

#IBELONG



Mapping  
**STATELESSNESS**  
in Slovakia



# Mapping **STATELESSNESS** in Slovakia



## **ACKNOWLEDGMENTS**

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Authors: Miroslava Mittelmannova and Monika Chaloupkova

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# ABBREVIATIONS

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<b>FPD</b>	Foreign Police Department
<b>BBFP</b>	Bureau of Border and Foreign Police of the Presidium of the Police Force
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CRC</b>	Convention on the Rights of Child
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECN</b>	European Convention on Nationality
<b>ECtHR</b>	European Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IOM</b>	International Organization for Migration
<b>IS ECU</b>	Register of Foreigners with Residence Permit in the Slovak Republic
<b>IS MIGRA</b>	Information System on Migration and International Protection
<b>MO</b>	Migration Office of the Ministry of Interior of the Slovak Republic
<b>MoI</b>	Ministry of Interior of the Slovak Republic
<b>NGO</b>	Non-governmental organization
<b>OPRC</b>	Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities
<b>PDR</b>	Public Defender of Rights
<b>RNP</b>	Register of Natural Persons
<b>RR</b>	Register of Residents of the Slovak Republic
<b>SIS</b>	Slovak Intelligence Service
<b>SOSR</b>	Statistical Office of the Slovak Republic
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East

# EXECUTIVE SUMMARY

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Slovakia is party to the major international and regional treaties relevant to statelessness. In particular, Slovakia has acceded to the Convention relating to the Status of Stateless Persons (1954 Convention) and the Convention on the Reduction of Statelessness (1961 Convention) on 3 April 2000. Slovakia retains its reservation to Article 27 of the 1954 Convention and issues the 1954 Convention Travel Documents only to stateless persons who have been granted permanent residence in the territory of the Slovak Republic. Slovakia has also ratified the European Convention on Nationality (ECN). As a party to these treaties, Slovakia has assumed obligations relating to the identification and protection of stateless persons living in Slovakia as well as obligations pertaining to the prevention and reduction of statelessness with respect to persons under its jurisdiction. The present report reveals that while many of those obligations have been transposed into Slovak national law, some gaps nevertheless remain, particularly with respect to the identification of stateless persons.

The exact scope of statelessness in Slovakia could not be established due to various difficulties in collecting and registering accurate data. Both the absence of a unified definition of a stateless person and a uniform method for applying this definition in practice often leads to the incorrect determination and registration of the nationality by the relevant State authorities. These factors, alongside the lack of a statelessness determination procedure, mean that potential stateless individuals are not adequately identified nor protected in Slovakia.

Despite the difficulty in establishing a reliable estimate of the stateless population, available data suggests that the stateless population in Slovakia is relatively small and homogeneous compared to the number of other groups of foreigners living in Slovakia, with the prevalence of stateless persons originating from Slovakia or its neighboring countries. The number of stateless persons coming from third countries has always been very low, which may be the reason why statelessness has been a topic of marginal interest amongst State authorities for years.

Although Slovakia has a relatively high number of Roma people, available statistics suggest a very low number of stateless persons among them.

As mentioned above, Slovakia does not have a dedicated statelessness determination procedure which may explain the limited identification of cases. Though not officially deemed to be the statelessness determination procedure as such, the procedure on permanent residence for five years on the ground of statelessness is the closest procedure to a stateless determination procedure that exists in Slovakia. Whilst the granting of permanent residence for five years is in line with the object and purpose of the 1954 Convention, the procedure itself is not in harmony with the guidelines provided in the UNHCR's Handbook on Protection of Stateless Persons. This is primarily due to the lack of procedural framework and the unpredictability of the outcome of the procedure since the status of a stateless person does not automatically provide the applicant with the right to permanent residence. The decision to grant this type of residence permit lies within the discretion of the Bureau of Border and Foreign Police. Moreover, obtention of this residence permit does not, in practice, demonstrate that the applicant has been recognized as having a statelessness status that would have a general validity for other state authorities.

Since there is no dedicated statelessness determination procedure in Slovakia, the assessment of nationality or statelessness usually arises in relation to asylum or other immigration procedures, as well as during the process of acquisition of Slovak citizenship. In most cases, stateless persons are treated similarly to other foreigners without any particular consideration being made to their potential statelessness. Stateless persons usually come into contact with various departments of the Bureau of Border and Foreign Police upon their irregular entry to the country or detected unauthorized stay in the country. As a result, this may lead to administrative expulsion or detention procedure. Notwithstanding that Slovak legislation provides for the protection of stateless persons against expulsion (except for cases related to national security and public order), the lack of guidelines and tools in

the course of the administrative expulsion procedure hampers these individuals' proper identification as stateless. Statelessness status can also be acknowledged (but not scrutinized) as part of the identity assessment during the asylum procedure if an asylum-seeker claims to be stateless.

Persons who do not qualify for permanent residence for five years are left with only one possibility: the "Remaining" status which only offers the right to stay in the country without the possibility to work legally, have access to health care or identity documents or to be fully integrated into the society.

In respect of the prevention and reduction of statelessness, Slovakia's national law provides relatively strong protection for stateless children born in Slovakia. However, the burden of proof lies solely with the parents of such a child who must not only provide relevant evidence but also demonstrate their own lawful stay in the territory of the Slovak Republic.

The reduction of statelessness is secured through the granting of Slovak citizenship to stateless persons who have continuous residence in Slovakia for a period of at least three years prior to submitting the application. This has proven to be effective as is evidenced by the high success rate of the applications lodged by stateless persons. However, there is room for improvement in respect of the length of the proceedings, observance of the procedural rights of the applicants, cooperation with the applicants in the course of the proceedings and the amount of the administrative fee.

As to the avoidance of statelessness in the context of renunciation, loss or deprivation of nationality, Slovak national law provides two ways that Slovak citizenship can be lost. The first option consists of renouncing citizenship at one's own request. This must be substantiated with proof that citizenship has been acquired from another State or that a promise of naturalization has been given. The second option represents an automatic loss of Slovak citizenship upon acquisition of citizenship of another State. Children and persons married to a foreign national are protected against the automatic loss of Slovak citizenship. Since 1 February 2015, former Slovak citizens who have lost their Slovak citizenship under the second option have facilitated access to its re-acquisition.

In conclusion, ensuring access to statelessness determination procedures which includes the granting of a residence permit and access to naturalization would be generally the preferred solution for most stateless persons in Slovakia. This would constitute the most adequate means for them to effectively benefit from the human rights protection regime.



# 1. INTRODUCTION

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Despite efforts made by States, with support from the United Nations High Commissioner for Refugees (UNHCR), to prevent and reduce statelessness, millions of people around the world are estimated to be stateless.<sup>1</sup> The exact number is difficult to establish. Stateless persons can be found in almost every country. Within the Europe, over 600,000 people are estimated to be stateless.<sup>2</sup>

UNHCR has been given a mandate by the United Nations (UN) to identify situations of statelessness, to protect the rights of stateless people and to promote the prevention and reduction of statelessness. In November 2014, on the 60th anniversary of the Convention relating to the Status of Stateless Persons (1954 Convention),<sup>3</sup> UNHCR launched a campaign to end statelessness by 2024. The strategy for this campaign was set out in a Global Action Plan to End Statelessness,<sup>4</sup> which contains ten actions to resolve existing situations of statelessness and prevent the emergence of new cases of statelessness.<sup>5</sup> In this regard, States are encouraged to adopt their own National Action Plans including all actions deemed necessary to end statelessness in their own national contexts, taking into consideration that many of them might already be in place.

UNHCR has been conducting numerous statelessness mapping studies in Europe.<sup>6</sup> The present report provides a mapping of the situation of stateless persons in Slovakia with the aim of raising awareness and provide a better understanding of the statelessness issue at the national level.

## 1.1 The structure and the methodology of the report

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A mixed-method approach was employed for this research, namely desk-based analysis of quantitative data and legal texts, meetings with stakeholders and interviews with stateless individuals. The research, as well as the writing of the report, was conducted between September – December 2019 by two researchers: Miroslava Mittelmanová<sup>7</sup> and Monika Chaloupková.<sup>8</sup> The statistical information used in this report was gathered from requests according to the Act no. 211/2000 Coll., on Free Access to Information and on Amendments of Certain Acts (the Freedom of Information Act) or taken from the following information systems: Register of Foreigners with Residence Permit in

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<sup>1</sup> UN News, “12 million’ stateless people globally, warns UNHCR chief in call to States for decisive action’, 12 December 2018, available at: <https://bit.ly/2Pyy3zE>.

<sup>2</sup> See: UNHCR, Statelessness around the world, available at: <https://www.unhcr.org/statelessness-around-the-world.html>.

<sup>3</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: <https://bit.ly/30Fme0F>.

<sup>4</sup> See: UNHCR, Global Action Plan to End Statelessness: 2014 – 2024, available at: <https://bit.ly/2nr6xpl> (UNHCR Global Action Plan).

<sup>5</sup> Action 1: Resolve existing major situations of statelessness. Action 2: Ensure that no child is born stateless. Action 3: Remove gender discrimination from nationality laws. Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds. Action 5: Prevent statelessness in cases of State succession. Action 6: Grant protection status to stateless migrants and facilitate their naturalization. Action 7: Ensure birth registration for the prevention of statelessness. Action 8: Issue nationality documentation to those with entitlement to it. Action 9: Accede to the UN Statelessness Conventions. Action 10: Improve quantitative and qualitative data on stateless populations.

<sup>6</sup> Including in Albania, Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Serbia, Sweden, Switzerland, Ukraine, and the United Kingdom. For more detailed information, please see [refworld.org](http://refworld.org).

<sup>7</sup> Miroslava Mittelmanová is an attorney cooperating with the Slovak non-governmental organization The Human Rights League on legal representation of asylum seekers and foreigners since 2005. She also works as a lecturer at the Law Faculty of Trnava University where she teaches the Asylum Law Clinic and Migration Law Clinic.

<sup>8</sup> Monika Chaloupková is a lawyer working for several years at the Slovak non-governmental organization The Human Rights League dealing with various issues related to asylum and migration in Slovakia, including research on these topics.

the Slovak Republic (IS ECU), Information System on Migration and International Protection (IS MIGRA), Register of Residents (RR), Register of Natural Persons (RNP), Central Register of acquisition and loss of citizenship of the Slovak Republic and the 2011 population census.

The desk-based research included an analysis of the relevant Slovak legislation, related acts and implementing regulations, as well as all relevant international instruments that Slovakia is a State Party to and several decisions of the State administrative authorities and Slovak courts related to stateless persons. The analysed decisions were either known to the researchers due to their legal practice, obtained from publicly available web pages of the judicial authorities or provided in an anonymized form based on an official request. During the research, periodic personal meetings or phone calls with the various stakeholders took place.

# 2. FACES OF STATELESSNESS IN SLOVAKIA

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## 2.1 Background

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### 2.1.1 Historical background

Based on the Constitutional Law no. 143/1968 Coll. on the Czechoslovak Federation, Czechoslovakia was considered as a federation of two equal nations, Czechs and Slovaks. A citizen of each of the two Republics was also a citizen of the Czech and Slovak Federal Republic<sup>9</sup> and the principles of the acquisition and loss of citizenship of the Republics were laid down in the Act of the National Council of the Czechoslovak Socialist Republic no. 165/1968 Coll. on the Principles of Acquisition and Loss of Czech and Slovak Citizenship<sup>10</sup> and Act of the Slovak National Council no. 206/1968 Coll., on Acquisition and Loss of Citizenship of the Slovak Socialist Republic.<sup>11</sup>

This legislation regulated the acquisition and loss of citizenship within Czechoslovakia until the very end of the existence of a common State. On 1 January 1993, Czechoslovakia was split into two separate Republics and Czechoslovak citizenship ceased to exist.

On 1 January 1993, an independent Slovak Republic was created. One of the first acts adopted by the National Council of the Slovak Republic was Act no. 40/1993 Coll., on the Citizenship of the Slovak Republic,<sup>12</sup> which represents the cornerstone of the Slovak national legislation on citizenship issues.

### 2.1.2 National legal framework

The Slovak Republic is a State party to various international and regional instruments concerning nationality and statelessness matters either based on the succession to the conventions which originally came into force for the Czechoslovak Socialist Republic or based on the ratification of the conventions by the Slovak Government.

The National Council of the Slovak Republic approved the Convention relating to the Status of Stateless Persons as well as the Convention on the Reduction of Stateless Persons through the adoption of resolution no. 621 of 7 December 1999. The 1954 and 1961 Conventions entered into force on 2 July 2000, respectively on the basis of Article 39 (2)<sup>13</sup> and Article 18 (2).<sup>14</sup> Slovakia made one reservation to the 1954 Convention as follows: *“The Slovak Republic is not bound by Article 27 to the effect that it will issue a personal document to any stateless person who does not have a valid travel document. The Slovak Republic shall issue a personal document only to stateless persons residing in the territory of the Slovak Republic who have been granted long-term or permanent residence.”*

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<sup>9</sup> See Section 5 (1) of the Constitutional Law no. 143/1968 Coll. on the Czechoslovak Federation.

<sup>10</sup> See: <https://bit.ly/3gl0rv4>.

<sup>11</sup> See: <https://bit.ly/33FmPkW>.

<sup>12</sup> See: <https://bit.ly/3in36dX>.

<sup>13</sup> See Announcement of the Ministry of Foreign Affairs of the Slovak Republic, no: 206/2001 Coll., available at: <https://bit.ly/3gl3nYv>.

<sup>14</sup> See Announcement of the Ministry of Foreign Affairs of the Slovak Republic, no: 192/2001 Coll., available at: <https://bit.ly/2PDK2AQ>.

Based on the succession, Slovakia became a State party to the 1962 Convention, which came into force for the Czechoslovak Socialist Republic on 4 July 1962.<sup>15</sup>

The Slovak Government ratified the European Convention on Nationality of the European Council on 30 April 1998 based on the resolution of the Government, no. 789 of 4 November 1997.<sup>16</sup>

The Constitution of the Slovak Republic contains a general stipulation on Slovak citizenship. Based on Article 5<sup>17</sup> *“acquisition and loss of the citizenship of the Slovak Republic shall be regulated by a law and no one shall be deprived of the citizenship of the Slovak Republic against his or her will”*.

As mentioned above, one of the first acts adopted by the National Council of the Slovak Republic in its history was Act no. 40/1993 Coll., on the Citizenship of the Slovak Republic. It represents the cornerstone of Slovak national legislation on citizenship issues. The purpose of this Act was to establish the conditions for the acquisition and loss of Slovak citizenship. According to this Act, Slovak citizenship may be acquired by determination of Slovak citizenship, by choice of Slovak citizenship, by birth, by adoption or by granting (naturalization). In this Act, the principle of non-discrimination and the principle that international agreements have precedence over domestic legislation are incorporated as follows: *“rights in exercising this Act shall be guaranteed equally to all persons irrespective of their gender, race, skin colour, language, faith and belief, political and/or other thinking, national or social origin, membership in national minority or ethnic group according to the equal treatment rule regulated by a special Act”*<sup>18</sup> and *“in case that an international agreement, by which the Slovak Republic is bound, modifies some of the issues differently to this law in the matter of citizenship, the modification in the international agreement prevails”*.<sup>19</sup>

## 2.2 Demography of statelessness in Slovakia

This subsection provides existing statistical information on statelessness in Slovakia, although several gaps and flaws in the available data have made it impossible to provide an accurate analysis of the data, and the relevant legal framework for population census and Register of Residents (RR).

### 2.2.1 Current data on statelessness in Slovakia

The Statistical Office of the Slovak Republic (SOSR)<sup>20</sup> carries out, in ten-year intervals, the population and housing census which is regulated by a special law, usually adopted prior to its execution. The population census that was taken into the consideration while writing this study was the one from 2011<sup>21</sup> and the very recent one that took place in 2021 was not incorporated in this study.<sup>22</sup> The population census provides, among other things, data on

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<sup>15</sup> See: <https://bit.ly/31y0pzy>.

<sup>16</sup> See: <https://bit.ly/3a9wZvl>.

<sup>17</sup> Pursuant to Section 5 (1) and 5 (2) of the Constitution of the Slovak Republic.

<sup>18</sup> Pursuant to Section 19a of the Citizenship Act.

<sup>19</sup> Pursuant to Section 17 of the Citizenship Act.

<sup>20</sup> SOSR is a central body of State administration of the Slovak Republic that carries out tasks specified by the Act no. 540/2001 Coll., on State Statistics, namely, publishing statistical survey results for Slovakia and for its individual territorial and administrative units, regularly informing the public on socio-economic and demographic developments and statistical information. For this purpose, it cooperates with other State authorities, which shall provide the SOSR, upon written request, with data obtained, collected, processed or stored during the performance of their activities pursuant to specified laws, among other things also data from the RR.

<sup>21</sup> Pursuant to Act no. 263/2008 Coll., on the Population and Housing Census in 2011 and amending Act no. 5/2004 Coll., on Employment Services and on Amendments to Certain Acts, as amended.

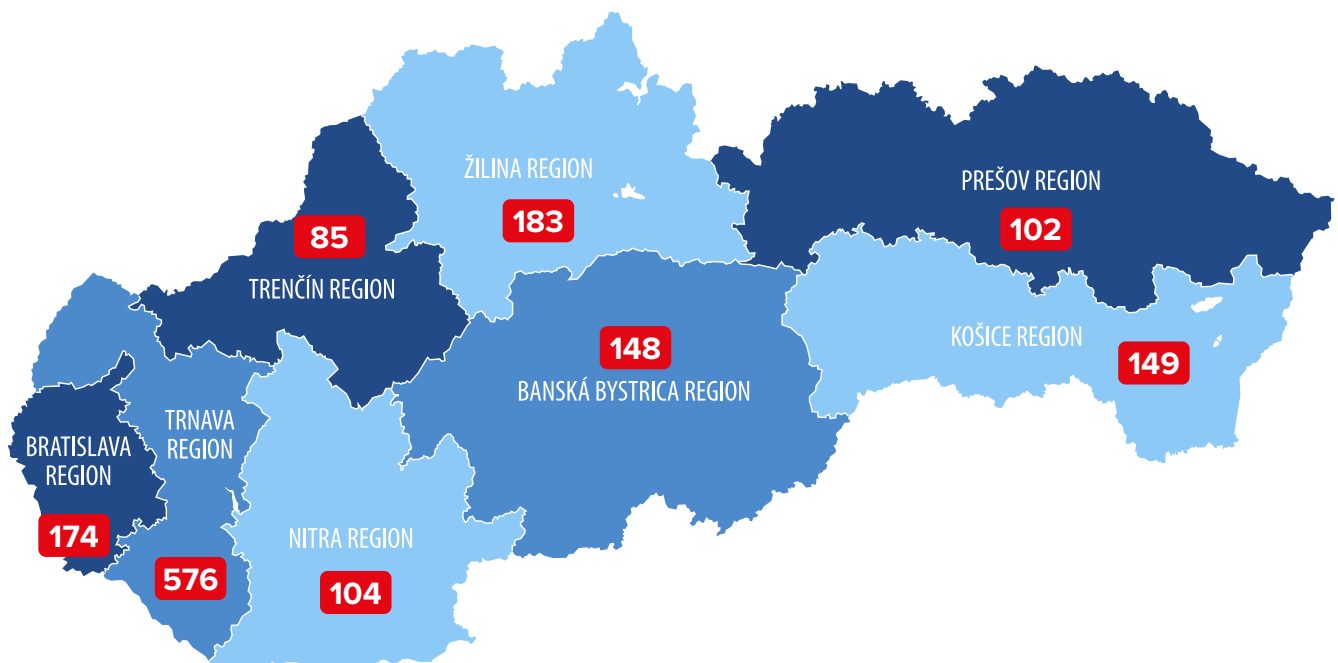
<sup>22</sup> In the 2021 population census, the data from the Register of Residents will be provided to the Statistical Office as one of the administrative basis for the census. Until lately, it was only an opportunity of the Statistical Office to request such data, whereas under the new legislation it is already an obligation of the authority responsible for running the RR. This measure is intended to help obtain more accurate census data.

foreigners staying in Slovakia at the relevant time of the census. It should be noted that the population census is carried out by means of self-declaration, i.e. a person states facts in a questionnaire on the basis of his/her self-identification<sup>23</sup> and the accuracy of such data is no longer subject to verification by the SOSR.<sup>24</sup> While data collected through the method of self-identification might not always be fully accurate, it still provides an interesting indication of the possible dimensions of statelessness in Slovakia.

In the population census in 2011, the self-declared stateless population in Slovakia comprised of 1,523 individuals while 393,100 persons were recorded with unknown nationality.<sup>25</sup> This high number of individuals with “unidentified” nationality might be caused by the self-identification method and also by the fact that some people might have left the space for information regarding their nationality empty when filling in the questionnaire. In comparison, 911 individuals self-identified as stateless during the population census in 2001.<sup>26</sup>

An insight into the distribution of the stateless population by regions in Slovakia reveals that the highest number of stateless persons was found in the Trnava Region, 576 in total,<sup>27</sup> while the second highest number of stateless persons was recorded in the Žilina Region, 183 in total. The lowest number of stateless persons was found in the Trenčín Region, 85 in total. In general, there are no significant differences between the regions of Slovakia.

