in the law, the person concerned should know the Lithuanian language, be loyal and should not be Polish or German."<sup>24</sup> There is no information available on the issue of statelessness stemming from that time, yet historical research suggests that German and Polish minorities faced significant obstacles in acquiring Lithuanian citizenship through naturalization.<sup>25</sup> Likewise, no information is available on the citizenship of the Roma population from 1919 to 1940, but some members of this community have reported that many Roma habitual residents of Lithuania were not even registered as such until the Soviet authorities forcibly settled them in 1956.<sup>26</sup>

During these two decades of statehood, the body of citizens of Lithuania was defined. The 1939 Law on Citizenship confirmed the principles that had emerged in the country's citizenship policy, laid out in the provisions of its 1922, 1928 and 1938 Constitutions. The principle of *jus sanguinis* applied as a general rule, and *jus soli* only applied to foundlings. A prohibition of dual citizenship was also introduced into the national law. Article 11(5) of the 1939 Law on Citizenship mentioned the concept of statelessness, albeit only in passing. This article stated that in order to be eligible for naturalization, the applicant had to be "stateless or a citizen of a state, under the operation of whose laws, he would automatically lose its citizenship by becoming a citizen of Lithuania", but no definition of a "stateless person" was provided.

In 1940, the Soviet Union annexed the Republic of Lithuania, which soon was renamed and restructured into the Lithuanian SSR. The new Constitution, adopted on 25 August 1940, declared every citizen of the

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<sup>23</sup> These groups are defined and explained further in the study (section 2.2.2.).

<sup>24</sup> Sinkevičius, V., *Lietuvos Respublikos pilietybė 1918-2001 metais / Citizenship of the Republic of Lithuania 1918-2001*. Vilnius: Teisinės informacijos centras, 2002, p. 50.

<sup>25</sup> Sinkevičius, V., *Lietuvos Respublikos pilietybė 1918-2001 metais / Citizenship of the Republic of Lithuania 1918-2001*. Vilnius: Teisinės informacijos centras, 2002, p. 50; recited in: Kūris, E. "Country Report: Lithuania", *EUDO Citizenship Observatory Country Reports*, 2010, p. 1, 5.

<sup>26</sup> Toleikis, V. *Nazi occupation 1941-1944. The Holocaust and other Nazi crimes. Persecution of non-Jews. Lithuanian Gypsies during the years of Nazi occupation*, 2002, p. 3; Simonuškytė, A., *The Roma of Sėdėžius*, 2003, 864. The issue has been emphasized by all Roma participants in this study and Kazimeras, a Roma rights activist during an interview on 29 August 2012. The difficulty in documenting non-sedentary Roma populations was acknowledged by Vytautas Toleikis, historian specializing in Jewish and Roma populations in Lithuania, interviewed by phone on 6 September 2012.

Lithuanian SSR to be also a citizen of the USSR.<sup>27</sup> Although statelessness as a concept was described in the Law on the Citizenship of the USSR, passed on 19 August 1938,<sup>28</sup> all registered residents of Lithuania were proclaimed citizens of the Lithuanian SSR and the USSR.<sup>29</sup> Not until 1981, however, was naturalization of aliens and stateless persons mentioned in legislation.<sup>30</sup>

The policy of openness and restructuring promoted in the USSR in the 1980s resulted in a renewed impetus for Lithuania to regain independence. A national movement known as *Sąjūdis* emerged at the forefront of these efforts. It called for national sovereignty, which encompassed sovereignty over the status of the citizenship of the Lithuanian SSR.<sup>31</sup> On 3 November 1989, four months before the restoration of independence, the Supreme Council of the Lithuanian SSR passed the Law on Citizenship of the Lithuanian SSR. It separated the citizenship of the Lithuanian SSR from that of the USSR, thereby redefining the body of citizens of the country.

According to the new law of 1989, citizens of the Lithuanian SSR were;

1. former citizens of the Republic of Lithuania, their children and grandchildren, as well as other permanent residents on the territory of the Lithuanian SSR prior to 15 June 1940, their children and grandchildren permanently residing on the territory of the Lithuanian SSR; or
2. persons who have a permanent place of residence in the Lithuanian SSR, provided they or at least one of their parents or grandparents were born on its territory, and provided that they are not citizens of another State; or
3. other permanent residents on the territory of the Republic who, on the day the Citizenship law entered into force, had a permanent place of employment or other legal source of support. This group could decide freely on their citizenship for two years from the entry of the force of the law; or
4. persons who had acquired citizenship of the Lithuanian SSR through naturalization and by way of exception.

Persons in categories one through three above were considered citizens but had to sign a pledge to the Republic promising to observe the Constitution and laws of the Lithuanian SSR and to respect the sovereignty and territorial integrity of Lithuania. In addition, persons in the third category had to “freely choose their citizenship”<sup>32</sup> within two years of entry into force of the 1989 law. Those who were eighteen years of age or older and who had not applied for the issuance of a Lithuanian SSR passport within two years of the date of entry into force of the law would be considered as having not accepted the citizenship of the Lithuanian SSR.<sup>33</sup> This provision is known in Lithuania as the “zero option,” by which all persons lawfully and permanently residing in Lithuania had the right to obtain its citizenship, “irrespective of the grounds on which their residence rested.”<sup>34</sup>

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<sup>27</sup> Kūris, E. “Country Report: Lithuania”, *EUDO Citizenship Observatory Country Reports* (2010), p. 11.

<sup>28</sup> Article 8 prescribed that “persons residing within the territory of the USSR, who under the provisions of the present law are not citizens of the USSR and who possess no proof of foreign citizenship, shall be considered as stateless persons.”

<sup>29</sup> Sinkevičius, V., *Lietuvos Respublikos pilietybė 1918–2001 metais / Citizenship of the Republic of Lithuania 1918–2001*. Vilnius: Teisinės informacijos centras, 2002, p. 84.

<sup>30</sup> *Ibid*, p. 96.

<sup>31</sup> *Ibid*, p. 99.

<sup>32</sup> The 3 November 1989 Supreme Council of the Lithuanian Soviet Socialist Republic Law on Citizenship, Article 1(3).

<sup>33</sup> *Ibid*, Article 2. Notably, every resident of the USSR had his or her exact place of residence recorded in their passport. For the purposes of the application of the law, this record was proof of the person being a permanent resident in Lithuania. As such, the length of their residence or the grounds for it did not matter in terms of being able to choose citizenship.

<sup>34</sup> Kūris, E. “Country Report: Lithuania”, *EUDO Citizenship Observatory Country Reports* (2010), p. 17.



The Lithuanian Constitutional Court elaborated on the reasoning behind the law in a ruling on 13 April 1994:

Persons described under Article 1.1 and 1.2 became citizens of the Republic of Lithuania *ex officio* (by right) (...) Their choice over their citizenship in essence consisted of their right to renounce Lithuanian citizenship. In this respect, the situation of the other groups was very different. (...) Persons mentioned in Article 1.3 were different (...) because they had not previously had strong and continuous legal ties with Lithuania. For all intents and purposes, they were migrants who had arrived from other places beyond the boundaries of Lithuania. They usually were citizens of the Soviet Union. Upon the restoration of an independent State of Lithuania, they became aliens here.

In other countries, citizenship for such persons is conferred only through the process of naturalization. In Lithuania, they could acquire citizenship in a much simplified manner. (...) This could be interpreted as acquisition of citizenship by option because, upon the restoration of the State and the end of occupation, a part of the residents who previously did not possess tight legal bonds with the previous state of Lithuania were given the option to choose their citizenship.<sup>35</sup>

On 11 March 1990, Lithuania declared independence. The aforementioned law was renamed, but its provisions continued to regulate the institution of citizenship until 5 December 1991, when the Law on Citizenship of the Republic of Lithuania was adopted.

Pursuant to the new law the following persons were considered citizens; (1) persons who were citizens of the Republic of Lithuania until 15 June 1940 and their children and grandchildren, if they have not acquired citizenship of another State; (2) persons who had lived in the current territory of Lithuania from 9 January 1919 to 15 June 1940 and their children and grandchildren, if at the time of the entry into force of the law they were permanent residents in Lithuania and were not citizens of another State; (3) persons who had acquired citizenship through “zero option” before 4 November 1991; (4) persons who restored or exercised their right to acquire Lithuanian citizenship or (5) acquired Lithuanian citizenship under the new law. The formulation of the new law intended to firmly establish the principle of continuity between the Lithuanian State prior to and after the occupation.<sup>36</sup> It also placed a greater emphasis on the principle of *jus sanguinis*, as those born in Lithuania but with no links to pre-occupation Lithuania were no longer considered citizens *ex lege*. According to the Government of Lithuania, almost all persons belonging to national minorities (“nearly 99 per cent”), chose to opt for Lithuanian citizenship within the “zero option” scheme.<sup>37</sup>

Under the Treaty on the Foundations of Inter-State Relations between the Republic of Lithuania and the Russian Soviet Federal Socialist Republic (RSFSR) of 29 July 1991, persons who had moved to Lithuania between 3 November 1989 and 29 July 1991 could also opt for Lithuanian citizenship until 1 July 1993.

The 1991 Law on Citizenship provided for certain conditions which had to be met before a person could be naturalized.<sup>38</sup> Even if the applicant met the required conditions, the granting of citizenship was a discretionary process “taking into consideration the interests of the Republic of Lithuania.”<sup>39</sup> The conditions

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<sup>35</sup> Lithuanian Constitutional Court, 13 April 1994, Ruling “On the compliance of the Resolution of the Seimas of the Republic of Lithuania ‘On Amending Item 5 of the Resolution of the Supreme Council of the Republic of Lithuania ‘On the Procedure for Implementing the Republic of Lithuania’s Law on Citizenship’” of 22 December 1993 with the Constitution of the Republic of Lithuania.” Available at: <http://www.lrkt.lt/en/court-acts/search/170/ta975/content>

<sup>36</sup> Sinkevičius, V., *Lietuvos Respublikos pilietybė 1918–2001 metais / Citizenship of the Republic of Lithuania 1918–2001*. Vilnius: Teisinės informacijos centras, 2002, p. 134.

<sup>37</sup> UNGA, Human Rights Council, Working Group on the Universal Periodic Review Twelfth session, Geneva, 3–14 October 2011, *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 -Lithuania*, A/HRC/WG.6/12/LTU/1, 19 July 2011, paragraph 26, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/LTSession12.aspx>.

<sup>38</sup> Conditions will be discussed in more detail in section 4.3.5.2 on naturalization below.

<sup>39</sup> Article 12 of the 1991 Law on Citizenship.

for naturalization were rather strict and were gradually relaxed under subsequent legislative initiatives. It is possible that some individuals who had not been able to “opt” for Lithuanian citizenship were also deterred from applying for citizenship through naturalization if, for example, they did not speak Lithuanian or had been convicted of a crime which incurred a prison term. Nevertheless, as naturalization rates have only become publicly available since 2001, it is impossible to analyze the trends and the impact of the 1991 Law on Citizenship.

## 2.1.2 National legal framework

Lithuania acceded to the 1954 Convention in February 2000 without any reservations, and to the 1961 Convention in July 2013, with a Declaration stating “... *In accordance with paragraph 3 of Article 8 of the Convention, ... the Republic of Lithuania declares that the Republic of Lithuania retains the right to deprive a person of his nationality on the grounds of the deprivation of nationality of the Republic of Lithuania, as provided for in paragraphs 4 and 6 of Article 24 of the Law of the Republic of Lithuania on Citizenship.*”

Lithuania should be commended for progress in working towards the prevention and reduction of statelessness, though some gaps remain in national law and practice with regard to meeting the obligations of the two Conventions. Recently, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee expressed concern regarding the fact that some Roma persons do not have identity documents and are stateless although born in the country.<sup>40</sup> Lithuania has not directly responded to these concerns, or other concerns expressed by the human rights treaty bodies pertaining to stateless persons on its territory, the low rates of naturalization, and lack of attention to the issue of statelessness.<sup>41</sup> Instead, the Government has emphasized the fact that nearly 99 per cent of all residents belonging to national minorities accepted Lithuanian citizenship through the “zero option” procedure following the restoration of independence.<sup>42</sup>

Article 12 of the 1992 Constitution of the Republic of Lithuania establishes that “Citizenship of the Republic of Lithuania shall be acquired by birth and other grounds established by law”. It also states that, with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another State at the same time.

The 2010 Law on Citizenship governs acquisition and loss of nationality. The most recent amendment to the Law was adopted on 9 May 2013, occurred in connection with Lithuania’s accession to the 1961 Convention.<sup>43</sup>

Under national law, stateless persons are considered aliens<sup>44</sup> and are thus subject to the 2004 Law on the Legal Status of Aliens, as well as other legislative and executive actions. Questions of citizenship fall under the competence of the President of the Republic of Lithuania, as executed by the Citizenship Commission, the Minister of the Interior, the Migration Department at the Ministry of the Interior, and the Vilnius District Administrative Court.

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<sup>40</sup> UNGA, Human Rights Council, Working Group on the Universal Periodic Review Twelfth session, Geneva, 3-14 October 2011, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 – Lithuania*, A/HRC/WG.6/12/LTU/2, 25 July 2011, paragraph 72, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/LTSession12.aspx>.

<sup>41</sup> *Ibid*, paragraphs 77 and 79.

<sup>42</sup> UNGA, Human Rights Council, Working Group on the Universal Periodic Review Twelfth session, Geneva, 3-14 October 2011, *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1-Lithuania*, A/HRC/WG.6/12/LTU/1, 19 July 2011, paragraph 26, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/LTSession12.aspx>.

<sup>43</sup> The Law on Citizenship is discussed in detail in chapter 3 and 4.

<sup>44</sup> Republic of Lithuania Law on the Legal Status of Aliens, 29 April 2004-No. XI-2206, Vilnius (with subsequent amendments) (Law on the Legal Status of Aliens), Article 2(32).

## 2.2 An overview of the stateless population in Lithuania

### 2.2.1 Introduction (specifics on the data used)

This study aims to examine the situation of all stateless persons in Lithuania. Article 1(1) of the 1954 Convention<sup>45</sup> defines a stateless person as a “person who is not considered as a national by any State under the operation of its law”. This definition constitutes customary international law.<sup>46</sup>

Although no data on the stateless population is separately collected in Lithuania, three sources include datasets on the stateless population in Lithuania. Namely, the Population and Housing Census, the Statistics Department Yearbook of Lithuania and Annual Reports produced by the Migration Department. In addition, the latter has also provided the researcher unpublished disaggregated data on the stateless population.

### 2.2.2 The target population

Statelessness arises in a variety of contexts. It occurs in migratory situations, for example among expatriates and/or their children who might lose their nationality without having acquired the nationality of their country of habitual residence. Most stateless persons, however, have never crossed borders and find themselves in their “own country”. Their predicament exists *in situ*, that is in the country of their long-term residence, in many cases the country of their birth. For these individuals, statelessness is often a result of discrimination on the part of authorities in framing and implementing nationality laws.<sup>47</sup>

In Lithuania, the general context of statelessness arises against the backdrop of the dissolution of the Soviet Union. According to the unpublished data provided to the researcher by the Migration Department, there were 4,151 stateless persons holding residence permits in the country in 2012.<sup>48</sup> Although these persons were born in thirty different countries, half of those countries had previously formed part of the USSR. Virtually all (98.9%) were born in the territory of the USSR, of whom a significant number (1,606 or 38.9%) were born in the territory of Lithuania. Although some stateless persons moved to Lithuania after it restored its independence, most had already been living on its territory prior to 3 November 1989.

There appears to be a prevailing perception that these individuals became stateless through their own fault. Authorities assert that, apart from Soviet military personnel, who were not considered “lawful permanent residents”, all residents were entitled to Lithuanian citizenship through the “zero option” but failed to avail themselves of this right. However, historic and legal analyses, as well as the results of the participatory assessments carried out with stateless persons themselves, reveal a reality that is more complex. While some did consciously choose not to opt for Lithuanian citizenship, others were unable to do so for a variety of reasons.

Some persons born in Lithuania were unable to obtain Lithuanian nationality. For example, if a person had temporarily moved to a different Soviet Republic for work, they would have been obliged to change their place of residence. If, as of 3 November 1989, a person’s place of residence was not in the Lithuanian SSR, they would not have been considered citizens of the Lithuanian SSR *ex lege*, even if they had been born

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<sup>45</sup> See the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, p. 49 (stating that the Article 1 definition can “no doubt be considered as having acquired a customary nature”), available at: <http://www.refworld.org/docid/525e7929d.html>.

<sup>46</sup> International Law Commission, *Commentary on the Draft Articles on Diplomatic Protection*, 2006, p. 49.

<sup>47</sup> UNHCR *Handbook on Protection of Stateless Persons*, para. 1.

<sup>48</sup> As of 1 August 2012. Unpublished data provided to the researcher by the Migration Department during the interview with its representatives on 7 August 2012.

in Lithuania or had been living there for most of their lives. Those who were imprisoned at the time did not have access to the “zero option” procedure. Those who were underage at the time and were not “of Lithuanian origin” needed the engagement of at least one of their parents in order to acquire Lithuanian citizenship. However, if the parents failed to initiate an acquisition procedure or if the child did not maintain contact with them, they became stateless. Those who are “of Lithuanian origin”<sup>49</sup> can apply for citizenship through a simplified procedure<sup>50</sup> or have their citizenship “restored” as described elsewhere in this report, but all others, even if they were born in Lithuania, would need to go through a process of naturalization.

Most of those who moved to Lithuania in the early 1990s came from former Soviet Republics. In the context of contemporary migration, the origins of stateless persons may be more varied. Although there are no official statistics or analyses, the Lithuanian migration authorities consider that many of those who reside in the country with temporary residence permits are Latvian “non-citizens”. There are also recent migrants from North Africa and the Middle East, among whom there may be stateless persons who have been granted refugee status and subsidiary protection by Lithuania.

Under the Immigration Law of 30 September, 1991, stateless people are to be considered “aliens.” In 1996, 1998, and 2004, the acquisition of permanent residence permits was facilitated for those aliens who had not obtained one already,<sup>51</sup> but few stateless persons obtained such permits (table 1). In order to apply for citizenship they would have to go through non-automatic modes of acquisition, such as naturalization or restoration of citizenship.

**Table 1:** Number of stateless persons who reported their unlawful stay in Lithuania under the “amnesty” laws of 1996, 1998 and 2004<sup>52</sup>

Year	1996	1998	2004
Number	12	113	23

The stateless population in Lithuania is heterogeneous and dispersed both geographically and across social groups. For the purposes of this study, stateless persons in Lithuania can be categorized in five broad groups, although there may well be stateless persons falling outside of these descriptors:

1. Persons who were born or had resided in the Lithuanian SSR, but did not for whatever reasons obtain Lithuanian citizenship during the “zero option” period from 1989 to 1991, and who never acquired the citizenship of any other State and became stateless, though they remained permanent residents of Lithuania. Other stateless permanent residents of Lithuania include permanent residents who had indeed obtained Lithuanian or another country’s citizenship but became stateless due to renunciation or loss.
2. Persons with “unresolved” legal status who became stateless under the same circumstances. Such persons now are either undocumented or have an expired Soviet passport and/or birth certificate. Their stay in Lithuania is considered unlawful.

<sup>49</sup> A person of Lithuanian origin’ is defined in Article 2(6) the Law on Citizenship of the Lithuanian Republic of 2010 as “a person whose parents or grandparents, or one of his parents or grandparents are or were Lithuanian, and who considers himself Lithuanian and declares so by a written statement.”

<sup>50</sup> Law on Citizenship, Article 2(14) and Article 39.

<sup>51</sup> Temporary Law on issuing permanent residence permits to aliens who arrived to live in Lithuania after the entry into force of the Immigration Law, 1996; Law on the Implementation of the Law on the Legal Status of Aliens of 17 December 1998, Article 3; Law on the Implementation of the Law on the Legal Status of Aliens of 29 April 2004, Article 2. These laws essentially entitled foreigners who settled in Lithuania before 1 July 1993 to apply for a permanent residence permit subject to certain conditions.

<sup>52</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2004*, Vilnius, 2005, p. 79.

These two groups comprise individuals who were either born in Lithuania or have lived in the country for a significant number of years. Lithuania is their “own country” within the meaning of Article 12(4) of the ICCPR.<sup>53</sup> Other stateless persons have arrived to Lithuania in the context of migration after the country’s independence. These include:

3. Stateless lawful migrants who have moved to Lithuania for reasons of family unity, employment, or business opportunities, as well as stateless persons granted refugee status or subsidiary protection;
4. Stateless asylum-seekers; and
5. “Unreturnable” persons who were not granted leave to remain in Lithuania, yet could not return or be returned to any country including, if known, their country of former habitual residence.<sup>54</sup>

In the following sections, a distinction will be made between the groups covered by data and groups which are not covered by data. Only permanent residents described under (1) and stateless migrants described under (3) are reflected in official statistics pertaining to the total number of stateless persons in Lithuania. Reliable statistical data regarding the number of stateless asylum-seekers as mentioned under (4) can be obtained from the Ministry of the Interior’s Migration Department. There is no official data on the number and profile of “unreturnable persons”, as mentioned under (5), in Lithuania. At the time of the field research carried out for this report (August 2012), there was one stateless person detained at the FRC. Another two were accommodated at the FRC without restrictions to their freedom of movement.<sup>55</sup> There are no statistics on the number of persons with “unresolved” legal status in Lithuania. Their number, according to the Migration Department and interviewed staff members of Migration Divisions of Territorial Police Units,<sup>56</sup> is small; however, their situation is the most vulnerable among the target population.

When discussing the Lithuanian rules, this report uses the term “lawful” (*teisėtas*) with regard to entry, stay and residence in Lithuania within the meaning of the Law on the Legal Status of Aliens and its official translation.<sup>57</sup> Importantly, the domestic terms of art shall not be confused with similar or identical terms used in the 1954 and 1961 Conventions, which have their own distinct legal meanings. Similarly, within the discussion of the Lithuanian law, the term “resident” will normally imply that the person has lawful residence, unless it is expressly stated otherwise. The Conventions use several different terms of art with regard to “resident”, which do not always mean the same as the domestic term.

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<sup>53</sup> For further details regarding the interpretation of “own country”, please see UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 20, available at: <http://www.refworld.org/docid/45139c394.html>.

<sup>54</sup> This term was suggested by the authors of the 2011 UNHCR study “*Mapping Statelessness in the UK*” UNHCR/Asylum Aid, Mapping Statelessness in the UK, London, 2011.

<sup>55</sup> Interview with a representative of the Foreigners Registration Centre (hereinafter – the FRC) in Pabrade, 17 August 2012.

<sup>56</sup> Interview with a representative of the FRC, 17 August 2012; Interviews with staff members of the migration agencies in Mažeikiai, 22 August 2012; Vilnius, 27 August 2012; Šalčininkai, 4 September, 2012; Švenčionys, 5 September, 2012; Visaginas, 29 August 2012. These divisions are also referred to as “migration agencies”. This report uses the two terms interchangeably.

<sup>57</sup> Article 10 of the Law on the Legal Status of Aliens states that **entry** into the Republic of Lithuania shall be unlawful if the alien enters the country: in violation of the provisions of the Schengen Borders Code.

Article 23 of the same law defines an alien’s stay in Lithuania unlawful if the person: **stays** in Lithuania after the period of authorised stay, including after the visa-free period expires; after their visa expires or has been annulled; holds a forged travel document or a forged visa; stays in Lithuania without a visa if they are required to have one; stays in Lithuania without a valid travel document; has unlawfully entered the country.

Article 39 of the same law provides that an alien’s **residence** in Lithuania shall be considered unlawful if the person: resides in the country without a residence permit or holding an invalid or withdrawn residence permit; or where a person holds a forged residence permit or travel document.

### 2.2.2.1 GROUPS COVERED BY ADMINISTRATIVE DATA

There are three different datasets used to describe the total number of stateless persons in Lithuania: the Population and Housing Census, the Statistics Department of Lithuania and the Migration Department.

According to the latest Population and Housing Census, carried out from 1 March to 9 May 2011, there were 2,400 stateless persons living in Lithuania<sup>58</sup> – a sharp drop from the 10,500 stateless persons registered in the 2001 Census.<sup>59</sup> This number encompasses the stateless “resident population”, i.e. “persons permanently residing in Lithuania and residents of the Republic of Lithuania residing abroad for a period [shorter] than one year.”<sup>60</sup> “Permanent place of residence” is defined as “the [lawful] or declared place of residence where an individual usually stays every day while having a rest, excluding temporary leaves on holiday, to visit friends, relatives, on business, for health or religious purposes.”<sup>61</sup> The Census also found that 99.8% of Lithuanian residents indicated they have at least one nationality.<sup>62</sup>

Both the 2001 and 2011 Censuses asked respondents to identify their country of birth, their citizenship (*pilietybė*) (“stateless” was included as a separate category), and national identity (*tautybė*).<sup>63</sup> The Census invited residents to fill out an electronic questionnaire and then visited households of those persons who had not filled them out.<sup>64</sup> This could have excluded numerous stateless persons, particularly those who live on the margins of society, such as homeless persons and those with “unresolved” legal status. Furthermore, self-identification of nationality or statelessness may be problematic. For example, some persons may identify themselves as stateless when they are not, other persons may consider that they hold a nationality when they do not, yet other persons may consider that their nationality is effective when it is not, or vice versa.<sup>65</sup>

Apart from the Census data, every year the Statistics Department of Lithuania publishes population statistics disaggregated by citizenship. According to this data, there were reportedly 3,500 stateless persons living in Lithuania in 2011.<sup>66</sup> The Statistics Department uses the national Census as a basis for its estimations, and adjusts it each year to the changes in the population (registered births, deaths and net migration) using the data of the national Residents’ Register. Having adjusted its previous estimates to the results of the 2011 Census, the official data provided by the Statistics Department indicates there were 2,300 stateless persons living in Lithuania in 2012, and the number dropped to 2,000 in 2013.<sup>67</sup>

The Residents’ Register is the main State register<sup>68</sup> which collects, processes, and stores personal data, including citizenship status (as of 1 January 2013 this also includes data related to citizenship acquisition and loss)<sup>69</sup> of citizens, stateless persons (but only those with lawful residence), and foreign nationals who

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<sup>58</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2012*, Vilnius, 2012, p. 70.

<sup>59</sup> *Ibid*, p. 70.

<sup>60</sup> *Ibid*, p. 66.

<sup>61</sup> *Ibid*, p. 39.

<sup>62</sup> *Ibid*, p. 66. The Statistical Yearbook uses the word “citizenships”: “Based on the 2011 Census data, people of 108 citizenships were living in Lithuania. Lithuanian nationals made up 99.3 per cent of the total population. Most of the residents (99.8 per cent) indicated that they had one”.

<sup>63</sup> Lithuania, Statistics Department, *Questionnaire of the 2011 Census*, 2010, p. 5-6; Lithuania, Statistics Department, *Questionnaire of the 2001 Census*, 2000, p. 1.

<sup>64</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2012*, Vilnius, 2012, p. 65.

<sup>65</sup> UNHCR, *Measuring Statelessness through Population Census: Note by the Secretariat of the United Nations High Commissioner for Refugees ECE/CES/AC.6/2008/SP/5*, May 2008, p. 4.

<sup>66</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2011*, Vilnius, 2011, p. 44.

<sup>67</sup> The Official Statistics portal of the Statistics Department: <http://osp.stat.gov.lt> (visited 8 August 2013).