**Map 1:** Distribution of stateless population in Slovakia by regions in 2011<sup>28</sup>



Source: The Statistical Office of the Slovak Republic<sup>29</sup>

<sup>23</sup> Every resident shall provide complete, correct and true information in a timely manner pursuant to Section 3 (8) of the Act no. 263/2008 Coll.

<sup>24</sup> Information provided by the Statistical Office of the Slovak Republic, dated 03 December 2019.

<sup>25</sup> Information available at: <https://bit.ly/3fH3Hpd>.

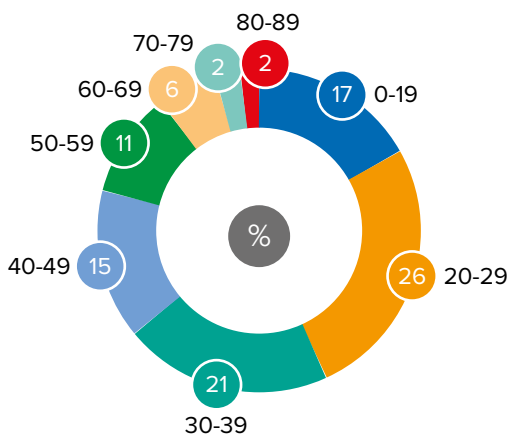
<sup>26</sup> Information provided by the Statistical Office of the Slovak Republic, dated 08 January 2020.

<sup>27</sup> The Statistical Office of the Slovak Republic stated in its response dated 03 December 2019 that the high number of stateless persons in the Trnava Region might be the result of incorrect self-identification.

<sup>28</sup> Map available at: [https://commons.wikimedia.org/wiki/Atlas\\_of\\_Slovakia](https://commons.wikimedia.org/wiki/Atlas_of_Slovakia).

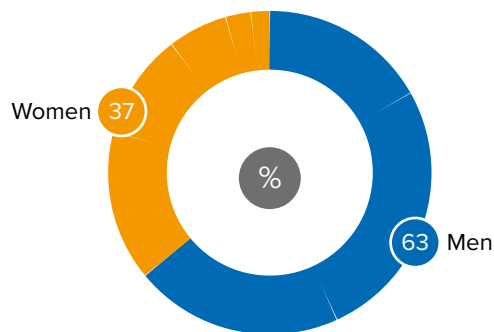
<sup>29</sup> Information provided by the Statistical Office of the Slovak Republic, dated 10 October 2019.

**Figure 1:** Age breakdown of stateless population in Slovakia



Source: The Statistical Office of the Slovak Republic<sup>30</sup>

**Figure 2:** Gender breakdown of stateless population in Slovakia

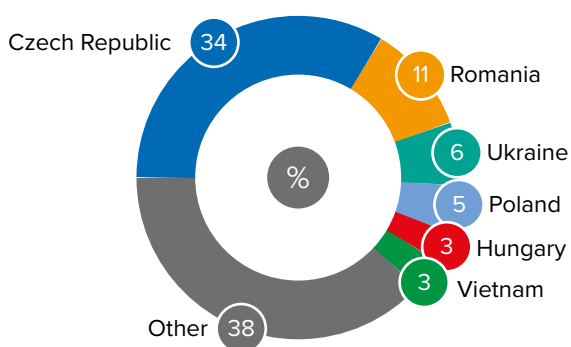


Source: The Statistical Office of the Slovak Republic<sup>31</sup>

Figure 1 shows that all age categories were represented amongst stateless persons - from 0 to 99 years old. The stateless population of Slovakia as of 2011 included 221 children in total. When it comes to the gender breakdown of stateless persons, men prevail substantially over women (964 men to 561 women).<sup>32</sup>

The population census in 2011 indicates a high number of self-declared stateless persons born in Slovakia. With 1,155 persons in total, they represent the majority of stateless persons in Slovakia. As mentioned above, a possible explanation for this might lie in the self-identification method used when collecting data. The second most common region of origin of stateless persons in Slovakia is Europe, where 234 persons were born in one of the EU Member States and 45 in the remaining parts of Europe. Other more represented regions of origin of the stateless population in Slovakia are Asia (46 in total), Africa (22 in total) and North America (12 in total).

**Figure 3:** Countries of origin of stateless persons born outside Slovakia



Source: The Statistical Office of the Slovak Republic<sup>33</sup>

The highest numbers of stateless persons born outside Slovakia but staying in Slovakia were recorded from the neighbouring countries, namely stateless persons born in the Czech Republic (124 in total), Ukraine (23 in total), Poland (17 in total), Hungary (11 in total) and Austria (seven in total), which is also reflected in the relatively high number of stateless persons born in EU Member States. The prevalent statistical figure in respect of stateless persons born in the Czech Republic and Slovakia might be due to the dissolution of the Czech and Slovak Federative Republic in 1992 and the new nationality laws adopted by each of the new countries after the dissolution.

<sup>30</sup> Information provided by the Statistical Office of the Slovak Republic, dated 10 October 2019.

<sup>31</sup> Information provided by the Statistical Office of the Slovak Republic, dated 10 October 2019.

<sup>32</sup> A deviation of two may be due to inaccuracies in the tables provided by the SOSR.

<sup>33</sup> Information provided by the Statistical Office of the Slovak Republic, dated 10 October 2019.

## 2.2.2 Register of Residents of the Slovak Republic

The RR<sup>34</sup> comprises data on Slovak citizens (with or without permanent residence in Slovakia) and foreigners with a residence permit or refugee status staying<sup>35</sup> in the territory of the Slovak Republic. Currently, Act no. 253/1998 Coll. does not include an exhaustive list of residence permits that enable a foreigner to qualify for inclusion in the register. Instead, it makes reference to Act no. 404/2011 Coll., on the Residence of Foreigners and on Amendments to Certain Acts (Act on the Residence of Foreigners) which provides three main types of residence permits (permanent residence, temporary residence and tolerated residence). In other words, only foreigners holding one of these residence permits can be included in the RR. According to Section 17 of the Act no. 253/1998 Coll., the register contains data on foreigners with a residence permit or refugee status to the extent specified in the residence card issued pursuant to the Act on the Residence of Foreigners,<sup>36</sup> i.e., name and surname, type of residence, assigned birth registration number (only in the Slovak version), date and place of birth, gender, nationality and additional remarks (usually the address in Slovakia).<sup>37</sup>

Act no. 253/1998 Coll. also establishes the Register of Natural Persons (RNP) which has a similar function as the RR, i.e. to provide a relevant source of complete and accurate data on natural persons living in Slovakia. The difference between the RNP and the RR is that the RNP also includes data on foreigners without a valid residence permit in Slovakia who are entered into the information systems pursuant to special regulations. The data stored on persons without valid residence permits includes, amongst other things, the place of birth, state of birth, nationality, state of residence and the last known address of such person.<sup>38</sup>

Even though the RR and the RNP represent the two main registers that should include the statistical data of both foreigners with/without residence permits or refugee status in Slovakia, it was not possible to obtain any relevant data on stateless persons or persons that might be at risk of statelessness from these registers for the purpose of this report.

## 2.2.3 Migration and asylum statistics

Section 45a (2) of the Act on the Residence of Foreigners defines a stateless person as “*a person who is not considered as a national by any State under the operation of its law*”, which is the same definition used by the 1954 Convention. Pursuant to Section 2 (4) of the same Act, a stateless person is considered a third country national. The Asylum Act does not include its own definition of a stateless person even though it uses this term.

There are two main information systems, both run by the Ministry of Interior (Mol) via the Bureau of Border and Foreign Police (BBFP), and the Migration Office, that provides data on legal and irregular migration in Slovakia. Statistical data on legal migration is processed on the basis of outputs from the Register of Foreigners with Residence

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<sup>34</sup> The RR poses as a main source of data on the size and structure of the Slovak population for the needs of State authorities, local authorities, other legal entities and natural persons. The RR was established by Act no. 253/1998 Coll., on the Report of Residence of Citizens of the Slovak Republic and the Register of Residents of the Slovak Republic (Act no. 253/1998 Coll.). The Ministry of Interior of the Slovak Republic (Mol) is responsible for its operation. The data can be entered into the register by various competent authorities designated by the Act no. 253/1998 Coll., including by the Bureau of Border and Foreign Police (BBFP) and its various departments which insert data on the residence permits of foreigners and recognized refugees living in Slovakia in their own information systems (discussed below) from where they are automatically transferred to the RR.

<sup>35</sup> Most probably also information on the beneficiaries of subsidiary protection. The wording of the act might just be outdated.

<sup>36</sup> There is a uniform format for residence cards in the EU pursuant to Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

<sup>37</sup> There might be a slight difference when it comes to data inserted in case of foreigners with a tolerated residence permit since they are not provided with the standard residence card pursuant to Section 73 of the Act on the Residence of Foreigners but with written confirmation on granting/prolonging of a tolerated residence instead.

<sup>38</sup> Pursuant to Section 23b (1) (d) or (2) of the Act no. 253/1998 Coll.

Permit in the Slovak Republic (IS ECU).<sup>39</sup> Any change in the residence permit procedure is entered in the database and is automatically reflected in the statistics. Statistical data on irregular migration and international protection is processed on the basis of outputs from the Information System on Migration and International Protection (IS MIGRA),<sup>40</sup> which is used both by the BBFP and the Migration Office. This information system is also an important analytical tool, as it collects data on detained irregular migrants and records the course of all actions taken with them. The BBFP publishes, based on statistical information from IS ECU and IS MIGRA, the Statistical Overview of Legal and Illegal Migration in the Slovak Republic on an annual and semi-annual basis on the web page of the Mol.<sup>41</sup> The Migration Office compiles its own detailed statistics on applicants for international protection and the results of their asylum procedure on a monthly and annual basis, which are also available on the web page of the Mol.<sup>42</sup>

The operation of these information systems is regulated by Act no. 171/1993 Coll., on the Police Force, the Act on the Residence of Foreigners, Act no. 480/2002 Coll., on Asylum and on Amendments to Certain Acts (Asylum Act) and various implementing decrees (e.g. Methodology for the Use of the Information System on Migration and International Protection (IS MIGRA)). The protection of processed personal data in these information systems is covered by Act no. 18/2018 Coll., on Personal Data Protection and on Amendments to Certain Acts.

### 2.2.3.1 Migration statistics

For the purpose of this report, the Mol provided statistical information on stateless persons broken down by the type of residence according to the Act on the Residence of Foreigners for the time period from 2011 to 2019.

**Table 1:** Statistical overview of valid residence permits held by stateless persons in Slovakia

Year	Type of residence permit			Total	Gender	
	Permanent residence	Temporary residence	Tolerated residence		Male	Female
2019 (31/08/2019)	43	3	0	46	29	17
2018	36	3	0	39	23	16
2017	35	3	7	45	29	16
2016	39	3	8	50	34	16
2015	39	4	9	52	36	16
2014	46	5	9	60	43	17
2013	55	5	9	69	48	21
2012	43	3	7	53	36	17
2011	47	10	6	63	47	16

Source: The Ministry of Interior of the Slovak Republic<sup>43</sup>

<sup>39</sup> IS ECU presents a base for statistical information on the number of valid residences permits of third country nationals and EU citizens per each Foreign Police Department. Various departments of the BBFP, primarily Foreign Police Departments, are responsible for entering and updating the data contained in IS ECU.

<sup>40</sup> IS MIGRA is a common database in relation to applicants for international protection and irregular migrants who were found to be irregularly staying in the territory of the Slovak Republic or who were apprehended while irregularly crossing the State border.

<sup>41</sup> See: <https://bit.ly/2Dta5U6>.

<sup>42</sup> See: <https://bit.ly/33NOxMm>.

<sup>43</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.



Table 1 shows that the number of residence permits granted to stateless persons is low in comparison to residence permits granted to other third country nationals in the territory of the Slovak Republic.<sup>44</sup>

The Act on the Residence of Foreigners (adopted 21 October 2011, with effect from 1 January 2012) introduced a new type of permanent residence for stateless persons. Despite the adoption of this new legislation, the number of permanent residence permits held by stateless persons has not risen significantly. Moreover, the following years show a downward trend, except for 2019 when an increase of seven permanent residence permits for stateless persons can be seen. The exact number of permanent residence permits granted to stateless persons pursuant to Section 45a (1) (a) of the Act on the Residence of Foreigners (formerly Section 46 (2) (b) of the same Act) could not be obtained for the purpose of this report, as such data is not processed within the statistics according to these provisions.<sup>45</sup>

A steady decrease of temporary residence permits held by stateless persons is shown in the years following 2011. Since 2016, the number of temporary residence permits remains stable (3 in total).

2018 and the first half of 2019 show a sudden drop of tolerated residence permits issued to stateless persons. This might be due to legislative changes effective from 1 May 2018, when tolerated residence on the ground that departure is not possible, and detention is not legitimate<sup>46</sup> (which was often the case for stateless persons who could not prove their statelessness), and on the ground that an impediment to administrative expulsion existed,<sup>47</sup> which ceased to be applicable. The two above-mentioned situations, formerly covered by tolerated residence, have since been covered by the newly introduced “Remaining” status pursuant to Section 61a of the Act on the Residence of Foreigners, which is not considered as a residence and solely provides the third country national with the right to remain on the territory of the Slovak Republic.

In 2018 and 2019, one stateless person was registered with “Remaining” status pursuant to Section 61a of the Act on the Residence of Foreigners in the territory of the Slovak Republic.<sup>48</sup>

Among stateless persons with some type of residence, men consistently represent the majority. Information on the country of origin of stateless persons with some type of residence permit could not be provided by the Mol as it is not covered by existing statistics.<sup>49</sup>

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<sup>44</sup> See: <https://bit.ly/2F1gWUV>, 2011: 24 333; 2012: 25 019; 2013: 26 157; 2014: 29 171; 2015: 35 261; 2016: 41 232; 2017: 50 395; 2018: 65 381; first half of 2019: 73 870.

<sup>45</sup> Information provided by the representatives of the Bureau of Border and Foreign Police of the Presidium of the Police Force, Interview dated 13 November 2019.

<sup>46</sup> Former Section 58 (1) (b) of the Act on the Residence of Foreigners.

<sup>47</sup> Former Section 58 (1) (a) of the Act on the Residence of Foreigners.

<sup>48</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 11 November 2019.

<sup>49</sup> Pursuant to Act no. 211/2000 Coll., on Free Access to Information and on Amendments to Certain Acts (the Freedom of Information Act), the Mol is not obliged to create a new mass of information.

**Table 2:** Statistical overview of valid residence permits of foreigners of “unspecified“ nationality in Slovakia

Year	Type of residence permit			Total	Gender	
	Permanent residence	Temporary residence	Tolerated residence		Male	Female
2019 (31/08/2019)	4	3	0	7	4	3
2018	12	5	0	17	8	9
2017	14	1	12	27	22	2
2016	15	1	10	26	21	5
2015	13	1	9	23	19	4
2014	8	2	9	19	-	-
2013	6	0	8	14	-	-
2012	5	2	11	18	-	-
2011	0	3	7	10	-	-

Source: The Ministry of Interior of the Slovak Republic<sup>50</sup>

The information provided by the Mol makes a distinction between statistics on stateless persons and statistics on persons with “unspecified” nationality. “Unspecified” nationality corresponds to the situation where the State authorities cannot identify the nationality of a person and at the same time cannot declare the person as stateless. The occurrence of cases with “unspecified” nationality can also be partially attributed to the lack of a statelessness determination procedure within the Slovak national legal framework which may leave people in a dire situation where their nationality or absence of nationality is difficult to establish (e.g. due to the lack of documents necessary to obtain a permanent residence permit as a stateless person). Some persons with “unspecified” nationality might in fact be stateless persons. In practice, it is also possible to come across cases of statelessness when people have their nationality marked as “unknown” or “undetermined” on their official documents (e.g. administrative decisions), which both, based on the response of the Mol, fall within the designation of “unspecified” nationality in Table 2.

The number of residence permits issued to persons with “unspecified” nationality is substantially lower than the number of residence permits issued to stateless persons. This should not be considered insignificant, since many of these people might be stateless without the possibility of enjoying all rights accorded to stateless persons pursuant to the national and international legal framework on statelessness.

The disappearance of tolerated residence permits in 2018 and 2019, given the change in legislation, can also be seen in cases of persons with “unspecified” nationality. Based on the information provided by the Mol, in 2018 and 2019, no person of “unspecified” nationality was registered with “Remaining” status pursuant to Section 61a of the Act on the Residence of Foreigners in the territory of the Slovak Republic. Despite this information, the lawyers of the NGO Human Rights League have come across one case of a person who was issued a confirmation on “Remaining” status in 2019 where his nationality was marked as “unspecified in relation to stateless persons,” making it unclear whether this person is considered as stateless by the BBFP or as a person with “unspecified” nationality.

The employees of the BBFP are regularly trained on the issues related to the Act on the Residence of Foreigners. The issue of statelessness is included as part of other trainings, e.g. training on the issue of administrative expulsion.<sup>51</sup>

<sup>50</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

<sup>51</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

### 2.2.3.2 Asylum statistics

In order to obtain detailed and accurate data, the Mol provided, for the purpose of this report, statistical information on stateless applicants for international protection between 2011-2019.<sup>52</sup>

**Table 3:** Statistical overview of asylum applications lodged by stateless persons in Slovakia

Year	Men	Women	UAM	Total
2019 (31/08/2019)	1	0	-	1
2018	1	0	-	1
2017	1	0	-	1
2016	0	0	-	0
2015	0	0	-	0
2014	0	0	-	0
2013	1	0	-	1
2012	2	0	-	2
2011	2	0	-	2

Source: The Ministry of Interior of the Slovak Republic<sup>53</sup>

Table 3 shows the very low numbers of applications for international protection lodged by stateless applicants (eight applications in total) in the years following 2011 up until 2019. No female applicant for international protection has been identified as stateless since 2011. The numbers given in Table 3 may not be fully accurate as the asylum procedure does not primarily focus on the verification of existence/absence of an applicant's nationality and, sometimes, applicants do not consider themselves stateless, even though they might be.

The countries of origin of those stateless applicants included Georgia (1), Ukraine (2), the Syrian Arab Republic (1) and Ivory Coast (1). One applicant could not have his country of origin established. Two of the applicants (from Georgia and Ukraine) applied twice for international protection in the reporting period.

Based on the information provided by the Mol, no stateless applicant for asylum has been granted asylum, asylum on humanitarian grounds, or subsidiary protection between 2011 and 2019. One stateless applicant originally coming from Georgia was granted asylum based on humanitarian grounds (pursuant to Section 9 of the Asylum Act) in 2016. This applicant was, however, considered by the Migration Office for the entire duration of his asylum procedure as a Georgian national (the applicant had no proof at his disposal of his statelessness during his asylum procedure; such proof was obtained once the asylum procedure was over) and, therefore, registered as such in the statistics.

The above-mentioned statistical information provided by the Mol regarding applications for international protection lodged by stateless persons, however, does not correspond with the nominal designation used in the statistical information published by the Migration Office on the web page of the Mol. Instead, the Migration Office uses the terms of "unidentified" nationality, "unspecified" nationality or "unspecified in relation to stateless persons" which might cause some confusion.<sup>54</sup> Moreover, the number of applications for international protection lodged by

<sup>52</sup> The Ministry of Interior of the Slovak Republic is the common point for requesting the provision of information pursuant to the Freedom of Information Act when it comes to the authorities that fall within its scope.

<sup>53</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>54</sup> See: <https://bit.ly/30HEhDD>.

persons with the various nationalities used by the Migration Office does not correspond to the numbers provided by the Mol in Table 3. In fact, these figures are slightly higher.