<sup>68</sup> Republic of Lithuania Law on Residents’ Register, 23 January 1992, No I-2237, Vilnius (Last amended on 03 December 2015 – No XII-2116), Article 4 (1).

<sup>69</sup> *Ibid*, Article 9(6).

declare their place of residence in the Republic of Lithuania or register changes in their civil status with institutions of the Republic of Lithuania.<sup>70</sup> Although one might imagine that data about stateless persons who do not hold a residence permit could be included in the Register (e.g., if they register the birth of a child) if it is not supported by documents issued in Lithuania,<sup>71</sup> the Director of the Residents' Register has confirmed that habitual residents without a valid residence permit cannot be captured by the Register.<sup>72</sup>

All stateless persons who have a residence permit in Lithuania must declare their place of residence if they have moved to Lithuania, have changed their address or have left Lithuania for longer than six months.<sup>73</sup> "Place of residence" is defined as "the main place where the person usually factually lives and with which he is most connected."<sup>74</sup> Persons who do not have such a place of residence, for example because they are homeless, are still included in the records by registering the municipality in which they live.<sup>75</sup> Such persons must provide data, supported by documentary evidence, on their personal identification number or date of birth, name(s), surname, previous surname, and citizenship, along with an identification document.<sup>76</sup>

The definition of "statelessness" is not provided by the Statistics Department. "Citizenship" is defined as a particular legal relationship between a person and a State, "which is acquired at birth or by naturalization, irrespective of whether it was granted upon submission of an application, by choice, marriage, or using other tools set by national law".<sup>77</sup> Of the five groups of the stateless population in Lithuania, as described above, the Statistics Department's data on stateless persons includes permanent stateless residents and lawful stateless migrants who are factually living in Lithuania and have declared Lithuania as their place of residence. Although the Law on Declaration of Place of Residence requires the inclusion of persons who do not have a residence permit in the Residents' Register, the obligation to present an identification document as well as other supporting documentary evidence potentially excludes many or all persons with "unresolved" legal status, as well as "unreturnable" persons. Stateless asylum-seekers are not included in the number.<sup>78</sup>

The Migration Department publishes annual statistics of aliens living in Lithuania disaggregated by citizenship. According to the Migration Department, there were 4,453 stateless persons living in Lithuania with a residence permit in 2011.<sup>79</sup> The number dropped slightly to 4,314 persons at the beginning of 2012<sup>80</sup>, to 4,151 persons as of 1 August 2012.<sup>81</sup> According to the latest statistics released by the Migration Department, the stateless population totaled 4,130 persons.<sup>82</sup> This number comprises persons who hold one of the four types of residence permits issued by the Government of Lithuania: permanent residence permit (*Lietuvos Respublikos ilgalaikio gyventojų leidimas gyventi Europos Sąjungoje*); temporary residence permit (*leidimas laikinai gyventi Lietuvos Respublikoje*); permanent residence card for a family member of an EU-citizen (*Europos Sąjungos valstybės narės piliečio šeimos nario leidimo nuolat gyventi Lietuvos Respublikoje kortelė*); and the temporary residence card for a family member of an EU citizen (*Europos Sąjungos valstybės narės piliečio šeimos nario leidimo laikinai gyventi Lietuvos Respublikoje kortelė*). Importantly, therefore, the number includes

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<sup>70</sup> *Ibid.*, Article 5(2).

<sup>71</sup> *Ibid.*, Article 9(2).

<sup>72</sup> Electronic correspondence with Marija Norkevičienė, Director of the Residents' Register, 25 January 2013.

<sup>73</sup> Republic of Lithuania, Law on the Declaration of the Place of Residence, 2 July 1998, VIII-840. Amended on 20 June 2015 - No. XII-1919, Articles 5 (1) (3) and 7 (1).

<sup>74</sup> *Ibid.*, Article 2 (2).

<sup>75</sup> *Ibid.*, Article 6.

<sup>76</sup> *Ibid.*, Article 6 (3).

<sup>77</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2011*, Vilnius, 2011, p. 33.

<sup>78</sup> Electronic correspondence with Marija Norkevičienė, Director of the Residents' Register, 25 January 2013.

<sup>79</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2011*, Vilnius, 2012, p. 11.

<sup>80</sup> *Ibid.*

<sup>81</sup> Data was provided by the Migration Department during the interview with the researcher on 7 August 2012.

<sup>82</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2012*, Vilnius, 2013, p. 10.

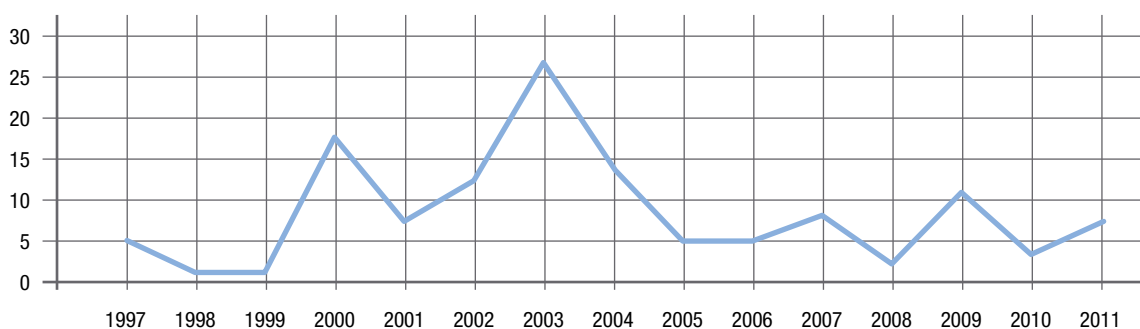
only those stateless persons who hold permanent residence permits or who otherwise have a right of lawful residence.

The discrepancy in the numbers provided by the two departments is difficult to explain. In the view of the researcher, the most plausible explanation is related to residence abroad. In 2011, 4,453 stateless persons held a residence permit issued by the Government of Lithuania according to the Migration Department. Of those, the Statistics Department estimates that only 3,500 persons had declared their place of residence in Lithuania; the remaining persons may have declared their residence abroad or had not declared it at all. Yet, the 2011 population census revealed only 2,400 stateless persons who factually lived in Lithuania – the estimated 900 persons who were included in the annual population statistics, but were not registered during the population census, probably do not actually live in Lithuania but have never declared their residence abroad. It is also possible that the population census did not reach all stateless persons residing in the country. Further research into the issue is crucial in order to correctly estimate the total number of stateless persons in Lithuania.

There is reliable statistical data on stateless asylum-seekers in Lithuania published by the Division of Asylum Affairs of the Migration Department. However, there are no guidelines in the law as to how an asylum applicant is to be registered as “stateless.” In practice, his or her claim to statelessness is presumed to be true if it is coherent and does not contradict established facts.<sup>83</sup> In cases where the asylum applicants cannot provide documentary evidence of their claims, their claim is presumed to be true provided it is coherent.<sup>84</sup> Information on the country of origin is also taken into account.

There have been 135 asylum applications submitted by stateless persons in Lithuania since 1997. Since 2008, most of the stateless asylum-seekers have reported their national origin or ethnic identity to be Chechen, Armenian, Yazidi (Yazidi), Kurdish, or Russian.<sup>85</sup> In 2011, seven stateless persons applied for asylum in Lithuania.<sup>86</sup> In 2012, the figure was 13.<sup>87</sup> All were young men between the ages of 18 and 34.<sup>88</sup> In the period 1997 to 2013, seven stateless persons were granted either refugee status or subsidiary protection.

**Figure 1:** Stateless asylum seekers in Lithuania (1997-2011)<sup>89</sup>



<sup>83</sup> Interview with representatives of the Migration Department, 7 August 2012; interview with representatives of the Lithuanian Red Cross Society, 7 August 2012.

<sup>84</sup> Law on the Legal Status of Aliens, Article 83 (2).

<sup>85</sup> Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2008*, Vilnius, 2008, p. 35; Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2009*, Vilnius, 2009, p. 15; Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2010*, Vilnius, 2010, p. 21; Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2011*, Vilnius, 2011, p. 23.

<sup>86</sup> *Ibid* p. 23.

<sup>87</sup> Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2012*, Vilnius, 2013, p. 24.

<sup>88</sup> *Ibid*, p. 23.

<sup>89</sup> Lithuania, Division of Asylum Affairs of the Migration Department of the Ministry of Interior, *Annual Report 2008*, Vilnius, 2008; *Annual Report 2009*, Vilnius, 2009; *Annual Report 2010*, Vilnius, 2010; *Annual Report 2011*, Vilnius, 2011.



The demographic profile of the stateless population in Lithuania is rather incomplete. Governmental institutions do not collect information on the ethnic composition or countries of origin of stateless residents in a systematic manner.<sup>90</sup> Nevertheless, the Migration Department<sup>91</sup> extracted some disaggregated data from their databases and shared it with the researcher. This data shed some light on the composition of this group. The absolute majority of registered stateless persons in Lithuania (97%) hold permanent residence permits (see table 3). Almost 60% of them are male (see figure 3) and over 85% are over 35 years old. There were 36 stateless children in Lithuania on 1 August 2012 (see table 2 below).<sup>92</sup> The causes of statelessness of these children are not known, but the grounds on which they were issued residence permits reveal the diversity of their circumstances. More than half hold residence permits on the grounds that at least one of their parents or their spouse is a citizen or a permanent resident of the Republic of Lithuania. This implies significant links with the country, either by birth or long term residence. A number of children have also moved to the country on the basis of family links. The children are rather evenly dispersed across the age groups (see figure 2 below).

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<sup>90</sup> Interview with representatives of the Migration Department, 7 August 2012.

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

<sup>92</sup> Data was provided by the Migration Department by electronic correspondence on 10 January, 2013.

**Table 2:** Number of stateless children in possession of residence permits as of 1 August 2012 (disaggregated by the type of document and grounds for issuance)<sup>93</sup>

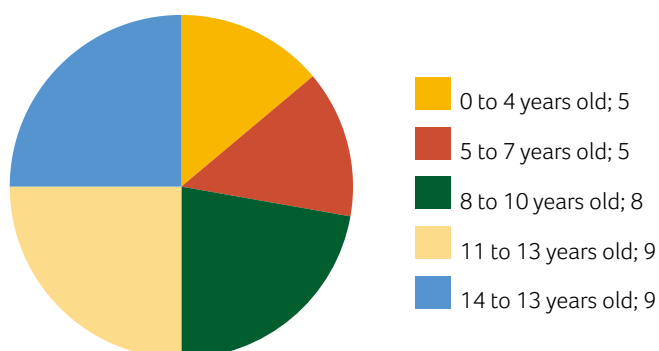
Type of Residence Permit	Reason for Issuing or Replacement <sup>94</sup>	Number of Children
<b>Temporary residence permit</b>	In a case of family reunification where the parents or one of them, or the spouse of one of them, is a citizen of the Republic of Lithuania or is in possession of a residence permit and in whose guardianship the minor alien is, reside in Lithuania.	1
	The child has been put under guardianship/custody of a citizen of the Republic of Lithuania.	1
<b>Total</b>		2
<b>Permanent residence permit</b>	The child has entered the Republic of Lithuania for residence together with a citizen of the Republic of Lithuania as his family member.	1
	The child was born in Lithuania and his parents or one of them are citizens of the Republic of Lithuania or hold a permanent residence permit. <sup>95</sup>	8
	The child was born outside Lithuania and his parents or one of them are citizens of the Republic of Lithuania or hold a permanent residence permit.	8
	The permit was replaced because it had become not fit for use.	1
	The permit was replaced because its validity had expired.	8
	The child entered to join and reside with a family member who has a permanent residence permit because the family member has retained the right to Lithuanian citizenship or are of Lithuanian descent.	1
<b>Total</b>		27
<b>EU residence card</b>	The child is a family member of a citizen of the Republic of Lithuania and has entered the country to reside accompanying the citizen who is exercising the right to freedom of movement in the EU, or arrives to join the citizen from the territory of another EU Member State.	3
<b>Total</b>		3
<b>EU permanent residence card</b>	The child has retained the right to citizenship of the Republic of Lithuania as a descendant of a person who held Lithuanian citizenship before 15 June 1940, or is a person of Lithuanian descent or entered the Republic of Lithuania for residence together with a citizen of the Republic of Lithuania as his family member.	4
<b>Total</b>		4
<b>Total stateless children</b>		<b>36</b>

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

<sup>94</sup> In relation to the relevant article(s) under the Law on the Legal Status of Aliens.

<sup>95</sup> This may be the case when a child born in a family of a Lithuanian citizen and a foreign national and the child loses or the parent and the child renounces Lithuanian citizenship later in life.

**Figure 2:** Number of stateless children as of 1 August 2012 (disaggregated by age groups)<sup>96</sup>

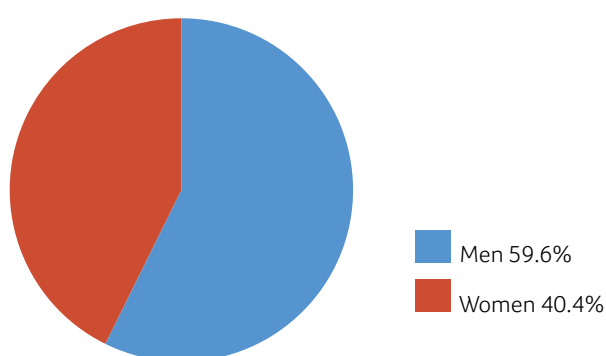


Stateless persons live everywhere in Lithuania. Each one of the 60 municipalities has at least one stateless person registered there.<sup>97</sup> More than half of the 4,151 stateless persons live in the regions of the three largest Lithuanian cities (Vilnius, Kaunas and Klaipėda). Approximately 43% of the target group lives in the city and region of Vilnius, while the border regions of Šalčininkai, Švenčionys and Visaginas host a further 11%.

**Table 3:** Number of stateless persons who hold a residence permit in Lithuania (disaggregated by the type of document)<sup>98</sup>

	Permanent residence permit	Temporary residence permit	Permanent residence card for a family member of an EU citizen	Temporary residence card for a family member of an EU citizen	Total
1 January 2012 <sup>99</sup>	4,213	43	6	52	4,314
1 August 2012 <sup>100</sup>	4,049	53	5	44	4,151

**Figure 3:** Stateless population in Lithuania (disaggregated by gender)<sup>101</sup>



<sup>96</sup> Data was provided by the Migration Department by electronic correspondence on 10 January, 2013.

<sup>97</sup> Data was provided by the Migration Department during the interview with the researcher on 7 August 2012.

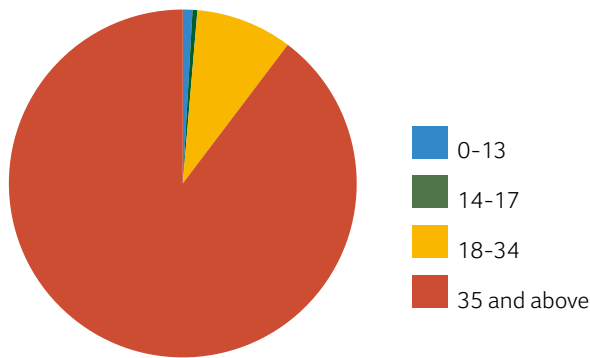
<sup>98</sup> Data was provided by the Migration Department during the interview with the researcher on 7 August 2012.

<sup>99</sup> Lithuania, Migration Department of the Ministry of Interior, Migration Yearbook 2011, Vilnius, 2011, p. 13.

<sup>100</sup> Data was provided by the Migration Department during the interview with the researcher on 7 August 2012.

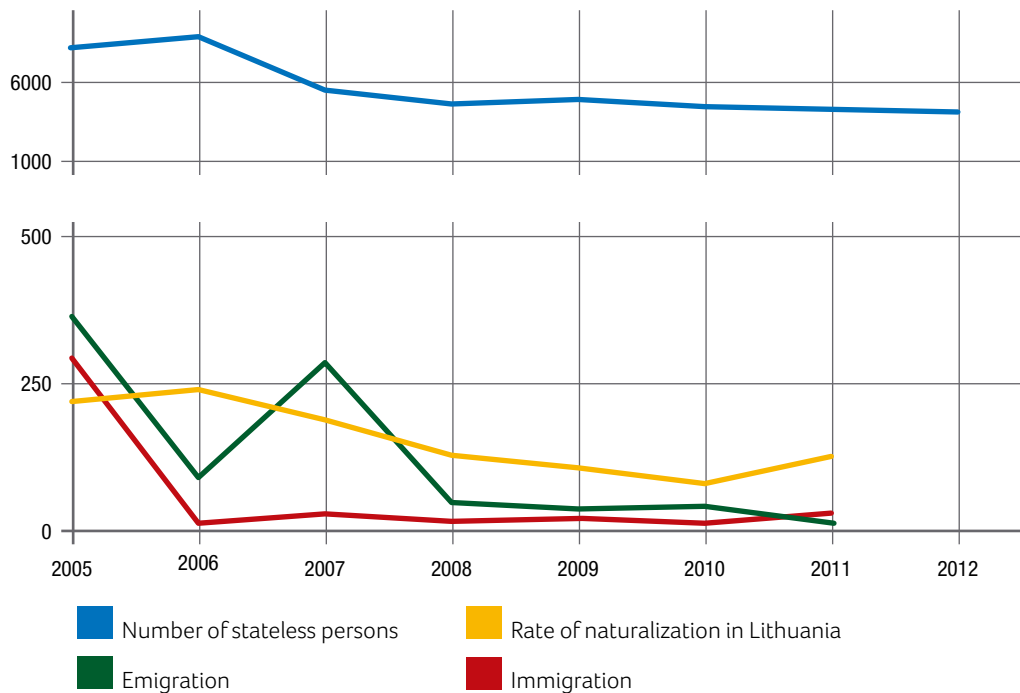
<sup>101</sup> *Ibid.*

**Figure 4:** Stateless population in Lithuania (disaggregated by age)<sup>102</sup>



The total number of stateless persons in Lithuania has been decreasing steadily since the restoration of independence, but this trend is not due to high naturalization rates of stateless persons or emigration (see figure 5). Staff members at local migration agencies interviewed for this research have suggested that the number is decreasing because of death rates and acquisition of other States' citizenship.<sup>103</sup> In 2011, the net migration trend of stateless persons in Lithuania was inverted for the first time: 12 stateless persons have left the country and 31 moved in. However, in 2012, the net migration ratio was negative again: 16 people moved in and 59 left the country.<sup>104</sup>

**Figure 5:** Number of stateless persons (who are naturalized, who left and who entered Lithuania) 2005-2011<sup>105</sup>



<sup>102</sup> As of 1 August 2012. Unpublished data provided to the researcher by the Migration Department during the interview with its representatives on 7 August 2012.

<sup>103</sup> Interviews with staff members of the migration agencies in Mažeikiai, 22 August 2012; Vilnius, 27 August 2012; Šalčininkai, 4 September, 2012; Švenčionys, 5 September, 2012; Visaginas, 29 August 2012.

<sup>104</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2012*, Vilnius, 2013, p. 16, 19.

<sup>105</sup> Statistics from: Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2004*, Vilnius, 2005; *Migration Yearbook 2005*, Vilnius, 2006; *Migration Yearbook 2006*, Vilnius, 2007; *Migration Yearbook 2007*, Vilnius, 2008; *Migration Yearbook 2008*, Vilnius, 2009; *Migration Yearbook 2009*, Vilnius, 2010; *Migration Yearbook 2010*, Vilnius, 2011; *Migration Yearbook 2011*, Vilnius, 2012.

## 2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

There are two substantial categories of stateless persons that are not included in the administrative data in Lithuania. The first group has emerged in the context of irregular migration and consists of “unreturnable” persons.<sup>106</sup> It applies to persons who have been or are going through the removal procedure under the Lithuanian aliens’ law but cannot return or be returned to any country, including, if known, the country of their nationality or the country of former habitual residence. Usually, “unreturnable” persons spend prolonged periods (from 12 to 18 months) in detention. If obstacles for removal persist for 12 months, the person receives a temporary residence permit with a validity of one year. Unresolved situations of “unreturnable” persons may make it impossible to document their nationality and may eventually, in particular over two or more generations, lead to statelessness.<sup>107</sup> Some “unreturnable” persons may already be stateless but not recognized as such.

There are no reliable statistics on the profile and number of “unreturnable” persons in Lithuania. The number of such persons should not be very large; the FRC held two “unreturnable” persons at the time of research. The representative of the FRC has expressed concern at the generic refusal of the Russian Federation to accept the return of stateless persons, even if they had been lawfully residing in the country prior to arriving in Lithuania. Many persons who become “unreturnable” come from Sub-Saharan African countries with which Lithuania does not maintain diplomatic relations and which often are reluctant to cooperate with the Lithuanian authorities.<sup>108</sup>

Other stateless persons in Lithuania may be those who have not obtained Lithuanian or any other citizenship since the restoration of the country’s independence in 1991. Some of them have come into contact with the authorities and are in the process of either obtaining citizenship or a residence permit. According to the staff of NGOs and Governmental authorities interviewed for the purposes of this research, such cases emerge every year across the country. Therefore, there is probably a number of people with “unresolved” legal status who have not been registered by the authorities. There are no estimates of how many cases like this still exist in Lithuania. Many, though not all, of the stateless persons with “unresolved” legal status live at the margins of society and include destitute persons, ex-convicts, the elderly, and persons living in isolated rural areas.

Incarcerated persons are not considered to have changed their previously declared place of residence<sup>109</sup> and, therefore, can be included in the Residents’ Register. It is unclear, however, how many stateless persons or persons with “unresolved” legal status are currently incarcerated in Lithuania, because the number of such persons who had declared their place of residence in the first place is not known. The researcher visited one corrective institution in the town of Marijampolė, which held at least two persons with “unresolved” legal status and where she was told by staff that the facility houses “many” stateless persons.<sup>110</sup> The Prisons Department of the Ministry of Justice does not collect or store information about stateless persons or persons with “unresolved” legal status.<sup>111</sup>

The Residents’ Register distinguishes between the groups of residents whose citizenship is “not indicated” (*nenurodyta*) or “undetermined” and stateless persons. The former group has a different code in the Register (PXX), while the latter are marked with the code P00. According to the 2001 Census, there were 3,200

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<sup>106</sup> This term was suggested by the authors of the 2011 UNHCR study “*Mapping Statelessness in the UK*” UNHCR/Asylum Aid, Mapping Statelessness in the UK, London, 2011.

<sup>107</sup> UNHCR, *Expert Meeting – The Concept of Stateless Persons under International Law (Summary Conclusions)*, 2010, p. 8.

<sup>108</sup> Interview with the representative of the FRC, 17 August 2012.

<sup>109</sup> Republic of Lithuania, Law on the Declaration of the Place of Residence, 2 July 1998, VIII-840, Article 7(1) (5). Following the amendment of the law of 30 June 2015, this group now falls under Article 6 (2) (3).

<sup>110</sup> Interview with the social worker at the Marijampolė corrective institution, 31 August, 2012.

<sup>111</sup> Electronic correspondence with Remigijus Gliaudelis, Deputy Director of the Prisons Department under the Ministry of Justice, 16 October 2012.

residents with “undetermined citizenship” in Lithuania. The number of residents with “undetermined” or “not indicated” citizenship reported in the Statistical Yearbooks increased to 10,600 in 2007 and 12,100 in 2011.<sup>112</sup> However, the results from the 2011 Census show that in 2011 there were no people with a status “not indicated” or “undetermined” in Lithuania, which is inconsistent with the data reported in the Statistical Yearbook.<sup>113</sup> It is unclear what accounts for this discrepancy. According to the Residents’ Register Agency, only those stateless persons who hold a residence permit are registered as stateless. Those described as “not indicated” or “undetermined” “can only be family members of someone in the Register but who themselves are not in possession of a document<sup>114</sup> and have not declared a place of residence.”<sup>115</sup>

The Statistics Department, the Migration Department and other relevant institutions have told the researcher they did not know exactly who the residents with “undetermined” citizenship are.<sup>116</sup> Some suggested that this group may consist of children under the age of 16 who have so far not obtained an identification document. Their citizenship is changed to “Lithuanian” in the datasets once they are issued a passport or a national identity card, but they are considered citizens since birth for all other purposes.<sup>117</sup> According to the Migration Department, this practice of registration has recently been changed and now children who acquire Lithuanian citizenship by birth are registered as such. Staff at some regional migration agencies reported the number could include children whose parents are of different nationalities and have not yet decided on the nationality of the child.

## 2.3 Qualitative analysis of the situation of stateless persons

### 2.3.1 Introduction

From the outset of the research, UNHCR considered that the participation of stateless persons in the identification of opportunities and challenges, and in the development of solutions to situations of statelessness is crucial. Participation of stateless persons is important in this process, not only to empower the individuals, but also to understand their situation and improve profiling. UNHCR therefore decided that participatory assessments<sup>118</sup> should be undertaken with stateless persons, as part of the research. As previously discussed, there have been no studies undertaken as to the socio-demographic profile, human rights challenges and daily life of stateless persons in Lithuania. Coming into contact with them, however, proved to be a challenge. Initially, lawyers’ associations, international organizations and NGOs working in the area of human rights, discrimination, charity, migration and asylum were contacted and asked for referrals of stateless persons who would be willing to be interviewed. While all of them were willing to share information at their disposal, only five potential interviewees were referred through these networks.

Consequently, migration and police officers were reached out to. However, due to data protection concerns, these officials felt reluctant to contact potential interviewees to ask them to participate. While expressing sympathy to the cause, many felt that in the absence of an official policy, they would be transgressing

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<sup>112</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2011*, Vilnius, 2011, p. 44.

<sup>113</sup> Lithuania, Statistics Department, *Statistical Yearbook of Lithuania 2012*, Vilnius, 2012, p. 70.

<sup>114</sup> It is unclear if the “document” referred to in this case is an identity document, such as a passport, or a residence permit.

<sup>115</sup> Electronic correspondence with Marija Norkevičienė, Director of the Residents’ Register Agency, 25 January 2013.

<sup>116</sup> Interview with representatives of the Statistics Department on 3 August, 2012 and the Migration Department on 7 August, 2012.

<sup>117</sup> Information provided by the Migration Department during the interview with the researcher on 7 August 2012.

<sup>118</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: <http://www.refworld.org/docid/462df4232.html>.

their competences. Still, another 16 referrals (in addition to the five mentioned above) were received anonymously. Sometimes, the researcher was only provided with the phone number or the address of the person. The FRC provided access to the three stateless persons detained or accommodated there during the time of the research. Also other methods were employed to reach out to the target population. These included contacting individual activists, posting advertisements in municipal newspapers, participating in online forums, extracting contact information from existing case law and visiting the soup kitchens in Vilnius. This combination of methods produced a further nine referrals.

Of the total of 33 referrals received, 21 resulted in semi-structured interviews because some people could not be contacted based on the information received. The interviews lasted on average 40 minutes and took place in interviewees' homes, cafés, a prison facility, the FRC, community centers and soup kitchens in eight towns from 16 August to 12 September 2012. Almost all of them were conducted individually; hence, UNHCR's participatory assessment methodology, which is normally implemented through focus group discussions could not be strictly used. If the interviewee agreed and if the circumstances permitted, they were recorded. Interviewees were asked if possible to share documents to support the information they shared. Participation was entirely voluntary, although vulnerable interviewees were provided with food items or small amounts of money after the interview. Two thirds of the interviews were conducted in Russian and the rest in Lithuanian.