Only in one case out of these eight applications was a decision on the merits issued, i.e. not granting asylum and not providing subsidiary protection. One asylum application was rejected as inadmissible according to Section 11 (1) (f) of the Asylum Act<sup>55</sup> and one application was rejected as manifestly unfounded pursuant to Section 12 (1) (a) and (3) of the Asylum Act.<sup>56</sup> The proceedings have been discontinued in the remaining cases of applications for international protection lodged by stateless applicants.<sup>57</sup>

The decision on rejecting the application of a stateless asylum-seeker as inadmissible stated *“However, it should be added that although he later provided new documents confirming the fact that he is a stateless person (birth certificate, embassy statements), he was considered as a stateless person already in the previous proceedings. (...) The fact that, as a citizen of (...), he did not apply for the issuance of any identity documents based on his birth certificate does not indicate that he was not a national of that State, but merely indicates his unwillingness to obtain the identity documents he was entitled to as a national. Therefore, his claim that he has no official identity in his country of origin, is also irrelevant.”* In one part of the decision, the applicant was recognized as stateless based on the submitted evidence but in another part of the decision, the Migration Office denied this fact. This reasoning suggests that the Migration Office misunderstood the situation of the asylum-seeker as a stateless person and the consequences associated with it.<sup>58</sup>

### 2.2.3.3 Citizenship Department statistics

The main source of statistical data on acquisition and loss of Slovak citizenship pursuant to Section 19 (1) of Act no. 40/1993 Coll., on the Citizenship of the Slovak Republic (Citizenship Act) is the Central register of acquisition and loss of citizenship of the Slovak Republic (Central Register) run by the Mol via the Citizenship Department of the Ministry of Interior of the Slovak Republic (Citizenship Department). Regional registers on acquisition and loss of Slovak citizenship are kept by the District Offices at the seat of each region. Such registers include various data on applicants pursuant to Section 8, 9 and 9a of the Citizenship Act, e.g. name, surname, birth registration number (if assigned), date and place of birth of the applicant, residence card, etc.

The Citizenship Act neither includes the definition of a stateless person for the purpose of application under Section 5 (1) (b) or Section 7 (2) (h), nor does it make any reference to the definition of a stateless person provided in the relevant international or national legal instruments. The Citizenship Department does not use any definition of a stateless person in its decision-making practice, as it claims not to be competent to verify whether an applicant for citizenship is a stateless person or not.<sup>59</sup>

Although there are no publicly available statistics on the acquisition of Slovak citizenship by stateless persons, the Mol via the Citizenship Department which is responsible for keeping the Central Registers updated, provided, for the purpose of this report, statistical information on applications for Slovak citizenship lodged by stateless persons.

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<sup>55</sup> Repeated application and no substantial change in the facts since the previous decision became final.

<sup>56</sup> Justifies his application for international protection by facts or reasons other than those referred to in Section 8, 10, 13a or 13b of the Asylum Act.

<sup>57</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>58</sup> Information obtained from the anonymized decisions provided by the Ministry of Interior of the Slovak Republic.

<sup>59</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 20 December 2019.

**Table 4:** Statistical overview of applications for Slovak citizenship lodged by stateless persons in Slovakia

Year	Gender		Type of resid	Total
	Male	Female		
2019 (31/08/2019)	-	-	-	0
2018	-	1	Netherlands	1
2017	-	-	-	0
2016	1	2	Kyrgyzstan, 2 Slovakia	3
2015	3	1	Slovakia, unknown, Republic of the Congo, Lebanon	4
2014	3	2	2 Slovakia, Kuwait, Lebanon, Republic of the Congo	5
2013	,	-	-	0
2012	4	-	Syria, Russia, Kuwait, Lebanon	4
2011	3	-	2 Lebanon, Slovakia	3

Source: The Ministry of Interior of the Slovak Republic<sup>60</sup>

Table 4 provides the number of stateless persons who have applied for Slovak citizenship since 2011. The total number of 20 stateless applicants in the course of nine years represents a very low number in comparison to the number of 1,523 self-identified stateless persons in the population census in 2011. The above table shows that male stateless applicants prevail over female stateless applicants in a ratio of 14: 6. Countries of birth of stateless applicants vary: Slovakia represents the highest number with six applicants, followed by Lebanon with five applicants, and Syria, Kuwait and the Republic of the Congo each with two applicants.

**Table 5:** Statistical overview of the Slovak citizenship granted to stateless persons in Slovakia

Year	Gender		Type of resid	Total
	Male	Female		
2019 (31/08/2019)	-	1	Netherlands	1
2018	1	-	Slovakia	1
2017	3	1	2 Slovakia, Lebanon, Kuwait	4
2016	1	2	2 Slovakia, Kyrgyzstan	3
2015	2	2	Slovakia, unknown, Syria, Lebanon	4
2014	1	-	Russia	1
2013	-	-	-	0
2012	3	-	2 Lebanon, Ukraine	3
2011	1	-	United Arab Emirates	1

Source: The Ministry of Interior of the Slovak Republic<sup>61</sup>

Table 5 provides the number of stateless persons who have been granted Slovak citizenship since 2011. Out of 18 cases, 6 women and 12 men were granted Slovak citizenship in the course of nine years. The youngest stateless person to acquire Slovak citizenship was 1 year old at the time of acquisition. The oldest person that acquired

<sup>60</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 20 December 2019.

<sup>61</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 20 December 2019.

Slovak citizenship was 53 years old. The most represented age group was the group of applicants in their thirties. The most successful applicants by birthplace were stateless applicants born in Slovakia (6 in total) and Lebanon (4 in total).

When comparing the number of applications (20 in total) with the number of stateless persons who were granted Slovak citizenship (18 in total) in the time period from 2011 to 2019, we can see a high success rate (90%).

According to the Mol, since 2011 up to 20 September 2019, 4 stateless applicants were not granted Slovak citizenship. Out of these, the procedure was discontinued in 3 cases (2013, 2017 and 2019) and in 1 case the application was rejected (2012). In the statistics concerning the discontinuation and rejection of the applications are also listed those that were lodged before the year 2011, but decisions were taken after 2011.

In the first case, in 2013, the procedure was discontinued due to the applicant withdrawing his application. In the second case, in 2017, the discontinuation of the procedure was caused by the fact that the applicant did not submit the documents requested by the Citizenship Department. In the third case, the reason for discontinuation was based on the ground that the stateless applicant has not been present on the territory of the Slovak Republic continuously for the duration of the procedure which at the issuance of such decision had already lasted almost five years.<sup>62</sup>

The decision of the stateless applicant, whose application was rejected in 2012, contained the following reasons for not granting the citizenship: *"(...) the applicant has been studying since (...) at the (...), but has not yet completed his bachelor's degree, which was to be completed in 2011. For this reason, it will only be possible to assess the applicant's sufficient integration into society following the outcome of the completion of his studies and his proper integration into the labour process in the Slovak Republic"*.<sup>63</sup>

For the purpose of this report, information on the average duration of the procedure in cases of stateless applicants was requested but could not be provided by the Mol<sup>64</sup> as the Central Register does not include data on the duration of the procedure or duration of the suspension of the proceedings.<sup>65</sup>

The Mol stated that the employees of the Citizenship Department are not trained on the issue of statelessness, further adding that the numbers of stateless applicants for Slovak citizenship have constantly been very low.<sup>66</sup>

#### 2.2.4 Missing data and stateless persons not included in the statistical data

The data gathered through the population census conducted in 2011 showed that there were 393,100 cases of persons of "unidentified nationality" and 1,523 stateless persons, as self-identified by the respondents. At the time of drafting this report, 46 stateless persons and seven persons of "unspecified" nationality held valid residence permits.

The above-mentioned figures vary, and do not provide a full and unified picture of the number of stateless persons living in Slovakia. There may be more reasons for possible inaccuracies in the processing of the data provided. One of them is the absence of a uniform method that would determine the criteria based on which a particular person shall be recognized and registered as a stateless person. All institutions involved in the process (in particular, the BBFP, the Migration Office, the Citizenship Department) have their own methods based on which they evaluate the

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<sup>62</sup> Information obtained from the anonymized decisions provided by the Ministry of Interior of the Slovak Republic.

<sup>63</sup> Information obtained from the anonymized decisions provided by the Ministry of Interior of the Slovak Republic.

<sup>64</sup> Decision of the Mol on partial non-compliance with the request for disclosure of information, dated 01 October 2019.

<sup>65</sup> The statutory duration of the procedure is 24 months from the delivery of the application to the Citizenship Department. This time limit shall not pass from the time of request until delivery of the requested statements by administrative authorities pursuant to Section 8 (3) of the Citizenship Act necessary which are necessary for issuing the decision.

<sup>66</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 01 October 2019.

data on the applicant's nationality and are, therefore, not comparable. Another obstacle in obtaining accurate data on statelessness is sometimes the declaratory nature of the data provided, which means that they are based on a specific person's declaration that the individual is stateless. Examples of this declaratory nature can be found in the data from the population census or data provided by applicants for international protection.

The statement of a person on their statelessness is often not verified, such as in the case of a census or where such data cannot be verified with certainty, such as in the case of an asylum procedure where the Migration Office cannot contact the national authorities of the applicant's country of origin. Another shortcoming in data processing is when individuals are registered differently by different national authorities. An example of this can be when an unsuccessful applicant for international protection was registered in the asylum procedure as stateless and later ends up registered in the administrative expulsion procedure or residence permit procedure as a person with certain nationality or *vice versa*. This may be due to the fact that the institutions involved do not often recognize each other's findings on nationality and, instead, conduct their own enquiries (e.g., the BBFP),<sup>67</sup> or the person does not have a proof of their statelessness at their disposal in the course of a certain procedure (e.g., administrative expulsion procedure). In addition, cases in which State authorities are unable to determine with certainty whether a certain person is stateless and instead register the individual as a person with "unspecified" or "unidentified" nationality can lead to misrepresentation of the data on statelessness. Lastly, individuals who have been erroneously registered with a certain nationality do not appear in statelessness-related statistics even though they may be stateless.

As there was no automatic granting of residence permits to "unreturnable"<sup>68</sup> individuals after their release from detention until May 2018,<sup>69</sup> many might have chosen to stay in the country, avoiding further contact with the relevant State authorities. The reasons for this may have been the lack of information on the possibilities of regularizing their residence, fear of being detained again<sup>70</sup> and/or helplessness about resolving their irregular status. Those persons might, therefore, either disappear from or not be recorded in the statistics.

## 2.3 Situation of the Roma community

Since members of the Roma community constitute the third most represented ethnic minority, based on the results of the population census carried out in 2011, this subsection will elaborate the access of its members to Slovak citizenship.

According to the last population census carried out by the SOSR, 5.397,036 people lived in Slovakia in 2011,<sup>71</sup> of which 106,000 claimed to have Roma ethnicity, which represents 2% of the total population of the Slovak Republic. The population census of 2011 recorded the highest share of Roma persons in the Prešov Region (5.3% of the total population of the region). Roma ethnicity also shows the highest share of population growth within the inter-census period 2001-2011. The age group of 0-4 years is the most represented among the Roma population (14.2%). The second most represented is the age group of 5-9 years amounting to 13.2% of the Roma population. With increasing age, the number of inhabitants claiming Roma origin has declined.<sup>72</sup>

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<sup>67</sup> Information provided by the representatives of the Bureau of Border and Foreign Police of the Presidium of the Police Force, Interview dated 13 November 2019.

<sup>68</sup> The term "unreturnable" is used in this report to cover persons who could not return or could not be returned to their country of origin/ country of former habitual residence or any other country. The reasons for this situation vary and are often not known. It could be that they are stateless or lack the right to reside in the State of their former habitual residence or their country of nationality refuses to readmit them which renders them *de facto* stateless.

<sup>69</sup> Since May 2018, persons released from detention who could not be deported are automatically registered in the information system with "Remaining".

<sup>70</sup> The issued decision on administrative expulsion does not have an expiry date and therefore constitutes a basis for repeated efforts of the Foreign Police Departments to implement it and for this purpose detain the person repeatedly.

<sup>71</sup> The next population census is scheduled for 2021.

<sup>72</sup> The Statistical Office of the Slovak Republic, Population and Housing Census 2011, FACTS ABOUT CHANGES in the life of Slovak citizens, year of issue: 2014, available at: <https://bit.ly/2XHsLWZ>.

Out of 1,523 individuals who claimed to be stateless in the 2011 population census, 35 registered as having Roma ethnicity. This number represents a slight increase in comparison with the 2001 population census where only 33 stateless persons claimed to be members of the Roma ethnic minority.<sup>73</sup> However, it must be stated that if the members of the Roma community identified as stateless during the population census, the Statistical Office registered their answer as such without further verification.

As of 31 December 2018, there was a total number of 35 stateless persons of Roma ethnicity with permanent residence in Slovakia.<sup>74</sup>

In the process of information gathering, the researchers of this report approached the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities (OPRC),<sup>75</sup> which did not identify cases of stateless persons with Roma ethnicity as widespread, as it has not yet dealt with such cases based on individual requests for intervention. Based on the findings by researchers that there are 35 stateless persons of Roma ethnicity, the OPRC contacted the Statistical Office in order to receive an explanation of this finding. According to the Statistical Office “if the inhabitants of the Roma ethnicity during the census decided to state that they do not have a citizenship, the Statistical Office registered them as stateless persons.”

The OPRC<sup>76</sup> also stated that the issue of acquiring Slovak citizenship of persons with Roma ethnicity after 1993 (the dissolution of the Czech and Slovak Federative Republic) was and still is sufficiently regulated with regard to the provisions of Section 2 and 3<sup>77</sup> of the Citizenship Act. According to the OPRC, the administrative process of acquisition of Slovak citizenship in relation to the Roma community does not pose significant obstacles in practice. The OPRC takes the view that the legal order of the Slovak Republic creates all the necessary legal conditions so that the situation of non-registration of a newly born citizen into the RR does not occur at all.<sup>78</sup> Within each municipality, there is a Registry Office which maintains its own birth book where entries are made based on written or oral notification. The birth of a child, irrespective of ethnicity, shall be notified to the competent Registry Office by the physician who was present at birth or who provided medical treatment after delivery; in other cases, one of the parents is obliged to do so.

Within the Police Corps of the Slovak Republic, senior officers are assigned to work in Roma communities, where they aid and support Roma persons together with field and social workers when it comes to obtaining registration documents, identity documents as well as reporting of their residence. With regard to the above-mentioned legislation and support provided to marginalized Roma communities in the field, the OPRC is of the opinion that these measures are sufficient to prevent statelessness amongst children born within various Roma communities in Slovakia or to tackle the potential occurrence of statelessness amongst adult Roma population.<sup>79</sup>

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<sup>73</sup> Information provided by the Statistical Office of the Slovak Republic, dated 08 January 2020.

<sup>74</sup> Information provided by the Statistical Office of the Slovak Republic, dated 10 October 2019.

<sup>75</sup> Special State office established to address the individual and systemic problems of the Roma minority in order to achieve equal status of citizens belonging to the Roma minority in society. See: <https://bit.ly/2XG5KU8>.

<sup>76</sup> Information provided by the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, dated 12 September 2019.

<sup>77</sup> Pursuant to Section 2 of the Citizenship Act: “A person who was a citizen of the Slovak Republic as of 31 December 1992 pursuant to the Act of the Slovak National Council no. 206/1968 Coll. on the Acquisition and Loss of Citizenship of the Slovak Socialist Republic as amended by Act no. 88/1990 Coll., is a citizen of the Slovak Republic pursuant this Act.” Section 3 (1) and (2) of the Citizenship Act provides: “(1) A person who was a citizen of the Czech and Slovak Federative Republic as of 31 December 1992 and who is not a citizen of the Slovak Republic pursuant to Section 2 may choose the citizenship of the Slovak Republic. 2) The choice of citizenship pursuant to par. 1 may be made until 31 December 1993 by a written declaration filed at a district office in the territory of the Slovak Republic, abroad at a diplomatic mission or at the consular office of the Slovak Republic, depending on the place of residence. Spouses can make a declaration of choice together.”

<sup>78</sup> Mainly Act no. 253/1998 Coll., on Reporting of Residence of Citizens of the Slovak Republic and the Register of Citizens of the Slovak Republic Act no. 154/1994 Coll., On Registry Offices Act no. 578/2004 Coll., on Health Care Providers, Health Care Workers, Professional Organizations in Health Care Sector and on Amendments to Certain Acts Act no. 576/2004 Coll., on Health Care, Services Related to the Provision of Health Care and on Amendments to Certain Acts and etc.

<sup>79</sup> Information provided by the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, dated 12 September 2019.



The District Office in Bratislava, Department of Administrative, Citizenship and Registries stated that in practice, they have not encountered any problem with the issuance of identity documents for stateless persons of Roma origin.<sup>80</sup> Similarly, NGOs working in Slovakia with the Roma community, that were approached for the purpose of this report, said that they had not come across the problem of statelessness amongst members of the Roma community and persons of Roma origin living in Slovakia have, in general, entitlements to nationality.<sup>81</sup>

## 2.4 Summary of main findings

- **Slovakia is party to the Convention relating to the Status of Stateless Persons (1954 Convention) and the Convention on the Reduction of Statelessness (1961 Convention).**
- **The stateless population in Slovakia is small and homogeneous.**
- **The number of applications and the number of Slovak citizenships granted to stateless persons indicates a very high success rate.**
- **Persons within the Roma community in Slovakia do not become stateless by virtue of their affiliation to Roma origin.**
- **It has not been possible to establish an accurate statistical overview of the stateless population in Slovakia as the figures provided by various authorities vary in numbers.**
- **The absence of a unified definition of a stateless person may lead to confusion and an incorrect determination of the person's nationality or stateless status.**
- **The Act on the Residence of Foreigners is the only act that contains a definition of a stateless person.**
- **Incorrect categorization or inconsistent categorization of stateless persons in various registers adversely affects the possibility of accurately obtaining knowledge about the extent of the stateless population in Slovakia.**
- Some of the national authorities **do not recognize each other's views concerning the person's nationality**, which leads to legal uncertainty for a person who has legitimate expectations that the State authorities will proceed consistently.
- Both, IS ECU and IS MIGRA allow for an automatic uploading of data to Registry of Residents and RNP. However, despite the efforts of the state administration, it was not possible to obtain any relevant data from the RR and RNP systems, and thus verifying the functioning of the interconnection of these systems was not possible.

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<sup>80</sup> Information provided by the District Office in Bratislava, Department of Administrative, Citizenship and Registries, dated 23 September 2019.

<sup>81</sup> Several NGOs were approached out of which the following provided us with answers: CVEK - Center for the Research of Ethnicity and Culture Center for Civil and Human Rights Cesta von (Way Out), civic association (the last one just informally).

# 3. DETERMINATION OF STATELESSNESS AND RIGHTS ATTACHED TO THE STATUS

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This chapter discusses the issue of the absence of a statelessness determination procedure together with an overview of the identification of stateless persons in other existing administrative and judicial procedures in the context of Slovakia's compliance with international standards and obligations.

## 3.1 National legal framework

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The 1954 Convention in its Article 1 (1) sets out the definition of a stateless person which helps its contracting States to identify the persons who are entitled to the protection and rights accorded to stateless persons under the 1954 Convention. Similarly, to the 1951 Refugee Convention, the 1954 Convention remains silent when it comes to setting a procedural framework for applying the definition of a stateless person in practice. However, according to UNHCR's Handbook on Protection of Stateless Persons *"it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment to comply with their Convention commitments"*.<sup>82</sup> Therefore, having an institutionalized procedure on identification and determination of stateless persons is the key for States to meet their obligations under the 1954 Convention. Such a determination procedure should be simple, fair, efficient and accessible for everyone. In order to ensure fairness and efficiency, basic procedural safeguards should be incorporated in a stateless determination procedure. While a comprehensive list of procedural guarantees may be found in Part Two of UNHCR's Handbook on Protection of Stateless Persons, some of the most important ones will be herein outlined: access to an individual interview; interpretation assistance; access to legal aid; respect for the specific protection needs presented by women, children and people with disabilities; a right to receive a grounded decision in writing, within a reasonable time and a right of appeal.<sup>83</sup>

Having a dedicated statelessness determination procedure in place is a good practice in several European countries.<sup>84</sup> Despite the fact that Slovakia is a party to both the 1954 Convention and the 1961 Convention since April 2000, up until present day it has no statelessness determination procedure in place. According to various representatives of State authorities dealing with stateless persons, the need to establish a statelessness determination procedure has not yet arisen in practice due to the constantly low number of stateless persons in Slovakia.

Within Slovak legislation, the procedure on permanent residence for five years regulated by the Act on the Residence of Foreigners is the closest instrument to a statelessness determination procedure, although it is not officially deemed to be a statelessness determination procedure *per se*.

Questions of nationality and statelessness also come to light in other administrative procedures that are specifically regulated by the Act on the Residence of Foreigners, the Asylum Act and the Citizenship Act which together form the legal framework for the protection of stateless persons starting with the protection against expulsion ("safety net") and ending with the possibility of acquiring Slovak citizenship under preferential terms. In the following sub-chapters, the different types of procedures and forms of protection for stateless persons will be discussed.

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<sup>82</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 8.

<sup>83</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 71-77.

<sup>84</sup> e.g. France, Georgia, Hungary, Italy, Latvia, Kosovo (UNSCR 1244/99), the Republic of Moldova, Spain, Turkey, Ukraine and the United Kingdom. See at: <https://bit.ly/30FW6Tx>.

Given the absence of a statelessness determination procedure in Slovakia, various State authorities competent to decide on different legal issues relevant to stateless persons apply different approaches when it comes to determining whether a certain person is stateless for the purpose of the given administrative procedure. It is important to note that the recognition of a person's statelessness by one authority (e.g., for the purpose of the asylum procedure) is not binding on other authorities.

Additionally, Slovak legislation explicitly provides for a Foreigners Travel Document (1954 Convention Travel Document) for stateless persons.<sup>85</sup> The issuance of such a travel document must be preceded by the grant of permanent residence pursuant to the Act on the Residence of Foreigners in a procedure which has established that the person concerned is stateless.

### 3.2 Permanent residence for five years procedure

The Act on the Residence of Foreigners (adopted on 21 October 2011, with effect from 1 January 2012) has introduced a new type of permanent residence for stateless persons.<sup>86</sup> This type of residence, once granted, enables stateless persons to live a full and dignified life, to obtain an identity document and stability. The adoption of this type of residence was innovative within the legal protection framework of stateless persons in Slovakia. For the first time, the Act on the Residence of Foreigners clearly defined who a stateless person is, and how this is to be proved with the aim of being granted permanent residence.

The provisions of the Act on the Residence of Foreigners concerning this type of residence provide the following definition of a stateless person: *“a stateless person is a person who is not considered as a national by any State under the operation of its law”*.<sup>87</sup> This definition corresponds to the definition of a stateless person enshrined in the 1954 Convention.

Stateless persons do not need to fulfil other conditions for the grant of such residence other than proving within the procedure that they are stateless according to Section 45a (2) (a – c) of the Act on the Residence of Foreigners. This act provides a clear distinction between other types of residence permits which usually require fulfilment of several conditions (e.g. submission of a valid travel document, proof of accommodation, proof of sufficient means, etc.). This residence is, however, available only to persons who are able to prove that they are stateless, it does not include “unreturnable” individuals.

The permanent residence for five years is not a statelessness determination procedure per se and the outcome of this procedure has no general validity as regards the recognition of the statelessness status of the applicant (it does not determine whether the applicant is or is not stateless). Indeed, the result of the procedure is either the grant of the residence or rejection of the application. Notification of rejection of the application does not necessarily mean that the applicant is not stateless. Even if the applicant is identified as a stateless person, the administrative authority is not obliged to grant him/her permanent residence. There is no legal entitlement for granting this type of residence. As such, the law speaks of the possibility and not the obligation of the responsible State authority. Granting this residence is within the discretion of the responsible authority which creates legal uncertainty and makes the outcome of the procedure unpredictable.

Initially, this type of permanent residence for stateless persons was adopted in the form of permanent residence for an unlimited period of time. In the years following its adoption, several restrictive changes have been made to it. The first change, effective since May 2017, excluded the applicability of Act no. 71/1976 Coll., on Administrative

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<sup>85</sup> Section (1) (a) of the Act No. 647/2000 Coll., on Travel Documents and on Amendments to Certain Acts.

<sup>86</sup> This type of residence for stateless persons was introduced to Slovak national law thanks to the support from UNHCR.

<sup>87</sup> Pursuant to Section 45a (2) of the Act on the Residence of Foreigners.

Proceedings (Administrative Procedural Code) in this procedure.<sup>88</sup> This has subsequently led to the majority of procedural rights provided to the applicant by the Administrative Procedural Code being lost. Moreover, the exclusion of the act has meant that the competent authority no longer issues decisions against which it is possible to file an appeal to the superior administrative authority and instead, provides the applicant with a written notification on the outcome of the application. The second major change followed in May 2018 when the permanent residence for an unlimited period of time granted to stateless persons changed to a permanent residence for five years that can be renewed repeatedly. This last change brought even more uncertainty when it comes to the procedural rules governing this type of residence.

### 3.2.1 Competent authority

The authority competent for the registration of the application for permanent residence for five years is the Foreign Police Department (FPD) according to the applicant's place of stay in the territory of Slovakia. The FPD is, however, not the authority that decides on the case. The FPD's task is only to register the application and afterward hand it over to the BBFP. The latter is the authority that decides on the application for permanent residence even though the law explicitly mentions the MoI as the state authority that can grant this type of residence.<sup>89</sup>

### 3.2.2 Initiating the procedure and the course of the procedure

It should be noted at the outset that an adequate procedural framework is missing when it comes to the permanent residence for five years for stateless persons. The provisions of the Act on the Residence of Foreigners governing the standard permanent residence for five years<sup>90</sup> do not apply to the permanent residence granted to stateless persons. This type of procedure is also not regulated by any implementing regulation, unlike other types of residence permits.<sup>91</sup>

The procedure for stateless persons on the permanent residence for five years is initiated on the basis of an application by a person claiming to be stateless. The standard duration of the procedure is 90 days from the receipt of the application which might be prolonged if more time is needed. The administrative fee for applying for this type of residence is EUR 165.50. The BBFP/FPD may waive or reduce the fee for humanitarian reasons. In order to do so, the applicant must apply for remission of the administrative fee providing a written statement of his/her situation that justifies such remission.

The application should be submitted in person on the official form. The law is silent on the place for submitting such an application. In practice, stateless applicants submit their applications at the respective FPD.<sup>92</sup> It is not possible to submit the application for this type of residence from abroad. The applicant must be present in the territory of the Slovak Republic at the time of application.

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<sup>88</sup> The Administrative Procedural Code applies in the vast majority of the procedures regulated by the Act on the Residence of Foreigners as a subsidiary legal instrument.

<sup>89</sup> This whole procedure is very unusual (sort of *sui generis*) in comparison to other residence permit procedures where the respective FPD is the one to decide on the application for the residence permit which, in practice, proves to be very confusing for the applicant.

<sup>90</sup> The permanent residence for five years used to be usually granted for the purpose of family reunification of Slovak citizens with third country nationals. The legislative changes dated May 2018 added new separate grounds for granting permanent residence for five years, including the ground of statelessness.

<sup>91</sup> The Methodology for securing the procedure of residence permits of foreigners in the territory of the Slovak Republic, Annex to the Order of the Director of the Bureau of Border and Foreign Police of the Presidium of the Police Force, no. 13/2019 mentions it only briefly in a couple of provisions.

<sup>92</sup> The Act on the Residence of Foreigners valid until 30 April 2018 included determination of the place for lodging an application – the respective FPD, which was later removed. According to the statement of BBFP's representatives, provided during interview dated 27 December 2019, it is even possible to apply for this type of residence directly at their office (by post). Cases of applications filed via post at the BBFP are, however, not known in practice.

The law also does not specify whether the applicant should be authorized to remain in Slovakia or should have any type of residence permit at the time of application. The Act on the Residence of Foreigners only explicitly states that permanent residence can be granted to a stateless person “*even without meeting the conditions set forth in this Act*” from which it can be concluded that the applicant does not necessarily have to stay legally in Slovakia at the time of submitting the application.<sup>93</sup> However, there is a reasonable prospect that a person who stays irregularly in Slovakia and appears before the FPD in order to apply for this permanent residence might be refused to have his/her application registered and the respective FPD might automatically initiate expulsion proceedings and, possibly, even detention. The BBFP in this regard stated that the procedure on administrative expulsion is a matter of priority (public interest in deporting migrants staying irregularly in the country).<sup>94</sup> Only when it is established that the administrative expulsion procedure cannot be carried out due to an impediment to expulsion (status of statelessness), can the application for permanent residence be registered.<sup>95</sup>

Apart from the official application form, the applicant should submit anything that can prove that she/he does not have a nationality of the State where (i) he/she was born, (ii) in which she/he previously resided<sup>96</sup> and (iii) whose nationality is held by his/her parents and siblings. The law does not specify the form or manner in which the applicant should prove these facts. Therefore, it is up to the applicant to choose the form or manner to prove that she/he is stateless. The official authentication and translation of documents issued abroad is not required in this case.<sup>97</sup>

Once the application is successfully received, the respective FPD hands over the case file to the BBFP that leads the proceedings from that moment on. The BBFP, among other actions, addresses the Slovak Intelligence Service (SIS) and the Military Intelligence with a request for provision of an opinion on the applicant. The BBFP also secures an extract from the criminal record of the applicant. If necessary, the BBFP contacts the applicant with a request to provide any further evidence or invites the individual to a personal interview.

The procedure is completed by the issuance and delivery of a written notification on the outcome of the procedure to the applicant. Such notification is final and cannot be appealed to a higher administrative authority.

### 3.2.3 Rights of applicants during the procedure

The 1954 Convention foresees several rights that should be enjoyed by stateless persons based on their degree of attachment to the State Party. The first group of rights accorded to stateless persons are rights that are triggered once the stateless person becomes a subject to the jurisdiction of the State Party, e.g., as soon as the stateless person is physically present in the territory. Right to identity papers (Article 27), right to administrative assistance (Article 25), and the right to access the courts (Article 16 (1)), belong to this group of rights.<sup>98</sup>

The drafting history of the 1954 Convention presumes that the applicants who enter into a statelessness determination procedure are “lawfully in” the territory of the State Party at least for the duration of the procedure and until a determination has been reached. The second group of rights is, therefore, provided for stateless persons who are “lawfully in” a State Party, including the right to engage in self-employment (Article 18), right to freedom of

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<sup>93</sup> All the cases of stateless person we know of and who received permanent residence on this ground were staying legally in Slovakia at the time of their application, e.g., either had tolerated residence or ongoing asylum procedure.

<sup>94</sup> Information provided by the representative of the Bureau of Border and Foreign Police of the Presidium of the Police Force, phone call dated 18 December 2019.

<sup>95</sup> *Ibid.*

<sup>96</sup> In the sense of having an official address or residence permit.

<sup>97</sup> Information provided by the representative of the Bureau of Border and Foreign Police of the Presidium of the Police Force, phone call dated 18 December 2019.

<sup>98</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 132-133.

movement within a State (Article 26) and right to protection from expulsion (Article 31).<sup>99</sup> As “lawfully in” rights under the 1954 Convention are formulated almost identically to those in the 1951 Convention, it is recommended that stateless persons awaiting the determination of statelessness receive the same standards of treatment as asylum-seekers.<sup>100</sup> To ensure that procedures are fair and effective, States are to refrain from removing an individual from their territory pending the outcome of the determination procedure.<sup>101</sup> The status of those awaiting statelessness determination must also reflect applicable human rights law standards.<sup>102</sup>

The third group of rights, such as the right to wage-earning employment (Article 17), the right to assistance to meet basic needs (Article 24) and some other rights may be claimed by stateless persons “lawfully staying” in the country, e.g. stateless persons who have been granted a residence permit. The final set of rights is granted to those who are “habitually resident” or “residing” in a State Party.<sup>103</sup>

As the 1954 Convention establishes minimum rights,<sup>104</sup> it follows that States may nevertheless provide higher levels and standards of protection and obligations stemming from international human rights law also complement rights accorded under the 1954 Convention.

### 3.2.3.1 Right to be “lawfully in” the country

As stated above, Slovakia does not have its own statelessness determination procedure, but the procedure on permanent residence for five years comes close to it. Lodging an application for this type of residence does not automatically provide the stateless applicant with a right to be “lawfully in” the country and the applicant does not have any explicit legal protection against removal during the procedure.<sup>105</sup> In practice, the applicant can be lawfully in the territory at the time of submission of the application either based on some other type of residence permit<sup>106</sup> or the “Remaining” status.<sup>107</sup> The lawful presence in the country derived from those statuses or permits remains for the entire duration of the procedure.

### 3.2.3.2 Right to identity papers

Slovakia made one reservation when acceding to the 1954 Convention, namely that it shall be bound by Article 27 of the 1954 Convention (issuance of identity papers) only with regard to stateless persons that have been granted permanent residence in Slovakia. Other stateless persons present in the territory do not have the right to obtain any identity documents issued by the Slovak authorities. The same applies to applicants for permanent residence for five years, who receive only a written confirmation of receipt of their application which is not an identity paper. The lack of identity documents, however, creates many obstacles for stateless persons in carrying out their basic daily needs and activities, e.g., finding accommodation, opening a bank account, receiving money via international transfers at the post office, obtaining a public transportation card, concluding commercial health insurance, etc.

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<sup>99</sup> *Ibid*, para 134.

<sup>100</sup> *Ibid*, para. 145.

<sup>101</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para. 72.

<sup>102</sup> Such as protection against arbitrary detention and assistance to meet basic needs. Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned. See UNHCR, Handbook on Protection of Stateless Persons, December 2014, paras.146 with reference to paras. 140 and 141.

<sup>103</sup> See UNHCR, Handbook on Protection of Stateless Persons, December 2014, para. 138.

<sup>104</sup> *Ibid*, para. 11.

<sup>105</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 07 January 2020.

<sup>106</sup> This situation assumes possession of one’s own identity documents issued by another country than Slovakia.

<sup>107</sup> In cases of stateless persons, the “Remaining” status follows automatically either as a result of an unsuccessful administrative expulsion procedure or detention procedure.

### **3.2.3.3 Right to wage-earning employment and the right to engage in self-employment**

Even though the 1954 Convention presumes the right to wage-earning employment to be enjoyed only by stateless persons who are “lawfully staying in” the State Party, States may provide a higher level of standard. The 1954 Convention on the other hand, states that the right to self-employment should be accorded to stateless persons who are “lawfully in” the country. In the context of Slovakia, lodging an application for permanent residence for five years neither entitles the stateless applicants to work nor to engage in self-employment for the duration of the procedure. The only case in which a stateless applicant could work or do business would be if the individual had another type of permanent residence or temporary residence<sup>108</sup> in Slovakia at the time of application for permanent residence for five years on the ground of statelessness. This is due to the fact that permanent or temporary residence is deemed to be valid - with all the resulting rights - pending a decision on the application for another type of residence. However, cases of stateless applicants who are holders of other types of residence permits at the time of application are very unlikely.

### **3.2.3.4 Freedom of movement within the State**

Stateless applicants are free to move within the territory of Slovakia. If they intend to stay outside their place of reported stay for more than 30 days (meaning within Slovakia), they are supposed to notify the respective FPD about it and the place they intend to stay. The freedom of movement of stateless applicants that stay lawfully in the country based on the “Remaining” status might be limited if an obligation is imposed to report at specified intervals to the respective FPD pursuant to Section 61a (5) of the Act on the Residence of Foreigners in order to prove that they are staying at the reported address.<sup>109</sup>

### **3.2.3.5 Protection from expulsion**

All stateless persons are generally protected from expulsion pursuant to Section 81 (3) of the Act on the Residence of Foreigners unless they pose a threat to national security or public order. The status of statelessness poses an obstacle to administrative expulsion. So even if this person has been issued a decision on administrative expulsion and subsequently it is found out that the individual is stateless, the respective FPD shall postpone the enforcement of such decision for the time this obstacle remains in place.<sup>110</sup> In addition, the protection from expulsion of stateless persons who applied for permanent residence on this ground, is secured in practice through their “lawful stay” in the country for the duration of this procedure, as described above (based on other types of residence permit valid prior to submitting an application or “Remaining” status).

### **3.2.3.6 Right to health care**

The applicant is, regardless of their status, only entitled to emergency health care. Other than that, health care cannot be provided to the applicant, unless they make a direct payment or have commercial health insurance.<sup>111</sup> However, commercial health insurance might be inaccessible for stateless persons, not only due to its high costs but also due to the lack of identity documents.

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<sup>108</sup> Temporary residence which allows its holder to work or do business.

<sup>109</sup> This respective FPD has a possibility, not an obligation, to impose such a restriction on the stateless person with the “Remaining” status. Cases where such an obligation would be imposed on the applicant is unknown from the practice.

<sup>110</sup> Pursuant to Section 84 (5) (a) of the Act on the Residence of Foreigners.

<sup>111</sup> Unless the individual falls within the scope of the public health insurance system based on permanent residence or temporary residence that allows its holder either to work or to engage in self-employment.

### 3.2.3.7 Right to assistance to meet basic needs

The 1954 Convention presumes the right to housing (Article 21), right to public relief (Article 23) and rights to labour legislation and social security (Article 24) to be provided only for stateless persons “lawfully staying in” the country. The State Parties are, however, free to provide higher standards of protection that would also include stateless persons that are only “lawfully in” the country. The stateless applicant is responsible for securing their own accommodation pending the procedure on permanent residence and no allowance is provided. Most of the benefits of the State social security system are linked either to the existence of a permanent/temporary residence or to the number of years worked prior to applying for the benefit, which is usually not the case of a stateless person. The only State support that the stateless applicants for permanent residence can receive is the benefit in material need pursuant to Act no. 417/2013 Coll., on Assistance in Material Need and on Amendments to Certain Acts, to the sum of EUR 64,70 per month, the housing allowance to the sum of EUR 55,80 per month or a lump-sum benefit.<sup>112</sup> The support in material need can, therefore, be considered as a certain form of higher standards of protection even though the status of the applicant is not crucial in this case.

### 3.2.3.8 Procedural rights of the applicants

Since the exclusion of the subsidiary application of the Administrative Procedural Code to the procedure of permanent residence for five years for stateless persons in May 2017, the procedural rights of the applicants remain unclear. It can be only presumed that the applicant has the right to interpretation in case of an interview,<sup>113</sup> the right to access the case file, the right to submit or propose the examination of evidence, or the right to have legal representation,<sup>114</sup> but not the right to free legal aid.<sup>115</sup> In this type of procedure, the BBFP does not issue a decision with all statutory requirements *per se*. The applicant only receives a written notification on the outcome of the procedure in the Slovak language. Such notification is a one-page document that does not provide any reasoning in case the application was rejected.<sup>116</sup> The procedure on permanent residence for five years on the grounds of statelessness is a one-stage procedure, which in practice means that the applicant does not have a right to appeal against the notification to the superior administrative authority if his/her application was rejected.

## 3.2.4 Questions of proof

One of the few conditions explicitly regulated in the Act on the Residence of Foreigners, is the applicant’s obligation to prove that the individual does not have the nationality of the State (i) where he/she was born, (ii) in which he/she previously resided<sup>117</sup> and (iii) whose nationality is held by his/her parents and siblings.<sup>118</sup> Such a formulation of

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<sup>112</sup> The lump-sum benefit is intended to partially cover the extraordinary expenses of members of the household receiving assistance in material need. It is intended to provide necessary clothing, linen, shoes, essential household equipment such as bed, table, chair, refrigerator, stove, etc. It may be granted to a person on a one-time basis according to the actual expenditure (the maximum limit is up to three times the subsistence level for one adult natural person – in 2019 the subsistence minimum was EUR 210,20).

<sup>113</sup> The interview is conducted only when considered necessary by the BBFP. The procedure takes place predominantly in writing.

<sup>114</sup> As long as the applicant has sufficient means to cover the costs of legal representation.

<sup>115</sup> The applicant might have a right to free legal aid provided by an NGO if said organization has an official project (usually funded by various EU funds) focused on providing legal aid in residential matters and under the conditions established by this project. If there is no project that would cover free legal aid for foreigners in this type of residence, the applicant is not entitled to free legal aid.

<sup>116</sup> The exclusion of subsidiary application of the Administrative Procedural Code to the procedure of permanent residence for five years for stateless persons and the absence of any reasoning in case of refusal was challenged at the national courts where the Regional Court in Bratislava in its decision no. 6S 186/2017, dated 04 June 2020 stated: “(...) *And in the event that the Ministry of Interior does not comply with the application, such processing of the application shall be governed by the Administrative Procedural Code and it shall be clear from the written notification to the applicant why his request was not complied with.* (...) *The legal situation created by the defendant in his communication, which is the subject of judicial review, is in conflict with Article 2 (2) of the Constitution of the Slovak Republic as well as with the principle of the rule of law in the sense of Article 1 (1) of the Constitution of the Slovak Republic, especially when the plaintiff did not learn from the notification in question any legal and factual reasons, nor the consideration as to why his application was rejected.*” This judgment represents a groundbreaking judgment for future practice of the BBFP and hopefully will bring more legal certainty for stateless applicants for permanent residence.

<sup>117</sup> In the sense of having an official address or residence permit.

<sup>118</sup> Pursuant to Section 45a (2) (a) to (c) of the Act on the Residence of Foreigners.



the law expressly implies that the burden of proof lies solely with the applicant.<sup>119</sup> This was also the case in the past when it was often extremely difficult for stateless persons to obtain such evidence in order to prove that they are stateless and can qualify for permanent residence.<sup>120</sup>

A positive change, when it comes to sharing the burden of proof, has occurred only due to the decision-making practice of the courts. The Supreme Court of the Slovak Republic (Supreme Court) dealt with a case of a stateless applicant of Kurdish nationality originating in Syria<sup>121</sup> who tried to prove, for the purpose of the permanent residence procedure, that he is stateless by submitting a solemn declaration claiming to be stateless, a decision of the Migration Office based on which he was granted subsidiary protection in Slovakia stating that he is stateless and country of origin reports. Those documents were evaluated by the BBFP as insufficient to establish that the applicant is stateless. However, the Supreme Court referred to the obligations of the Slovak Republic under the 1954 Convention, stating that if an administrative authority concludes that the foreigner is to prove that he is stateless through the authorities of a foreign country to whom he cannot have recourse, the Slovak Republic as a State Party to the 1954 Convention under Article 25 (1)<sup>122</sup> shall provide him with such assistance by its authorities. With reference to the foregoing, if the applicant's solemn declaration stating that he is a stateless person is found insufficient, the administrative authority shall instruct the applicant on how to prove that he is stateless in another way and, if necessary, provide the applicant with assistance needed.<sup>123</sup>

The aforementioned judgment can be summarized as follows: if the applicant is unable to obtain proof that she/he is stateless from the countries referred to in Section 45a (2) (a) to (c) of the Act on the Residence of Foreigners, the Slovak authorities should provide her/him with the necessary assistance. This improves the situation of the stateless applicant since it divides the burden of proof between the applicant and the administrative authority (the BBFP). The judgement also implies that if some evidence provided by the applicant is found to be insufficient, the BBFP shall instruct the individual on what kind of evidence would be considered as sufficient to prove stateless status.