Of the 21 interviews, one was brought to a halt because the interviewee was not feeling well and did not want to continue. One individual turned out to be a national of the Russian Federation. Thus, 19 cases in total were used for the purposes of this research. Despite additional efforts to ensure the diversity of participants, only four of them were women and only a single case concerned a stateless child. Just over half of the participants were born in Lithuania, while the others had come to the country from Russia, Belarus, Ukraine, Azerbaijan and Latvia. Asked to describe their national identity, participants quoted Russian (5), Belarusian (3), Lithuanian (2), Roma (2), Ukrainian (2), Armenian (1), Chuvash (1) and Tatar (1). Two participants found it difficult to describe their national identity. The vast majority of the participants were between 35 and 64 years old. As said, one interviewee was a minor and three participants were over 65 years old.

The group most represented by far consisted of permanent residents who had not obtained any country's citizenship during the "zero option" period or who later renounced their Lithuanian citizenship, and who subsequently obtained permanent residence permits. Such persons represented 65% of the interviewed persons. Three persons with "unresolved" legal status were interviewed; another two persons had acquired residence permits very recently and could thus provide valuable information regarding the situation of this group. These two groups of stateless persons for whom Lithuania is their "own country" together constituted 80% of the sample. One "unreturnable" person was interviewed at the FRC. Three of the interviewed persons had arrived after 1991 and were subject to Lithuanian immigration laws from the outset of their stay. One stateless asylum-seeker was referred but in the end did not participate in the interview.

Given the relatively small sample of stateless persons interviewed, UNHCR does not consider these interviews to constitute a proper quantitative and qualitative analysis of the actual situation and experiences of stateless persons in Lithuania. However, the experiences and views expressed do help shed some light on "the face of statelessness" in Lithuania, and how the fact of being stateless impacts on these people's daily lives and hopes for the future.

## 2.3.2 Procedural issues

Very few of the interviewed persons had gone through judicial procedures. Only one person had applied to court regarding his “unresolved” legal status, wanting to acquire Lithuanian citizenship. The case was rejected by the regional administrative court, but was ordered to be re-examined upon appeal. The person was representing himself in the administrative case, as he did not have the right to legal aid in the judicial proceedings. He did, however, receive legal counselling from the social worker at the prison. Two persons interviewed had gone through the judicial process with regard to their detention. Neither could tell the researcher if they had legal representation in the court proceedings.

Although the interviewees reflected positively regarding the treatment they received from the authorities, several challenges in administrative procedures were identified during the interviews. Firstly, persons with “unresolved” legal status and migration officers reported that the process of obtaining a residence permit for such persons is complex and expensive. This is illustrated by the story of A.N.

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### CASE STUDY<sup>119</sup>

#### A.N., male, 57 years old

Country of birth: Lithuania

A.N. is 57 and was born in Lithuania. Asked about his ethnic origin, he hesitates: “Well, my mother was Ukrainian and my father was Russian. I was born here. What am I?” Both of A.N.’s parents were dead and had come from different parts of Russia in 1946 or 1947 when they were still children to live and study at a specialized school in Vilnius. His paternal grandparents were from Lithuania, who had fled the country for St. Petersburg during the First World War. They later returned to Lithuania and settled in Vilnius. When he was a child, care rights were taken away from his parents. A.N. grew up in a children’s home.

In 1988, A.N. was sentenced to a jail term in a prison in Lithuania. In line with the practice at the time, he was “registered out” of his declared place of residence, but was not “registered in” under the address of the prison. During the four years he spent in jail, he was not informed of a possibility or need to take any action regarding his citizenship status. When A.N. was released in 1992, he did not have a declared place of residence in Lithuania although he had never lived anywhere else. He went to the authorities on 4 September 1992, but was too late to “opt” for citizenship.

As A.N. did not qualify as a permanent resident in Lithuania, he could not acquire citizenship under other provisions of the law. He says he did not receive much support from the authorities: “I told them, I went from a children’s home to a jail. What should I do? The lady at the passport desk gave me two options: pay her 100 USD or find somebody who would allow me to declare their home as my place of residence. At that time, none of the options were viable for me. This is how I became an immigrant.”

He received a permanent residence permit upon presenting his birth certificate, school leaving certificate and other documents he had, which were proving his factual residence in Lithuania. Because he did not have a job, A.N. did not pay for social security. He was thus not entitled to receive State benefits or in fact register at the Labour Exchange Office until 1999. Once he joined the social security scheme, A.N. took up several jobs and was renting a room in his parents’ flat. Things were going rather well until his life was shaken. “When my mother died ten years ago, I suffered from a lot of stress. I started drinking really heavily and became homeless. It took me some time to get out of this dark place, and just when I managed, my father died. My brother had tricked my barely literate parents into leaving the flat to him. He immediately sold the flat and other property and moved to the UK with his family. He gave me 50 Litas and told me to sort out my papers.”

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<sup>119</sup> Interviewed on 6 September 2012.



In 2007, his residence permit was stolen and A.N. lived undocumented for three years. He had tried to take out a new document, but could not afford the fees. One day, upon coming into contact with police officers and failing to present a valid identity document, he was taken to the police headquarters and learned that he had been wanted by the police because petty crimes had been committed with the use of his stolen residence permit. He spent eighty days in detention and was released after having proved his innocence in court.

After his release, A.N. obtained a new residence permit with the help of a social worker at Caritas. He used this opportunity to inquire about the possibility of him acquiring citizenship and was told he would need to go through the process of naturalization. Homeless and destitute, A.N. found the accumulative fees prohibitive:

*“ I would not have a problem in taking the exam – I have no problem in learning the Constitution. My problem is a financial one. If not for the fees, I would be happy to take the exam.”*

The cost of the examination of the citizenship application is 179 Litas and the exam costs 20 Litas (approximately 60 Euro).

At the time of the interview, A.N. had a temporary place at a homeless shelter and had been out of work for eight months. For a long time he had considered seasonal jobs abroad to help him get back on track. He tried to travel abroad twice and failed both times. “They told me I needed a travel document, and for that I would have to pay 100 Litas. Then I need special applications to be able to work abroad. Every piece of paper costs money – where should I get it from?”

A.N. has some health problems. He is entitled to State-provided healthcare services but has to pay in full or in part for some of them. He receives around 100 Euros a month and food stamps from the Government, which is not enough to cover all of his expenses or to rent a place to live. A.N. thinks acquiring citizenship would improve his situation: “Firstly, if I can’t find a job here, I can get a temporary job abroad for, say, six months and save some money to restart my life here. That would allow me to find a place to live and to repay my debts.”

*“ I am not saying my life would change immediately upon receiving a passport. But it would allow me to begin getting out of this mess. This life of destitution has trapped me. You are in constant contact with other homeless people. Many of them drink and are always inviting you to join in. For me it’s a temptation. A passport would be like a trampoline that would help me make a leap. There are many things I could give to the society.”*

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Most persons with “unresolved” legal status interviewed belonged (or still belong) to vulnerable social groups; two were incarcerated at the time of the interview and another one was destitute and drinking heavily. Of the two stateless persons who had only recently resolved their legal status, one was drinking heavily and another had grown up in a children’s home and, until he got married, did not have a social support network that is usually provided by the family. This makes it more difficult to obtain access to procedures, which is confirmed by the persons with “unresolved” legal status who have obtained the permanent residence permit. These persons had relied heavily on the assistance of friends, family or social workers. The example of J.S. illustrates problems of stateless persons.

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## CASE STUDY<sup>120</sup>

### J.S., male, 49 years old

Country of birth: **Lithuania**

J.S. was born in Lithuania and has lived there all his life. In 1988, he temporarily moved to Russia where he committed a crime and in 1989, he was sentenced to five years in prison. When he returned to Lithuania in 1995, he approached the authorities expressing his will to acquire Lithuanian citizenship. He described their response: “They told me I should go back to Russia, the authorities said they would deport me and that I had no right to citizenship. They didn’t even give me a residence permit. I never went back to Russia.”

J.S. was working unofficially for many years. He maintained a low profile and avoided any contact with the authorities. In 2010, he was sentenced to another prison term. He was hired by the public company which operates in the prison, but was fired when, upon an attempt to register him with the social security, the prison facility was told J.S. did not have the right to work. The social worker then took up his case and began trying to get J.S. documented.

J.S.’s father was born in Lithuania prior to its incorporation into the Soviet Union. However, proving that he was a citizen of the Republic of Lithuania and that he is a person “of Lithuanian origin” was difficult because his family roots lie in the Vilnius region, where questions of citizenship were complicated. The region was annexed by Poland from 1920 to 1939. The archive search and cross-referencing by J.S. and the social worker, as well as by the Lithuanian authorities, took almost two years.

In August 2012, J.S. was recognized as a person “of Lithuanian origin” who has an indefinite right to restore Lithuanian citizenship. He could now choose between obtaining Lithuanian citizenship, which would cost him 142 Litass, or a permanent residence permit, which would cost him 150 Litass. J.S. will choose acquiring citizenship. He says becoming documented is important to him:

*“ Of course it is important, especially because now I will be able to work. I will have rights, not like before.”*

J.S. says he would not have been able to solve his situation if not for the help of the social workers at the prison facility.

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One interviewee, who is a national of the Russian Federation born in Latvia, moved to Lithuania with his daughter, a Latvian “non-citizen”, when she was a baby. While he himself eventually obtained a permanent residence permit without any problems, his daughter was only issued a temporary residence permit, which has to be renewed each year. According to the father, the local migration agency claims that his daughter has a right to the citizenship of the Russian Federation and can only obtain a permanent residence permit upon providing a passport of the Russian Federation. It must be noted that this case is not in line with the provisions outlined in the Law on the Legal Status of Aliens which provides a right to a permanent residence permit for children who were not born in Lithuania if one of their parents is a permanent resident.<sup>121</sup> The case illustrates the practical problems stateless persons may face in administrative procedures.

Two stateless Roma persons who were interviewed for this research reported major obstacles in proving their Lithuanian descent, because their parents or grandparents had not been registered as citizens or residents of the Republic of Lithuania prior to 15 June 1940<sup>122</sup>. Some only have their parents’ or grandparents’ birth

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<sup>120</sup> Interviewed on 12 September 2012.

<sup>121</sup> Law on the Legal Status of Aliens, Article 53(1) (6).

<sup>122</sup> G.K. and A.M., interviewed on 29 August 2012. Pursuant to Art. 1 (2) of the Citizenship Law in force until 01 April 2011, where a person could prove being a resident of Lithuania before the annexation by the Soviet Union in 1940, or having parents or grandparents who were residents at that time, the person could claim citizenship.

registered in church records, but this is not enough to prove descent for the purposes of restoration of citizenship. To cross-reference this information, the researcher also interviewed two Roma persons reportedly of Lithuanian descent who are citizens of Belarus and of the Russian Federation, residing in the enclave of Kaliningrad.<sup>123</sup> They had attempted to restore their Lithuanian citizenship, as they are both descendants of Lithuanian Roma families. There were no records of their parents and grandparents in the national archive. The Lithuanian authorities did not accept church records from Lithuania of their respective parents' birth on its territory.

### 2.3.3 Obstacles to travel

The issue of obstacles with regard to travelling abroad, including to the country of origin or previous residence, was raised by eight out of the nineteen participants. The short validity of the Stateless Person's Travel Document, the high fees charged for it, as well as the requirement of visas to travel to Russia, Belarus, Ukraine and the UK where some of the interviewee's families resided, was often quoted as the major problem caused by statelessness. Other participants, like A.N. whose case is described in the previous section, were frustrated by the inability to seek employment abroad given the levels of unemployment in Lithuania.

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#### CASE STUDY<sup>124</sup>

##### **N., male, 67 years old**

Country of birth: **Ukraine**

N. says his only problem being stateless is travelling back to Ukraine to visit his family. When his mother died several years ago, he was almost late for the funeral because he had to arrange the visa. "My daughter helps me with everything. We had to wake up very early and go to the embassy in Vilnius. I am too old to do this on my own. Lithuanian citizens do not need a visa, when we go to visit the relatives, my whole family could just get into the car and drive, but I always become a problem."

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#### CASE STUDY<sup>125</sup>

##### **V.S., female, 52 years old**

Country of birth: **Belarus**

Many times throughout the interview, V.S. insists she has not had any problems due to the fact that she has been stateless, except for the fact that she needs a visa for Belarus: "I think this is a problem for everyone. It takes time, money... I constantly need to apply for one and pick it up in Vilnius. I have family in Belarus, I will be travelling there all my life. This is definitely a problem."

V.S. is currently going through the process of acquiring citizenship through naturalization. She should become a citizen soon, and is particularly excited about being able to travel back to Belarus with fewer restrictions. Becoming a Lithuanian citizen of Belarusian nationality, she will be eligible for visas free of charge:

*“ Now that I will have the document, I will be able to travel freely. I will feel more confident in life.”*

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<sup>123</sup> L.M. and A.A., interviewed on 14 September 2012 by phone.

<sup>124</sup> Interviewed on 10 September 2012.

<sup>125</sup> Interviewed on 24 August 2012.

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## CASE STUDY<sup>126</sup>

**V.J., male, 53 years old**

Country of birth: **Russian Federation**

“ This is a major problem. My daughter is studying in the UK. Seeing her costs me 5000 Litas, because I have to travel to Warsaw for a visa, sometimes more than once. Russian and Ukrainian visas for business purposes are ludicrously expensive. If I were a Lithuanian citizen, I would not even need one for Ukraine, for example. I need to renew the Travel Document every two years, which takes time and money, again. This constant chasing after documents is exhausting. Sometimes I have border guards stare at the Travel Document not knowing what it is. As if I was an alien. In Turkey, I was stopped at the passport control point at the airport for more than two hours!”

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## CASE<sup>127</sup> STUDY

**D.A., male, 65 years old**

Country of birth: **Russian Federation**

D.A. had worked as a driver until his retirement in 2009. He lives in a flat he owns together with his wife. His only complaint and problem caused by the fact that he is stateless is the issue of travelling to Russia to visit his family:

“ I am retired. Where would I get so much money? If I had Russian citizenship, I would just get into the car and go visit my family. Now, for example, I could not even go to my brother's funeral.

They could not wait for me to sort out the documents. (...) For God's sake, I would just like to go visit my family. I haven't been home for five or six years. When will I go back to at least say goodbye to everyone?”

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## 2.3.4 Stateless persons' wishes to acquire Lithuanian citizenship

There seems to be a general perception that persons who are stateless in Lithuania are so largely through their own fault, though many staff members at the local migration agencies have a more nuanced view.<sup>128</sup> It bears emphasizing here that this is of no legal consequence under the statelessness Conventions, as will be discussed in more detail elsewhere in this report.

Of the fifteen participants who were either born in Lithuania or had already been living in the country when it restored its independence, three reported that they chose not to opt for Lithuanian citizenship in 1989. All three were born outside Lithuania and reported that they decided to remain stateless because it was easier to travel back to their countries of origin that way, using their Soviet passports. They also mentioned a sense of insecurity over the future of an independent Lithuanian State at that time and, in some cases, uncertainty over whether they would stay in Lithuania or move to another country.

Three other persons reported that they believed they did not acquire Lithuanian citizenship through their own inaction, but they all found it difficult to explain why. V.B. (a 61 year old woman) indicates a lack of priority:

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<sup>126</sup> Interviewed on 10 September 2012.

<sup>127</sup> Interviewed on 5 September 2012.

<sup>128</sup> Interview with representatives from the Migration Department on 7 August 2012. Through the “zero option” procedure, people were deemed to be able to obtain Lithuanian citizenship.

*“ It was my mistake. I was working and had to care for a child, I had my own problems and solving documents just was not a priority in my mind. When I eventually got around to it... It was too late.”<sup>129</sup>*

Also S.M. (a 62 year old man) gave the same reason: “I know, I know, everybody told me to. There was no particular reason... How do I put it...? I was naughty. I didn’t listen to everybody. I thought tomorrow, then the next day.”<sup>130</sup>

Of the remaining nine participants who could not obtain citizenship, some had temporarily moved abroad and were not aware of the “zero option.” Upon their return home to Lithuania, they were told they were not eligible for Lithuanian citizenship because they were not considered permanent residents. Others were in prison during that time and were at no point informed about the process by the prison authorities. Still others were children whose parents or care institutions did not make sure they acquired Lithuanian citizenship. All but one were born in Lithuania and found the fact that they had fallen through the cracks very unfair.

In interviews with migration officers, it was explained to the researcher that the only benefit stateless people permanently residing in Lithuania are not entitled to, is a voting right in Parliamentary and Presidential elections, and that citizenship in itself was not really important to them. However, the majority of the interviewees refuted this statement, expressing their clear desire to obtain Lithuanian citizenship. Half of the interviewees said that the right to vote in national elections was one of the reasons why they wanted to acquire citizenship.

In particular, those born in Lithuania spoke passionately about their links to the country. S.R. (a 50 year old man) said:

*“ I want to acquire citizenship because I am Lithuanian. I was born and raised here, I am not a genius, but I can take the necessary exams. I have no problem with that.”<sup>131</sup> G.K. (a 41 year old male) agrees: “I simply don’t understand why. I was born here, I went to school here, my parents were born here, I have never lived anywhere else. I consider myself a Lithuanian citizen, but I am not one. I am not some kind of a refugee, I am Lithuanian.”<sup>132</sup>*

The same feeling is shared by others: “I am ashamed to tell foreigners I am stateless, you see. I don’t want to embarrass Lithuania. We, the Roma, call the place we live home. We don’t have our own homeland. Our homeland is where we live” (A.M., male, 61 years old);<sup>133</sup> “It was absurd. What else can I be if not Lithuanian? It was not my fault that my parents lost custody rights and that the State didn’t do what it had to do” (S.R., male, 35 years old);<sup>134</sup> “I’m Lithuanian, I know I’m Lithuanian, I have never left this place and I will be buried in Lithuania... This thing about citizenship... Do they think you stop being Lithuanian if you don’t have citizenship? But I must admit having papers is important. What will people say, they will think you’re a refugee from somewhere. So I do want citizenship, yes” (S.M.).<sup>135</sup>

The face of statelessness in Lithuania is diverse. Those interviewed for this research were entrepreneurs, workers, homeless persons, prisoners, irregular migrants, farmers and refugees; people who have become stateless for different reasons. Nonetheless, most of them expressed a desire to acquire Lithuanian

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<sup>129</sup> Interviewed on 7 September 2012.

<sup>130</sup> Interviewed on 10 September 2012.

<sup>131</sup> Interviewed on 31 August 2012.

<sup>132</sup> Interviewed on 29 August 2012.

<sup>133</sup> Interviewed on 29 August 2012.

<sup>134</sup> Interviewed on 10 September 2012.

<sup>135</sup> Interviewed on 10 September 2012.

citizenship. The perception of stateless persons as being “asocial,” which the researcher heard during several of the interviews with authorities,<sup>136</sup> was not confirmed by the researcher’s consultations with stateless persons, but could create a negative attitude towards this diverse group of people. Finally, while all stateless persons are considered to be aliens under national law, those who were interviewed saw Lithuania as their own country, and did not view themselves as aliens.

### 2.3.5 The situation of children born in Lithuania with a lack of nationality

The number of registered stateless children in Lithuania is small so the researcher was only able to come into contact with the parents of one stateless child. The case concerned a girl who was born in Latvia to a “non-citizen” mother and a father who is a citizen of the Russian Federation. Although the researcher was not able to interview the child directly, her father has provided some good insights into the situation of children with a lack of nationality in Lithuania.

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#### CASE STUDY<sup>137</sup>

##### **Olga<sup>138</sup>, female, 11 years old**

Country of birth: **Latvia**

Olga is 11. She was born in Latvia but did not acquire the country’s citizenship because her mother was a “non-citizen” and her father was a Russian citizen born in Latvia. The Latvian authorities said she was entitled to Russian citizenship and if she did not want to opt for the latter, she would acquire the status of “non-citizen” in Latvia. When she was a baby, her parents separated and Olga moved to Lithuania with her father who had been running a business in both countries for a while.

Her father soon “upgraded” his residence permit from temporary to permanent, but he could not do the same for his daughter because she was a “non-citizen”. He thus has to renew her residence permit every year, which is costly and takes time. Asked why Olga did not acquire Russian citizenship, her father answered: “Because I have decided so. My daughter has never even been to Russia. She has no family there, both of her parents were born in Latvia. Why is she not a Latvian citizen? And, in fact, she feels Lithuanian. Her mother tongue is, in theory, Russian, but she speaks much better Lithuanian than Russian. She has lived here all her life and has lost almost all ties to Latvia. But most importantly, imagine if she acquires Russian citizenship and then I die. What would the Lithuanian authorities do? They would deport her to Russia. And what would she do there?”

Olga is a talented musician. Two years ago, she was accepted to a special boarding school in Vilnius, which combines a rigorous academic and music curriculum. Her father says he never encountered any problems in accessing health care or education; he never had to pay for services which would otherwise be provided for children with Lithuanian citizenship.

*“ But I need to change her status from temporary to permanent resident. I’m also thinking about my daughter’s future. She has lived in Lithuania all her life and, at least for now she sees herself living here all her life. I don’t want her to turn 18 and then have problems with naturalization. She is too young to think about it, but I think she will want to receive Lithuanian citizenship if she stays here. She embodies the concept of integration. The people here consider her one of them.”*

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<sup>136</sup> The word used in Lithuanian was “asocialus”.

<sup>137</sup> Interviewed on 10 September, 2012.

<sup>138</sup> A pseudonym has been used to protect the identity of the participant.

He sees their future in Lithuania. He has no complaints against the authorities, other than the issue of the permanent residence permit. “It would make my and my daughter’s life much easier. And it would give us a sense of security,” he says.

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There is a need to look into why the 36 stateless children reportedly living in Lithuania lack a nationality, especially when 16 of them were born in the country.

## 2.3.6 Hopes and expectations for the future

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### CASE STUDY<sup>139</sup>

#### V.B., female, 61 years old

Country of birth: **Belarus**

V.B. moved to Lithuania from Belarus in 1970, because there were more work opportunities. As explained in section 2.3.4 above, she struggles to find a reason why she did not “opt” for Lithuanian citizenship to which she was entitled through the “zero option”. In 1994, she received a permanent residence permit.

In the late 1990s, she developed a dependency on alcohol, which eventually drastically changed her life. Her husband left her and moved to the United States with their daughter. V.B. says that before leaving, her husband sold the flat where she lived and she was rendered homeless. She receives around 100 Euro in benefits per month, which is not enough to rent her own place.

V.B. had never considered acquiring Belarusian citizenship because she did not have relevant links to the country anymore. She described what would have been required of her to qualify for the naturalization procedure to acquire Lithuanian citizenship:

*“ I would have to take the exam, and all this money. (...) I have difficulties even getting the money to renew the permit every several years. I know a passport would not solve my situation.”*

At the time of the interview she was homeless and had no family in Vilnius or Belarus that could help her. V.B. said she was lonely and felt insecure and helpless because she could not fight her addiction. Asked about her future, V.B. was very pessimistic: “In the future? I will die.”

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V.B.’s pessimism about the future was echoed by several other participants who were socially excluded or at risk thereof: convicts, destitute persons and elderly persons. People who had a family and stable income were much more optimistic and were able to formulate their hopes for the future. They often mentioned their children, work and acquiring property.

Despite what is believed by some officials, stateless persons in Lithuania are affected by this status and would like to see change. The procedures to acquire citizenship take, however, much time and effort, and are for many too expensive. Stateless persons living in Lithuania generally report feeling Lithuanian and would like to have this feeling formalized into legal status as Lithuanian citizens.

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<sup>139</sup> Interviewed on 7 September 2012.

## 2.4 Conclusions and recommendations

Representatives of national authorities interviewed for this research have generally not recognized statelessness as a problem that needs to be addressed. However, staff members at the Migration Divisions of the Territorial Police Units, which are the authorities dealing with stateless persons directly, had a more nuanced view and acknowledged that stateless persons face specific problems in Lithuania. Members of civil society have recognized that statelessness is an under-reported, under-funded, and often misunderstood, issue.

Statelessness in Lithuania arises against the backdrop of its independence from the Soviet Union and the subsequent dissolution of the latter. The majority of the stateless persons currently residing in Lithuania have not or could not obtain Lithuanian citizenship through the so-called “zero option”. While a variety of reasons caused this situation, proactive efforts need to be undertaken with a view to reaching those persons and facilitating their access to procedures pertaining to the acquisition of Lithuanian citizenship.

Some 40% of stateless persons included in official statistics were born in Lithuania. Most of the others were born in former Soviet Republics. In recent years, however, a small number of stateless persons have come to Lithuania through the migration route.

There are currently three numbers used to quantify the body of stateless persons in Lithuania. The Statistics Department uses the number 3,500 for the year 2011 and the Migration Department uses the number 4,151 as of 1 August 2012. The definitions and methodologies used by both lack clarity. According to the latest population census, there were 2,400 stateless persons living in Lithuania in 2011.

Importantly, official tallies of stateless persons do not include stateless asylum-seekers, “unreturnable” stateless persons and stateless persons with “unresolved” legal status. For the last fifteen years, eight stateless persons (on average) applied for asylum every year. Disaggregated protection statistics reveal that since 2003, almost 25% of the stateless – asylum seekers have been granted subsidiary protection. There are no reliable statistics regarding the number of “unreturnable” stateless persons and stateless persons with “unresolved” legal status.

Datasets used by the Statistics Department include a group of residents whose citizenship status is described as “not indicated” or “undetermined”. There were 12,100 such persons residing in Lithuania in 2011. It is unknown who exactly comprises this group.

Interviews conducted with stateless persons for this study have confirmed that most of those interviewed would like to acquire Lithuanian citizenship and want to be able to fully participate in society, including through voting in national elections. Persons with “unresolved” legal status find it very difficult to regularize their stay in Lithuania, principally because the cumulative administrative fees are unaffordable for many stateless persons.

Obstacles to travelling abroad, including to countries of origin or previous residence because of statelessness were quoted as a serious problem by many participants. The specific problems mentioned were the price of the travel document and of the country visas, the short duration of the Travel Document and the necessity of visas to travel to countries of origin for stateless persons, obstacles that Lithuanian citizens do not face.

To overcome some of the challenges faced in accurately reporting on the number and profile of stateless persons in Lithuania, it is recommended that the Government of Lithuania establishes a consistent and accurate methodology of collecting statistical data about stateless persons residing in the country, in particular in the Statistics Department, Residents’ Register and the Migration Department. Information regarding the methodologies should be made publicly available. Centralization of data from the municipal authorities, prison and detention facilities, as well as Territorial Police Units regarding the number of persons with “unresolved” legal status should also be considered.



The Government of Lithuania could also undertake a socio-demographic study of the stateless population of Lithuania, including a survey on the social profile of stateless persons, causes of becoming and remaining statelessness in Lithuania, the problems faced by the target group in everyday life and migration dynamics. Such a study would not only enable the Government of Lithuania and civil society to better understand the specific needs of the stateless population and develop possible solutions, it would also increase awareness regarding the issue of statelessness among the authorities, civil society groups and the wider public. The causes of statelessness for the 36 stateless children living in Lithuania who lack a nationality, especially when 16 of them were born in the country, should also be researched.

Building upon the good practice of including codified stateless and citizenship questions in the national census, it is recommended that the future research should not only include household visits, but also soup-kitchens, homeless shelters, corrective and prison facilities and other places where they could encounter and register vulnerable populations.

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

## 3.1 Introduction

As noted in Chapter 1.3.1, a stateless person is defined in Article 1(1) of the 1954 Convention as “a person who is not considered as a national by any State under the operation of its law.” This definition identifies the persons who are entitled to the core protections of the 1954 Convention, with additional convention rights depending on the individual’s residence status, as discussed below. While ultimately only the acquisition of a nationality will end a person’s statelessness, in situations where this is not yet possible, it is necessary to protect stateless persons. A formal statelessness determination procedure makes it possible to identify those persons who are entitled to the protection regime of the 1954 Convention.

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be taken into consideration. The procedure must be accessible for stateless persons,<sup>140</sup> and while the procedure is underway, applicants should be entitled to certain rights.<sup>141</sup> During the procedure, stateless persons may not be detained for reasons relating to their statelessness. Where they are detained, it must be a measure of last resort and the person may not be held with convicted criminals or individuals awaiting trial.<sup>142</sup> Moreover, pending the outcome of the procedure, the applicant may not be expelled from the State where the procedure is ongoing.<sup>143</sup>

The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons and others dependent on the precise legal status of the individual.<sup>144</sup> When a person’s statelessness has been determined, he or she is entitled to the core rights of the 1954 Convention.<sup>145</sup> In the first place, this means granting the right of residence, which is not explicitly set forth in the 1954 Convention, but follows from its object and purpose.<sup>146</sup> Apart from the 1954 Convention, other instruments also provide content to the protection of stateless persons. Human rights law instruments, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the CRC, CEDAW and in Europe the ECHR, enumerate certain rights relevant to the protection of stateless persons.

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<sup>140</sup> UNHCR *Handbook on Protection of Stateless Persons*, paras. 68–70.

<sup>141</sup> *Ibid.*, paras. 144–146.

<sup>142</sup> *Ibid.*, paras. 112–115.

<sup>143</sup> *Ibid.*, paras. 72 and 145.

<sup>144</sup> For a detailed discussion, *see ibid.*, paras. 132–139. *See also ibid.*, paras 14 and 16 (on the status of a stateless person and attendant rights even prior to a formal determination of his or her statelessness).

<sup>145</sup> Some Convention rights apply to all stateless persons in a state’s territory or otherwise subject to the state’s jurisdiction. Others are dependent upon factors such as the type of residence the individual holds. *See ibid.*

<sup>146</sup> *Ibid.*, para. 14.

The 1954 Convention foresees that stateless persons who are “lawfully in” a State party (in French “*se trouvant régulièrement*”), are entitled to, *inter alia*, protection from expulsion (Article 31).<sup>147</sup> For stateless persons to be “lawfully in” a State party, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual. The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention, applicants for statelessness status who enter a determination procedure are therefore “lawfully in” the territory of a State party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.<sup>148</sup>

## 3.2 National legal framework

As mentioned in Chapter 2.1.2, Lithuania acceded to the 1954 Convention on 7 February 2000, without reservation and the 1961 Convention on 22 July 2013, with one declaration.<sup>149</sup> It is also party to other human rights instruments containing provisions of relevance to the prevention and reduction of statelessness, and protection of stateless persons. These include the ICCPR, the CRC, the CEDAW, the ICERD, the ICESCR and the Convention Against Torture (CAT). Lithuania is also a party to the ECHR, which applies to stateless persons as well as citizens.

Lithuania has signed several readmission agreements that envisage the return of persons, including stateless persons. Bilateral agreements with Austria and France explicitly apply to stateless persons in addition to third-country nationals. Importantly, these agreements are inapplicable to stateless persons who have been determined to be stateless and have been granted protection in accordance with the 1954 Convention.<sup>150</sup> So, for example, the French authorities can return a stateless person staying in France irregularly to Lithuania if he or she came to France from Lithuania or is in possession of a visa issued by the Lithuanian authorities. Lithuania can do the same to stateless persons resident in France. However, if such a person has been granted a statelessness status in France, he or she shall not be returned to Lithuania.

Agreements with Armenia, Romania, and Germany do not mention stateless persons, but they could be interpreted as including stateless persons in the term “alien,” which in all three agreements is defined as a person who is not a citizen of any of the Contracting States.<sup>151</sup> Other agreements apply to stateless persons

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<sup>147</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 134.

<sup>148</sup> *Ibid*, para 136.

<sup>149</sup> Lithuania's sole declaration reads as follows: “... In accordance with paragraph 3 of Article 8 of the Convention, ... the Republic of Lithuania declares that the Republic of Lithuania retains the right to deprive a person of his nationality on the grounds of the deprivation of nationality of the Republic of Lithuania, as provided for in paragraphs 4 and 6 of Article 24 of the Law of the Republic of Lithuania on Citizenship.”

<sup>150</sup> Agreement between the Government of the Republic of Lithuania and the Government of the Federal Republic of Austria regarding the readmission of persons who illegally entered the territory of a Contracting State, signed in Vienna on 9 December 1998, Articles 4(1), 4(2.4); Agreement between the Government of the Republic of Lithuania and the Government of the French Republic regarding readmission of illegally present persons, signed in Vilnius on 4 December 1998, Articles 5, 6.

<sup>151</sup> Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Armenia regarding the readmission of persons whose stay is illegal, signed in Yerevan on 15 September 2003, Articles 1, 4; Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Romania regarding taking back (readmission) of their citizens and aliens, signed in Bucharest on 19 February 2004, Articles 1, 4; Agreement between the Government of the Republic of Lithuania and the Government of the Federal Republic of Germany regarding the return/transfer of persons (Readmission Agreement), signed in Berlin on 16 December 1998, Article 3.1.

who hold travel documents,<sup>152</sup> a visa or residence permit<sup>153</sup> or a permanent residence permit<sup>154</sup> issued by the Lithuanian authorities. Lithuania thus has an obligation to accept the return of stateless persons who have a certain bond with Lithuania under the conditions outlined by these agreements.

The acquisition and loss of Lithuanian citizenship is governed by the 2010 Law on Citizenship. Article 2(1) of the law defines a stateless person as “a person who is not a citizen of any state.”<sup>155</sup> Citizenship of the Republic of Lithuania is defined as “a permanent legal relationship of a person with the Republic of Lithuania based on mutual rights and responsibilities.”<sup>156</sup> Because of the substantial overlap between countries’ use of the words “national” and “citizen,” as well as the complexities of translation, it is assumed for purposes of this report that the Lithuanian definition under domestic law is to be interpreted in line with the 1954 Convention’s Article 1 definition, now customary international law.

Under national law, stateless persons are considered aliens<sup>157</sup> and are thus subject to the 2004 Law on the Legal Status of Aliens. Under current Lithuanian law, there are no rights granted to stateless persons on the grounds of their statelessness. Thus, stateless persons in Lithuania have no rights distinct from those accorded to aliens in the same circumstance. The rights of stateless persons in Lithuania are determined by the type of residence permit they hold and whether their stay is lawful under Lithuanian immigration law.

### 3.3 Stateless determination procedure or other procedures in which statelessness status can be determined

Lithuania does not have a dedicated statelessness determination procedure. There are, however, three contexts in which an inquiry into an individual’s nationality can be launched: regularization of a person’s legal status in Lithuania (ad 1);<sup>158</sup> the asylum procedure (ad 2); and identity determination of “unreturnable” persons in the procedure on removal of unlawfully staying third-country nationals (ad 3). All three procedures are discussed in more detail below.

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<sup>152</sup> Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Greece regarding the return of illegally residing persons, signed in Vilnius on 1 July 1999, Article 3; Agreement between the Government of the Republic of Lithuania and the Government of Iceland regarding the return of persons who have entered or live in the State without a permission, signed in Reykjavik on 4 April 1997, Article 4.3; Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Portugal who have entered or live in the State without a permission, signed in Lisbon on 11 February 1999, Articles 3, 4.

<sup>153</sup> Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Moldova regarding the acceptance back of persons who have illegally arrived or live in the territory of the Republic of Lithuania or the Republic of Moldova, signed in Chisinau on 6 December 2001, Article 2; Agreement between the Government of the Republic of Lithuania, the Government of the Republic of Estonia and the Government of the Republic of Latvia regarding the return of illegally residing persons, signed in Vilnius on 30 June 1995, Article 3.2.

<sup>154</sup> Agreement between the Government of the Republic of Lithuania and the Government of Ukraine regarding the transfer and taking back of persons, signed in Vilnius on 23 September 1996, Article 3.

<sup>155</sup> Republic of Lithuania Law on Citizenship, 2 December 2010-No XI-1196, Vilnius (hereinafter – Law on Citizenship), Article 2(1).

<sup>156</sup> *Ibid.*, Article 2(8).

<sup>157</sup> Law on the Legal Status of Aliens, Article 2(32).

<sup>158</sup> Which occurs when a person does not have any identification documents but claims to be a resident of Lithuania. If a person is found to be born in Lithuania, if the person was already living in Lithuania before 15 June 1940, or when the person is a descendant of such persons, he or she can obtain citizenship or a permanent residence permit as a stateless person.

The determination of citizenship in removal procedures and those intended to resolve an individual's legal status is largely based on inquiries sent to the country or countries with which the individual enjoys a relevant link, such as birth or previous residence.<sup>159</sup>

Under the 1954 Convention, establishing whether an individual is considered as a national under the operation of the law of the concerned State requires a careful analysis of relevant legislation and the practice of its application. This is because a State may not in practice follow the letter of the law. The reference to "law" in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.<sup>160</sup>

### 3.3.1 Competent authority

While there are many institutions involved in direct or indirect assessment of nationality, or lack thereof, in most cases the initial contact between a stateless person and the authorities is with migration agencies or the State Border Guard Service (SBGS), while most decision-making falls under the competencies of the Migration Department.

#### Ad 1) status regularization procedure

Lithuania has a process it refers to as having a person's legal status "resolved." A person must have his or her legal status "resolved" when he or she has no valid identification documents or residence permit but claims either to have been born in Lithuania or to have resided in its territory prior to 1993. The Migration Division of a Territorial Police Unit will attempt to reconstruct the person's biography to establish whether the person was a citizen before 15 June 1940 or a descendant of a Lithuanian citizen born prior to 1940. If so, the individual is considered to have retained an indefinite right to Lithuanian citizenship.<sup>161</sup> If it cannot be established that they were a citizen before 15 June 1940 or are a descendant of a Lithuanian citizen born prior to 1940, their legal status will be "resolved" through the issuance of a residence permit.

If the person concerned meets the criteria for citizenship, he or she is given the choice between being granted a permanent residence permit as a stateless person or receiving Lithuanian citizenship. If the individual chooses the latter, he or she will obtain citizenship through one of two procedures, depending on the individual's circumstances. One way to obtain citizenship is through the simplified procedure, which does not require the applicant to meet any of the conditions of the naturalization procedure. The other procedure is to have citizenship restored. After submitting administrative forms, paying fees, and receiving confirmation from the State, the person will be issued a national identity card (*tapatybės kortelė*). If, in the course of the regularization procedure, an individual does not meet the criteria for citizenship, there will be an assessment of nationality, or lack thereof.

The competent authorities are the Migration Divisions of the Territorial Police Units (migration agencies), the Migration Department, and the Minister of Interior. The migration agencies collect the data and look into the relevant facts, while the Migration Department assesses whether the applicant is eligible for citizenship or a residence permit. The Minister of Interior makes citizenship-related decisions, including decisions on the reinstatement of citizenship of the Republic of Lithuania, as provided by Article 32 of the Law on Citizenship. Courts have competency to establish the judicially relevant facts, if need be. In cases of undocumented imprisoned persons, social rehabilitation specialists at the prison facility, in cooperation with the migration agencies and the Migration Department, undertake the procedure on behalf of the undocumented person.

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<sup>159</sup> Interviews with staff members of the migration agencies in Mažeikiai, 22 August 2012; Vilnius, 27 August 2012; Šalčininkai, 4 September, 2012; Švenčionys, 5 September, 2012; Visaginas, 29 August 2012.

<sup>160</sup> *Ibid*, p. 12, para. 24.

<sup>161</sup> Law on Citizenship, Article 9(1).

## Ad 2) asylum procedure

In asylum cases, the Asylum Division of the Migration Department is responsible for the nationality assessment. An asylum application can be lodged with the SBGS at border-crossing points or in territory considered a border area,<sup>162</sup> a Territorial Police Unit<sup>163</sup> or the FRC.<sup>164</sup> The Migration Department reviews applications and makes the decision as to whether to grant asylum. The asylum claim, as well as information relating to whether the individual possesses the nationality of his or her country of origin, are examined. No inquiries are submitted to the authorities of the country of origin, in keeping with the asylum procedure. If the applicant is granted refugee status or subsidiary protection and is also determined to be stateless, both conditions are recognized simultaneously.

Importantly, however, if an asylum claim from a person considered to be stateless is rejected, no status of a stateless person is conferred on the applicant, and the individual is obliged to return to his or her country of habitual residence.

Notably, until 2005, asylum statistics of the Migration Department distinguished between “stateless” and “stateless Gaza and West Bank” applicants. The Migration Department no longer considers asylum-seekers with identification documents issued by the administration of the Occupied Palestinian Territories (OPT) stateless for purposes of the asylum procedure. The changes owe to the increasing recognition of Palestinian statehood in the international fora in the recent years.<sup>165</sup> Stateless Palestinian asylum-seekers from outside the OPT, however, are still considered to be stateless<sup>166</sup> if they claim to be such. Importantly, under the 1954 Convention, the inquiry into whether a person is stateless does not cease if it is determined that the person has a connection – including birth in – a State. Rather, it must be determined whether that State considers the person to be a national. Thus, in the context of Palestinians, it must be determined whether the Palestinian authorities consider that particular individual to be a national.

## Ad 3) removal procedure<sup>167</sup>

Decisions to remove aliens or stateless persons can be made by Territorial Police Units, structural units of the SBGS, or the Migration Department. The information provided by these institutions can be further analyzed by the Division of Aliens’ Affairs of the Migration Department. Identity determination is undertaken by the FRC and the SBGS, with the cooperation of the Migration Department. In cases where the person’s identity cannot be established because they do not possess identification documents, officers use a questionnaire (*užsieniečio apklausos lapas*), which includes questions on place of birth, citizenship and ethnic group, family, identity documents, and countries of previous residence. Inquiries are sent to the authorities of countries of origin and/or previous residence.

If the person explicitly states he or she is stateless, officers will make inquiries to all countries with which the person alleges or is suspected of having relevant links. The aim of the inquiry is to identify a country to which the individual is to be returned, not whether he or she is stateless.

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<sup>162</sup> Law on the Legal Status of Aliens, Article 67 (1) (1).

<sup>163</sup> *Ibid*, Article 67(1) (2).

<sup>164</sup> *Ibid*, Article 67(1) (3).

<sup>165</sup> Interview with representatives of the Migration Department, 7 August 2012.

<sup>166</sup> *Ibid*.

<sup>167</sup> The return procedure is addressed in detail in the Order of the Minister of the Interior No. 1V-429, 24 December 2004, on the confirmation of rules of making and implementing decisions to oblige an alien to leave, on their expulsion, return and transit through the territory of the Republic of Lithuania (new version of the Order of 15 May 2012 as subsequently amended).

## 3.3.2 Procedural aspects

### 3.3.2.1 INITIATION OF THE PROCEDURE

#### Ad 1) status regularization procedure

This procedure is initiated when a person without valid identification or residence permit comes into contact with the authorities and where there is reason to believe that the person was either born in Lithuania or resided on its territory prior to 1993.

#### Ad 2) asylum procedure

An assessment of an asylum-seeker's potential statelessness is undertaken if the applicant claims to be stateless, and as part of establishing his/her identity within the asylum procedure.

#### Ad 3) removal procedure

The removal procedure itself is initiated when it is decided that a person cannot remain in Lithuania. Assessment of statelessness as part of this procedure will be undertaken when the person involved explicitly states that he or she is stateless.

### 3.3.2.2 QUESTIONS OF PROOF

Although the 1954 Convention does not articulate a standard of proof, States are encouraged to make a finding of statelessness where it is established to a "reasonable degree" that an individual is not considered as a national by any State under the operation of its law.<sup>168</sup> Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Moreover, statelessness, by its very nature, cannot normally be proved. Rather, it is an individual's nationality that can be proved. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence.<sup>169</sup>

#### Ad 1) status regularization procedure

Lithuanian law requires that the individual concerned submits any documentary evidence at his or her disposal. The individual will be questioned about family, education and employment history, place of birth and residence, as well as periods of residence abroad. All countries in which the individual may have relatives or where the individual had his or her previous residence are contacted with an inquiry into whether they consider the person to be their citizen. All information is then cross-referenced with the Residents' Register and, if necessary, with other institutions and databases. The authorities determine if the individual concerned was born in Lithuania, if he or she was a citizen of the Republic of Lithuania before 15 June 1940, or if he or she is a descendant of such persons. Consequently, an applicant should prove the fact of residence in Lithuania prior to 1993, evidence of having a legal source of income in Lithuania, payment of taxes, and a place of residence in Lithuania.<sup>170</sup>

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<sup>168</sup> UNHCR *Handbook on Protection of Stateless Persons*, para 91.

<sup>169</sup> *Ibid*, at para 90. For a detailed discussion, see *ibid*, paras 89-107 (discussing, *inter alia*, evidentiary issues such as the proper consideration of passports, enquiries with and responses from foreign authorities, the importance of conducting interviews with the individual whose nationality or statelessness is at issue, and credibility issues).

<sup>170</sup> Law on the Implementation of the Law on the Legal Status of Aliens, Article 2.

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## ON THE BURDEN OF PROOF:

### Application to Parliamentary Ombudsman

4D-2010/1-843 (18 November 2010)

The Lithuanian Parliamentary Ombudsman received a complaint against the Migration Division of the Vilnius Territorial Police Unit. The applicant, born in Lithuania and incarcerated at the time of filing the complaint, claimed he had approached the authorities about obtaining Lithuanian citizenship in 2004 and was asked in response to prove that he had been living in Lithuania prior to 1993. He appealed to the court in 2006, but the case was not heard because of an unpaid administrative fee and insufficient procedural documents.

The Parliamentary Ombudsman rejected the application and noted that national law does not oblige officers in migration agencies to collect information regarding the acquisition of citizenship or a residence permit, this being the duty of the person concerned. It did, however, recommend that the director of the corrective facility where the applicant was incarcerated facilitate the process of accessing the court and preparing relevant documents according to their competence.

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### Ad 2) asylum procedure

In the asylum procedure, the applicant is obliged to provide all necessary information about him or herself. If the applicant's claims cannot be supported by written proof, the information relevant to the determination process will be assessed. The decisive issues are country of origin information, obtained and analyzed by the Migration Department, and the coherence of the facts reported by the applicant.<sup>171</sup> If the applicant claims to be stateless, the Migration Department will accept the claim if it is coherent and does not contradict general country of origin information regarding statelessness and nationality.<sup>172</sup>

### Ad 3) removal procedure

In removal procedures, even if a person claims to be stateless, the examination of the case will be aimed at finding a country to which the person can be returned. The individual subject to the procedure is obliged to fully cooperate with the SBGS/other authorities involved in the procedure, who will undertake the investigation.<sup>173</sup>

In all the three procedures outlined above, the burden of proof is not clearly established by law, nor is it clear whether it in practice is applied in line with the guidance referred to above, pursuant to the UNHCR *Handbook on Protection of Stateless Persons*. As no dedicated statelessness determination procedure exists in Lithuania, procedural aspects are not specifically provided for by law. Therefore, there exists the possibility that a stateless person might not be identified as stateless, and thus as eligible to enjoy the rights guaranteed by the 1954 Convention.

## 3.3.2.3 ACCESS TO COURTS

As there exists no formal statelessness determination procedure in Lithuania and no formally recognized status of stateless with rights attached to that status, there is no mechanism by which persons who believe they have been wrongly identified as nationals of a given country (instead of being recognized as stateless) can appeal such a decision to a court of law, or an independent, quasi-judicial body.

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<sup>171</sup> Law on the Legal Status of Aliens, Article 83.

<sup>172</sup> Interview with representatives of the Lithuanian Red Cross Society, 7 August 2012.

<sup>173</sup> Interview with a representative of the FRC, 17 August 2012.



## Ad 1) Status regularization procedure

If the person does not retain the right to Lithuanian citizenship and is not confirmed as a citizen by any country, the person will be presumed to be stateless by the migration agency. The individual concerned has to establish the judicially relevant fact of having lived on the territory of the Republic of Lithuania prior to 1 July 1993. The Migration Department then issues a permanent residence permit, which states the person is “stateless” instead of indicating a nationality. If residence in Lithuania during the statutory period cannot be established, the Migration Department may still issue a temporary residence permit on grounds such as family reunification.<sup>174</sup>

## Ad 2) Asylum procedure

Stateless asylum-seekers can appeal any decision made within the framework of the Law on the Legal Status of Aliens, including a decision of the Migration Department not to grant refugee status or subsidiary protection.<sup>175</sup> In practice, however, as the applicant’s statelessness does not affect their asylum application under Lithuanian law, it is unlikely the courts would hear a statelessness claim.

## Ad 3) Removal procedure

Irregular migrants can appeal decisions to remove them to district administrative courts within 14 days.<sup>176</sup> Statelessness is not a reason to halt or suspend removal or to release the individual from detention. Thus, the court will not hear a claim that the person is stateless. Notably, statelessness can be a serious practical obstacle to returning an individual to the country of origin. Persons who have resided in Lithuania prior to 1 July 1993 and want to resolve their legal status can appeal decisions, as well.

### 3.3.2.4 OTHER PROCEDURAL ASPECTS

Although the Law on the Legal Status of Aliens and the Law on Administrative Proceedings<sup>177</sup> provides the right to access the national court system for stateless persons, in practice, stateless persons face obstacles enjoying this right. Free or subsidized legal aid in Lithuania is provided to Lithuanian citizens, nationals of other EU countries, lawful residents, and “other persons indicated in international treaties ratified by Lithuania.”<sup>178</sup> Asylum-seekers and refugees or beneficiaries of subsidiary protection whose protection has been withdrawn, also have the right to legal aid during proceedings.<sup>179</sup> Stateless irregular migrants are entitled to free legal aid only in the appeal proceedings if they challenge their detention.<sup>180</sup> Residents with an “unresolved” legal status have no access to free legal aid, including to secondary legal aid (representation and defense in court), which is important in establishing legally significant facts in a court. Some Migration Divisions of Territorial Police Units have reported to mediate between the applicant and the legal aid providers or to apply for extraordinary municipal funds to cover costs. Interviewed specialists have reported they have to use their creativity and imagination to ensure access to basic services, including legal aid. This practice is, however, inconsistent, and staff members at other Territorial Police Units have expressed frustration at the lack of access to legal aid.

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<sup>174</sup> Law on the Legal Status of Aliens, Article 40.

<sup>175</sup> Law on the Legal Status of Aliens, Article 136.

<sup>176</sup> *Ibid*, Articles 136 and 138.

<sup>177</sup> Law on Administrative Proceedings (No. VIII-1029, of 14 – 01-1999, as subsequently amended).

<sup>178</sup> The Law on State-Guaranteed Legal Aid, Article 11.

<sup>179</sup> Law on the Legal Status of Aliens, Articles 71 (1) (4) and 90 (5).

<sup>180</sup> *Ibid*, Article 116 (1).

Also, there is a problem with interpretation for people who do not speak Lithuanian. The Civil Procedure Code establishes the right to an interpreter, but only during judicial proceedings. Interpretation services during preparatory meetings and necessary sessions outside court proceedings shall be covered by the applicant. Finally, applicants need to pay a fee (referred to as *žyminis mokestis*) for court proceedings. For example, as of September 2012, if an applicant wants to establish that he or she lived in Lithuania prior to 1 July 1993, he or she must pay a State fee of 143 LTL (around 40 Euro). The courts may reduce the fee if the applicant requests so in writing.<sup>181</sup>

## 3.4 Rights of applicants and of stateless persons

### 3.4.1 Rights of applicants during the procedures in which statelessness can be determined

The 1954 Convention, along with other standards of international human rights law, grants stateless persons a core set of rights. These rights are extended to an individual based on the degree of attachment to the State. The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons and others dependent on the precise legal status of the individual.<sup>182</sup> Some provisions depend on whether the person is “lawfully in,”<sup>183</sup> “lawfully staying in,”<sup>184</sup> or “habitually resident” in a territory. Other provisions, however, are applicable to any stateless person who is either subject to the jurisdiction of a State party or present in its territory.

Persons with “unresolved” legal status, stateless asylum-seekers and “unreturnable” persons in Lithuania find themselves in a situation similar to that of persons who would normally submit an application to a statelessness determination procedure, if one existed.<sup>185</sup> Therefore, their rights are examined in the present section. The analysis encompasses only those “unreturnable” persons where there is an indication that they may be stateless. A discussion of “unreturnable” persons who purportedly have a nationality is beyond the scope of this report.

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<sup>181</sup> Civil Process Code, Article 83(3).

<sup>182</sup> For a detailed discussion, see UNHCR *Handbook on Protection of Stateless Persons*, paras. 132-139. See also *ibid.*, paras 14 and 16 (on the status of a stateless person even prior to a formal determination of his or her statelessness).

<sup>183</sup> For a discussion of the “lawfully in” rights, see UNHCR Handbook, para 134.

<sup>184</sup> See UNHCR *Handbook on Protection of Stateless Persons*, para 137, noting, “The “lawfully staying” requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorized by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category. It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be “lawfully staying.” Individuals recognized as stateless following a determination procedure but to whom no residence permit has been issued will generally be “lawfully staying” in a State party by virtue of the length of time already spent in the country awaiting a determination.” See also Waas, L.V., *Nationality Matters*, pp. 325-327.

<sup>185</sup> As there is no specific stand-alone statelessness determination procedure in Lithuania, rights during such a procedure cannot be discussed here. The other procedures in which statelessness can be determined will be discussed in its stead.

### 3.4.1.1 DETENTION

Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, an individual's undocumented status or lack of necessary immigration permits cannot be used as a general justification for the detention of such persons.<sup>186</sup>

Article 9 of the ICCPR, guaranteeing the right to liberty and security of person, prohibits unlawful as well as arbitrary detention. For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits set on such detention, and subject to periodic and judicial review. For detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate, and non-discriminatory. Indefinite as well as mandatory forms of detention are arbitrary *per se*.<sup>187</sup>

Detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. Alternatives to detention – from reporting requirements or bail/bond systems to structured community supervision and/or case management programs – are part of any assessment of the necessity and proportionality of detention. General principles relating to detention apply *a fortiori* to children, who as a rule are not to be detained in any circumstances.<sup>188</sup>

The Lithuanian Law on the Legal Status of Aliens provides a list of seven grounds on which an alien, including a stateless person, may be detained:<sup>189</sup> (1) in order to prevent the alien from entering the country without a permit; (2) unlawful entry or stay, except when the person has lodged an application for asylum; (3) in return procedures; (4) upon a suspected use of forged documents; (5) to facilitate the removal of the person pursuant to the EU Council Directive 2001/40/EC of 28 May 2010; (6) in order to prevent the spread of dangerous and particularly dangerous contagious diseases; or (7) when the person's stay in Lithuania constitutes a threat to national security, public policy, or public health.