In this regard, the BBFP<sup>124</sup> stated that it carries out its own evidence to verify the applicant's identity and whether the individual is stateless. All the countries that are named as relevant by the applicant are verified and the State authorities of these countries are contacted. For this purpose, the BBFP also uses various channels for cooperation, such as the network of Slovak embassies<sup>125</sup> and police attachés, Interpol and the Slovak Intelligence Service (SIS). As regards the applicant's obligations in the proceedings, the BBFP stated that the applicant can submit anything that they have at their disposal and anything that can clarify the circumstances of the case. Documents issued abroad do not have to be authenticated since the BBFP itself can verify their authenticity. Country of origin reports constitute supportive evidence. If the applicant has no evidence at their disposal, they shall be heard in respect of the countries referred to in Section 45a (2) (a) to (c) of the Act on the Residence of Foreigners. Despite the

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<sup>119</sup> This legislation is not in compliance with UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 89 that states as follows: „*In the case of statelessness determination, the burden of proof is in principle shared, in that both the applicant and examiner must cooperate to obtain evidence and to establish facts.*”

<sup>120</sup> Those stateless persons who could not obtain such evidence were doomed to live for years in the regime of tolerated residence.

<sup>121</sup> Decision of the Supreme Court, no. 1Sža/18/2013, dated 16 June 2013, available at: <https://bit.ly/30FW6Tx>.

<sup>122</sup> Pursuant to Article 25 (1) of the 1954 Convention: “*When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.*”

<sup>123</sup> The Supreme Court quashed the contested decision and returned the case back to the administrative authority (at that time it was still the respective FPD). The administrative authority rejected his application for the second time. The applicant was later successful at the court. Despite being successful twice at the court proceedings, the applicant has still not been granted permanent residence as a stateless person.

<sup>124</sup> Information provided by the representative of the Bureau of Border and Foreign Police of the Presidium of the Police Force, interview dated 13 November 2019 and phone call dated 18 December 2019.

<sup>125</sup> Obtaining information through embassies may not always be the best option. An example of this was the Ambassador of the Slovak Republic in Damascus who wrote in his response to the BBFP's request that the applicant is a national of Syria with reference to the Presidential Decree, which was adopted several years after the applicant had left Syria and without verifying this fact (application of legislation in practice and on an individual case). This ambassador's statement had adverse consequences for the outcome of the proceedings. See: decision of the Regional Court in Banská Bystrica, no. 2Scud/4/2014, dated 15 January 2015, available at: <https://bit.ly/2DDbcjQ>.

statements of the representatives of the BBFP in this regard, the level of standard of proof in this procedure could not be established from the recent known practice.<sup>126</sup>

The distribution of the burden of proof is clearly a great relief for stateless applicants. However, it could not be ascertained to what extent this change has made it easier for stateless persons to obtain permanent residence, since neither the statistics on the number of permanent residences granted pursuant to Section 45a (1) (a) of the Act on the Residence of Foreigners nor relevant practical experience is available.

### 3.2.5 Other procedural aspects

Other aspects of the procedure on permanent residence for five years that must be taken into consideration are potential obstacles to the granting of residence. Ensuring national security and public order is always a matter of priority for the BBFP,<sup>127</sup> therefore the assessment of the application for permanent residence of a certain applicant is carried out in this spirit. Failure to comply with the following conditions shall constitute a ground for refusal of the application:<sup>128</sup>

- The SIS and the Military Intelligence must give their consent to the granting of residence permit to the applicant.
- The applicant shall not pose a threat to national security, public order and public health. In practice it is also advised that the applicant has a clean criminal record.<sup>129</sup> Although being convicted for committing a crime does not automatically lead to the refusal of the application (a proportionality test should always be taken when assessing the threat stemming from the applicant or their actions in respect of public order),<sup>130</sup> it is usually to the detriment of the applicant in the context of the BBFP's broad discretionary power.
- The applicant shall not be designated as an "undesirable person" pursuant to Section 2 (8) of the Act on the Residence of Foreigners within the information systems of the Mol. The "undesirable person" is usually a person who was given an entry ban as part of the decision on administrative expulsion, a person who was given a penalty to expulsion as part of a criminal conviction, or a person to whom an alert has been issued for the purpose of refusing entry to the country. Meeting this condition may be particularly difficult for stateless persons as they often go through various procedures, including administrative expulsion procedures, in which they are issued with an expulsion decision along with an entry ban since they are unable to prove their identity due to the absence of identity documents.

The practical experience of the interviewed lawyers suggests that there is an unwritten rule that the applicant should prove their identity in some credible way (even expired identity documents might serve this purpose)<sup>131</sup> This may remove potential doubts of the BBFP about the credibility of the applicant's claims about their identity.<sup>132</sup>

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<sup>126</sup> The request for the provision of statistical data on applications lodged by the stateless persons, permanent residence permits granted to stateless persons and provision of anonymized decisions and notifications issued in cases of stateless applicants was rejected.

<sup>127</sup> Information provided by the representatives of the Bureau of Border and Foreign Police of the Presidium of the Police Force, Interview dated 13 November 2019.

<sup>128</sup> Pursuant to Section 48 (2) of the Act on the Residence of Foreigners.

<sup>129</sup> The applicant does not have a clean criminal record for the purpose of this Act if he/she has committed an offense that is considered as a deliberate crime according to the Slovak law for which she/he has been lawfully convicted in the past.

<sup>130</sup> Pursuant to Section 125 (4) of the Act on the Residence of Foreigners.

<sup>131</sup> This could be the case prior to the sharing of the burden of proof.

<sup>132</sup> As a part of the repressive forces, the BBFP has often approached applicants' claims not only with great caution but also with suspicion that the applicant might not be telling the truth about their identity.

### 3.2.6 Access to courts

As explained above, the outcome of the procedure on the permanent residence for five years is only a written notification informing the applicant of the result of the proceedings. This notification, as such, cannot be appealed to a higher administrative authority. The legality of this notification and the procedure which preceded it may be reviewed exclusively by the Regional Court<sup>133</sup> based on an administrative action filed to the court within two months of receipt of the notification. The court proceedings are regulated by Act no. 162/2015 Coll., the Administrative Court Code. The stateless applicant must be legally represented before the court by an attorney registered with the Slovak Bar Association.<sup>134</sup> In case the applicant does not have sufficient financial means to pay for an attorney, they have the possibility to apply for the provision of free legal aid at the Centre for Legal Aid.<sup>135</sup> Provision of free legal aid is subject to an assessment whether the applicant meets the conditions laid down by law, which might often not be the case of stateless persons.<sup>136</sup> When it comes to judicial review, not only is the obligation of the applicant to be represented by an attorney considered as problematic, but it is also troublesome that the Regional Court does not have statutory deadlines for issuing a decision. In general, the court proceedings in cases of administrative actions last, on average, around two years, which is a disproportionately long time for a stateless person to wait without a proper residence permit that would allow her/him to legally obtain means of subsistence.<sup>137</sup> If the decision of the Regional Court is not in favour of the applicant, she/he still has a possibility to file a cassation complaint to the Supreme Court, whose decision on the legal matter is final.

The findings from field and desk research suggest that the number of stateless applicants who had their cases reviewed by a court, is very low.<sup>138</sup> The researchers found only two court decisions relating to the permanent residence in cases of stateless persons and both of them concerned the same stateless Kurdish applicant, originally from Syria.<sup>139</sup> According to the BBFP's representatives, currently there are no cases pending before the courts.<sup>140</sup>

### 3.2.7 Rights of stateless persons with permanent residence for five years

It shall be noted that stateless persons with permanent residence for five years are entitled, aside from the rights described below, to the rights listed in the preceding sub-chapter.

#### 3.2.7.1 Right to reside

Stateless persons who were granted permanent residence for five years acquire the right to reside in the territory of the Slovak Republic for the given period, after which they may apply for the renewal of the residence permit. The right to travel and re-enter the country is also provided to stateless persons with permanent residence.<sup>141</sup>

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<sup>133</sup> In this case the only competent court is the Regional Court in Bratislava based on the seat of the BBFP in the court's area of jurisdiction.

<sup>134</sup> In this type of procedure, the applicants cannot be represented by NGO lawyers, unlike in cases of administrative actions in matters of asylum, detention and administrative expulsion.

<sup>135</sup> Pursuant to Act no. 327/2005 Coll., on the Provision of Legal Aid to Persons in Material Need.

<sup>136</sup> In reality, however, the provision of free legal aid to foreigners in residential matters (other than asylum, administrative expulsion and detention procedure) by the Centre for Legal Aid remains unclear both because of the vague legislation but also due to the lack of knowledge of such cases in practice.

<sup>137</sup> The stateless applicant does not usually have the right to work or do business.

<sup>138</sup> Until May 2017, the outcome of the procedure on the permanent residence for stateless persons was a regular decision that could be reviewed by the higher administrative authority based on an appeal filed by the applicant. The procedure on permanent residence used to be a two-instance administrative procedure. The judicial review could only be considered when the applicant exhausted the possibility of reviewing the decision by the higher administrative authority.

<sup>139</sup> Decision of the Supreme Court, no. 1Sža/18/2013, dated 16 July 2013, available at: <https://bit.ly/3a81Y1p> and decision of the Regional Court in Banská Bystrica, no. 2Scud/4/2014, dated 15 January 2015, available at: <https://bit.ly/3fGij8c>.

<sup>140</sup> Information provided by the representative of the Bureau of Border and Foreign Police of the Presidium of the Police Force, Interview dated 27 December 2019.

<sup>141</sup> Travel restrictions are solely determined by the visa conditions of other countries.

Permanent residence also entitles stateless persons to move freely within the territory of other EU Member States for up to 90 days within any 180-day period, provided they have a valid travel document with them.

### **3.2.7.2 Right to identity papers**

Stateless persons with permanent residence for five years have the right to obtain a Foreigners Travel Document pursuant to Section 13 (1) (a) of Act no. 647/2007 Coll., on Travel Documents and on Amendments to Certain Acts. Its validity is for two years and can be prolonged. This travel document is considered to be proof of identity of its holder. Apart from the travel document, stateless persons are issued with a residence card valid for up to five years. However, the residence card is not regarded as an official identity document, it is merely proof of residence of its holder.

### **3.2.7.3 Right to wage-earning employment and the right to engage in self-employment**

Stateless persons who are granted permanent residence are entitled to work in Slovakia without the need to obtain a work permit or confirmation of the possibility of filling a vacancy.<sup>142</sup> The permanent residence also entitles them to undertake business activities.<sup>143</sup>

### **3.2.7.4 Right to health care**

Stateless persons with a permanent residence in Slovakia fall within the system of public health insurance pursuant to Section 3 (2) of Act no. 580/2004 Coll., on the Health Insurance and on Amendments to Act no. 95/2002 Coll., on the Insurance and on Amendments to Certain Acts (the Health Insurance Act). This Act also regulates conditions for payment of health insurance contributions. The State pays health insurance for a stateless person, for example, if the individual receives a benefit in material need or is registered as a job seeker. If a stateless person is employed, the contributions are paid by the employer. If a stateless person undertakes business activities, the individual pays for health insurance. Stateless persons with permanent residence have access to public health care under the same conditions and scope as Slovak citizens pursuant to Act no. 576/2004 Coll., on Health Care, Services Related to the Provision of Health Care and on Amendments to Certain Acts.

### **3.2.7.5 Right to assistance to meet basic needs**

No initial integration support in the form of accommodation or allowance is provided to stateless holders of permanent residence. If stateless persons find themselves in material need, they can apply for benefit in material need, housing allowance or a lump-sum benefit<sup>144</sup> pursuant to Act no. 417/2013 Coll., on Assistance in Material Need and on Amendments to Certain Acts. Apart from those, the permanent residence itself entitles its holders to receive other types of benefits from the State social security system, such as childbirth allowance, child benefit, parental allowance, etc. Other types of benefits are also available to stateless holders of permanent residence. However, these benefits are linked either to the existence of employment / business activity or to the number of years worked prior to applying for such benefits (e.g., sickness benefit, accident allowance, unemployment benefit, retirement pension, etc.). Also, other conditions laid down in the specific laws governing contributions to the State social support system must be fulfilled by the applicant in order to receive the benefit.

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<sup>142</sup> Pursuant to Act no. 5/2004 Coll., on Employment Services and on Amendments to Certain Acts.

<sup>143</sup> Pursuant to Act no. 513/1991 Coll., Commercial Code and Act no. 455/1991 Coll., on Trade Licensing (the Trade Licensing Act).

<sup>144</sup> The lump-sum benefit is intended to partially cover the extraordinary expenses of members of the household receiving assistance in material need. It is intended, in particular, to provide necessary clothing, linen, shoes, essential household equipment such as bed, table, chair, refrigerator, stove, etc. It may be granted to a person on one-time basis according to the actual expenditure (the maximum limit is up to three times the subsistence level for one adult natural person – in 2019 the subsistence minimum was EUR 210,20).

## Case of Richmond

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**Name:** Richmond\*

**Age and sex:** About 40 years, male

**Country of birth:** Ivory Coast

**Length of stay in Slovakia:** seven years

**Claimed cause of statelessness:** Never acquired the nationality of his parents

**Status:** Holder of permanent residence for five years

*“First of all, I would like to have a status, because I feel like an inferior being. I want to find a job here. My most important goal is to propose to my girlfriend and stay with her. I want to be a responsible husband. I do not ask for any financial support. I just need an identity to take care of myself and my family. I established my whole life in Slovakia, I have nowhere else to go.”*

Richmond was born near Abidjan to an Ivorian mother and father who was originally from Somalia. So even though Richmond had always lived in Ivory Coast, he was regarded as a “foreigner”. When the civil war broke out in Ivory Coast in 2011, being a “foreigner” became especially problematic for Richmond who had troubles sustaining himself, so he decided to look for opportunities abroad. He met a “businessman” who offered to take him to Poland to work as a professional footballer for 700 dollars in return. Upon arrival in Poland on a fake passport, Richmond found out that it was nothing but a scam. His passport was confiscated and work in the football club was out of sight. The “businessman” started to demand more money which forced Richmond to flee. He found himself in Slovakia, applying for asylum late in 2011. The asylum procedure lasted more than three years, ending with a negative result for Richmond even though it was established by the Migration Office that Richmond is neither an Ivory Coast nor a Somali national. Richmond tried to apply for tolerated residence given the fact that his departure was not possible since he was stateless. The Foreigners Police, however, did not recognize the finding of the Migration Office on Richmond’s statelessness and instead rejected his application. Having no other option, Richmond registered for assisted voluntary return with IOM which was accompanied by a decision on administrative expulsion where a 90-day period for his departure was set. As IOM could not secure a travel document for Richmond’s departure due to his statelessness, the 90-day period had to be extended. Even the second extension did not suffice, and Richmond could not leave Slovakia in accordance with the decision. In order to avoid being charged with obstruction, Richmond applied for tolerated residence again. His application was rejected for the second time, but this time the appellate authority quashed the negative decision due to the absence of a country that would accept Richmond. In the end he was granted tolerated residence which he had prolonged repeatedly in the course of the next years. It took more than two years to get confirmations in writing that Richmond was neither Somali nor an Ivorian national. Once Richmond had both of these confirmations, he applied for permanent residence on the ground of his statelessness. It was a shock for him when he received a written notification rejecting his application without any reasoning whatsoever. Desperately seeking a durable option that would allow him to work and have health insurance, Richmond applied for asylum for the second time stressing the humanitarian grounds of his situation. However, the Migration Office had no understanding of his limbo situation, did not find any reason for refugee protection, and rejected his application as inadmissible. Richmond got lucky the second time in 2018 when he again applied with FPD BBFP and was granted permanent residence on the ground of his statelessness. This was thanks to a successful cooperation between the BBFP and UNHCR which intervened on Richmond’s behalf based on the request of the lawyers of The Human Rights League who provided him with legal representation. Now Richmond has received a Foreigners Travel Document, issued by Slovakia, and will soon be able to apply for Slovak citizenship. He got a job as a pallet loader in a supermarket warehouse and is planning a wedding with his girlfriend. This case demonstrates that Slovakia has the means to address the situation of stateless persons, although the use of these means in Richmond’s case took place only after the intervention of the UNHCR and seven years of proceedings.

*\* Name changed to protect privacy.*

### 3.3 Other administrative procedures in which stateless persons act as parties to the proceedings and rights of the party to the proceedings

#### 3.3.1 Asylum procedure

The asylum procedure is conducted by the Migration Office that is acting as a first instance administrative authority in asylum matters in Slovakia.

The 1951 Convention stipulates that the term “*refugee shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his habitual residence a result of such events, is unable or owing to such fear, is unwilling to return to it*”.<sup>145</sup>

The 1951 Convention explicitly enables the grant of refugee status to a stateless person. Refugees may be stateless persons at the same time. In contrast, not every stateless person is a refugee. A stateless refugee is a person who has no nationality and is outside the country of his/her habitual residence and fulfils all other requirements for being granted international protection.

In addition to being regulated through the 1951 Convention, the asylum procedure in Slovakia is also regulated by the Asylum Act, EU asylum legislation and other international human rights instruments.<sup>146</sup> No specific exemptions referring to stateless asylum-seekers are stipulated in the Asylum Act. Therefore, a stateless asylum-seeker is considered as a regular asylum-seeker. The only references to stateless persons in the Asylum Act may be found in its Section 2 (k), (l) and (n) concerning the definitions of a country of origin,<sup>147</sup> safe country of origin<sup>148</sup> and residence of a stateless person.<sup>149</sup>

Stateless persons who wish to claim asylum in Slovakia may submit an asylum application either upon their arrival at the external land borders or at the international airport or after arrival at the Department of Asylum of the Police Force at the reception centre in Humenné or at other respective places stipulated in the law.<sup>150</sup>

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<sup>145</sup> Article 1/A (2) of the *Convention relating to the Status of Refugees*.

<sup>146</sup> e.g. other relevant *UN Conventions such Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, and other instruments that cover the core body treaties etc.

<sup>147</sup> Pursuant to Section 2 (k) of the Asylum Act: “*Country of origin means the State or States of which the foreigner is a national or, in case of a stateless person, the State of his/her last residence.*”

<sup>148</sup> Pursuant to Section 2 (l) of the Asylum Act: “*Safe country of origin means a stable country with rule of law and democratic order of which the foreigner is a national or, in case of a stateless person, it means a country of his/her residence, 1. in which state power protects and ensures respect for human rights and fundamental freedoms, 2. whose nationals or stateless persons with residence in this state are not generally leaving for the reasons set out in Section 8 or Section 13a, 3. which has ratified and respected international treaties on human rights and fundamental freedoms, and 4. which allows the activities of legal entities overseeing observance of human rights in the country.*”

<sup>149</sup> Pursuant to Section 2 (n) of the Asylum Act: “*Residence of a stateless person means the State, in which he/she has been staying for a long time before entering the territory of the Slovak Republic and to which he/she has personal ties.*”

<sup>150</sup> Pursuant to Section 3 (2) of the Asylum Act.

Each asylum application is assessed individually by the Migration Office based on the facts stated by the stateless asylum applicant together with all other relevant information, including the country of origin information. In the case of stateless persons, their credibility is verified, as well as the possible issuance/ownership of a travel document, ID card or other identification documents that might confirm their bond to a certain State or prove their stateless status. If the veracity of the applicant's statements on statelessness is confirmed, the Migration Office shall consider her/him as a stateless person.<sup>151</sup> However, solely being stateless is not considered as a reason for granting international protection in Slovakia.<sup>152</sup>

In general, the burden of proof is shared between the applicant and the Migration Office. The applicant does not have an obligation to prove their statelessness other than by statements while it is an obligation of the Migration Office to verify the facts provided by the applicant during an interview and draw a relevant conclusion based on its findings.<sup>153</sup>

If the stateless applicant does not qualify for asylum, they may be granted subsidiary protection provided there are substantial grounds for believing that if returned to the country of former habitual residence, the individual would face a real risk of suffering serious harm.<sup>154</sup>

The Asylum Act also enables the grant of asylum based on humanitarian grounds as a form of national protection.<sup>155</sup> The Migration Office may, therefore, grant asylum to an applicant even when no refugee-related reasons have been established in the asylum procedure. Humanitarian reasons include cases of unsuccessful applicants who are elderly, traumatised, or suffering from a serious disease, where repatriation to the country of origin might cause significant physical or mental suffering, or even death.<sup>156</sup> The applicant has no legal entitlement to be granted humanitarian asylum. The decision to grant this type of asylum lies completely within the discretion of the responsible authority. Whilst this kind of asylum has not been officially used as a solution for stateless persons in Slovakia,<sup>157</sup> there is one case of a single mother with unspecified nationality mentioned in a legal theory, namely within the Asylum Act Commentary<sup>158</sup> as an example of solving the statelessness of an asylum-seeker through the institute of humanitarian asylum. However, the status was granted more than ten years ago.

If a stateless applicant receives a negative decision of the Migration Office concerning the asylum and/or subsidiary protection application, the applicant may submit an administrative action to the respective Regional Court (in Bratislava or in Košice). If the Regional Court dismisses the administrative action of the asylum-seeker, the applicant may submit a cassation complaint to the Supreme Court of the Slovak Republic. Both the Regional Court, as well as the Supreme Court, may quash the decision of the Migration Office and return it to the Migration Office for further examination.

The asylum-seeker is considered to be "lawfully in" Slovakia for the whole duration of the asylum procedure, including the first instance judicial review,<sup>159</sup> unless provided otherwise by law or special regulation.<sup>160</sup> As soon as the decision of the Migration Office becomes final, the rejected applicant is no longer authorized to stay in Slovakia. Apart from being "lawfully in" the country, asylum-seekers are entitled to emergency health care and if needed, upon approval of the Migration Office, to other necessary treatment, interpretation, accommodation, food,

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<sup>151</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>152</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>153</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>154</sup> Pursuant to Section 13a of the Asylum Act.

<sup>155</sup> Pursuant to Section 9 of the Asylum Act.

<sup>156</sup> Pursuant to Section 13 of the Implementing Regulation of the Minister of Interior of 21 February 2014 to the Asylum Act.

<sup>157</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 02 October 2019.

<sup>158</sup> Hrnčárová, Meššová, Srebalová, Macková, Asylum Act, Commentary, C.H.Beck, 1. edition, ISBN: 978-80-7400-264-9, 2012, pg. 126.

<sup>159</sup> During the second instance judicial procedure only if the asylum-seeker files together with the cessation complaint a request for suspensive effect and the Supreme Court complies with this request.

<sup>160</sup> Pursuant to Section 22 (1) of the Asylum Act.

basic toiletries, Slovak language classes, daily allowance.<sup>161</sup> After receiving a negative decision of the Migration Office, the stateless asylum-seeker has a right to free legal aid provided by the Centre for Legal Aid.<sup>162</sup>

The Migration Office neither informs the rejected stateless applicants about the possibility to apply for a permanent residence for five years, nor does it inform the BBFP of rejected applicants whose nationality or lack of nationality has been raised in the asylum procedure. Currently, the Migration Office just informs the BBFP about the termination of the asylum procedure without any special notice being paid to the statelessness of the rejected applicant.

The Migration Office has never considered the combination of a statelessness and refugee determination in one procedure. One of the reasons is the matter of “confidentiality” that was highlighted by the Migration Office during the interview,<sup>163</sup> meaning that “*they never contact the country of origin of any asylum-seeker*”. On one side, as UNHCR also points out in its Handbook on Protection of Stateless Persons, “*confidentiality requirements for applications by asylum-seekers and refugees must be respected regardless of the form or location of the statelessness determination procedure*” on the other side, “*when an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that both types of status are explicitly recognized*”.<sup>164</sup> If Slovakia establishes a statelessness determination procedure in the future and a certain person raises the issue of statelessness and at the same time the need for international protection, UNHCR envisages such a situation and recommends that the asylum procedure shall proceed and the consideration of the statelessness claim shall be suspended. If the refugee claim fails, then the unsuccessful applicant shall have an opportunity to re-activate a suspended statelessness claim (in the Slovak context: to submit an application for a permanent residence for five years at the respective FPD, or if introduced, to apply for recognition of stateless status in a new procedure) in which relevant Slovak state officials may inquire with the foreign authorities without having broken the principle of confidentiality applied in refugee cases.

The Migration Office has established throughout its existence two subordinated departments, the Dublin Unit and the Department of Documentary and Foreign Relations, specialized in country of origin information research and communication with foreign State authorities that may potentially be useful in the statelessness determination procedure in the future.

### **3.3.2 Administrative expulsion procedure**

The Act on the Residence of Foreigners provides a legal framework for the protection of stateless persons against expulsion in Section 81 (3), the so-called “safety net”. Stateless persons are considered as “protected persons” compared to other foreigners in situations of unauthorized entry or residence. Such protection is reflected in the possibility of the expulsion of stateless persons only if they constitute a danger to national security or public order and are not subject to impediments to expulsion pursuant to Section 81 (1) and (2) of the Act on the Residence of Foreigners.<sup>165</sup> The fact that a certain foreigner is a stateless person constitutes one of the impediments to expulsion.

In order to apply these safeguards, the person must be identified as a stateless person. However, this may be problematic as the Act on the Residence of Foreigners does not provide any concrete tools or guidelines for the identification of stateless persons. The only guidance in this regard is provided in Section 9 (3) of the Methodology

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<sup>161</sup> Pursuant to Section 22 (2), (4), (5), (6) and (7) of the Asylum Act.

<sup>162</sup> Pursuant to the Act no. 327/2005 Coll. on the Provision of Legal Aid to Persons in Material Need.

<sup>163</sup> Information provided by the Director of Procedural Department of the Migration Office, Interview dated 07 November 2019.

<sup>164</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 66, 78.

<sup>165</sup> A foreigner cannot be expelled to a State where his/her life or freedom is at risk because of his/her race, nationality, religion, membership of a particular social group or political belief, or at risk of torture, cruel, inhuman or degrading treatment or punishment. Similarly, a foreigner cannot be expelled to a State in which she/he was sentenced to death or it is presumed that such a sentence may be imposed in the current criminal proceedings.



## Case of Mikheil

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**Name:** Mikheil\*

**Age and sex:** About 56 years, male

**Country of birth:** Georgia

**Length of stay in Slovakia:** more than 25 years

**Claimed cause of statelessness:** dissolution of the Soviet Union

**Status:** Asylum on humanitarian grounds

*"I've gotten humanitarian asylum because of my leg. It is sick. I would rather have my leg and go to work at the construction site. I would trade asylum for my leg."*

Mikheil was born in Suchumi, Georgia, at a time when it was part of the Soviet Union. He was studying in the evenings at the university to become an engineer and during the day he was working to support a single-parent family after his father's death. Mikheil came to Slovakia with a valid Soviet passport and visa in August 1992, a couple of days before the war erupted in Abkhazia. The purpose of his trip was to explore the business market. However, his mother told him to stay in Slovakia because the situation in Georgia was very volatile. Time had passed, the war continued, and Mikheil was still in Slovakia, working illegally to sustain himself. He lost his Soviet passport in 1994 which was the only identity document he has ever had. Georgia did not adopt laws regarding the acquisition of Georgian citizenship until 1993, but Mikheil did not meet the conditions laid down by the new laws. In 1997, Mikheil was detained for the first time but had to be released because the Foreigners Police could not secure a travel document for him. An obligation was imposed on him to remain at a certain address where he stayed for several years trying to resolve his situation. He could not go to the Georgian embassy, because the closest one was in Vienna and he did not have a travel document to cross the borders. In 2003, Mikheil applied for asylum for the first time which was denied. For the next ten years, Mikheil irregularly stayed and worked in Slovakia on various construction sites, as there was no other option for him. In 2014, he applied for asylum a second time with the same result. The only difference was that after 22 years of no health care, Mikheil was diagnosed with diabetes. Meanwhile, the Georgian embassy in Slovakia was established, so Mikheil went there to try to resolve his status. While waiting for the result, Mikheil applied for tolerated residence as his departure was not possible without a travel document. Once his application for tolerated residence was registered, he also applied for permanent residence for reasons worthy of special consideration given his worsened health condition and duration of stay in Slovakia. Both of his applications were rejected. Mikheil appealed the negative decision on tolerated residence, but during the appeal proceedings, he applied for asylum again because of his rapidly worsening health condition which needed urgent specialized health care and medication that Mikheil could not afford. One month later Mikheil had to have his leg amputated. Two months later, he was granted asylum based on humanitarian grounds. The Georgian embassy confirmed that he is not a Georgian citizen three months after the amputation. Mikheil has been in a wheelchair for three years, unemployed and reliant on the assistance of another person.

*\* Name changed to protect privacy.*

on Administrative Expulsion<sup>166</sup> which provides: “*The police department will not expel a stateless person (the person has an official document on his/her statelessness - a travel document or a certificate from a state authority) if it is not possible to determine the country of origin or the country of his/her last residence.*” This provision not only places the burden of proof solely on the foreigner (i.e., if they do not possess any proof of statelessness, they can be expelled), but also goes beyond the scope of the statutory provision by stating that the expulsion will not take place only if it is impossible to establish the country of origin or last residence of such stateless person. Such a formulation can, therefore, be considered as unfortunate and confusing guidance for the officers of the Foreigners Police. In relation to the problem of identifying stateless persons in an administrative expulsion procedure, it should also be noted that this procedure usually takes only a few hours and within this short time frame it is almost impossible to determine whether a person is stateless, unless the individual has proof of it (any proof of statelessness). Such legal framework does not reflect the nature of the situation of a potentially stateless person as well as the UNHCR Handbook, which advises the authorities to share the burden of proof and, if appropriate, give a sympathetic consideration to testimonial explanations regarding the absence of proof.<sup>167</sup>

In accordance with the Act on the Residence of Foreigners, if, in the administrative expulsion procedure, it is ascertained that a person is stateless and meets the conditions set out in Section 81 (3), the respective FPD shall stop the proceedings. However, if that person constitutes a danger to national security or public order and is not subject to the impediments to expulsion, the respective FPD shall continue with the proceedings. Before issuing a decision on administrative expulsion the FPD shall verify whether there is a State that will admit this stateless person. If such a State does not exist, the FPD will not issue a decision on administrative expulsion. The FPD will also not expel a person if it is impossible to determine the country of origin or the country of former residence.<sup>168</sup>

In practice, however, the identification of stateless persons in the administrative expulsion procedure is difficult, especially if the person does not have any documents that would demonstrate that they are stateless. In reality, in spite of the legal framework on the protection against expulsion, there may be situations where a stateless person is not identified and is, instead, issued with a decision on administrative expulsion alongside an entry ban (i.e., falls through the “safety net”). If this unfavourable situation occurs, the identification of that person as a stateless person may still take place during detention, which usually follows a decision on administrative expulsion. The unidentified stateless person can file an appeal against the decision on administrative expulsion. During the appeal proceedings, the individual can try to collect the necessary evidence to prove that he/she is stateless, which might be highly challenging given the restriction on freedom of movement. Qualified legal aid is essential in such cases.<sup>169</sup>

If it is determined in the course of detention that such a person is stateless, the individual will be released. Subsequently, the FPD has two options to resolve the situation when a decision on administrative expulsion was issued to a stateless person. The first option is to postpone the enforcement of the decision on administrative expulsion until the impediment to expulsion ceases to exist pursuant to Section 84 (5) of the Act on the Residence of Foreigners. However, this option is not favourable for a stateless person since the decision on administrative expulsion is usually associated with the imposition of an entry ban, which constitutes an obstacle to the granting of permanent residence for five years.<sup>170</sup> The second option is to order the reopening of the proceedings (either *ex officio* or at the request of the stateless person), in which the decision on administrative expulsion is annulled. The second option is the preferred option, as it allows the stateless person to subsequently apply for a permanent residence permit for five years.

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<sup>166</sup> Methodology of procedure in matters of administrative expulsion of a foreigner, “Remaining” of a third-country national in the territory of the Slovak Republic, assisted voluntary return and detention of a third-country national, Annex to the Order of the Director of Bureau of Border and Foreign Police of the Presidium of the Police Force no. 25/2019.

<sup>167</sup> UNHCR, Handbook on Protection of Stateless Persons, December 2014, para 89, 90.

<sup>168</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

<sup>169</sup> Stateless persons who were issued with a decision on administrative expulsion have a right to free legal aid provided by the Centre for Legal Aid.

<sup>170</sup> A person who was given an entry ban is considered an “undesirable person”.

For the purpose of this report, statistical information on the expulsion of stateless persons was provided by the relevant authorities. The tables below give an overview of the situation on decisions on administrative expulsion issued to stateless persons and expulsions that were carried out from 2012 to 2019.

**Table 6:** Statistical overview of decisions on administrative expulsion issued to stateless persons in Slovakia

Year	Total	Gender	
		Male	Female
2019	1	1	0
2018	1	1	0
2017	1	1	0
2016	0	0	0
2015	24	14	10

Source: The Ministry of Interior of the Slovak Republic<sup>171</sup>

**Table 7:** Statistical overview of expulsions carried out in cases of stateless persons in Slovakia

Year	Total	Gender	
		Male	Female
2019	1	1	0
2018	0	0	0
2017	1	1	0
2016	0	0	0
2015	19	11	8

Source: The Ministry of Interior of the Slovak Republic<sup>172</sup>

Between 2012 and 2014, no stateless person was issued a decision on administrative expulsion. In one case, the administrative expulsion procedure was discontinued due to the identification of a stateless person (2014).

All stateless persons expelled in 2015 were expelled to Hungary. Both in 2017 and 2019, stateless persons were expelled to Ukraine.

In order to analyse the application of the “safety net”<sup>173</sup> in practice, the above-mentioned decisions on the administrative expulsion of stateless persons were requested anonymously. However, the result of such analysis shows shortcomings because none of the provided decisions on the expulsion of stateless persons included an assessment according to Section 81 (3) of the Act on the Residence of Foreigners, even though the Methodology on Administrative Expulsion obliges the respective FPD to provide reasoning within the decision in this regard.<sup>174</sup> Only in one case, a threat to national security was established but no reasoning was given regarding the fact that the party to the proceedings is a stateless person.<sup>175</sup> The application of the “safety net”, therefore, remains controversial. It should also be noted that the number of the above-mentioned administrative expulsion decisions is only the number of cases where a stateless person was identified during the administrative expulsion procedure. The number of cases where stateless persons were not identified in the administrative expulsion procedure remains unknown.

<sup>171</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

<sup>172</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 11 November 2019.

<sup>173</sup> The non-expulsion of stateless persons, except in cases referred to Section 81 (3) of the Act on the Residence of Foreigners.

<sup>174</sup> Pursuant to Section 8 (6) of the Methodology of procedure in matters of administrative expulsion of a foreigner, “Remaining” of a third-country national in the territory of the Slovak Republic, assisted voluntary return and detention of a third-country national, Annex to the Order of the Director of Bureau of Border and Foreign Police of the Presidium of the Police Force no. 25/2019.

<sup>175</sup> The reasoning of this decision was as follows: “The party to the proceedings jeopardized the state’s security by entering the territory of the Slovak Republic without a travel document and authorization to enter and stay in the territory of the Slovak Republic. By doing so, he endangered the inviolability of the national borders.” The FPD’s argument on a threat to national security due to an unauthorized border crossing and stay by a stateless person constitutes a very extensive interpretation of this concept.

### 3.3.3 Detention procedure

Stateless persons should, in general, not be detained.<sup>176</sup> As mentioned above, statelessness, by its very nature, severely restricts access to identity documents that people with nationality normally possess. Moreover, stateless persons find themselves on many occasions without legal residence in any country. These two issues combined might often lead to the detention of stateless persons, especially if a country in which they are present has no stateless determination procedure in place. This is also the case of Slovakia, where a statelessness determination procedure is not available. In practice, the institutional framework of “safety net” (protection from expulsion) is not always reliable and stateless persons might often end up in a detention facility on several occasions, waiting for months for their expulsion to be carried out.

The Act on the Residence of Foreigners stipulates in Section 88 (1) the legal grounds for detention of irregularly staying persons. In cases of stateless persons, the legal grounds for detention are usually either the ongoing administrative expulsion procedure (time limit of 48 hours) or the enforcement of the decision on administrative expulsion. The law provides for two alternatives to detention (reporting of residence and financial guarantee), the application of which must be examined by the respective FPD before proceeding to the detention decision. Out of these two options, only the reporting of residence is used in practice, albeit very rarely. This is due to the fact that most irregularly staying foreigners (not only stateless persons) are unable to provide proof of accommodation and sufficient resources (EUR 56 per day) at the time of the detention procedure, which is a precondition for the application of one of the alternatives to detention.<sup>177</sup>

In case a decision on detention is issued, the respective FPD shall provide the concerned stateless person with one copy and a translation (via interpreter) of the decision. A stateless person has the possibility of bringing an action before the Administrative Court that will review the legality of a detention decision and the procedure that preceded its issuance. The advantage of the judicial review of detention is the statutory deadline for deciding on the matter (seven working days from the delivery of the action to the court). Any foreigner who has been issued a decision on detention has the right to apply for free legal aid provided by the Centre for Legal Aid.<sup>178</sup>

The Act on the Residence of Foreigners allows for an extension of the detention (even repeatedly) if the person concerned does not sufficiently cooperate or the embassy of the country of origin of such a person has not issued a temporary travel document for the individual. The maximum duration of the detention is 18 months in total.

With regard to the detention of stateless persons, the BBFP stated that each case is assessed on an individual and proportionate basis. During the detention itself, the FPD (within the Detention Centre for Foreigners) tries to verify the identity of the person concerned (the data provided by the stateless person is checked) through the embassy of the State in which the person concerned was born, in which they previously resided, and whose nationality is held by their parents and siblings. If it is established during the detention that the person concerned is a stateless person and there is no State to which the individual could be expelled, the Detention Centre for Foreigners shall release the individual without undue delay pursuant to Section 90 (2) (b) (1.) of the Act on the Residence of Foreigners (the purpose of detention ceased to exist).<sup>179</sup>

The above-cited response of the BBFP raises doubts as to the effectiveness of the “safety net”, because it implies that if it is established during the detention that the detained person is stateless, the expulsion will not take place only if there is no State to which the individual could be expelled. However, this may contradict the law, which

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<sup>176</sup> UNHCR in its Handbook on Protection of Stateless Persons, December 2014, states that for detention to be lawful, it must be regulated by domestic laws that comply with the international standards of human rights protection, 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. Detention should always be a measure of last resort and can only be justified where other less coercive measures have been considered and found insufficient to safeguard the lawful objective pursued by detention.

<sup>177</sup> In one case, the FPD stated that it would have considered the imposition of an alternative to detention if the party to the proceedings proved that he had at least EUR 5,000 at disposal, the court decision is available at: <https://bit.ly/33TUPdN>.

<sup>178</sup> He/she also might access free legal aid provided by NGOs’ lawyers (depending on the availability of projects that cover free legal aid for detained foreigners).

<sup>179</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

clearly stipulates that a stateless person can be expelled only if she/he constitutes a danger to national security or public order and is not subject to impediments to expulsion within the meaning of Section 81 (1) and (2) of the Act on the Residence of Foreigners.

**Table 8:** Statistical overview of detention of stateless persons in Slovakia

Year	Total	Gender	
		Male	Female
2018	1	1	0
2016	1	1	0
2015	27	14	13
2014	1	1	0

Source: The Ministry of Interior of the Slovak Republic<sup>180</sup>

The table above suggests (in comparison to Table 7), that in most cases stateless persons who were issued with a decision on administrative expulsion were subsequently detained. Table 8 provides only the number of detained stateless persons who were identified as stateless in the administrative expulsion proceedings that preceded their detention, while the actual number of detained stateless persons may be higher.

In the period of 2012 - 2013 and 2017, no person recognized as stateless by the authorities was detained. The statistical information provided by the Mol does not include any data on the number of detained stateless persons in 2019. However, the decision-making practice of the courts indicates that at least one stateless person was detained in 2019.<sup>181</sup> This particular case involved the repeated detention of a stateless person, in whose case the Supreme Court had previously criticized the FPD for not having sufficiently examined the impediments to expulsion based on the fact that the person concerned was recognized as stateless in the decision on administrative expulsion by the respective FPD.<sup>182</sup> The justification concerning the necessity of repeated detention of the stateless person concerned, provided by the respective FPD,<sup>183</sup> was once again considered as inadequate by the reviewing judicial authority which reiterated the obligation of the FPD to examine the impediments to expulsion within the meaning of Section 81 (3) of the Act on the Residence of Foreigners in the detention procedure (which the FPD neglected to do again despite the binding judgement of the Supreme Court).

The above-described case depicts one of several cases of repeated detention of stateless persons that takes place in practice due to the lack of statelessness determination procedure.

<sup>180</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 03 October 2019.

<sup>181</sup> See the decision of the Regional Court in Košice, no. 4Sa/7/2019, dated 21 October 2019, available at: <https://bit.ly/3ktuoBe>.