The Supreme Administrative Court of Lithuania has ruled that these grounds for detention are inseparable from the legitimate purposes to restrict the alien's freedom of movement.<sup>190</sup> These purposes are: to ensure national security and public policy; to protect public health or morals; or to prevent crime or to safeguard the rights and freedoms of other persons.<sup>191</sup> That is, if detention on the grounds outlined in the law does not fulfil one or more of the allowed purposes, it is unjustified. Detention of persons solely on the basis of their statelessness would be against national legal provisions.

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<sup>186</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para 112 (citing the UN Working Group on Arbitrary Detention, Report to the Human Rights Council, A/HRC/13/30, 18 January 2010), at: <http://www.refworld.org/docid/502e0fa62.html>. In relation to stateless persons specifically, please see UNHCR Executive Committee Conclusion 106 (LV1) of 2006 on identification, prevention and reduction of statelessness and protection of stateless persons, <http://www.unhcr.org/453497302.html> which "Calls 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..." See *ibid* generally, paras 112-115.

<sup>187</sup> UNHCR *Handbook on Protection of Stateless Persons*, para. 112.

<sup>188</sup> *Ibid*, para. 113.

<sup>189</sup> Law on the Legal Status of Aliens, Article 113 (1). In addition, Article 113 (2) addresses detention in connection to a return procedure, and Article 113 (4) deals with detention of asylum-seekers.

<sup>190</sup> Supreme Administrative Court of Lithuania, judgments N-575-5928/2009 (28 May 2009), 62-4397/2010 (30 March 2010), N-62-4776-10 (23 April 2010), N-502-6566/2010 (12 August 2010).

<sup>191</sup> Law on the Legal Status of Aliens, Article 112.

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## CASE LAW

### Supreme Administrative Court of Lithuania

N-575-5928/2009 (28 May 2009)

N.A. moved to Lithuania in 1992. Since that time, he lived in Vilnius with his partner, who is a Lithuanian citizen, and their three children. On 7 May 2009, N.A. was detained for 48 hours because he provided a USSR passport issued in Azerbaijan upon the request of the police officers to show identification documents.

The migration directory of the Vilnius police asked the Vilnius municipal court No. 2 to allow for the detention of N.A. at the FRC until his legal status was resolved or until he was removed from Lithuania. The court allowed for N.A. to be detained at the FRC for three months on the grounds of unlawful stay. N.A. appealed the decision to the SACL. The appeal was based on, among other reasons, his long-term residence in Lithuania, his family links, and the fact he had a place of residence.

The SACL overturned the decision of the municipal court. The judges agreed that N.A. lived in Lithuania unlawfully and that that is a grounds for detention. However, considering that N.A. did not pose a threat to national security or public order, that his identity could be determined, and that he lived with his family and was willing to cooperate with the authorities in resolving his legal status, the SACL declared that N.A.'s detention was unnecessary.

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A police officer or other law enforcement officer can detain a person for up to 48 hours.<sup>192</sup> Detention longer than 48 hours is only allowed pursuant to a court order.<sup>193</sup> The detained individual is entitled to State-guaranteed legal aid.<sup>194</sup> All persons detained for longer than 48 hours are detained at the FRC.<sup>195</sup> Detention may be executed by police officers, the SBGS, or other law enforcement agents.

Alternatives to detention are provided for in Lithuanian law.<sup>196</sup> The law allows for detention of vulnerable persons and families with children only in extreme cases, and the best interests of the child and of vulnerable persons must be considered.<sup>197</sup> In practice, vulnerable individuals are detained, sometimes because alternatives to detention cannot be implemented in practice.<sup>198</sup> Upon a visit to the FRC,<sup>199</sup> this report's researcher found an asylum-seeking family with a small child and a pregnant mother detained.

Although detention of persons with "unresolved" legal status used to be routine – purportedly for purposes of documenting them – it is now rare and only used in cases where the person's identity cannot be established.<sup>200</sup> Since 2008, there have been very few cases of detention of long-term habitual residents.<sup>201</sup>

Presently, persons most affected by detention are "unreturnable" migrants, especially if their identity cannot be established. Frequently, they spend at least six months in the FRC.<sup>202</sup> The law allows for an extension of

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<sup>192</sup> *Ibid*, Article 114 (1).

<sup>193</sup> *Ibid*, Article 114 (2).

<sup>194</sup> *Ibid*, Article 116 (1).

<sup>195</sup> *Ibid*, Article 114 (2).

<sup>196</sup> *Ibid*, Article 115.

<sup>197</sup> *Ibid*, Article 114 (4).

<sup>198</sup> Lithuanian Red Cross, *Detention of asylum seekers and alternatives to detention in Lithuania*, 2011, p. 18.

<sup>199</sup> On 21 August 2012.

<sup>200</sup> Interview with a representative of the FRC, 17 August 2012; interview with representatives of the Lithuanian Red Cross Society, 7 August 2012.

<sup>201</sup> Interview with a representative of the FRC, 17 August 2012.

<sup>202</sup> Interview with a representative of the FRC, 17 August 2012; interview with representatives of the Lithuanian Red Cross Society, 7 August 2012.

the detention period for up to twelve months if the individual does not cooperate or where the necessary documents to execute the removal are not received.<sup>203</sup> The individual can challenge the detention decisions and appeal for alternatives to detention, but in practice many “unreturnable” persons spend at least a year at the FRC, especially if the individual has no personal identification documents.<sup>204</sup>

The case of M.A. is illustrative of how a lack of identity documents or recognition by a country of origin/former habitual residence may contribute to restricting a person’s liberty. Also, it shows how “unreturnable” persons can be detained for excessive periods of time despite the fact that their return to the country of origin is not possible.

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## CASE LAW

### Supreme Administrative Court of Lithuania

N-575-1289/2012 (24 October 2012)

M.A. first arrived in Lithuania in June 2001 and applied for asylum. He was granted several temporary residence permits and, in February 2004, was granted subsidiary protection in Lithuania. Although the judgment does not reveal M.A.’s nationality, he is referred to as a “citizen” of a foreign country. In September 2008, M.A. was returned to Lithuania from Germany, where he allegedly lived under a false name. He was accommodated at the FRC. In April 2009, the Migration Department issued a decision not to grant asylum to M.A. and ordered his expulsion. M.A. absconded, leaving the Lithuanian territory. In October 2011, he was transferred to Lithuania from Luxemburg under the Dublin II Regulation.

The 3<sup>rd</sup> Vilnius district court ordered his detention for a three-month period, until 20 January 2012. M.A. lodged an application for asylum, which the Migration Department rejected. It then ordered M.A.’s expulsion. On 13 January 2012, Švenčionys regional court ordered a cessation of his detention and on 18 January, M.A. was accommodated at the FRC without restricting his freedom of movement. On 24 January, the applicant absconded and was intercepted in Poland. On 26 January, Lazdijai regional court ordered M.A. be detained until his expulsion could be carried out. The court based its decision on the applicant’s irregular entry and stay in Lithuania and on the fact that a decision to expel M.A. had been adopted.

On 16 March, M.A. approached the FRC officers, asking them to contact the authorities of his country of origin in order to obtain a confirmation of his nationality. On 10 April, the Švenčionys regional court agreed with a request to detain M.A. until 10 May on the grounds of his irregular entry and stay and later extended the term until 10 July. On 14 June, the Supreme Administrative Court of Lithuania returned M.A.’s asylum claim to the Migration Department for reexamination. On 9 July, the Švenčionys regional court agreed to extend the detention period for three months, until 10 December.

On 6 August, the authorities received a response from M.A.’s country of origin as to his readmission. The response said that M.A. was not a citizen of that country and that it is impossible to verify his birth registration because the archives had been destroyed by fire. M.A. appealed the decision to detain him, but it was rejected despite his status as an asylum-seeker and the fact that his country of origin had refused to readmit him. M.A. claimed that the length of his detention was disproportionate, particularly because no date could be set for his expulsion through no fault of his own.

The authorities cited M.A.’s history of absconding, doubted the veracity of his claims as to his citizenship, and claimed he was abusing the right to seek asylum. They emphasized that the country of origin confirmed that M.A. had never resided at the address he had provided to the Lithuanian authorities and thus was not

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<sup>203</sup> Law on the Legal Status of Aliens, Article 114 (5).

<sup>204</sup> Interview with a representative of the FRC, 17 August 2012; interview with representatives of the Lithuanian Red Cross Society, 7 August 2012.

cooperating in establishing his identity and citizenship. They said his detention for a period longer than six months was thus justified.

The Supreme Administrative Court ruled there were grounds to extend M.A.'s detention until 10 December 2012, based on his lack of cooperation, obstruction of the procedure of expulsion and asylum, and abuse of the right to seek asylum. M.A. had already spent nearly twelve months in detention.

At the time of the field research carried out for this report (August 2012), there was one stateless person detained at the FRC. Another two were accommodated at the FRC without restriction of their freedom of movement.<sup>205</sup> The detained person had been apprehended as he was trying to smuggle cigarettes into Lithuania. Around August 2012, he was subjected to a removal procedure that was prolonged while his country of origin was determining whether to readmit him. The first person accommodated at the FRC was a long-term resident of Lithuania with an “unresolved” legal status. He had previously been destitute and undocumented, and the specialists at the FRC were trying to establish his identity. The second person was an asylum-seeker who had previously been subject to a failed removal procedure, as both his country of origin and his country of long-term residence refused to readmit him. In 2011, a total of eight stateless persons were detained for 48 hours, seven were detained for more than 48 hours, and five were subjected to alternatives to detention.

The available data indicates that detention of stateless persons in Lithuania is rather low (Table 5). Nevertheless, some undocumented persons detained in the context of migration or accommodated at the FRC, including “unreturnable” persons and asylum-seekers, are registered by alleged or presumed nationality.<sup>206</sup> Some individuals are registered as persons with “unknown” nationality (Figure 6) and may, in fact, be stateless. Official data, thus, may not reflect the true number of stateless persons detained in Lithuania. Also, the data available are not disaggregated by age and gender.

**Table 5.** Number of stateless persons detained and those to whom measures alternative to detention were applied, 2006-2011<sup>207</sup>

	Detained for 48h	Alternatives to detention	Detained for more than 48h	Accommodated at FRC*
2006	11	0	0	0
2007	12	0	0	0
2008	2	3	0	0
2009	3	5	8	0
2010	7	2	0	8
2011	8	5	7	0
2012	-	-	-	-

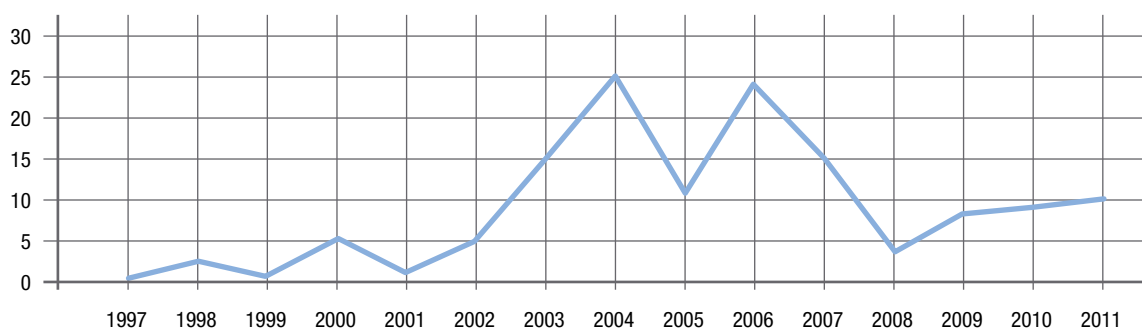
\* Without restricting freedom of movement

<sup>205</sup> All three of them are male. No information on the country of origin of the concerned persons is available.

<sup>206</sup> Interview with a representative of the FRC, 17 August 2012.

<sup>207</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2006*, Vilnius, 2007, p. 77; *Migration Yearbook 2007*, Vilnius, 2008, p. 68; *Migration Yearbook 2008*, Vilnius, 2009, p. 85; *Migration Yearbook 2009*, Vilnius, 2010, p. 88; *Migration Yearbook 2010*, Vilnius, 2011, p. 106; *Migration Yearbook 2011*, Vilnius, 2012, p. 77., *Migration Yearbook 2012*, Vilnius, 2013, p. 80.

**Figure 6.** Number of persons with “unknown” country of origin accommodated at the FRC, 1997-2011<sup>208</sup>



### 3.4.1.2 EXPULSION

Article 31 of the 1954 Convention prohibits the expulsion of a stateless person “lawfully in” the State Party’s territory, save on grounds of national security or public order. For a stateless person to be “lawfully in” a State party to the Convention, his or her presence needs to be authorized by the State, either by explicitly sanctioning or by knowing of and not prohibiting the stay.<sup>209</sup> A stateless person is entitled to submit evidence to clear him- or herself, to appeal a decision on expulsion and be represented by a person specially designated by the competent authority. In addition, a stateless person is entitled to a reasonable period to seek legal admission into another country. The State implementing the expulsion can apply internal measures as necessary.<sup>210</sup>

Stateless asylum-seekers and persons with “unresolved” legal status who are awaiting a residence permit or recognition of citizenship are among those persons who are “lawfully in” Lithuania within the meaning of the 1954 Convention.

Persons with expired or withdrawn temporary residence permits are obliged to leave Lithuania.<sup>211</sup> If they fail to do so within a certain period of time (from seven to 30 days after notification of the return decision), they can be expelled. Other grounds for expulsion include unlawful entry or stay in Lithuania (save for where the principle of *non-refoulement* applies). If an alien is found to constitute a threat to State security or public order by a Court, this can also be grounds for expulsion.<sup>212</sup>

Since 1999, the numbers of expelled stateless persons has been decreasing steadily. There have been no reported expulsions of stateless persons since 2008 (Figure 7). Those with permanent residence permits—the majority of the stateless population in Lithuania—can only be expelled if they constitute a threat to national security or public order. There are no known cases of expelled stateless permanent residents.

<sup>208</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2004*, Vilnius, 2005, p. 74-5; *Migration Yearbook 2005*, Vilnius, 2006, p. 80; *Migration Yearbook 2006*, Vilnius, 2007, p. 78; *Migration Yearbook 2007*, Vilnius, 2008, p. 69; *Migration Yearbook 2008*, Vilnius, 2009, p. 87; *Migration Yearbook 2009*, Vilnius, 2010, p. 90; *Migration Yearbook 2010*, Vilnius, 2011, p. 108; *Migration Yearbook 2011*, Vilnius, 2012, p. 79.

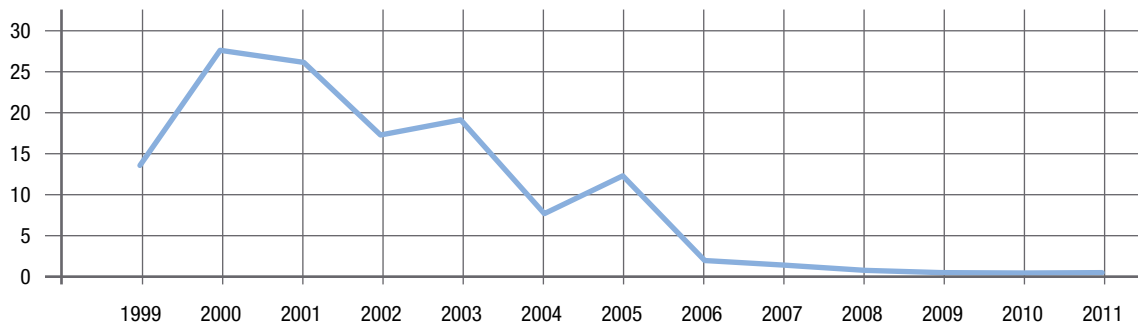
<sup>209</sup> UNHCR *Handbook on Protection of Stateless Persons*, para. 135.

<sup>210</sup> Article 31(2)-(3) of the 1954 Convention.

<sup>211</sup> Law on the Legal Status of Aliens, Article 125.

<sup>212</sup> *Ibid*, Article 126.

**Figure 7.** Number of stateless persons expelled from Lithuania, 1999-2011<sup>213</sup>



Stateless asylum-seekers cannot be expelled or obliged to leave the territory of Lithuania until the adoption of a final decision on their claim. Importantly, however, “unreturnable” persons have scant protection from expulsion. Even where “unreturnable” persons are granted a temporary residence permit because they cannot be returned for twelve months, the permit needs to be renewed every year for at least five years. These persons remain vulnerable to expulsion at the time of annual renewal. Even long-term residents with an “unresolved” legal status can, in theory, be expelled. However, this does not occur in practice because the majority of these persons settled in Lithuania prior to 1 July 1993, which gives them the right to a permanent residence permit.

In making a decision to expel, remove, or return a person, the authorities must take into account the length of the individual’s lawful stay in Lithuania, their family, economic, and social relations in the country, as well as and the gravity of the offense.<sup>214</sup> A decision to remove a person can be appealed. The appeal has a suspensive effect unless the person constitutes a threat to national security or public order.<sup>215</sup>

### 3.4.2 Rights of persons recognized as stateless

The 1954 Convention, along with applicable standards of international human rights law, grants stateless persons a core set of rights. Some provisions apply to all stateless persons, while others have certain residence requirements.<sup>216</sup> Importantly, “[r]ecognition of an individual as a stateless person under the 1954 Convention also triggers the “lawfully staying” rights, in addition to a right to residence. Thus the right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.”<sup>217</sup>

Substantive rights guaranteed to stateless persons include, *inter alia*, freedom of religion, the right to recognition of their personal legal status (especially marriage), property rights, the right of association, access to courts, the right to identity documents, certain rights to travel documents, certain rights to wage-earning employment, self-employment, housing, public education, public relief, administrative assistance,

<sup>213</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2004*, Vilnius, 2005, p. 78; *Migration Yearbook 2005*, Vilnius, 2006, p. 83; *Migration Yearbook 2006*, Vilnius, 2007, p. 81; *Migration Yearbook 2007*, Vilnius, 2008, p. 71; *Migration Yearbook 2008*, Vilnius, 2009, p. 89; *Migration Yearbook 2009*, Vilnius, 2010, p. 93; *Migration Yearbook 2010*, Vilnius, 2011, p. 111; *Migration Yearbook 2011*, Vilnius, 2012, p. 82.

<sup>214</sup> Law on the Legal Status of Aliens, Article 128(1).

<sup>215</sup> *Ibid*, Article 128(2) (1). Following the amendment of 26 November 2015, suspensive effect is ensured through interim measures.

<sup>216</sup> For a comprehensive discussion on the proper interpretation of these terms, see UNHCR, Handbook on *Protection of Stateless Persons*, paras 147–152, (*inter alia*, making specific recommendations as to the granting of a residence permit; noting that the recognition of an individual as stateless “triggers the “lawfully staying” rights;” discussing “habitual residence;”), paras 136–139 (discussing the “lawfully staying” rights as well as “habitually resident” provisions), and paras 140–143 (discussing international human rights law and its relevance to statelessness, in particular the ICCPR’s Article 12(4) “own country” provisions and its guarantee of “the right of entry, and thus the right to remain, of individuals with special ties to a State.”), available at: <http://www.refworld.org/docid/53b676aa4.html>.

<sup>217</sup> *Ibid*, para 150.



and freedom of movement.<sup>218</sup> This list is not exhaustive, and other international and regional human rights instruments and jurisprudence afford stateless persons additional rights.

Under Lithuanian law, stateless persons have no distinct rights on the ground of their statelessness. Rather, the rights of stateless persons in Lithuania is determined by the type of residence permit he or she holds.

### 3.4.2.1 THE RIGHT TO RESIDENCE

Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.<sup>219</sup>

It is therefore recommended that States grant persons recognized 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, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.<sup>220</sup>

In certain limited circumstances, a state might have discretion to provide a residence status that is more transitional in nature where the person in question is able to acquire or reacquire a different nationality through a simple, rapid, and non-discretionary procedure that is a mere formality or where the person enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.<sup>221</sup>

Considered aliens under Lithuanian law, stateless persons have no right to residence on the sole ground of statelessness, but rather exercise their right to residence through the same channels as other non-citizens.<sup>222</sup> As such, stateless persons can obtain a one-year temporary residence permit, or permanent residence; in the latter case, the actual residence permit, or document, will have a validity of 5 years, after which it will need to be renewed. Hence, a stateless person's right of residence will not be granted on the ground of his or her statelessness, but will be based on an independent ground for a residence permit pursuant to the Law on the Legal Status of Aliens.

If, after the restoration of independence of Lithuania in 1991, a resident had not acquired Lithuanian citizenship, he or she is entitled to a permanent residence permit, irrespective of citizenship. Such persons with "unresolved" legal status must, in judicial proceedings, prove that they lived in Lithuania before 1 July 1993 through certificates, statements and other relevant documents, as well as witness accounts. Additionally, such persons must meet three conditions; to prove in court that they have a lawful source of subsistence in Lithuania; that they pay income and other taxes, as required by national law; and that they have a place to live in Lithuania.<sup>223</sup> In practice, because many persons concerned are unable to meet these requirements, they are applied rather leniently, as the case summarized below shows.<sup>224</sup> There is strong political will to document all long-term residents in Lithuania.<sup>225</sup>

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<sup>218</sup> See *ibid* for a discussion of the proper interpretation of the 1954 Convention's "lawfully staying" rights.

<sup>219</sup> UNHCR *Handbook on Protection of Stateless Persons*, para 147.

<sup>220</sup> *Ibid*, para 148.

<sup>221</sup> *Ibid*, para. 154. For more detail, see *ibid*, paras. 153-157.

<sup>222</sup> Law on the Legal Status of Aliens, Article 2(32).

<sup>223</sup> Law on the Implementation of the Law on the Legal Status of Aliens, Article 2.

<sup>224</sup> Interview with staff members of the Migration Department, 7 August 2012.

<sup>225</sup> Interviews with staff members of the migration agencies in Mažeikiai, 22 August 2012; Vilnius, 27 August 2012; Šalčininkai, 4 September, 2012; Švenčionys, 5 September, 2012; Visaginas, 29 August 2012.

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## CASE LAW

### **Nr. 2-6661-797/2010 (11 November 2010)**

Šiauliai Municipal Court

A.P. appealed to court to establish that he moved to Lithuania in 1991, currently lives in its territory, and has a family and a place to live. The applicant, at the time, was not officially employed or paying taxes, as he could not be contracted without a valid identification document or a residence permit. A representative of the Migration Division of the Territorial Police Unit pointed out that the criteria established by law cannot realistically be met given the applicants situation, as the applicant could not work officially or have another lawful means of subsistence without a valid identification document. She asked the court to consider other facts in the case, because without establishing the applicant's actual residence in Lithuania, his situation would only become worse. The court took note of documentary evidence, which consisted of the applicant's expired Soviet passport, documents relating to previous employment and social insurance, as well as three witness accounts. It established the fact of actual residence for the purposes of obtaining a permanent residence permit.

### **Nr.2-1757-364/2011 (22 February 2011)**

Kaunas Municipal Court

L.P. was born in Latvia in 1958. In court, she wanted to establish the fact that she had moved to Lithuania in 1985 and at that time resided in its territory, for the purposes of obtaining Lithuanian citizenship or a permanent residence permit. She was unemployed and did not have a place of residence. At the time of the trial, she was temporarily staying at a women's shelter. The applicant provided documentary evidence and an oral statement by two representatives of the municipality. The court had received a confirmation from the Migration Department that it would accept L.P.'s application since her residence can be confirmed. The court granted the petition.

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The vast majority of undocumented residents are vulnerable populations who experience social exclusion. Staff members at migration agencies and social workers have identified destitution, alcohol addiction, prior imprisonment, and lack of social or family networks as affecting this small population.<sup>226</sup>

One staff member calculated that it costs some 600 LTL (175 Euro) in total to obtain a residence permit. A part of this sum can be covered by a one-off allowance from the municipal authorities, which must be applied for by the migration agency itself. As there is no specific procedure to deal with situations of people with "unresolved" legal status, the practice and results are inconsistent. Some migration agencies are unaware of the possibility to apply for the benefit. In poorer municipalities, it is even more difficult to obtain these benefits, as some agencies observed. One expert at a migration agency in the south of Lithuania said: "Sometimes the municipalities tell us, "I have this single mother with four children, or that person who has cancer and needs medicine, and you want me to spend the money I could give them on this alcoholic?""

Even if the allowance is granted, it is necessary to obtain Social Insurance, which is a requirement in order to obtain a permanent residence permit. The individual can also be fined 250 to 1000 LTL (70 to 290 Euro) for "unlawful stay" in the country.<sup>227</sup> If the fine is applied, the person cannot obtain a residence permit unless he or she pays it first.

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<sup>226</sup> Interviews with staff members of the migration agencies in Mažeikiai, 22 August 2012; Vilnius, 27 August 2012; Šalčininkai, 4 September, 2012; Švenčionys, 5 September, 2012; Visaginas, 29 August 2012.

<sup>227</sup> Code of Administrative Offences of the Republic of Lithuania, Article 206. Following the amendment of 16 October 2014, the concerned person may be fined 72 - 289 Euro.

In the context of migration, stateless persons are subjected to the same conditions as other aliens. That is to say, they have no freestanding right to a residence permit on grounds of their statelessness. They can obtain a temporary residence permit on grounds of family unification,<sup>228</sup> employment,<sup>229</sup> or other grounds, including entrepreneurship<sup>230</sup> or studies.<sup>231</sup> The person will have to meet other requirements, like possession of a health insurance<sup>232</sup> and a valid travel document,<sup>233</sup> proof of sufficient income,<sup>234</sup> and place of residence.<sup>235</sup> After five years of continuous residence on the basis of a temporary residence permit, the person can apply for a permanent residence permit.<sup>236</sup> As the law provides that possession of a valid travel document is one of the prerequisites to obtaining a residence permit,<sup>237</sup> undocumented stateless or potentially stateless persons may face additional obstacles in acquiring the right to residence.

Stateless asylum-seekers are issued a permanent residence permit if they obtain refugee status<sup>238</sup> and a temporary residence permit if they are granted subsidiary or temporary protection.<sup>239</sup> As discussed above, successful asylum-seekers can be recognized as refugees and acknowledged as stateless persons simultaneously, but their right to residence depends on their status as refugee or as a beneficiary of subsidiary protection.

If a person's identity as stateless is accepted but his or her claim of persecution is rejected, his or her status changes from an "asylum applicant" to an "alien." In the majority of cases, such a person would become "unreturnable" and therefore entitled to a residence permit pursuant to Article 40 (1) (8) of the Law on the Legal Status of Aliens. It is also possible that some rejected asylum-seekers eventually can become "unreturnable" persons, in particular where the statelessness element becomes apparent and is recognized at a later stage, i.e. in the course of the enforcement of a return decision, e.g. when the State to which the failed asylum-seeker was supposed to return refuses to take him/her back.

Hence, statelessness can be a serious obstacle to return a person to his or her country of origin or previous residence. In cases where a person whose expulsion has been suspended for twelve months due to the fact that the country of intended return refuses to accept the individual, or because he or she is in need of basic medical aid or because he or she cannot be expelled due to objective reasons (such as not being in possession of a valid travel document or not having a possibility to obtain travel tickets),<sup>240</sup> the person can be issued a temporary residence permit if he or she is not detained.<sup>241</sup> However, if the grounds for the temporary residence permit no longer exist, the expulsion is to be implemented immediately.<sup>242</sup>

A child born in the Lithuanian territory to a stateless person lawfully residing in Lithuania is issued a residence permit of the same type and duration as his or her parent(s),<sup>243</sup> unless he or she acquires Lithuanian citizenship pursuant to Article 15 of the Citizenship Law, discussed in more detail below.

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<sup>228</sup> Law on the Legal Status of Aliens, Article 40(1) (3).

<sup>229</sup> *Ibid*, Article 40(1) (4).

<sup>230</sup> *Ibid*, Article 40(1) (5).

<sup>231</sup> *Ibid*, Article 40(1) (6).

<sup>232</sup> *Ibid*, Article 26(1) (2).

<sup>233</sup> *Ibid*, Article 6(1).

<sup>234</sup> *Ibid*, Article 26(1) (3).

<sup>235</sup> *Ibid*, Article 26(1) (4).

<sup>236</sup> *Ibid*, Article 53(1) (8).

<sup>237</sup> *Ibid*, Article 40(4).

<sup>238</sup> *Ibid*, Article 53(1) (7).

<sup>239</sup> *Ibid*, Article 40(1) (9, 10).

<sup>240</sup> *Ibid*, Articles 132; 128(2) (2,3,4).

<sup>241</sup> *Ibid*, Article 132 (1).

<sup>242</sup> *Ibid*, Article 128(3).

<sup>243</sup> *Ibid*, Article 31(2).

Lithuanian legislation foresees a possibility of family reunification for aliens lawfully residing in Lithuania. The parents of a stateless minor who has been granted refugee status and was issued a permanent residence permit can be granted a temporary residence permit.<sup>244</sup> However, stateless beneficiaries of temporary protection have no right to family reunification.<sup>245</sup> A stateless person can be joined by his or her minor children if he or she, or the spouse who is a guardian of the child, holds a residence permit.<sup>246</sup> If the stateless person or persons concerned lives or live in Lithuania with a permanent residence permit and are incapable of work due to age or disability, the child or children can obtain a temporary residence permit.<sup>247</sup> A stateless person's spouse or civil partner can be granted a temporary residence permit<sup>248</sup> if both are at least 21 years old.<sup>249</sup> Parents and children are also eligible for family (re)unification.<sup>250</sup>

Those seeking a Lithuanian residence permit through family reunification must meet the conditions of possessing valid health insurance, sufficient financial means, a place of residence and a valid travel document.<sup>251</sup> The permits are issued for the same period as the stateless person who is joined.<sup>252</sup> In case of family reunification with children, a spouse or a civil partner and other first-degree relatives in the direct ascending line, the inviting stateless resident shall have lived in Lithuania for at least two years, hold a temporary residence permit valid for at least one year and have reasonable prospects of obtaining the right to permanent residence in Lithuania.<sup>253</sup> This provision, however, is not applicable to stateless persons who:

- have been granted asylum;
- have moved to Lithuania to carry out scientific research or to perform a highly-qualified work requiring high professional skills;
- are teaching or taking part in internship programs at institutions of education and science under international treaties or EU academic exchange programs with third countries;
- are directly involved in projects “of importance to the State” or have financial investments in Lithuania.<sup>254</sup>

Stateless persons are afforded no special protections with regard to withdrawal of a residence permit, but rather are subjected to the same regulations applicable to other aliens. A temporary residence permit is to be withdrawn if:

- the circumstances for which the permit was issued no longer exist;<sup>255</sup>
- it was obtained by fraud;<sup>256</sup>
- the person concerned departs to reside or has been residing in a foreign country for a period longer than six months;<sup>257</sup>
- their residence in Lithuania constitutes a threat to State security, public order or public health;<sup>258</sup> or
- they have repeatedly failed to fulfil the duties of reporting to the authorities set out in the law.<sup>259</sup>

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<sup>244</sup> *Ibid*, Article 43(1) (4).

<sup>245</sup> *Ibid*, Article 43(8).

<sup>246</sup> *Ibid*, Article 43(1) (2).

<sup>247</sup> *Ibid*, Article 43(1) (7).

<sup>248</sup> *Ibid*, Article 43(1) (5).

<sup>249</sup> *Ibid*, Article 43(7).

<sup>250</sup> *Ibid*, Article 43(1) (6).

<sup>251</sup> *Ibid*, Article 43(3).

<sup>252</sup> *Ibid*, Article 43(5).

<sup>253</sup> *Ibid*, Article 43(6).

<sup>254</sup> *Ibid*.

<sup>255</sup> *Ibid*. Article 50(1) (2-12, 16, 17).

<sup>256</sup> *Ibid*. Article 50(1) (1).

<sup>257</sup> *Ibid*. Article 50(1) (13).

<sup>258</sup> *Ibid*. Article 50(1) (14).

<sup>259</sup> *Ibid*. Article 50(1) (15).

If a stateless person's temporary residence permit is withdrawn, the temporary residence permits of their co-habiting family members shall be also revoked, except in cases where their right to residence is based on other grounds.<sup>260</sup> The decision to withdraw a temporary residence permit is taken by the Migration Department.<sup>261</sup> The decision can be appealed within 14 days.<sup>262</sup> The appeal has a suspensive effect.<sup>263</sup> Thus, the person concerned, still considered a lawful resident, would be entitled to the State-guaranteed legal aid.

A permanent residence permit may only be withdrawn if it has been obtained by fraud, if the person's residence in Lithuania may constitute a threat to State security or public order or if the person has been residing in a country that is not a Member State of the EU for a period exceeding 12 consecutive months.<sup>264</sup> Upon withdrawal of the permit, the person's co-habiting family members' permits are also withdrawn, unless they are entitled to reside in Lithuania on other grounds.<sup>265</sup> The expiration of a permanent residence card does not affect the validity of the permanent residence itself.<sup>266</sup> The decision to withdraw the permanent residence permit can be appealed, under the same terms as in withdrawing a temporary residence permit.<sup>267</sup> The competent authority to withdraw the permit is the Migration Department.<sup>268</sup>

### 3.4.2.2 THE RIGHT TO WORK

As noted above, the recognition of an individual as stateless “triggers the ‘lawfully staying’ rights” of the 1954 Convention.<sup>269</sup> Among these rights are the right to work (Article 17), practice of liberal profession (Article 19), and labor and social security rights (Article 24).

Article 17 provides in its entirety:

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances,<sup>270</sup> as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Although the Convention does not define the term “wage-earning employment,” it should be interpreted in the broadest sense of the term.<sup>271</sup>

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<sup>260</sup> *Ibid.* Article 50(3).

<sup>261</sup> *Ibid.* Article 51(4).

<sup>262</sup> *Ibid.* Articles 136, 138.

<sup>263</sup> *Ibid.* Article 139(1) (1).

<sup>264</sup> *Ibid.* Article 54(1) (1-3).

<sup>265</sup> *Ibid.* Article 54(3).

<sup>266</sup> *Ibid.* Article 54(4).

<sup>267</sup> *Ibid.* Articles 136, 138.

<sup>268</sup> *Ibid.* Article 55(4).

<sup>269</sup> UNHCR Handbook on Protection of Stateless Persons, para 150.

<sup>270</sup> Article 6, the term “in the same circumstances” provides: For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

<sup>271</sup> Robinson, N., *Convention Relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary* (1955), p. 62.

All stateless persons lawfully residing in Lithuania have a right to work. Those who have permanent residence have an automatic right to work. However, most of those who are in possession of a temporary residence permit need to apply for and receive a work permit. Those who obtain the permit on the grounds of a retained right to the citizenship of Lithuania, family reunification, having been under guardianship or custody or having been granted subsidiary protection in Lithuania are exempted from the obligation to obtain a work permit.<sup>272</sup>

In the time of conducting the research, “unreturnable” persons granted a temporary residence were required to obtain a separate work permit. Following the adoption of the amendment of 26 November 2015, they currently have an automatic right to work. This important development is welcomed.<sup>273</sup>

### 3.4.2.3 THE RIGHT TO PUBLIC RELIEF

Article 23 of the 1954 Convention provides: “The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.” The right to social security is set forth in Article 24 and is also a “lawfully staying” right.<sup>274</sup> Like Article 23, Article 24 requires that states treat stateless persons “lawfully staying” in the territory in the same manner in which nationals are treated with respect to certain labor and social security provisions, as detailed in Article 24.

Although the “lawfully staying” requirement envisages a greater duration of presence in a territory, it need not take the form of permanent residence. According to the UNHCR *Handbook on Protection of Stateless Persons*, “stateless persons who have been granted a residence permit would fall within this category. It also covers individuals who have temporary permission to stay if this is for more than a few months.”<sup>275</sup> Thus, stateless persons residing in Lithuania with both permanent and temporary permits should be entitled to the same access to public relief programs and medical care as nationals.

Only stateless persons who are lawful residents in Lithuania have a right to public relief in the form of social services and social welfare benefits, with the exception of access to social housing (shelters).<sup>276</sup> The Lithuanian Law on the Principles of State Social Security System establishes that the State social security system shall provide for all of persons residing in Lithuania. Citizens, aliens, and stateless persons permanently residing in the country shall enjoy equal social security rights, provided that the laws of the country and international agreements do not provide otherwise.<sup>277</sup> The social security system consists of a compulsory State insurance scheme and separate public relief systems.<sup>278</sup> Thus, stateless persons who hold a permanent residence permit have the same access to public relief as Lithuanian nationals.

Subject to several exceptions, stateless persons residing in Lithuania with a temporary residence permit are excluded from the full scope of the social welfare legislation. They need to be enrolled into the Social

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<sup>272</sup> Law on the Legal Status of Aliens, Article 58.

<sup>273</sup> Law on the Legal Status of Aliens, as amended on 26 November 2015 – No XII-2080, Article 58 (1).

<sup>274</sup> See UNHCR *Handbook on Protection of Stateless Persons*, para 137, noting, “The “lawfully staying” requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorized by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category. It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be “lawfully staying.” Individuals recognized as stateless following a determination procedure but to whom no residence permit has been issued will generally be “lawfully staying” in a State party by virtue of the length of time already spent in the country awaiting a determination.” See also Waas, L.V., *Nationality Matters*, pp. 325-327.

<sup>275</sup> *Ibid.*

<sup>276</sup> See, e.g., Article 1 (2) of the Law on Child Benefits, consolidated version of 08 May 2014, available at <http://goo.gl/9ySxSB>, and Article 1 (4) of the Law on Relief Benefits, consolidated version of 03 June 2014, available at <http://goo.gl/8MNqtM>.

<sup>277</sup> Law on the Principles of State Social Security System, Article 2.

<sup>278</sup> *Ibid.*, Article 4.

Insurance scheme by either paying for it themselves or by paying income and other taxes, though they are entitled to emergency healthcare, unless national legislation provides otherwise.<sup>279</sup> If a temporary resident is employed, he or she and underage children are entitled to full medical care access through the obligatory healthcare insurance.<sup>280</sup> However, subject to several exceptions, they are not entitled to mainstream social benefits such as child or relief benefits.<sup>281</sup> In this respect, additional measures may need to be taken at legislative level to ensure that the legislative framework be in full compliance with the requirements of Article 23 of the 1954 Convention.

Persons who are not “lawful residents” within the meaning of Lithuanian law, such as persons with “unresolved” legal status, have a right to emergency medical care, but nothing else.<sup>282</sup> In practice, access to secondary medical care is somewhat haphazard for members of this group.

A staff member at one Migration Division of a Territorial Police Unit has reported that there are exceptional cases when persons with “unresolved” legal status are suffering from serious illnesses, such as advanced forms of cancer, and do not have access to medical treatment until they obtain a residence permit or are granted citizenship. In one such case, the person died before he or she received medical help.<sup>283</sup> In contrast, one of the stateless persons interviewed for this report, who had not “resolved” his legal status until several months prior to the interview, reported he had been hospitalized several times and in general did not have a problem accessing medical care.<sup>284</sup>

Stateless persons who are detained or accommodated at the FRC have the right to access medical care beyond emergency care. These services are provided by the general practitioner or other medical staff at the FRC, but if the case is more complicated, the person is transported to a hospital. The costs associated with medical attention to detainees and residents are covered by the SBGS.<sup>285</sup>

Thus, while persons living in Lithuania with “unresolved” legal status are only entitled to emergency medical coverage, asylum-seekers accommodated at the FRC and detained “unreturnable” persons have more extensive medical coverage. None of these groups have access to health insurance schemes until they are issued a residence permit.

Stateless asylum-seekers have a range of other rights while their asylum claim is being determined. These rights include, among others, the right to be accommodated at the FRC and the Refugee Reception Centre (RRC) and use the services provided, the right to an interpreter, basic medical and social services, and a monthly subsistence allowance.<sup>286</sup>

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<sup>279</sup> Law on the Health System, Article 49(1).

<sup>280</sup> Law on Health Insurance of 21 May 1996 – No I-1343 (new version of the law of 2003, as subsequently amended), Article 6 (1) (2).

<sup>281</sup> See, e.g., Article 1 (2) of the Law on Child Benefits.

<sup>282</sup> Law on the Healthcare System of the Republic of Lithuania, Article 49(1).

<sup>283</sup> Interview with a staff member of a migration agency in a town in the east of the country, 29 August 2012.

<sup>284</sup> Participant S.R., interviewed on 10 September 2012.

<sup>285</sup> Lithuanian Red Cross, *Detention of asylum seekers and alternatives to detention in Lithuania*, 2011, p. 39.

<sup>286</sup> Law on the Legal Status of Aliens, Article 71.

### 3.4.2.4 IDENTIFICATION AND TRAVEL DOCUMENTS

Article 27 of the 1954 Convention stipulates: “The Contracting States shall issue identity papers to *any* stateless person in their territory who does not possess a valid travel document.”

Article 27, by its own terms, requires that State parties “issue identity papers to any stateless person in their territory who does not possess a valid travel document” (emphasis added). Thus, where a State party imposes conditions on a stateless person in order for the individual to obtain identity papers, including conditions relating to residence permits, it is a violation of Article 27. Further, because Article 27 expressly requires that State parties issue identity papers to any stateless person “who does not possess a valid travel document,” the Convention expressly contemplates situations where the stateless individual does not have other documents and thus has difficulty establishing his or her identity.<sup>287</sup>

In Lithuania, decisions as to personal identification documents are made by the Migration Department. The documents are issued by the territorial migration agencies, the Migration Department, or prison facilities. These Government-issued documents are recognized by other Lithuanian Government agencies and private entities.

Currently, Lithuanian law does not provide for the issuance of identity papers to a stateless person on the sole grounds of statelessness. For stateless persons in Lithuania who have residence permits, this permit serves as their identification. Stateless asylum-seekers are issued an alien’s registration certificate within 3 working days of lodging the asylum application.<sup>288</sup> The document certifies the right to stay on the territory of the Republic of Lithuania or, in cases where the identity of the asylum applicant has been established, his or her identity.<sup>289</sup>

Persons with “unresolved” legal status are provided with an identification document once their identity is established and their legal status is “resolved,” meaning that persons who do not qualify for “resolution” of their legal status are not entitled to these documents under domestic law.

If an “unreturnable” person is issued a temporary residence permit because the obstacles to removal persist for twelve months, the residence permit serves as an identity document. Importantly, however, “unreturnable” persons face obstacles obtaining identity documents because establishing their identity is problematic.<sup>290</sup>

Article 28 is among the “lawfully staying” rights. It provides in full:

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

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<sup>287</sup> Given the nature of statelessness, applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence UNHCR *Handbook on Protection of Stateless Persons*, para 90 (discussing burden of proof).

<sup>288</sup> Law on the Legal Status of Aliens, Article 78(1).

<sup>289</sup> Law on the Legal Status of Aliens, *Ibid*, Article 2(30).

<sup>290</sup> Interview with a representative of the FRC, 17 August 2012.



Hence, Article 28 of the 1954 Convention does not permit discretion in the issuance of travel documents to “lawfully staying” stateless persons.

Under current Lithuanian law, a stateless person who is a temporary or permanent resident of Lithuania and does not possess a valid foreign-issued travel document *may* be issued a stateless person’s travel document (emphasis added).<sup>291</sup> Procedures for the issuance and renewal of a Stateless Person’s Travel Document are outlined in the Rules of issuing the Stateless Person’s Travel Document, approved by the Minister of the Interior on 24 November 2005.<sup>292</sup> For a stateless person to obtain a travel document in Lithuania, the residence permit must be valid for at least four months at the time of the request, and the period of validity of the travel documents may not exceed the period of validity of the residence permit. The maximum period of validity of the Travel Document is two years.<sup>293</sup>

If a stateless person is to be returned or expelled to the country of origin but does not possess a valid travel document, SBGS issues a temporary travel document. Such a travel document is issued if the country of origin has no diplomatic presence in Lithuania and if it accepts the person with such a document. The temporary travel document is valid for thirty days from its issuance and only for the duration of the travel.<sup>294</sup>

“Unreturnable” persons may be given a temporary travel document in the course of the removal procedure if they have no valid travel documents and if the country of origin agrees to accept the document: the document is only valid for the duration of the travel.<sup>295</sup>

**Figure 8:** The number of Stateless Person’s Travel Documents issued or renewed 2007-2012<sup>296</sup>

	2007	2008	2009	2010	2011	2012
<b>Number of Travel Documents issued</b> <sup>297</sup>	1,029	1,219	1035	715	402	633

Stateless persons and migration agencies staff interviewed for this report have identified two main problems with travel document for stateless persons. First, the document is only valid for two years and then must be renewed. This is a major issue for those who have to travel often for business purposes or to visit family in other countries. Prior to 2004, the document could be “extended” at the migration agency for a small fee, but now a new document must be issued in Vilnius and collected at the local migration agency for the full fee of 100 LTL (30 EUR).

<sup>291</sup> Law on the Legal Status of Aliens, Article 38 (1).

<sup>292</sup> New version of the Order of 2011, as amended on 22 December 2011 and 24 September 2013.

<sup>293</sup> A stateless person must submit the request at a territorial migration agency, which examines it and asks the Centre of Identity Documents to issue it. The timeframe for the issuance of the document is twenty days under a regular procedure and seven days under an urgent procedure. The cost for the Travel Document is 100 LTL (30 Euro) and 150 LTL (45 Euro) respectively. The fee cannot be waived. However, according to the Law on Fees persons below the age of 16 years receive it free of charge.

<sup>294</sup> Order of the Minister of the Interior No. 1V-429, 24 December 2004, on the confirmation of rules of making and implementing decisions to oblige an alien to leave, on their expulsion, return and transit through the territory of the Republic of Lithuania (new version of the Order of 15 May 2012 as subsequently amended), paragraph 10.

<sup>295</sup> Order of the Minister of Interior No. 1V-429, 24 December 2004, on the confirmation of rules of making and implementing decisions to oblige an alien to leave, on their expulsion, return and transit through the territory of the Republic of Lithuania (new version of the Order of 15 May 2012 as subsequently amended), paragraph 10.

<sup>296</sup> Lithuania, Migration Department of the Ministry of Interior, *Migration Yearbook 2012*, Vilnius, 2013, p. 64.

<sup>297</sup> *Ibid.*

The second problem is the high price for the issuance of the travel document. The Convention requires that the fees charged do not exceed the lowest scale of charges for national passports.<sup>298</sup> At the time of research, the charge for a national passport for children and retirees was 75 LTL (21,78 EUR),<sup>299</sup> meaning the fee for the travel document should be no higher than this. As noted above, the travel document fee is 100 LTL (30 EUR). This fee, however, is waived for persons under the age of 16 years.<sup>300</sup>

### 3.4.2.5 OTHER RIGHTS GUARANTEED

Article 22 of the 1954 Convention provides, “The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.” Furthermore, the right of every child to free and compulsory primary education is enshrined in Article 28(1)(a) of the Convention on the Rights of the Child.

Under current Lithuanian law, the right to primary education is not guaranteed to all stateless children. Rather, access to education is dependent on the status of the child under Lithuania’s immigration laws. Free access to elementary education is guaranteed to stateless minors who hold a temporary or permanent residence permit,<sup>301</sup> asylum-seeking children,<sup>302</sup> and unaccompanied migrant children.<sup>303</sup> However, no provision in the national law ensures free elementary education to stateless children without lawful residence status in Lithuania (except for unaccompanied children). Gaps in children’s right to free elementary schooling has been highlighted in the recent report of the EU Fundamental Rights Agency.<sup>304</sup>

## 3.5 Conclusions and recommendations

Lithuania does not have a specific statelessness determination procedure. Nationality or statelessness is assessed in procedures related to “resolving” the legal status of long-term residents, or in the context of establishing identity within the framework of the asylum procedure, or process of removal from the territory. Importantly, even where a person is determined to be stateless, under Lithuanian law, none of these procedures results in the formal recognition of stateless status, and no rights are conferred on the grounds of an individual’s statelessness.

The determination of an individual as stateless is the first step toward securing legal status and enjoyment of rights guaranteed under the 1954 Convention. Having statelessness determination procedures also enhances the ability of States to adhere to their obligations under the 1954 Convention and incorporate stateless persons into society.

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<sup>298</sup> Schedule to Article 28, paragraph 3.

<sup>299</sup> Information provided by the Police Department under the Ministry of Interior, <http://www.policija.lt/index.php?id=12633> (accessed 7 October 2012).

<sup>300</sup> Law on National Fees, Article 6(7).

<sup>301</sup> Law on Education, Article 2(36).

<sup>302</sup> Law on the Legal Status of Aliens, Article 71(2).

<sup>303</sup> Law on the Legal Status of Aliens, Article 32.2(2).

<sup>304</sup> European Union Agency for Fundamental Rights, *Fundamental rights of migrants in an irregular situation: Comparative report*, 2011, p. 87.

It is therefore recommended that Lithuania establishes a statelessness determination procedure, which shall, in case of positive outcome, result in the granting of a legal status as a stateless person, and in the granting of a residence permit and a specific set of rights in line with the 1954 Convention and related standards in the human rights instruments. For procedures to be fair and efficient, everyone in a State's territory must have access to statelessness determination procedures, regardless of whether the person has lawful stay in the country or not. Thus, given that the nature of statelessness prevents many stateless persons from obtaining the documentation necessary to enter or reside in a State lawfully, establishing such a requirement for recognition as a stateless person is problematic. In this context, it is therefore also recommended that "unreturnable" persons have access to the statelessness determination procedure where there are indications that the individual may be stateless.

The UNHCR *Handbook on Protection of Stateless Persons* provides guidance to States as to the form and procedural safeguards of statelessness determination procedures. Amongst other things, it recommends States to establish such procedures within the framework of already existing asylum or immigration procedures, by building on the competence and experience that already exists in regard to establishing a person's identity as stateless.

It is moreover recommended to harmonize the definition of a stateless person in Article 2(1) of the Law on Citizenship to the customary international law definition in Article 1 of the 1954 Convention.<sup>305</sup>

There is commendable political will and considerable effort undertaken by the Lithuanian authorities to document its long-term residents with "unresolved" legal status. However, the vulnerability of such persons is often not taken into account. Administrative fees and the complexity of the procedure prove insurmountable obstacles for some applicants.

"Unreturnable" persons who may be stateless are often subjected to prolonged periods of detention, even when there are no realistic prospects of carrying out their expulsion due to their statelessness. Those who do not possess any identification documents are particularly vulnerable. As noted above, "unreturnable persons" in respect of whom there are indications that they might be stateless, should be given access to a statelessness determination procedures; they should moreover not be subject to arbitrary or unlawful detention.

When a person cannot be returned to the country of origin or previous residence for a period of longer than 12 months, and when the person is not detained, he or she is granted a temporary residence permit. This provides legal security and a temporary solution for persons who would otherwise be in a limbo situation. If a person is determined to be stateless, this will be indicated on the residence permit. Previously, the temporary residence permit provided no automatic right to work. This gap has been addressed through the amendment of the Aliens Law of 26 November 2015.

With regard to the provision of social welfare to stateless persons, Lithuania should consider initiating amendments to the social welfare legislation with a view to ensuring that stateless persons residing in Lithuania with a temporary residence permit be entitled to the same social benefits as nationals, in line with Article 23 of the 1954 Convention.

In Lithuania, stateless persons can access national courts and, if they are lawfully staying in the country, they are entitled to free legal aid on par with nationals. Access to free legal aid is not provided to persons with "unresolved" legal status, despite the fact that they, as "habitual residents" in Lithuania, are entitled to this right under the 1954 Convention.

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<sup>305</sup> See same recommendation in the *Observations by the UNHCR Regional Office for the Baltic and Nordic Countries on the Ministry of Internal Affairs' proposal no. 12-2398-02 introducing amendments to the Lithuanian Law on Citizenship*, at: <http://goo.gl/a9c1Yt>.

Stateless children with irregular immigration status who are not accommodated at the FRC and whose parents did not arrive in Lithuania regularly, but who nonetheless may have been living in Lithuania for some time, may face problems accessing public elementary education, despite that this right is guaranteed to them under the 1954 Convention and other international human rights instruments, to which Lithuania is a State Party.

Stateless persons generally acquire identity papers in the form of a residence permit. The right to identification documents is not extended to persons with “unresolved” legal status during the procedure for regularizing their status.

Obtaining a travel document in Lithuania might be relatively easy for stateless persons who have residence permits. However, there are problems with regard to the short validity of this document and high administrative fees. Currently, the State fee for the travel document does not correspond to the lowest scale of charges for national passports, as is required by Article 28 of the 1954 Convention.

# 4. Reduction and prevention of statelessness

## 4.1 Introduction

The 1961 Convention is the leading international instrument that provides rules for the conferral and nonwithdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights, which recognizes that “everyone has the right to a nationality.”

Underlying the 1961 Convention is the notion that, while States maintain the power to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided. By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by establishing general rules for the prevention of statelessness, while simultaneously allowing some exceptions to those rules.

A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. States must also ensure that foundlings and persons born on a ship or aircraft acquire a nationality.

The Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from a State’s nationals – either through loss, renunciation, or deprivation of nationality – when doing so would result in statelessness. The 1961 Convention further seeks to prevent statelessness upon a change in civil status. This is complemented by Article 9 of CEDAW, which grants women equal rights with men to acquire, change, or retain nationality, in particular in the context of marriage.

The safeguards of the 1961 Convention are triggered only where statelessness would otherwise arise and for individuals who have some link with a country. These standards serve to avoid nationality problems which might arise between States.

The provisions of the 1961 Convention must be read and interpreted in light of developments in international law, in particular international human rights law. Relevant instruments include the ICCPR, CEDAW, and the CRC, which is of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children. Article 7 of the CRC sets out that every child has the right to acquire a nationality. The drafters of the CRC saw a clear link between this right and the 1961 Convention and therefore specified in Article 7(2) of the CRC that “States Parties shall ensure the implementation of

these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”<sup>306</sup>

In addition to the 1961 Convention, the 1954 Convention includes provisions relating to the reduction of statelessness. Namely, Article 32 of the 1954 Convention provides, “The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

Regional instruments, such as the 1997 European Convention on Nationality (ECN) and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, are also relevant.

## 4.2 National legal framework

On 9 May 2013, Lithuania acceded to the 1961 Convention. On the same day that it acceded to the Convention, Lithuania amended its Law on Citizenship,<sup>307</sup> in an effort to ensure compliance with its new international obligations.

Lithuania has yet to sign two other major treaties relevant to nationality and statelessness, namely, the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession. Importantly, although it has not acceded to the ECN, the principles of that Convention are applied in practice by Lithuania’s courts, as the case below illustrates.