<sup>182</sup> Decision of the Supreme Court of the Slovak Republic, no. 1SzaK/21/2018, dated 19th December 2018, in which the court stated: "Pursuant to the decision on the administrative expulsion of the complainant of 3 October 2018 no. PPZ-HCPSO14-299-012 / 2018-ZAV (.....), the complainant is registered as a stateless person. According to the reviewed decision and the defendant's response to the cassation complaint, the complainant's nationality has not been established yet (after more than two months of detention). In the reviewed decision, the defendant declared his obligation to examine the existence of impediments to the expulsion of the complainant, (...). However, that finding is lacking an assessment, which can reasonably be regarded as a material error. It is also necessary to draw attention to the wording of the provision Section 81 (3) of the Act no. 404/2011 Coll. ("Stateless persons may be expelled only if they constitute a danger to the state's security or public order, and are not subject to impediments to expulsion pursuant to par. 1 and 2), which, in the light of the foregoing, was to be applied by the administrative authority, which was supposed to examine the impediments to the expulsion of the complainant as a stateless person.", available at: <https://bit.ly/3ioo38t>.

<sup>183</sup> The FPD stated in its response to the action that: "the applicant has not proved to be stateless during the administrative procedure and therefore could not be granted such status." and "his detention for the purpose of administrative expulsion is also in accordance with his interests, as he will be provided with food, accommodation and, above all, with an access to the real possibility of establishing his identity, respectively his nationality.", see the decision of the Regional Court in Košice, no. 4Sa/7/2019, dated 21 October 2019, available at: <https://bit.ly/3fFdFHB>.

## Case of Abdullah

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**Name:** Abdullah (name changed to protect privacy)

**Age and sex:** About 39 years, male

**Country of birth:** Lebanon

**Length of stay in Slovakia:** 14 years

**Claimed cause of statelessness:** Palestinian refugee born in Lebanon

**Status:** “Remaining” status

Abdullah unsuccessfully applied for international protection several times between 2005 and 2014. After the last decision of the Migration Office became final, Abdullah tried to apply for tolerated residence claiming that due to his statelessness he has no place to return to. His application for tolerated residence was registered, however, on the same day he was also issued a decision on administrative expulsion that did not specify the country of expulsion and a decision on detention. When the respective FPD found out that they made a mistake (the FPD was either not supposed to register his application for tolerated residence or, once registered, it was not supposed to initiate the administrative expulsion procedure as his stay in Slovakia was considered legal), they tried to correct it by issuing a decision on discontinuation of the procedure on his application for tolerated residence. Abdullah appealed both decisions, the decision on his application for tolerated residence as well as the decision on his administrative expulsion. The appeal against the discontinuation of the procedure on his application for tolerated residence was successful and the case was returned to the respective FPD which decided to suspend the proceedings until the procedure on administrative expulsion would be resolved by a final decision.

Despite being a Palestinian refugee from Lebanon, Abdullah was designated as a Palestinian citizen in all decisions issued in his case. The decision on his detention included a statement that no impediments to expulsion to the country of his origin, Palestine, were identified by the respective FPD. Therefore, the Detention Centre for Foreigners in Medved'ov, where Abdullah was placed, decided to contact the Embassy of the State of Palestine inquiring on the issuance of a temporary travel document for him. However, the Palestinian Embassy responded that they were not entitled to issue a Palestinian travel document for him and expressed a hope that he will be allowed to stay in Slovakia. Subsequently, the Detention Centre contacted the Lebanese Embassy in Vienna with the same request since Abdullah was born there. Urgent messages regarding the issuance of a temporary travel document were sent repeatedly to the Lebanese Embassy but to no avail. After spending more than a year in detention, Abdullah was released based on the fact that there is no prospect for the issuance of a temporary travel document in his case by any Embassy that came into consideration. When detained, Abdullah tried to object to his detention. However, even the Supreme Court confirmed his detention as legal due to the fact that he presented himself during the previous proceedings as a Palestinian citizen (although he stated that he was stateless when submitting his application for a tolerated residence).

In December 2015, the appellate authority finally delivered a decision on Abdullah's appeal against the decision on administrative expulsion (a year and a half since its issuance) where it stated that the respective FPD erred in establishing the state of expulsion. The decision further states that the FPD should have known, from the application on the tolerated residence, that Abdullah was not a Palestinian national since he was born as a refugee in Lebanon. The appellate authority also concluded that the expulsion of Abdullah to Lebanon was not possible because the Lebanese Embassy has not responded to any request within the time frame of more than one year.

Despite this positive development, until December 2018, Abdullah had no information as to whether the proceedings concerning his application for tolerated residence were taking place or not (the procedure was supposed to continue immediately once the administrative expulsion procedure was over). Abdullah had to send an official request for the provision of information to find out that he was granted tolerated residence as of 30 January 2017 (i.e., more than a year after his administrative expulsion procedure was resolved). The statutory period for deciding on application for tolerated residence is 15 days. In Abdullah's case, it was more than a year and he was not even informed about the outcome until sending an official request.

At the time when he found out, his tolerated residence had already expired and due to the change in law he could no longer re-apply. Now Abdullah is staying in Slovakia based on the “Remaining” status.

### 3.3.4 “Remaining” status and tolerated residence

The “Remaining” status was introduced into the Act on the Residence of Foreigners by an amendment effective 1 May 2018. It is a specific status that enables a person who resides irregularly in Slovakia for various specific reasons<sup>184</sup> preventing his/her departure, to legally remain in the country until such reasons cease to exist. However, the “Remaining” status is not considered as a valid residence per se. The fact that it is not a classic type of residence is also reflected in the scope of the rights entitled to its holders. A person residing in Slovakia on the basis of “Remaining” status is not entitled to work, conduct business, be part of the public health insurance system,<sup>185</sup> apply for a different type of residence (except for permanent residence for five years as a stateless person), apply for an invitation verification for a visa application for his relatives or friends abroad, obtain identity or travel documents.

A person with irregular stay cannot apply for the “Remaining” status, as it comes as an automatic result of other proceedings or circumstances, e.g., administrative expulsion proceedings, detention proceedings, etc. If one of the situations listed in Section 61a (1) of the Act on the Residence of Foreigners occurs, the “Remaining” status shall be automatically registered in the IS MIGRA system and shall be valid as long as its reason lasts, i.e., a person does not need to prolong or renew its validity. The competent FPD issues a written confirmation to the person concerned about the possibility of remaining in the territory of the Slovak Republic that includes a portrait photo of the foreigner. This confirmation is, however, not considered as proof of identity.

In the case of stateless persons, two principal grounds for the “Remaining” status exist. Impediments to the person’s administrative expulsion pursuant to Section 81 of the Act on the Residence of Foreigners constitutes the first ground.<sup>186</sup> The “Remaining” status shall be valid for the duration of the impediment to expulsion (usually the case of identified stateless persons). The second ground for the “Remaining” status is the case of a person who does not have a valid travel document; this document cannot be secured through his/her embassy; the legal period of detention of such a person has expired and departure could not be carried out even with a Foreigners Passport issued by the Slovak authorities, i.e. an “unreturnable” person (the case of either unidentified stateless persons or persons whose country refuses to provide them with administrative assistance).<sup>187</sup>

Prior to the introduction of the “Remaining” status in the Act on the Residence of Foreigners, the above-mentioned two situations of stateless persons or persons who are at risk of statelessness were covered by tolerated residence.<sup>188</sup> This type of residence was considered to be a temporary solution to the person’s residence situation which also corresponded to the length of stay for a maximum of 180 days with the possibility of repeated extension (provided that the reason for granting persists). The tolerated residence had to be applied in person at the competent FPD, while the burden of proving the existence of facts justifying the granting of the residence lied on the applicant. Tolerated residence provided stateless persons with the same limited scope of rights as the “Remaining” status, with the sole difference of a positive and long-standing practice of issuing a Foreigners Passport to persons with this type of residence. Although the Foreigners Passport was not considered as an identity document, its possession helped the stateless persons to solve common situations that require an identity document (such as obtaining a public transport card, sim card, at the post office, etc.).<sup>189</sup> Later some FPDs abandoned the practice of issuing this document, except if the person intended to use this passport to leave Slovakia permanently.<sup>190</sup> In the

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<sup>184</sup> E.g. existence of impediments to administrative expulsion; provision of institutional care linked with urgent health care; detention; arrest or imprisonment; preparation of an assisted voluntary return; period for departure, etc.

<sup>185</sup> Commercial health insurance is also questionable in this case as the stateless persons usually does not have any identity documents that are necessary for a conclusion of health insurance contract.

<sup>186</sup> Pursuant to Section 61a (1) (a) of the Act on the Residence of Foreigners.

<sup>187</sup> Pursuant to Section 61a (1) (f) of the Act on the Residence of Foreigners.

<sup>188</sup> Formerly Section 58 (1) (a) and (b) of the Act on the Residence of Foreigners (in force until 30 April 2018).

<sup>189</sup> At present, it is possible to issue the Foreigners Passport (enabling only a departure from Slovakia) to a person with “Remaining” status due to the impediments to his/her administrative expulsion. However, Section 74 (2) of the Act on the Residence of Foreigners contains a condition that the person may not have their own passport and that such passports cannot be secured even through the embassy of the State of which the individual is a national. These conditions automatically exclude stateless persons from obtaining such passports.

<sup>190</sup> The Foreigners Passport issued to persons with a tolerated residence allows the individual to leave Slovakia but not to return.

meantime, the new practice of issuing a Foreigners Passport only for the purpose of immediate departure from Slovakia has been institutionalized and also extended to the “Remaining” status.<sup>191</sup>

Currently, stateless persons may apply for and be granted tolerated residence pursuant to Section 58 (1) (d) of the Act on the Residence of Foreigners, i.e. if it results from international commitments of the Slovak Republic.<sup>192</sup> In practice, however, the application of this provision may be complicated as the law does not specify which international commitments are involved and which conditions a person should fulfil in order to be granted this residence. The law explicitly states that the applicant for tolerated residence is considered to be lawfully staying in the country until the decision on the application is made, unlike in the case of permanent residence for five years. Even tolerated residence pursuant to Section 58 (1) (d) of the Act on the Residence of Foreigners does not entitle its holder to apply for another type of residence (except for permanent residence for five years as a stateless person).<sup>193</sup> The use of tolerated residence on the ground of meeting the international commitments in cases of stateless persons in practice is not known, and therefore, remains only as a theoretical option.

In general, stateless persons who do not qualify for permanent residence for five years (they do not possess any evidence on their statelessness and their identity is not verified, do not have a clean criminal record, are designated as “undesirable” persons) are reliant on living and functioning solely on the basis of the “Remaining” status in Slovakia.

Neither “Remaining” status nor tolerated residence entitles its holder to work, conduct business, be part of the public health insurance system, apply for a different type of residence (except for permanent residence for five years as a stateless person), obtain an identity or a travel document, or to successfully apply for Slovak citizenship. Granting remaining status or tolerated residence is, therefore, contrary to the obligations of the Slovak Republic under Articles 17 to 19,<sup>194</sup> Article 28<sup>195</sup> and Article 32<sup>196</sup> of the 1954 Convention.

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<sup>191</sup> Pursuant to Section 7 (3), Part VII. of the Methodology for securing the procedure of residence permits of foreigners in the territory of the Slovak Republic, Annex to the Order of the Director of the Bureau of Border and Foreign Police of the Presidium of the Police Force, no. 13/2019.

<sup>192</sup> Information provided by the representative of the Bureau of Border and Foreign Police of the Presidium of the Police Force, Interview dated 27 December 2019.

<sup>193</sup> Pursuant to Section 1 (2), Part IV. on Tolerated Residence of the Methodology for securing the procedure of residence permits of foreigners in the territory of the Slovak Republic, Annex to the Order of the Director of the Bureau of Border and Foreign Police of the Presidium of the Police Force, no. 13/2019.

<sup>194</sup> The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to foreigners generally in the same circumstances, as regards the right to engage in wage-earning employment and the right to practice a liberal profession. In case of self-employment, such right shall be accorded to stateless persons who are lawfully in the territory.

<sup>195</sup> Pursuant to Article 28 of the 1954 Convention: „*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. (...)*”

<sup>196</sup> Pursuant to Article 28 of the 1954 Convention: „*The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. (...)*”



## Case of Semit

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**Name:** Semit\*

**Age and sex:** About 50 years, male

**Country of birth:** Turkey

**Length of stay in Slovakia:** 15 years

**Claimed cause of statelessness:** unknown

**Status:** “Remaining”

Semit was born in a Kurdish family living in Turkey. His parents later moved with him to the Soviet Republic of Georgia. When he reached adulthood, he moved to Ukraine, where he lived and worked in a restaurant of his relatives for several years. Semit also tried to run his own business, but he had problems with police officers who kept asking him for money in return for letting him stay and keep his business. The situation was not sustainable, so he decided to leave Ukraine.

In 2004 he came to Slovakia, where he applied for asylum. In the course of the asylum procedure, he stayed in three different reception centres and once ended up for almost six months in detention before the court decided to release him. However, in the end, he was not granted asylum. Subsequently, Semit applied for assisted voluntary return with IOM, which sought to help him get the travel document needed for his return to Turkey. Unfortunately, the Turkish embassy said that information about Semit could not be found at the Registry Office as well as any proof of his Turkish citizenship, therefore, it was not possible to issue him a Turkish passport. Semit had no choice but to go to the Foreigners Police to apply for a residence permit. To his surprise, he was issued a decision on administrative expulsion accompanied with an entry ban instead and detained again. Deprivation of liberty had a negative impact on Semit, who decided to go on a hunger strike as a matter of protest. His hunger strike lasted for several weeks until he ended up in hospital. Despite his repeated detention, the Foreigners Police were not able to deport him. He was, therefore, released from detention and an obligation was imposed on him to leave Slovakia within a month. However, this was not possible since he did not have any passport or identity document. Semit decided to seek the assistance of a lawyer who advised him to apply for tolerated residence. Finally, Semit was granted his first residence permit, although he had to prolong it every three months. Each prolongation cost him EUR 33, which was a lot of money for him since he could not work legally.

Once Semit did not prolong his tolerated residence on time and was apprehended by police for an unauthorized stay. He was brought to court, where the judge sentenced him to three months in prison for obstructing the execution of an official decision on the ground that Semit had not left Slovakia following the decision on his expulsion. After his release from prison, he had nowhere to go, so he applied for tolerated residence again on the grounds that his departure was not possible, and detention was not legitimate. He was granted the residence permit; however, it was difficult for Semit to live in security without knowing whether his residence would or would not be prolonged every couple of months. Additionally, he was not allowed to work, do business or have health insurance which worsened his situation. After a couple of years of living this way, he decided to try his luck and apply for permanent residence as a stateless person. Unfortunately, his application for permanent residence was rejected given his former conviction, even though his statelessness was recognized by the appellate authority. Since then, Semit has been staying in Slovakia based on tolerated residence as his only option. Later, this was transformed into “Remaining” status. He has no identity documents, no possibility of working legally or having public health insurance. Years have passed and Semit remains living in a homeless shelter without any social support and identity documents that would be provided by the State.

*\* Name changed to protect privacy.*

### 3.4 Summary of main findings

#### Permanent residence for five years:

- A stateless person may be granted a permanent residence permit for five years in Slovakia. The procedure on permanent residence for five years can, in the Slovak context, be considered as the closest to a statelessness determination procedure even though Slovakia has not yet officially adopted a statelessness determination procedure.
- The Act on the Residence of Foreigners clearly defines who shall be considered a stateless person and how this person can prove that they are stateless in order to be granted a permanent residence for five years.
- In comparison with other types of residence permits, the permanent residence for five years provides relief to stateless persons by waiving the fulfillment of several conditions, such as the submission of a valid travel document, proof of accommodation, and proof of sufficient means. This waiver certainly facilitates the access of stateless persons to the proceedings.
- The outcome of the procedure on permanent residence for five years, however, does not mean the actual recognition of the statelessness status of the applicant.
- Permanent residence for five years is currently available only for those stateless persons who can prove within the procedure that they are stateless, i.e., who fulfill the definition of a stateless person. The Act on the Residence of Foreigners explicitly imposes an obligation on the applicant to prove statelessness.
- The protection regime of this type of residence can be undermined by the absence of a clear procedural framework as this procedure is not governed by the Administrative Procedural Code and no standard reasoned decision is provided which would allow the applicant the right to appeal.
- Lodging an application for permanent residence for five years does not itself automatically provide the applicant with the right to be “lawfully in” the country.
- The standard of proof for the purpose of establishing the applicant’s statelessness is not explicitly stipulated in the law.
- The outcome of the procedure on permanent residence for five years can be considered unpredictable given the discretionary powers of the BBFP.

#### Asylum procedure:

- A stateless person is eligible to enter the asylum procedure and to claim international protection. However, statelessness, as such, is not considered as a reason for being granted asylum nor subsidiary protection or humanitarian asylum.
- A rejected asylum-seeker who is stateless is not officially informed by the Migration Office about the possibility to apply for permanent residence for five years at the BBFP and at the same time the Migration Office does not refer, ex officio, the case to the BBFP.

### **Administrative expulsion procedure:**

- The Act on the Residence of Foreigners **provides a legal framework for the protection of stateless persons against expulsion** in Section 81 (3), the so-called “safety net”.
- **Statelessness constitutes one of the impediments to expulsion**, unless a stateless person concerned poses a danger to national security or public order.
- **Identification of a certain person as stateless in the course of the administrative expulsion procedure has proved to be complicated** given the short time frame of this procedure and the lack of tools and guidelines provided by the Act on the Residence of Foreigners for such identification.
- **Available decisions on the administrative expulsion of stateless persons indicate that no assessment according to Section 81 (3) of the Act on the Residence of Foreigners was taken** by the respective FPD, which is concerning when it comes to the effectiveness of the “safety net”.

### **Detention procedure:**

- **Detention was used in most of the cases of stateless persons that were issued with a decision on administrative expulsion.**
- **No cases were identified in which an alternative to detention was applied in cases of stateless persons for the research period.**<sup>197</sup>
- The BBFP stated that **if, during detention, it is established that the detained person is stateless, his/her expulsion will not take place** in the event there is no State to which she/he could be expelled to.
- The available judgements of the courts in cases of detention of stateless persons/persons at risk of statelessness revealed that the FPD often did not examine the impediments to expulsion stemming from one’s statelessness. Additionally, **detention was often perceived by the FPDs as a tool for establishing a person’s identity and nationality.**

### **“Remaining” status and tolerated residence:**

- Stateless persons who do not qualify for permanent residence for five years might be reliant solely on a “Remaining” status or tolerated residence in Slovakia permanently. However, neither of these can be considered under current circumstances as a permanent solution to the situation of stateless persons as they do not provide their holders with most of the rights accorded to stateless persons according to the 1954 Convention.

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<sup>197</sup> i.e., 2011-2019.

# 4. THE PREVENTION AND ELIMINATION OF STATELESSNESS IN SLOVAKIA

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Under Slovak law, there is no legal entitlement for being granted Slovak citizenship and an application for citizenship may be denied notwithstanding that the applicant fulfils all conditions stated in the Citizenship Act.

## 4.1 National legal framework

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The Constitution of the Slovak Republic sets out the basic principles on acquisition and loss of the Slovak nationality.<sup>198</sup>

Detailed regulation of this matter is contained in the Citizenship Act, the purpose of which is to lay down further conditions for the acquisition and loss of citizenship. In this Act, the principle of non-discrimination and the principle of precedence of international agreements are incorporated as follows: *“rights in exercising this Act shall be guaranteed equally to all persons irrespective of their gender, race, skin colour, language, faith and belief, political and/or other thinking, national or social origin, membership of a national minority or ethnic group according to the equal treatment rule regulated by a special Act”*<sup>199</sup> and *“in case that an international agreement, by which the Slovak Republic is bound, modifies some of the issues differently to this law in the matter of citizenship, the modification in the international agreement prevails”*.<sup>200</sup>

Only one implementing regulation has been adopted to the Citizenship Act, namely the Ordinance of the Ministry of Interior of the Slovak Republic no. 1/2015 on the Granting of Citizenship of the Slovak Republic based on Special Reasons.<sup>201</sup> This Ordinance stipulates the conditions for the re-acquisition of the Slovak citizenship by former Slovak nationals who have lost their Slovak citizenship as a result of acquiring citizenship of another State.

## 4.2 Acquisition and loss of nationality under the Slovak Citizenship Act and compatibility with international standards

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The Citizenship Act foresees five different possibilities of acquisition of citizenship: by determination, by choice, by birth, by adoption and by granting (naturalization). The type called “citizenship by choice” no longer applies in practice. This type of acquisition of Slovak citizenship reflected the dissolution of Czechoslovakia and citizens of the Czech and Slovak Federal Republic could use it only until 31 December 1993.