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### CASE LAW

#### Supreme Administrative Court of Lithuania

A-662-413-11 (21 March 2011)

The case concerns L.K. who lost Lithuanian citizenship on 23 November 2009 upon allegedly obtaining the citizenship of the Russian Federation. The claimant had lived in Vilnius since her birth and in 1991 chose to acquire the citizenship of Lithuania and received a passport in 1993. In 2001, she applied for citizenship of the Russian Federation and was informed she could acquire Russian nationality. That same year, she was informed by the Lithuanian authorities that she could not have dual citizenship and should thus choose one or the other. L.K. did not exercise her right to acquire the citizenship of the Russian Federation. In 2009, she was deprived of Lithuanian citizenship on the grounds of holding another country’s citizenship.

The administrative court of the region of Vilnius (“the court”) revoked the decision to deprive L.K. of Lithuanian citizenship on 25 March 2010. The court quoted Articles 4(1), 7(1.b) and 7(3) of the European Convention on Nationality (ECN) as well as provisions of national law. The judgment stated that there was no definite proof that L.K. had acquired the citizenship of the Russian Federation, only that she met the conditions to apply for Russian nationality. The court had relied on the provisions of the ECN and on the fact that L.K. was rendered stateless to reinforce the point that the Migration Department’s decree depriving the claimant of Lithuanian citizenship was unlawful. The Migration Department appealed the court’s decision to the Supreme Administrative Court (“the Supreme Court”).

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<sup>306</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* (UNHCR *Guidelines on Statelessness No. 4*), 21 December 2012, HCR/GS/12/04, para 10, available at: <http://www.refworld.org/docid/50d460c72.html>.

<sup>307</sup> See Law amending and supplementing articles 18 and 40 of the Law on Citizenship No. XII-269 of 9 May 2013.

The Supreme Court dismissed the appeal on the grounds that the Migration Department failed to prove L.K. had acquired citizenship of the Russian Federation. Referring to the lower court's citation of the ECN, the judges wrote:

“ While Lithuania has not acceded to the ECN, and thus questions of citizenship belong to the realm of national law, ... the common principles on nationality enshrined in this Council of Europe Convention are important to Lithuania, as an EU Member State, even if it is not a State party to the ECN.”

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Under Lithuanian law, Article 12 of the 1992 Constitution of the Republic of Lithuania establishes that citizenship of the Republic of Lithuania shall be acquired by birth and other grounds established by law. Lithuania strongly disfavors dual nationality, and its Constitution provides that, with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another State at the same time. The current procedure for the acquisition and loss of citizenship was established by the 2010 Law on Citizenship of the Republic of Lithuania (Law on Citizenship).

As a general rule, acquisition of citizenship in Lithuania is based on descent (*jus sanguinis*), although there are several provisions based on place of birth (*jus soli*) in the Law on Citizenship. As explained in the first chapter, the Law on Citizenship is based on the principle of continuity of the Lithuanian State, which was independent between 1918 and 1940, and accordingly, of the continuity of citizenship.<sup>308</sup> Citizenship of the Republic of Lithuania is equal irrespective of the ground on which it has been acquired.<sup>309</sup> When the provisions of the Law on Citizenship are inconsistent with an international treaty that Lithuania has ratified, the provisions of the international treaty prevail.<sup>310</sup>

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

There are six modes of acquisition of Lithuanian citizenship. It can be (i) acquired at birth; (ii) granted under the simplified procedure; (iii) acquired through naturalization; (iv) granted by way of exception; and (v) it can also be acquired on the grounds established by international treaties entered into by Lithuania (5).<sup>311</sup> In addition, persons who were citizens of the Republic of Lithuania prior to 15 June 1940 and their descendants have an indefinite right to have their citizenship reinstated.

Acquisition of citizenship at birth is partly governed by the principle of *jus sanguinis*. A child acquires Lithuanian citizenship at birth if at least one parent is a citizen of Lithuania, regardless of whether the child was born on Lithuanian territory or abroad.<sup>312</sup> The law is gender-neutral with respect to a parent's ability to transmit Lithuanian citizenship. Children born out of wedlock have the same rights to acquire citizenship at birth as children born in wedlock. If one or both of the parents were citizens of Lithuania and where a parent who was a citizen of Lithuania died before the child was born, the child would still acquire Lithuanian citizenship.<sup>313</sup>

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<sup>308</sup> Article 3(1) of the Law on Citizenship.

<sup>309</sup> *Ibid* Article 3(3).

<sup>310</sup> *Ibid* Article 4.

<sup>311</sup> *Ibid* Article 13.

<sup>312</sup> *Ibid* Article 14(1).

<sup>313</sup> *Ibid*, Article 14(2).

## 4.3.1 Avoidance of statelessness at birth

### 4.3.1.1 BIRTH ON THE STATE'S TERRITORY

Article 1(1) of the 1961 Convention provides, “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”

Article 1(1) allows a State Party to provide for the grant of its nationality to such a person either a) “at birth, by operation of law,” or b) by way of an application procedure.<sup>314</sup> Article 1(2) lists the four enumerated conditions that a State Party can permissibly impose on a person who comes under Article 1(1). Importantly, this list is exhaustive. The four conditions a state may permissibly impose on an Article 1 applicant for nationality are a fixed period for application within certain rules set forth by Article 1(2)(a);<sup>315</sup> a requirement of habitual residence within the rules set forth by Article 1(2)(b);<sup>316</sup> certain exceptions for certain criminal offenses, as described by Article 1(2)(c);<sup>317</sup> and that the person concerned has always been stateless, as provided by Article 1(2)(d).<sup>318</sup>

As agreed by experts convened in 2011 by UNHCR, if a state is to grant its nationality to a stateless person born in its territory pursuant to an application, as contemplated by Article 1(1)(b) of the 1961 Convention – rather than by operation of law – the state is obligated to grant the applicant nationality, provided that he or she meet the conditions permitted to be imposed pursuant to Article 1(2).

The use of the mandatory “shall” (“Such nationality shall be granted...”), indicates that a Contracting State must grant its nationality to otherwise stateless children born in their territory where the conditions set forth in Article 1(2) and incorporated in their application procedure are met. The exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention. As a result, providing for a discretionary naturalization procedure for otherwise stateless children is not permissible under the 1961 Convention. A State may choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application.<sup>319</sup>

The importance of a child’s obtaining a nationality is reiterated by Article 7 of the CRC and Article 24 of the ICCPR, the latter of which has been described in the UN Human Rights Committee General Comment No. 17 as follows: “States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.”<sup>320</sup> It follows from these articles and

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<sup>314</sup> Article 1(b) provides for the grant of nationality “upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.” Note that the final paragraph of Article 1(1) further provides: “A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality *by operation of law* at such age and subject to such conditions as may be prescribed by the national law” (emphasis added). Any such conditions must be within the limitations of Article 1(2).

<sup>315</sup> Article 1(2)(a) provides: “that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so.”

<sup>316</sup> Article 1(2)(b) provides: “that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all.”

<sup>317</sup> Article 1(2)(c) provides: “that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge.”

<sup>318</sup> Article 1(2)(d) provides: “that the person concerned has always been stateless.”

<sup>319</sup> UN High Commissioner for Refugees (UNHCR), *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: (“Dakar Conclusions”)*, para 26 Dakar Conclusions (interpreting Art 1 of the 1961 Convention), September 2011, available at: <http://www.refworld.org/docid/4e8423a72.html>.

<sup>320</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, para 8, available at: <http://www.refworld.org/docid/45139b464.html>.



Article 3 of the CRC, which describes the principle of the best interest of the child, that a child may not be left stateless for an extended period of time.<sup>321</sup> Specifically, when read with Article 1 of the 1961 Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. Thus, if the State imposes conditions for an application as allowed for under Article 1(2) of the 1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.<sup>322</sup>

Moreover, a Contracting State may apply a combination of the alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of an individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by children born in their territory who would otherwise be stateless whose parents are permanent or legal residents in the State, whereas it might require an application procedure for those whose parents are not legal residents. Any distinction in treatment of different groups, however, must serve a legitimate purpose, cannot be based on discriminatory grounds and must be reasonable and proportionate.<sup>323</sup>

Lithuanian law contains a combination of modes of acquisition, where certain children born stateless acquire Lithuanian nationality at birth, while other categories of children born stateless have to follow an application procedure, with stipulated requirements.

A child with parents who are stateless lawful permanent residents<sup>324</sup> of Lithuania, or a child with one parent who is a stateless lawful permanent resident and one unknown parent, acquires Lithuanian citizenship automatically at birth if the child would otherwise be stateless. This provision applies regardless of whether the child was born on Lithuanian territory or abroad.<sup>325</sup>

However, as the provision in Article 15 of the Law on Citizenship does not cover all children falling within the scope of Article 1 of the 1961 Convention, such as children born to parents who cannot confer their nationality(ies) to their child due to conflict of laws, or children to stateless parents who are habitually but not permanently residents, it is important that the application procedure set out in Article 18 of the Law on Citizenship ensures that the other children born stateless in the territory have a non-discretionary right to Lithuanian citizenship.

On 9 July 2012, the Ministry of the Interior proposed a legislative initiative aiming to bring the national Law on Citizenship in line with the 1961 Convention. The proposed amendments to Articles 18 and 40 of the Law were adopted on 9 May 2013, when Lithuania acceded to the 1961 Convention.<sup>326</sup> The amendments introduced a new paragraph 2 to Article 18 of the Law on Citizenship, which deals with the granting of citizenship to persons born stateless in Lithuania, by application. The adopted text reads as follows:

Citizenship of the Republic of Lithuania may be granted to a stateless person who was born in Lithuania if he or she has been a lawfully permanent resident in the Republic of Lithuania during the previous 5 years, has not acquired the citizenship of another country, has a right to reside in the Republic of Lithuania at the moment of submission of application for Lithuanian citizenship

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<sup>321</sup> UN High Commissioner for Refugees (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, para 11, available at: <http://www.refworld.org/docid/50d460c72.html>.

<sup>322</sup> *Ibid.*, para 34.

<sup>323</sup> UNHCR Guidelines on Statelessness No. 4, para. 35.

<sup>324</sup> Pursuant to Article 2(18) of the Law on Citizenship, lawful permanent residence means the uninterrupted residence of a citizen of another State or a stateless person in the Republic of Lithuania, holding a document entitling or attesting to the right of residence in the Republic of Lithuania.

<sup>325</sup> Article 15 of the Law on Citizenship.

<sup>326</sup> Law Amending and Supplementing Articles 18 and 40 of the Law on Citizenship No. XII-269 of 9 May 2013.

and adoption of the decision to grant Lithuanian citizenship, as well as meets the conditions established in points 3,4,5 and 7 of paragraph 1 of this article.<sup>327</sup>

As a result of the adoption of the aforementioned amendments, a person born stateless on the territory of Lithuania, if he or she does not acquire nationality automatically on the basis of Article 15(1) of the Law on Citizenship, may apply for Lithuanian citizenship but will be required to have lawful permanent residence in Lithuania at the time of application; to have passed examinations of knowledge of the Lithuanian language and the basics of the Constitution; to have lawful means of subsistence; and to not fall under any of the exclusion clauses outlined in the Law on Citizenship.<sup>328</sup>

UNHCR understand the provision in Article 18 to encompass children born to parents who cannot transmit their citizenship, either because they are citizens of a country whose nationality law is governed by the principle of *jus soli*, or because of conflict of nationality laws that do not allow neither of the parents to transmit citizenship to their children. This is important, as such children would not fall within the provision on automatic acquisition of citizenship, in Article 15 of the Law on Citizenship.

Hence, Lithuanian law imposes numerous requirements on the applicant for nationality that are impermissible under Article 1 of the 1961 Convention. As mentioned above, Article 1(2) sets forth the four enumerated conditions a State Party may impose upon an applicant for nationality under Article 1(1)(b).

The requirement of lawful permanent residence (as opposed to habitual residence) at the time of submission of the application is not in accordance with Article 1(2)(b) of the 1961 Convention, by which States may impose a habitual residence requirement on the child, but not a lawful residence requirement on the child. “Habitual residence” should be understood as stable, factual residence. In other words, the 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon *lawful* residence.<sup>329</sup> Likewise, the required examinations of language skills, knowledge of the Constitution, and the requirement of lawful means of subsistence are not permitted under Article 1(2) of the 1961 Convention.

In the context of the accession of Lithuania to the 1961 Convention, it is worth noting that the translation of the original text of the Convention into Lithuanian is problematic. Translation of the phrase “by operation of law” (*įstatymu numatyta tvarka*) of Article 1(a) of the 1961 Convention eviscerates its intended meaning. “By operation of law” is not intended to mean “in the manner prescribed by law” as is suggested by the Lithuanian version of the Convention. Rather, it simply means “without the person concerned taking any specific action himself”, “automatically”, or “*ex lege*”. Interpreting the phrase as “in the manner prescribed by law” distorts the real meaning of Article 1.

Furthermore, the translation of Article 1(2) does not reflect the exhaustive nature of the listed conditions which Contracting States are allowed to base the granting of nationality on, to children born stateless in the territory. “Subject to one or more of the following conditions” should be translated into Lithuanian as “*gali nustatyti vieną ar daugiau iš šių sąlygų*”.

As noted above, the use of the mandatory “shall” indicates that States are obligated to grant their nationality to persons falling within the terms of Article 1. Since the Lithuanian Law on Citizenship leaves room for

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<sup>327</sup> *Ibid*, Article 1.

<sup>328</sup> Pursuant to Article 22 of the Law on Citizenship, citizenship of Lithuania may not be granted through naturalization to persons who (i) prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity and war crime or criminal acts against the Republic of Lithuania; (ii) prior to coming to reside in Lithuania, were sentenced to imprisonment in another state for a premeditated crime which is a grave crime under laws of Lithuania, or were punished for a grave crime in Lithuania, (iii) in accordance with the procedure laid down by law, are not entitled to obtain a document attesting to the right of permanent residence in Lithuania.

<sup>329</sup> UNHCR *Guidelines on Statelessness No. 4*, para. 41.

discretion to the Government authority not to grant citizenship, even if the conditions are met, it is not fully in line with the 1961 Convention.

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

Article 4 of the 1961 Convention sets forth the obligation of a Contracting State to “grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person’s birth was that of that State.”

A child born to at least one Lithuanian citizen acquires citizenship of Lithuania by operation of law, whether born in Lithuanian territory or abroad.<sup>330</sup> Lithuanian law extends citizenship to children born to parents both of whom are stateless permanent residents of Lithuania, whether the child is born in Lithuania or abroad.<sup>331</sup> These provisions contain a strong *jus sanguinis* safeguard against statelessness, as well as further safeguards, for which Lithuania should be commended.

#### **4.3.1.3 FOUNDLINGS**

Article 2 of the 1961 Convention provides that “a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.” The question may be raised as what exactly are the conditions for a child to be considered as such. At a minimum, the safeguard for Contracting States to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless.<sup>332</sup>

Under Lithuanian law, a child found or living in its territory of which both parents are unknown, is “considered to be born in the territory of the Republic of Lithuania and acquires citizenship of the Republic of Lithuania, unless it is revealed that the child had acquired citizenship of another state or other circumstances are discovered, by reason of which the child would acquire citizenship of another state.”<sup>333</sup> This provision also applies to a child of which one or both parents are dead, are recognized as missing or legally incompetent; or where the child has been placed under permanent guardianship.<sup>334</sup> An expert at the Migration Department has confirmed to the researcher that under circumstances relevant to the citizenship of foundlings, the age limit is 18 years.<sup>335</sup>

The Lithuanian citizenship rule for foundlings, which this report presumes will be interpreted in accordance with the 1961 Convention, as well as Article 1 of the 1954 Convention, encompasses a strong safeguard against statelessness, and Lithuania is to be applauded for this provision.

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<sup>330</sup> Law on Citizenship, Article 14.

<sup>331</sup> Law on Citizenship, Article 15.

<sup>332</sup> UNHCR *Guidelines on Statelessness No. 4*, paras 57-61.

<sup>333</sup> Article 16 of the Law on Citizenship.

<sup>334</sup> *Ibid.*

<sup>335</sup> Under Lithuanian law, a child is a person younger than 18 years.

#### 4.3.1.4 BIRTH ON A SHIP OR AIRCRAFT

The 1961 Convention Article 3 provides that birth on a ship or in an aircraft “shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.” The Lithuanian Law on Citizenship includes no provisions addressing births aboard Lithuanian-flagged ships or aircrafts. However, Migration Department staff assured the researcher that such births would be considered to have taken place on the territory of Lithuania.

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

Article 5(1) of the 1961 Convention provides:

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

Lithuania has strong safeguards for preservation of Lithuanian citizenship in the event of changes in personal status. The law is gender-neutral and Lithuanian citizens will not lose their citizenship upon marriage to a citizen of another country. Nor will a Lithuanian citizen, who acquired citizenship by virtue of marriage to a Lithuanian, lose this citizenship upon divorce or if the Lithuanian spouse changes his or her citizenship.<sup>336</sup> If, upon marriage with a foreigner, a Lithuanian citizen acquires another country’s citizenship *ipso facto*, he or she is allowed to maintain both citizenships.<sup>337</sup>

#### 4.3.3 Avoidance of statelessness in the context of renunciation of nationality

Articles 7, 8, and 9 of the 1961 Convention contain detailed provisions governing the loss, renunciation, and deprivation of nationality. Article 7(1) generally prevents State Parties from permitting renunciation of nationality “unless the person concerned possesses or acquires another nationality.” Article 7(2) contains a similar safeguard against statelessness applicable in situations where the person concerned is seeking naturalization in a foreign country. Article 7(3) establishes safeguards against statelessness for nationals abroad.

Citizens of Lithuania are permitted to renounce their citizenship.<sup>338</sup> Article 25 of the Law on Citizenship provides that an application for renunciation will not be considered if the renunciation would render the person stateless.<sup>339</sup> However, in practice, problems may arise. Cases of deprivation or renunciation of citizenship are reviewed by the Minister of the Interior.

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<sup>336</sup> Article 3(6) of the Law on Citizenship.

<sup>337</sup> Article 7(5) of the Law on Citizenship.

<sup>338</sup> Under Article 25(1) of the Law on Citizenship, this right generally may not be restricted. However, an application for renunciation will not be considered if the applicant is suspected or accused of a criminal act or if there is an effective and enforceable court judgment.

<sup>339</sup> Article 25 of the Law on Citizenship.

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**CASE STUDY<sup>340</sup>****D.A., male, 65 years old**Country of birth: **Russian Federation**

D.A. moved from the Russian SSR to the Lithuanian SSR for work in 1978. He “opted” for Lithuanian citizenship through the “zero option” procedure, but later decided to acquire the citizenship of the Russian Federation. In order to apply for this, he had to first renounce the citizenship of the Lithuanian Republic.

D.A. and his family had for some time been thinking about moving back to Russia. Both he and his wife were born there, and their families lived there. For a long time, D.A. was postponing the acquisition of Russian citizenship. “We were not in a hurry because the situation was very unclear. I was afraid I would be deported, I was afraid I would not receive a pension, so I was postponing this decision. With time I saw some of my friends getting Russian citizenship and nobody was sending them away.” After his mother’s death, D.A. made up his mind to acquire the citizenship of the Russian Federation. To leave options open, his wife and he thought it would be best if one of them had Lithuanian and another had Russian citizenship. In late 1990s, D.A. applied for the citizenship of the Russian Federation.

“ Both my parents were born in Russia. My father died many years ago, and while my mother was alive, I was not in a hurry to obtain Russian citizenship. When she died, I wanted to acquire Russian citizenship. So I did all I had to do, renounced my Lithuanian citizenship, paid all the fees and prepared all the documents here. We went to the embassy and in the end they rejected my application. The reason was that I didn’t have family members in Russia. My sister and brother lived there, but for the officials they were not considered family. I went to the embassy twice, and there was nothing I could do. They said: “If only you had your mother or father living there, we would immediately give you citizenship.” They didn’t even return my documents. And I was left stateless, I was just given a residence permit.”

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In cases in which the citizenship is renounced for the purposes of acquiring another country’s citizenship, Lithuanian law does not expressly address the standard of proof governing whether the would-be renunciant has in fact obtained another nationality. Temporary statelessness has been reported to occur in some instances. This occurs, for example, when other countries require the renunciation of existing citizenship (i.e., Lithuanian) during the acquisition procedure.<sup>341</sup> In such cases, in order to be allowed to renounce Lithuanian citizenship, the person concerned must provide a written statement to the Lithuanian authorities proving that he or she will receive another citizenship.<sup>342</sup> If the person eventually does not acquire another citizenship, he or she can have Lithuanian citizenship reinstated upon petition.<sup>343</sup>

If the person originally acquired citizenship by birth or had it restored or granted under the simplified procedure, Lithuanian citizenship will be reinstated.<sup>344</sup> Persons who originally acquired Lithuanian citizenship by naturalization are only eligible for reinstatement if they acquired it at an age younger than 18 years.<sup>345</sup> They would additionally need to fulfil the following conditions; lawful permanent residence in Lithuania during the previous five years; having the right to permanently reside in Lithuania at the time of application; having lawful means of subsistence; and not being barred from the procedure under any

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<sup>340</sup> Interviewed on 5 September 2012.

<sup>341</sup> Interview with a staff member of Visaginas migration agency, 29 August 2012.

<sup>342</sup> Electronic correspondence with a specialist of the Citizenship division of the Migration Department, 16 October 2012. *See also* Article 43(2) (3) of the Law on Citizenship.

<sup>343</sup> Law on Citizenship, Article 21(1).

<sup>344</sup> *Ibid*, Article 21 (4).

<sup>345</sup> *Ibid*, Article 21(3).

of the exclusion clauses of Article 22.<sup>346</sup> Those persons who had acquired Lithuanian citizenship by way of exception would not be able to have their citizenship returned after renouncing it.<sup>347</sup> Those who do not meet the circumstances outlined in the law for the reinstatement of Lithuanian citizenship would have to go through the process of naturalization.

The conditions imposed by Lithuanian law on naturalized citizens who have been rendered stateless in the course of renunciation proceedings are impermissible under Article 7 of the 1954 Convention. Article 7(1) (a) unambiguously provides: “If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.” Article 7(2) further provides: “A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.”

### 4.3.4 Avoidance of statelessness in the context of loss and deprivation of nationality

Article 7(6) prohibits automatic loss of nationality if it would render the person stateless, with certain enumerated exceptions.

Article 8 governs deprivation of nationality. Article 8(1) provides, “A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.” Articles 8(2) through 8(4) contain certain enumerated exceptions, as well as important procedural safeguards.

Article 9 provides in its entirety: “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”

The 1961 Convention uses the term “loss of nationality” for loss by operation of law (*ex lege*) and the term “deprivation” where the loss is initiated by the authorities of the State.<sup>348</sup>

Under operation of Lithuanian law, citizenship is lost if a person acquires the citizenship of another State, except for very exceptional situations in which national legislation allows for dual citizenship.<sup>349</sup> This occurs when a person has acquired the citizenship both of Lithuania and of another State; when a person is adopted by Lithuanian citizens and thus acquired the citizenship of Lithuania; or a Lithuanian citizen was adopted by citizens of another State and thus acquired that State’s citizenship.<sup>350</sup> In some cases in which multiple citizenship is allowed, the person is obliged under Lithuanian law to renounce the citizenship of the other State or States upon reaching 21 years of age. If the person does not do so, he or she will be deprived of the citizenship of Lithuania.<sup>351</sup> Citizenship can also be lost on the grounds established by international treaties to which the Republic of Lithuania is a party.<sup>352</sup>

The principles governing the Lithuanian Law on Citizenship provide for several safeguards against statelessness resulting from loss of nationality. A Lithuanian citizen does not lose his or her citizenship

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<sup>346</sup> *Ibid*, Article 21(2).

<sup>347</sup> *Ibid*, Article 21(1).

<sup>348</sup> UN High Commissioner for Refugees (UNHCR), *Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (“Tunis Conclusions”)*, March 2014, para. 9, available at: <http://www.refworld.org/docid/533a754b4.html>.

<sup>349</sup> Article 24(2) of the Law on Citizenship.

<sup>350</sup> Article 7(1, 6, 7) of the Law on Citizenship.

<sup>351</sup> *Ibid* Article 24(8).

<sup>352</sup> *Ibid* Article 24(3).

because of residence abroad.<sup>353</sup> Citizenship can only be lost in accordance with the Law on Citizenship.<sup>354</sup> The citizenship of a child who acquired Lithuanian nationality at birth does not change if the citizenship of his or her parents changes.<sup>355</sup>

A person may be deprived of citizenship where he or she is in the service of another State without the authorization of the Lithuanian Government.<sup>356</sup> “Service of another State” means the service where a position of a State politician or official or any other position related to the implementation of functions of justice or public administration is held in institutions of any other State, when these positions require holding citizenship of that State and/or taking an oath of allegiance to that State. The service of another State shall include military service and any other statutory service. The service of another State shall not include a position of a politician in local self-government bodies to which a citizen of the Republic of Lithuania may be elected under European Union law.<sup>357</sup>

A Lithuanian citizen can further be deprived of citizenship if the citizenship was acquired through fraud or misrepresentation, when any of the exclusion clauses are discovered (this clause only applies to non-automatic modes of acquisition, that is when the citizenship was “granted, reinstated or restored”) and when a decision on citizenship of Lithuania in respect of the person concerned has been taken in breach of the laws of the country.<sup>358</sup> The Law on Citizenship does not stipulate a time limit beyond which a revocation of citizenship is no longer allowed. Nor are there provisions to take into account the gravity of misrepresentation or fraud or the individual’s links with the country. Deprivation of nationality on these grounds can result in statelessness.

National legislation provides for safeguards against statelessness for children whose parent or parents have lost Lithuanian citizenship. Those children who had acquired Lithuanian nationality at birth maintain their citizenship under any circumstances.<sup>359</sup> If both parents lose Lithuanian citizenship which had been acquired by naturalization, the child also loses it if it had not acquired it at birth, unless the child would be rendered stateless.<sup>360</sup> If one of the parents loses Lithuanian citizenship which had been acquired by naturalization and the other parent maintains Lithuanian citizenship, the child does not lose Lithuanian citizenship.<sup>361</sup> If one of the parents loses Lithuanian citizenship which had been acquired by naturalization and the other parent is unknown or a citizen of another State, the child loses Lithuanian citizenship if the child had not acquired citizenship at birth, unless the child would be rendered stateless. A child from 14 to 18 years of age can only lose Lithuanian citizenship if he or she agrees, unless the child would be rendered stateless.<sup>362</sup> In any case, if a child’s parents lose Lithuanian citizenship, the child would retain Lithuanian citizenship if the child would otherwise be stateless.<sup>363</sup>

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<sup>353</sup> *Ibid* Article 3(5).

<sup>354</sup> *Ibid* Article 3(8).

<sup>355</sup> *Ibid* Article 3(9).

<sup>356</sup> *Ibid*, Article 24(4).

<sup>357</sup> *Ibid* Article 2(5).

<sup>358</sup> *Ibid*, Article 24. The last option stems from a case in 2003, where the President of the Republic granted nationality by way of exception to a citizen of the Russian Federation who, in order to acquire it, had earlier renounced his Lithuanian citizenship. His previously held Lithuanian citizenship had been acquired unlawfully, as the person was barred from opting for Lithuanian citizenship under one of the exclusion clauses. Furthermore, the Lithuanian Parliament found the President had granted the individual nationality because of a significant financial contribution to his electoral campaign. The person concerned was deprived of Lithuanian citizenship and the President was removed from Office by way of impeachment. Küris, E. “Country Report: Lithuania”, *EUDO Citizenship Observatory Country Reports (2010)*, p. 27.

<sup>359</sup> Article 28.1 of the Law on Citizenship.

<sup>360</sup> *Ibid*, Article 28.2.

<sup>361</sup> *Ibid*, Article 28.3.

<sup>362</sup> *Ibid*, Article 28.4.

<sup>363</sup> *Ibid*, Article 28.

The 1961 Convention generally prohibits loss of citizenship if it would render the person stateless.<sup>364</sup> If the national law provides for loss of nationality as a consequence of any change in the personal status of a person, it must be conditional upon possession or acquisition of another nationality.<sup>365</sup> Similarly, a person may not lose his/her nationality as a consequence of his/her spouse or parent losing or being deprived of citizenship if it would render him or her stateless.<sup>366</sup> As explained above, Lithuanian law meets these requirements. Furthermore, in line with Article 7(1)(a) of the 1961 Convention, a petition of a Lithuanian national to renounce his/her citizenship is not examined if it would render him or her stateless.<sup>367</sup>

Article 7(2) of the 1961 Convention provides that a national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country. A person may lose Lithuanian citizenship if he or she acquires citizenship of another State.<sup>368</sup> Although there is an obligation for the person to notify an authorized institution (i.e. the Migration Department, a local migration agency, or consulate) within two months from the acquisition of the citizenship of another country, Lithuanian citizenship is lost on the basis of a formal decision taken by the Minister of the Interior from the date of acquisition of another citizenship, except for persons who may maintain dual citizenship.<sup>369</sup> That way, there is no possibility for the person to become stateless, even temporarily. In cases where the other country requires the person to renounce Lithuanian citizenship first, assurance that the person will acquire citizenship of that State, in the form of a written statement, is sought by the Lithuanian authorities.<sup>370</sup>

Contracting States may deprive a person of nationality when it has been obtained by misrepresentation or fraud under Article 8(2)(b) of the 1961 Convention. Article 24(7) of the Citizenship Law provides for deprivation of Lithuanian nationality “when it is revealed that a decision with regard to the acquisition of citizenship had been taken in breach of the laws of the country.” This language is broader than “misrepresentation or fraud.” However, for purposes of this report, it will be assumed that the Lithuanian law will be interpreted consistently with the 1961 Convention and, as such, construed only to refer to misrepresentation or fraud.

Article 8(3) of the 1961 Convention further allows a Contracting State to deprive a person of nationality where there is a breach of the duty of loyalty of the citizen towards the State, namely when, despite an express prohibition by the State, the person rendered or continued to render service or received or continued to receive emoluments from another State or has conducted himself in a manner seriously prejudicial to the vital interests of the State,<sup>371</sup> or where the person has taken an oath or made a formal declaration of allegiance to another State or given definite evidence of his determination to repudiate his allegiance to the Contracting State.<sup>372</sup>

These provisions, however, are allowed only insofar as they are already envisaged by the legislation of the Contracting State and when the Contracting State specifies the retention of such a right at the time of signature, ratification or accession (Article 8(3)). The application of these provisions must be subject to the person concerned having the right to a fair hearing by a court or other independent body (Article 8(4)). As a result, the third of the aforementioned modes of loss in Lithuania (“when the person is employed in the service of another State without the authorization of the Government of Lithuania”) is in line with international standards. Lithuania made a declaration when acceding to the 1961 Convention that,

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<sup>364</sup> See Article 8(1) of the 1961 Convention.

<sup>365</sup> *Ibid* Article 5(1).

<sup>366</sup> *Ibid* Article 6.

<sup>367</sup> Article 25(3) of the Law on Citizenship.

<sup>368</sup> *Ibid*, Article 24(2).

<sup>369</sup> *Ibid*, Article 26(1, 2).

<sup>370</sup> Electronic correspondence with a specialist of the Citizenship division of the Migration Department, 16 October 2012.

<sup>371</sup> Article 8(3a) of the 1961 Convention.

<sup>372</sup> *Ibid* Article 8(3b).



pursuant to Article 8(3) of the Convention, it retains the right to recognize the person as having lost the citizenship of Lithuania in accordance with paragraphs 4 and 6 of Article 24 of the Law on Citizenship (the person is in the service of another State and exclusion clauses). This report assumes that the Lithuanian law will be interpreted in accordance with the requirements of the 1961 Convention.

## 4.3.5 Reduction of statelessness

### 4.3.5.1 NATURALIZATION

Article 32 of the 1954 Convention provides, “The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

The Law on Citizenship does not facilitate the naturalization of stateless persons generally. However, stateless persons who were born in Lithuania benefit from a reduced residence requirement, as described under section 4.3.1.1 of this report

Applications for the acquisition of citizenship are examined by the Citizenship Commission under the President’s Office and, if approved, are ultimately granted by the President of the Republic. Acquisition of citizenship through naturalization in Lithuania is subject to a number of conditions.<sup>373</sup> The applicant must permanently reside in Lithuania for at least ten years on a lawful basis and have the right of permanent residence at the time of submission of the application and the decision. This term is reduced to seven years if the person is married to a citizen of Lithuania and has lived with the spouse during that time.<sup>374</sup> The applicant shall pass an examination on the knowledge of Lithuanian and on the basics of the Constitution, unless he or she is over 65 years of age, is incapacitated, is of retirement age and has high or moderate special needs, or has a serious chronic mental disorder.<sup>375</sup>

Unless the applicant is stateless, a refugee, or a foreigner who automatically loses his or her original citizenship upon acquisition of Lithuanian citizenship, applicants must provide written evidence that they will renounce their original citizenship after obtaining Lithuanian citizenship.<sup>376</sup>

The applicant cannot be granted citizenship if:

- he or she has prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity and war crimes, or criminal acts against the Republic of Lithuania;
- prior to arrival to Lithuania the applicant has been sentenced to imprisonment in another State for a premeditated crime which is a grave crime under laws of Lithuania;
- he or she has been punished for a grave crime in Lithuania, irrespective of whether or not the conviction for the crimes specified in this subparagraph has expired;
- he or she in accordance with the order determined by the laws does not have a right to obtain the document confirming his right to permanent residence in Lithuania.<sup>377</sup>

Even if the person meets all the conditions for naturalization and does not fall under the conditions of exclusion, citizenship is granted “having regard to the interests of the Republic of Lithuania”.<sup>378</sup> Although

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<sup>373</sup> Law on Citizenship, Article 18(1).

<sup>374</sup> *Ibid*, Article 19(1).

<sup>375</sup> *Ibid*, Article 18(4).

<sup>376</sup> *Ibid*, Article 18 (1) (6) and 18 (5).

<sup>377</sup> *Ibid*, Article 22.

<sup>378</sup> *Ibid*, Article 18(6).

the Citizenship Law is not clear on the way in which rejections are communicated with the applicant, the Constitutional and Supreme Administrative Courts have ruled that the person concerned must be informed of the reasons for the rejection and have the right to lodge an appeal with an administrative court. At the same time, the case law acknowledges that the President enjoys wide discretion in such cases.

In practice, there are several obstacles for stateless persons to acquire Lithuanian citizenship through naturalization. Many older stateless persons interviewed for this research quoted the requirement to pass the Lithuanian language examination as the main obstacle.<sup>379</sup> Those who were over 65 years old and were thus exempt from this requirement, were not aware of this fact.<sup>380</sup> The Roma community benefits from free courses to prepare them for the language and Constitution examinations by the Trakai municipality.<sup>381</sup> Other interviewees, especially those born in Lithuania, said they could not afford the fees for the process of naturalization and the examinations.<sup>382</sup> At the time of research, the process of naturalization cost 179 LTL (51 Euro) and this fee could not be waived.

One of the recommendations provided by the UN Human Rights Council to the Government of Lithuania during the latest Universal Periodic Review was to ease the procedure of obtaining citizenship, including by reducing the language requirement. Lithuania did not support the recommendation, as it “[did] not have any data showing that the Lithuanian provisions on obtaining citizenship create any obstacles to ensuring adequate protection of human rights for Lithuanian residents.”<sup>383</sup>

Finally, although a criminal record does not *per se* disqualify an applicant from naturalizing, the case of A.M. described below shows that in practice, even if the person has not been convicted of a grave crime, a conviction of any crime can result in a refusal to grant citizenship in the process of naturalization.

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## CASE STUDY<sup>384</sup>

### A.M., male, 39 Years old

Country of birth: **Lithuania (born to Russian parents)**

A.M. approached the authorities at the age of 18 (in 1991) and was told that the “zero option” time had expired but the new Law on Citizenship had not yet entered into force, so he would have to wait. In 1991 or 1992, A.M. obtained a permanent residence permit and the Stateless Person’s Travel Document. He soon returned to approach the authorities regarding citizenship. “They told me the rules had changed and now I had to take the exams and provide many documents. I started the process but soon realized it was very lengthy and complicated, so I thought I would leave it for now. Travelling was easier like that, I thought I was not going to take up a job in the civil service and that I could give up voting,” he says.

A.M. lived and worked with a residence permit until he decided he definitely wanted to acquire citizenship in 2011. He gathered the necessary documents and passed the necessary exams in 2012. Asked if the exams were difficult, A.M. said: “No, for me they were not difficult. They would be difficult for foreigners who migrate to Lithuania these days, but not for somebody who is autochthonous from Lithuania.” However, a

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<sup>379</sup> Of the 15 participants eligible for naturalization, 5 said they would like to acquire Lithuanian citizenship but feel they would not be able to pass the Lithuanian language examination. Their age ranged from 53 to 71 years.

<sup>380</sup> R. interviewed on 7 September 2012 and N. interviewed on 10 September 2012.

<sup>381</sup> Interview with Svetlana Novopolskaja from the Roma Community Centre on 20 August 2012.

<sup>382</sup> Of the 15 participants eligible for naturalization, 3 quoted prohibitive fees as an obstacle to undertaking the process of naturalization.

<sup>383</sup> UNGA, Human Rights Council, Nineteenth session, *Report of the Working Group on the Universal Periodic Review (Addendum): Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review – Lithuania*, A/HRC/19/15/Add.1, 6 March 2012, paragraph 15, available at: <http://goo.gl/4o1mql>.

<sup>384</sup> Interviewed on 11 September 2012.

month before the interview, he had received a letter from the Citizenship Commission informing him he was not granted citizenship because of his criminal record dating back to 1993: “The letter said that although my previous conviction had expired, the fact that I have a criminal record stays with me my whole life. It said I could try next year.”

A.M. had been sentenced to six months imprisonment for what under the current criminal code would be considered a crime of little gravity. He went to a legal aid clinic where he was advised to write to the President directly instead of appealing the decision. “The lawyers read the letter and they didn’t understand the Commission’s decision themselves. There is no law that would deny citizenship in my case. I’m not a terrorist; I’m not a serial killer or a drug trafficker. I had just made a mistake,” he says.

A.M. is deeply uncomfortable about his statelessness: “What if something happens to me? Will Lithuania take care of me? They will say, “You’re not a citizen of our country.” But I’m not a citizen of any country!”

In the longer term, he wants to see himself as a Lithuanian citizen with full rights. If this does not happen, he would consider moving to a different country: “I don’t want to, but perhaps then I should go to a country where people are treated with dignity. But first I will try and do everything I can here.”

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In view of the above, it is recommended that Lithuania considers ways of facilitating the naturalization of stateless persons on its territory, such as stateless refugees, by, for example, reducing the number of years of residence required prior to being eligible for naturalization, and by reducing or waiving the application fees.<sup>385</sup> Measures like increasing the accessibility to Lithuanian language courses and orientation classes on the content of the Lithuanian Constitution would also be welcomed.

#### 4.3.5.2 OTHER MODES

Persons who were citizens of Lithuania prior to 15 June 1940, and their descendants, can have their Lithuanian citizenship reinstated, whether they live in Lithuania or not.<sup>386</sup> Lithuanian citizenship cannot be reinstated to those persons who are citizens of another State, unless they were deported from Lithuania or left Lithuania before 11 March 1990 or are descendants of such persons. They must also not fall under one or more of the exclusion clauses of Article 22 of the Law on Citizenship. Lithuanian citizenship can only be reinstated once.<sup>387</sup>

Persons “of Lithuanian descent”, i.e. persons with a Lithuanian parent or grandparent and who consider themselves Lithuanian and declare so by written statement,<sup>388</sup> can be granted citizenship of Lithuania under the simplified procedure, that is without having to meet the conditions for naturalization.<sup>389</sup> The person must have never been a Lithuanian citizen, must not hold the citizenship of another State, and must not meet any of the general exclusion clauses.<sup>390</sup> The applications are submitted to the President of the Republic through the Migration Divisions of the Territorial Police Units or diplomatic institutions. The current fee is 50 Euros.

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<sup>385</sup> See further *Observations by the UNHCR Regional Office for the Baltic and Nordic Countries on the Ministry of Internal Affairs’ proposal no. 12-2398-02 introducing amendments to the Lithuanian Law on Citizenship*, paras. 16-17, at: <http://goo.gl/a9clYt>.

<sup>386</sup> Article 9 of the Law on Citizenship.

<sup>387</sup> The person may apply through the Migration Division of his/her Territorial Police Unit or diplomatic institutions if he or she resides abroad. The applications are submitted to the Minister of the Interior. The applicant must write a petition to reinstate citizenship, provide an identification document along with supporting documentary evidence of (an ancestor’s) links with Lithuania. The current fee is 41 Euro.

<sup>388</sup> *Ibid.*, Article 2(6).

<sup>389</sup> *Ibid.*, Article 2(14).

<sup>390</sup> *Ibid.*, Article 10 and 39.

Documents prove Lithuanian descent if they show that at least one of the person's parents or grandparents is or was Lithuanian, as well as a written statement of the fact that the person considers himself or herself Lithuanian.<sup>391</sup> Some stateless Roma persons interviewed for this research could not prove their Lithuanian descent because their parents or grandparents had not been registered as citizens or residents of the Republic of Lithuania prior to 15 June 1940.<sup>392</sup> Some only have their parents' or grandparents' birth registered in church records, but this is not enough to prove descent for the purposes of restoration of citizenship. This problem was only reported among the Roma community in Vilnius and Pagėgiai.

## 4.4 Conclusions and recommendations

Several provisions of Lithuanian law, such as those extending the right to nationality to children of stateless permanent residents born outside the territory of Lithuania, are to be praised. However, some provisions in the current nationality law, including some of the amendments to the Law on Citizenship adopted on 9 May 2013, which were aimed at bringing the law in line with the 1961 Convention, do not fully meet the standards set out in the 1954 and 1961 Conventions and related obligations under other international human rights treaties to which Lithuania is a State Party.

Lithuanian law contains a combination of modes of acquisition according to Article 1 of the 1961 Convention, where certain children born stateless acquire Lithuanian nationality automatically at birth, while other categories of children born stateless have to follow an application procedure, with stipulated requirements.

Children born to two lawfully and permanently residing parents or are either both stateless, or where one is stateless and the other is unknown, acquire Lithuanian citizenship automatically at birth, if the child would otherwise be stateless.

Stateless persons born on the territory who do not meet the aforementioned criteria for automatic acquisition of citizenship at birth, but who have been a lawful permanent resident for the past 5 years, passed exams on the Lithuanian language and basics of the Constitution, have a lawful means of subsistence, and do not fall under any of the exclusion clauses in the Citizenship Law, can apply for citizenship. These conditions go beyond those permissible under Article 1(2) of the 1961 Convention.

The rules for preventing statelessness contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality. By applying Article 1 of the 1961 Convention in conjunction with Articles 3 and 7 of the CRC, UNHCR recommends that States grant children born on their territory, who would otherwise be stateless, nationality automatically at birth. If Lithuania, however, opts to continue granting nationality to some of the persons born on its territory who would otherwise be stateless by application, it then needs to be done in line with the enumerated conditions set out in Article 1(2) of the 1954 Convention, and not have the effect of leaving the child stateless for a considerable period of time.<sup>393</sup>

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<sup>391</sup> Information available at the Website of the Migration Department: [http://www.migracija.lt/index.php? -866363388](http://www.migracija.lt/index.php?-866363388).

<sup>392</sup> G.K. and A.M., interviewed on 29 August 2012.

<sup>393</sup> See *Observations by the UNHCR Regional Office for the Baltic and Nordic Countries on the Ministry of Internal Affairs' proposal no. 12-2398-02 introducing amendments to the Lithuanian Law on Citizenship*, paras. 6-15, at: <http://goo.gl/a9clYt>.

As noted in Chapter 4.3.1.1, it is recommended that the translation of the 1961 Convention be reviewed so that it fully reflects its purpose and object. Its *travaux préparatoires*, as well as UNHCR Guidelines and expert studies elaborating on the notions contained in the Convention, should be consulted in the process.

The principles governing the Lithuanian Law on Citizenship provide for several safeguards against statelessness resulting from loss of nationality or change of civil status in compliance with Lithuania's obligations under the 1961 Convention. However, the language regarding deprivation of nationality due to service to another State, or where citizenship is acquired by misrepresentation or fraud, is broader in the Law on Citizens than the 1961 Convention. However for the purposes of this report it is assumed that the Lithuanian law will be interpreted in accordance with the requirements of the 1961 Convention.

In light of its obligations under Article 32 of the 1954 Convention, Lithuania is strongly encouraged to consider facilitating the naturalization of stateless persons, by reducing the number of years of residence required prior to being eligible for naturalization, as well as eliminating obstacles such as high fees and examinations through, for example, expanding preparatory courses to stateless persons and by reducing or waiving the fees.

# 5. Concluding remarks and recommendations

Lithuania should be applauded for preventing a potentially significant statelessness problem after the dissolution of the Soviet Union, through the “zero option”, and through its continued implementation of a status regularization procedure, under which certain categories of stateless persons can have their citizenship restored, or acquire citizenship through a simplified procedure. Nonetheless, some persons who were unable or unwilling to benefit from the “zero option” have remained stateless in Lithuania to date.

Mapping the exact size of the population and profiles of stateless persons in Lithuania has proved challenging due to certain gaps in the data. While the Residents’ Register and Migration Department database contain data on some stateless persons, other who may be stateless such as persons with “unresolved” legal status and “unreturnable” persons are not included in the statistics. Furthermore, the composition of the group of persons recorded as having their citizenship “not indicated” or “undetermined” in the Residents’ Register and in the Statistical Yearbook is unclear. Therefore, quantitative and qualitative data on the stateless population in Lithuania could be improved by the inclusion of these groups, and by a more thorough understanding of the background, profile and aspirations of the stateless population.

The definition of a stateless person set out in Article 1 of the 1954 Convention has not been expressly incorporated into the national law. Furthermore, Lithuania does not have a procedure to determine if a person meets the definition of a stateless persons, and thus is entitled to a status, residence permit, and the rights of stateless persons set out in the 1954 Convention. Nonetheless, nationality or statelessness is assessed to a certain degree in asylum and removal procedures, as part of the establishment of the identity of the person concerned. There is no right of appeal or ability to contest a person’s nationality being incorrectly registered though.

If a stateless persons is issued a residence permit on other grounds (than their status as stateless) in Lithuania, they are largely guaranteed the rights they would be entitled to under the 1954 Convention. There is, however, a need to amended some law and policy to ensure full compliance in the areas of access to social welfare, issuance of identity documents, access to legal aid and ensuring that all stateless children have access to primary education. Lithuania should be commended for its progress in this area, including recent amendments to extend the right to work to “unreturnable” persons who have been issued a temporary residence permit.<sup>394</sup>

Lithuanian law has quite strong safeguards against statelessness with regard to persons born abroad to stateless permanent residents of Lithuania, foundlings, and in relation to loss, renunciation, and deprivation of Lithuanian nationality. With regard to the deprivation of nationality, the language in the Lithuanian law relating to some instances where a citizen can be deprivation of nationality is, however, broader than that set out in the 1961 Convention.

The requirements in Article 1 of the 1961 Convention, on the granting of nationality to children born on the territory who would otherwise be stateless, have not been fully incorporated into Lithuanian law. While Lithuania should be commended for granting nationality automatically at birth to some of the children born stateless in its territory, the conditions for granting nationality by application to other categories of

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<sup>394</sup> Draft Law Amending the Law on the Legal Status of Aliens No XIIP-3291, Article 51, available at <http://goo.gl/UKSwly>.

persons born in the territory who would otherwise be stateless go beyond those permissible under Article 1(2) of the 1961 Convention. Available data shows that there are a number of children who have been identified as stateless, some of whom were born in Lithuania.

With regard to the reduction of statelessness, while some stateless persons have managed to naturalize as Lithuanian citizens, others face significant barriers to being able to do so. Those who are of “Lithuanian origin” can apply for citizenship through a simplified procedure or have their citizenship “restored” as described in this report, but all others, even if they were born in Lithuania, would need to go through the regular naturalization procedure. The fees for the procedure are cited by some stateless persons as an obstacle, and the ten year residency requirement is relatively lengthy.

Therefore, in order to bring the Lithuanian law, policy and practice in full compliance with the standards set out in the 1954 and 1961 Conventions, and thereby ensure that stateless persons are able to enjoy the rights to which they are entitled, UNHCR makes the following suggestions and recommendations.

## **IDENTIFICATION AND REGISTRATION OF STATELESSNESS**

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**IT IS RECOMMENDED THAT CONSISTENT ADMINISTRATIVE GUIDELINES BE USED BY THE AUTHORITIES THAT MAY REGISTER PERSONS AS STATELESS** in the context of asylum, immigration and return-related procedures/situations and in the context of resolution of legal status, to ensure that the respective authorities use the same definition of stateless and apply the same criteria and procedural standards, including the burden and standard of proof. This would ensure that only those individuals who are stateless in accordance with the definition set out in Article 1 of the 1954 Convention are registered as such.

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**IT IS RECOMMENDED THAT THE DEFINITION OF A STATELESS PERSON SET FORTH IN ARTICLE 1 OF THE 1954 CONVENTION BE INCORPORATED IN THE NATIONAL LEGISLATION** to strengthen the understanding and application of the binding definition of a stateless person in Lithuanian law and practice.

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**IT IS RECOMMENDED TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESS PERSONS IN LITHUANIA.** This should include improving the statistics and information on the situation of stateless persons in Lithuania using a range of methods, such as analyses of residents’ registration data, population censuses, targeted surveys and studies. In this regard, Lithuania could consider how to expand the scope of the national census to capture more stateless persons who may not have a permanent place of residence, or are to be found in corrective and prison facilities. Lithuania is also encouraged to consider ways of centrally consolidating data from the municipal authorities, prisons and detention facilities and Territorial Police Units in regard to persons with “unresolved” legal status who have applied for residence permits or citizenship as well as in regard to “unreturnable” persons in detention. Furthermore, the status and profiles of the persons registered as having their citizenship “not indicated” or “undetermined” needs to be investigated.

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**LITHUANIA IS ENCOURAGED TO UNDERTAKE A SOCIO-DEMOGRAPHIC STUDY OF THE STATELESS POPULATION OF LITHUANIA,** including a survey on the social profile of stateless persons, the causes of their statelessness and the barriers they face in acquiring citizenship or a residence permit. Such a study would not only enable the Government of Lithuania and civil society to better understand the specific needs of the stateless population, and the possible solutions; it would also increase awareness regarding the issue of statelessness amongst the authorities, civil society groups and the wider public.

## DETERMINATION OF STATELESS PERSONS AND THE RIGHTS ATTACHED TO THE STATUS

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**IT IS RECOMMENDED THAT A STATELESSNESS DETERMINATION PROCEDURE BE ESTABLISHED** to determine who, within Lithuanian territory, is stateless, including among the persons in detention who cannot be expelled (“unreturnables”). The most effective way to ensure Lithuania meet its international obligations towards stateless persons under the 1954 Convention and other human rights law is through the establishment of an accessible and efficient statelessness determination procedure that identifies stateless persons on Lithuanian territory, in line with the requirements elaborated in the UNHCR *Handbook on Protection of Stateless Persons*.

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**IT IS RECOMMENDED TO INTRODUCE PROVISIONS GUARANTEEING APPLICANTS, AS WELL AS PERSONS RECOGNIZED AS STATELESS, THE RESPECTIVE RIGHTS TO WHICH THEY ARE ENTITLED UNDER THE 1954 CONVENTION.** The UNHCR *Handbook on Protection of Stateless Persons* describes which rights applicants for the statelessness status are entitled to, and which are reserved for persons determined to be stateless.

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**IT IS RECOMMENDED THAT A SPECIFIC RESIDENCE PERMIT BE INTRODUCED FOR PERSONS RECOGNIZED AS STATELESS** and that these stateless persons be granted the “lawfully staying” rights guaranteed by the 1954 Convention, as elaborated in the UNHCR *Handbook on Protection of Stateless Persons*.

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## PREVENTION AND REDUCTION OF STATELESSNESS

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**IT IS RECOMMENDED THAT RESEARCH ON STATELESS CHILDREN IN LITHUANIA BE CARRIED OUT** in order to determine the number, current legal status, profiles and needs of these children, and to identify solutions to their statelessness.

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**IT IS RECOMMENDED THAT THE LITHUANIAN LAW ON CITIZENSHIP BE AMENDED TO INCLUDE SAFEGUARDS PREVENTING CHILDREN FROM BEING BORN INTO STATELESSNESS** by providing for the automatic grant of Lithuanian nationality at birth to persons born in the territory who would otherwise be stateless, in accordance with Article 1(1) (a) of the 1961 Convention or, alternatively, that nationality be granted by application pursuant to Article 1(1) (b). Lithuania can also opt to continue using a combination of modes of acquisition. Regardless of the method or combination of methods chosen, it is important that the conditions stateless persons born on the territory are required to fulfill do not go beyond those permitted under Article 1(2) of the 1961 Convention. Pursuant to Article 1(1) (a) of the 1961 Convention, and Articles 7 and 3 of the CRC, UNHCR recommends States to grant children born on the territory who would otherwise be stateless citizenship automatically at birth.

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**IT IS RECOMMENDED THAT GUIDANCE BE DEVELOPED TO ENSURE THAT THE LITHUANIAN LEGISLATION BE INTERPRETED SUCH THAT BIRTHS ABOARD A LITHUANIAN AIRCRAFT OR SHIP** be deemed to have occurred on Lithuanian territory.

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**IT IS RECOMMENDED TO FACILITATE THE NATURALIZATION OF STATELESS PERSONS BY REVIEWING THE POSSIBILITY OF REDUCING THE REQUIREMENTS.** For example, Lithuania is encouraged to consider reducing the number of years of residence required prior to being eligible for naturalization, as well as eliminating obstacles such as high fees and examinations through, for example, expanding preparatory courses to stateless persons and by reducing or waiving the fees.

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**IT IS RECOMMENDED THAT THE LITHUANIAN TRANSLATION OF THE 1961 CONVENTION BE REVIEWED SO THAT IT FULLY REFLECTS ITS PURPOSE AND OBJECT.** Its *travaux préparatoires*, as well as UNHCR Guidelines and expert studies elaborating on the notions contained in the Convention should be consulted in the process.





# STATELESSNESS



UNHCR Regional Representation  
for Northern Europe  
Stockholm, May 2016