The first possibility of acquisition of Slovak Citizenship, through *“Determination by Law”*, was relevant for those persons who were, up to 31 December 1992, citizens of the Slovak Republic under Act no. 206/1968 Coll., on Acquisition and Loss of Citizenship of the Slovak Republic and became citizens of the Slovak Republic under the Citizenship Act without any legal action. Hypothetically, if a person who used to be a citizen of the Slovak Federal Republic up to 31 December 1992 were currently identified as stateless, that individual would automatically acquire Slovak citizenship according to Section 2 of the Citizenship Act.

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<sup>198</sup> Pursuant to Section 5 (1) and 5 (2) of the Constitution of the Slovak Republic: *“acquisition and loss of the citizenship of the Slovak Republic shall be regulated by a law and no one shall be deprived of the citizenship of the Slovak Republic against his or her will”*.

<sup>199</sup> Pursuant to Section 19a of the Citizenship Act.

<sup>200</sup> Pursuant to Section 17 of the Citizenship Act.

<sup>201</sup> Available at: <https://bit.ly/2C9Fkme>.

The second possibility to acquire Slovak citizenship by “Choice”, as mentioned above, was based on an individual’s decision to choose between Slovak and Czech citizenship. Where a Czech citizen, who was up to 31 December 1992 a citizen of the Czech and Slovak Federal Republic, chose Slovak Citizenship, that individual could lodge, until 31 December 1993, a written statement to the respective District Office on the territory of the Slovak Republic or abroad to the Diplomatic Mission or the Consulate of the Slovak Republic. Currently, acquisition by choice is not possible anymore due to the expiration of the time limit.

The third way to acquire Slovak citizenship is by “Birth”. In general, a child has Slovak citizenship if the child’s parents or at least one of them is a Slovak citizen. A child also acquires Slovak citizenship by birth if (i) the child is born in the territory of the Slovak Republic and the child’s parents have no citizenship, or (ii) the child is born in the territory of the Slovak Republic, the child’s parents are foreigners, and the child does not acquire the citizenship of any of them by birth.

The fourth possibility to acquire Slovak citizenship is by “Adoption”. If Slovak citizens or at least one Slovak citizen adopts a child who is a foreign national, such a child is considered to acquire Slovak citizenship on the day the decision on adoption is validated.

The fifth and the last way of acquiring Slovak Citizenship is by “Naturalization”. Slovak citizenship may be granted to an applicant who is not a Slovak citizen and has continuous permanent residence in Slovakia for at least eight years before lodging the application. In various cases, the law enables some exemptions from the eight-year residency, e.g., to stateless persons, persons granted asylum, a spouse of a Slovak citizen, or an unaccompanied child.<sup>202</sup>

The Citizenship Act stipulates two different ways for losing Slovak citizenship. The first one is by “Releasing from the State bond” upon a request lodged by a Slovak citizen and the second one is by “Acquiring other citizenship” based on explicit consent with the acquisition of foreign citizenship.

#### 4.2.1 Prevention of stateless at birth

The prevention of statelessness among children is generally regulated by the 1961 Convention and further interpreted by the 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.<sup>203</sup> These Guidelines are intended to assist States, NGOs, legal practitioners, decision-makers and the judiciary, UNHCR and other UN agencies to interpret and apply Articles 1-4 and Article 12 of the 1961 Convention.<sup>204</sup>

A child automatically (*ex lege*) acquires Slovak citizenship by birth if at least one of her/his parents is a Slovak national.<sup>205</sup> In this case, the principle of *ius sanguinis* is applied. It is the most common way that a child in Slovakia can acquire citizenship.<sup>206</sup>

According to the 1961 Convention, Slovakia “shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted at birth or upon an application being lodged with the appropriate authority”.<sup>207</sup>

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<sup>202</sup> Pursuant to Section 7 (2) of the Citizenship Act.

<sup>203</sup> See Articles (1) – (4) of the 1961 Convention on the Reduction of Statelessness.

<sup>204</sup> See page 1 of the Guidelines on Statelessness No. 4: Ensuring Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, available at: <https://bit.ly/3fKwB7M>.

<sup>205</sup> Pursuant to Section 5 (1) (a) of the Citizenship Act.

<sup>206</sup> Human Rights and Citizenship: Citizenship of the Slovak Republic, Mgr. Jana Horská, Mgr. Denisa Holubeková, Comenius University in Bratislava, 2014, ISBN: 978-80-223-3565-2.

<sup>207</sup> See Article 1 (1) (a) and (b) of the 1961 Convention.

Slovak legislation reflects the international framework by providing that a child acquires Slovak citizenship by birth if the child is born in Slovakia and the child's parents are stateless or if the child is born in Slovakia and the child's parents are foreigners and the child does not acquire the citizenship of any of them upon birth.<sup>208</sup>

In such cases, the principle of *ius soli* is applied. In practice, the parents of a child need to provide the relevant District Office with a birth certificate that states that the child was born in Slovakia. Besides that, the parents shall provide a document issued by the competent State of which each parent of the child is a citizen that this State does not regard the child as its own citizen. This document must be officially authenticated (Apostille or Superlegalisation) and translated into the Slovak language by a certified translator. The burden of proof in such cases in Slovakia is solely with the parents of a child and is not shared between them and the respective State authority. Additionally, both parents of the child must have legal residence in Slovakia supported by identity documents and other documents on their personal status, e.g., birth certificates, marriage certificate, etc.<sup>209</sup> This is not in line with Article 1(2) of the 1961 Convention and the UNHCR Guidelines on Statelessness No. 4, paragraphs 36-37.

The fulfilment of the above conditions is based on the interpretation of Section 9a (4) (a) to (d)<sup>210</sup> and Section 14 (1)<sup>211</sup> of the Act by the Citizenship Department in practice. In conclusion, the standard of proof when it comes to the acquisition of Slovak citizenship by a stateless child born in Slovakia is very high and, in some cases, might even prevent a stateless child from effectively accessing Slovak citizenship.

As soon as the non-acquisition of the citizenship of another State is established and the other above-mentioned conditions are fulfilled, the child is, based on a written application, issued a Certificate on citizenship of the Slovak Republic by the respective District Office.<sup>212</sup>

Another way of acquisition of Slovak citizenship by a child is in cases where a child was born or found<sup>213</sup> in Slovakia and the child's parents are unknown, unless it is proven that the child acquired citizenship of another State upon birth.<sup>214</sup> A child born to a foreigner and a Slovak citizen shall also be considered as a Slovak citizen even if it is proven later that the Slovak citizen is not the child's parent.<sup>215</sup>

#### 4.2.2 Prevention of statelessness upon change in civil status

The 1961 Convention stipulates in Article 5 (1) that *"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 on another nationality"*.

The European Convention on Nationality further articulates this matter in its Article 4 (d), which provides that *"neither marriage nor the dissolution of a marriage between a national of a State Party and a foreigner, nor the*

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<sup>208</sup> Pursuant to Section 5 (1) (b) and (c) of the Citizenship Act.

<sup>209</sup> Information provided in writing by the Director of the Citizenship Department, dated 13 November 2019.

<sup>210</sup> Section 9a (1) (a) to (d) of the Citizenship Act states: *"The applicant shall submit with the application for a Certificate on the citizenship of the Slovak Republic (a) proof of identify (b) birth certificate and (c) evidence of civil status, such as marriage certificate, final judgement or divorce certificate, spouse's death certificate, if the applicant is married, divorced or widowed and (d) other documents necessary for the assessment of the application if requested by the District Office."*

<sup>211</sup> Section 14 (1) of the Citizenship Act states: *"At the request of the Ministry or the District Office, public authorities as well as legal entities and natural persons are obliged to provide information and report facts that are relevant for decision making under this Act, in paper form or in electronic form."*

<sup>212</sup> See Section 9a (1) (a) (2) of the Citizenship Act.

<sup>213</sup> See Article 2 of the 1961 Convention.

<sup>214</sup> Pursuant to Section 5 (2) (a) and (b) of the Citizenship Act.

<sup>215</sup> Pursuant to Section 5 (3) of the Citizenship Act.

*change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse”.*

In this regard, Slovak law allows dual citizenship for Slovaks in cases when another citizenship was acquired through marriage with a foreigner. The Slovak Citizenship Act stipulates in Section 9 (17) that *“acquisition of a foreign citizenship through marriage with a foreign citizen, provided a foreign citizenship was acquired during the marriage, shall not be a reason for the loss of citizenship”.*

Therefore, it can be concluded that Slovak legislation is in line with international and regional legal instruments in this respect. However, it must be noted that this provision applies only to a marriage between a man and a woman. Civil partnerships and same sex marriages are excluded, since Slovak legislation does not allow either of them. In this regard, the Citizenship Department refers to Section 41 of the Constitution of the Slovak Republic which states as follows *“marriage means a unique union between a man and a woman”*.<sup>216</sup>

#### 4.2.3 Prevention of statelessness in the context of renunciation, loss or deprivation of nationality

Under Articles 5-7 of the 1961 Convention, loss of nationality that will not result in statelessness is permitted on a number of grounds, including change in the personal status of a person, voluntary renunciation of nationality, or naturalization in a foreign country. Loss of nationality that would result in statelessness is however only permitted in very limited circumstances relating, as a general matter, to residence abroad for substantial periods by naturalized persons or persons born abroad. Article 8 of the 1961 Convention strictly circumscribes deprivation of nationality that would result in statelessness.

The Constitution of the Slovak Republic<sup>217</sup> stipulates that *“no one shall be deprived of citizenship of the Slovak Republic against his or her will”*. As stated above, the Citizenship Act enables the loss of Slovak citizenship *“by release from the State bond of the Slovak Republic upon own request or by acquiring other nationality based on explicit consent”*.<sup>218</sup> In both circumstances, the acquisition of another citizenship or at least a promise of acquiring citizenship of another State has to be proven. However, in practice, there exists another kind of deprivation of Slovak citizenship via the confirmation of the State authority that a person is not a citizen of the Slovak Republic.

The first case constitutes a renunciation of Slovak citizenship at one’s own request by release of the person from the State bond in case the individual proves the acquisition of citizenship of another country or the promise that the individual will become a citizen of another country if that person loses Slovak citizenship. In such cases, a Slovak citizen has to lodge an application to release themselves from the State bond of the Slovak Republic in person. The respective District Office decides on release within six months from its delivery and issues a deed on release from the State bond.

Former Slovak citizens who were released from the State bond of the Slovak Republic may apply for the re-acquisition of Slovak citizenship pursuant to Section 7 (2) (i) of the Citizenship Act. Instead of fulfilling the condition of being eight years on a permanent residence permit in Slovakia, the applicant shall demonstrate only a continuous residence of at least two years prior to submitting the application for Slovak citizenship.

The researchers have come across one case of a former Slovak citizen who was released from the State bond of the Slovak Republic. As he did not acquire the new citizenship as promised, he decided to apply for Slovak citizenship in 2007. The procedure on his application for Slovak citizenship was, however, suspended due to the ongoing

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<sup>216</sup> Information provided by an employee of the Citizenship Department, email dated: 23 February 2017.

<sup>217</sup> Pursuant to Section 5 (2) of the Constitution of the Slovak Republic.

<sup>218</sup> Pursuant to Section 9 (1) (a) and (b) of the Citizenship Act.

criminal proceedings initiated against him. The criminal proceedings have been ongoing for more than 11 years while the applicant continued to be a stateless person with tolerated residence in Slovakia. As he could not enjoy most of the rights accorded to Slovak citizens, he decided to file a motion to the Public Defender of Rights (PDR) to review his case. The PDR concluded in its findings that *“as the law does not allow the administrative authority to decide on the application for the Slovak citizenship on merits in a case where the criminal proceedings are led against the applicant, the Ministry acted in accordance with the legislation. However, the legislation resulting from the Section 8a (4) of the Citizenship Act allowing a formation of a situation, in which you as a stateless person are, cannot be considered as sufficient protection and therefore needs to be amended and brought into line with fundamental rights and freedoms”*.<sup>219</sup>

The above-mentioned case describes a situation pursuant to Section 8a (4) of the Citizenship Act which provides an obligation for the Citizenship Department to suspend the proceedings if there are any criminal proceedings, extradition proceedings, procedure for the execution of the European arrest warrant, administrative expulsion procedures or procedures on the withdrawal of asylum status led against the applicant. As a clean criminal record is one of the conditions generally applied to all applicants seeking naturalization, the Citizenship Department cannot decide on the merits of the case without a decision being taken in the criminal proceedings concerning the applicant. The criminal proceedings can sometimes take several years while the Citizenship Act does not provide any time-limit for such suspension of the procedure. During this time, the stateless applicant remains in a vulnerable situation as no State provides the individual with the protection enjoyed by its nationals. Therefore, the question arises whether addressing the statelessness of the applicant should not take precedence over the public interest. This could be implemented into practice by not suspending the proceedings on the application for citizenship or providing a time limit for such suspension (e.g., one year) in case the applicant is prosecuted for misdemeanour or other minor offences. In the case of more serious offences, the public interest would prevail.

The Citizenship Act also provides for the possibility of losing Slovak citizenship based on the acquisition of citizenship of another State. The Citizenship Act states that *“a citizen of the Slovak Republic shall lose his/her citizenship of the Slovak Republic the same day in which he/she based on explicit consent in form of request, statement or other action for the acquisition of other citizenship, voluntarily acquires a foreign citizenship”*.<sup>220</sup> Such a person has an obligation to report the loss of their citizenship without delay to the respective District Office which will report the loss of the citizenship to all other relevant subjects.<sup>221</sup>

Losing Slovak citizenship based on an acquisition of foreign citizenship was incorporated into the Citizenship Act<sup>222</sup> back in 2010 as a response to the amendment to the Hungarian Citizenship Act. The law states that upon request a non-Hungarian citizen whose ascendant was a Hungarian citizen or who is able to substantiate being of Hungarian origin may be naturalized in preferential terms, the individual proves that they are sufficiently proficient in the Hungarian language, in addition to having a clean criminal record and not being indicated in any criminal proceedings before the Hungarian court and the individual's naturalization not being considered as a threat to public safety or to the national security of Hungary.<sup>223</sup>

The Slovak Government stated in the Explanatory Memorandum<sup>224</sup> to the Amendment of the Citizenship Act that *“dual citizenship is an undesirable phenomenon given the fact that the granting of another citizenship creates a legal relationship with two states at the same time. In practice, serious problems may arise in terms of the rights and obligations that a citizen has in relation to the state from such a legal relationship.”* However, as the statistical data shows, the Amendment had a major impact on Slovak citizens who acquired citizenship of States other than

<sup>219</sup> Information provided by the Public Defender of Rights, no: 1751/2017/VOP, dated 19 September 2019.

<sup>220</sup> Pursuant to Section 9 (16) of the Citizenship Act.

<sup>221</sup> Pursuant to Section 14 of the Citizenship Act: *“other relevant subjects are: 1. municipality of permanent residence of the applicant, 2. police department, 3. tax authority, 4. customs authority, 5. institutions performing social insurance and public health insurance.”*

<sup>222</sup> Act no. 250/2010 Coll., on Amending and Supplementing Act no. 40/1993 Coll., on the Citizenship of the Slovak Republic.

<sup>223</sup> See Section 3 of the Hungarian Citizenship Act.

<sup>224</sup> Available at: <https://bit.ly/3irliCj>.



Hungary. Therefore, the Slovak Government has decided to mitigate the impact of the legislation by adopting the Ordinance of the Ministry of Interior of the Slovak Republic no. 1/2015 on the Granting of Citizenship of the Slovak Republic based on Special Reasons (Ordinance). This Ordinance entered into force on 1 February 2015 and relates to the grant of Slovak citizenship based on special reasons, namely to former Slovak citizens. Former Slovak citizens who have lost their Slovak citizenship may apply for re-acquisition of Slovak citizenship pursuant to Section 7 (2) (b) of the Citizenship Act. First of all, they have to apply for a permanent residence in Slovakia pursuant to Section 45a (1) (b) of the Act on the Residence of Foreigners which shall be granted by the BBFP automatically. Afterwards, they must apply for the re-acquisition of Slovak citizenship either at the relevant District Office or at the Diplomatic Mission or Consulate of the Slovak Republic abroad. The applicant shall explicitly state in the application that they are a former Slovak citizen.

Since the introduction of the Amendment in 2010, 3,046 persons lost their Slovak citizenship due to the fact that they acquired foreign citizenship.<sup>225</sup> Until 20 September 2019, 825 former Slovak citizens re-acquired Slovak citizenship pursuant to Section 7 (2) (b) of the Citizenship Act in conjunction with the Ordinance.<sup>226</sup>

A Slovak citizen will not lose Slovak citizenship in case they acquired foreign citizenship in relation to a conclusion of a marriage with a foreign citizen and the foreign citizenship was acquired while the marriage still lasts. Another exemption to the loss of Slovak citizenship is in the case of a child who is a Slovak citizen, and who acquires foreign citizenship by birth or has acquired foreign citizenship before 17 July 2010.<sup>227</sup>

As stated at the beginning of this sub-chapter, a third kind of deprivation of Slovak citizenship exists. The Citizenship Act enables the District Office to issue a Certificate in order to prove Slovak citizenship. In case of irregularities, the District Office requests the Citizenship Department to confirm whether a person is or is not a citizen of the Slovak Republic.

While writing this report, the researchers came across one case where a person, having considered that he was a Slovak citizen and having lived decades in the country, was, in fact, informed that he was a citizen of the Czech Republic.

This person, of Roma origin, was born in Czechoslovakia, concretely in the Czech Republic in 1960. At the age of three years, his whole family moved to Slovakia and since then, until now, he has been residing in the same location in Slovakia. The issue concerning his citizenship was raised after he lost his ID card and was using an incorrect birth number of his previous ID card. The Citizenship Department officially declared that this person is not a citizen of Slovakia due to the fact that he has never been granted Slovak citizenship and that he has not chosen Slovak citizenship as envisaged by Section 3 of the Citizenship Act. Given the fact that he was born in the Czech Republic, he initially possessed Czechoslovak citizenship and also Czech citizenship. He was, therefore, considered to be a Czech citizen.

Being deprived of Slovak citizenship after fifty years of living in one place and in one country should at least be grounds for receiving a form of decision. *“The person affected by deprivation of nationality has the right to have the decision issued in writing, including the reasons for the deprivation. Deprivation decisions are only to enter into effect at the moment all judicial remedies have been exhausted.”*<sup>228</sup> At the same time, *“deprivation of nationality must be proportionate to the interest which the State seeks to protect. This requires a balancing of the impact on*

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<sup>225</sup> In 2010 – 70 persons; in 2011 – 281 persons; in 2012 – 291 persons; in 2013 – 305 persons; in 2014 – 316 persons; in 2015 – 279 persons; in 2016 – 419 persons; in 2017 – 487 persons; in 2018 – 451 persons; in 2019 (until 20 September) – 147 persons.

<sup>226</sup> In 2015 – 53 persons; in 2016 – 151 persons; in 2017 – 181 persons; in 2018 – 256 persons; in 2019 (until 20 September) – 184.

<sup>227</sup> Pursuant to Section 9 (17) and (18) of the Citizenship Act.

<sup>228</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, available at: <https://bit.ly/2PBRSpJ> page 7.

*the rights of individual and the interests of the State*”.<sup>229</sup> The State authorities have to take into consideration that deprivation of Slovak citizenship causes a deep impact on the rights of a person who used to be a Slovak national. Each person should be issued a formal decision and, also, be given the legal opportunity to challenge it before court. In the same way, the justification of the decision should consist of an analysis on the proportionality of the individual's and state's interests.

#### 4.2.4 Reduction of statelessness by granting Slovak citizenship

In general, the application for Slovak citizenship has to be lodged by an applicant in person at the respective District Office according to the place of permanent or last permanent residence in Slovakia or at the Diplomatic Mission or Consulate of the Slovak Republic abroad. The same is relevant for a stateless applicant.

First of all, an applicant has to assemble all relevant personal documents and other documents needed from the respective authorities and institutions.<sup>230</sup> All documents issued abroad must be officially authenticated (Apostille or Superlegalisation) and translated into the Slovak language by a translator certified by the Ministry of Justice of the Slovak Republic.

While submitting the application, the applicant must fill in a questionnaire<sup>231</sup> - one of the ways that the officers of the District Office verify knowledge of the Slovak language. Children below 14 years of age do not have to fill in the questionnaire, while the questionnaire of a child below 18 years of age has to be signed by the parents. Verification of knowledge of the Slovak language is an important part of the proceedings. Therefore, the head of the District Office, the Ambassador or the Consul appoints a three-member Committee that shall conduct the language check and verify the applicant's knowledge of the Slovak language.<sup>232</sup>

The criteria for assessing knowledge of the Slovak language consists of undergoing an interview, in which the applicant is asked questions related to himself/herself and her/his relatives, as well as general questions, including questions about history, geography and social and political development in the Slovak Republic. The applicant is also asked to read an article from the press and then to write a summary of the article.<sup>233</sup> The Citizenship Act requires a resolution of the Committee which is adopted by the votes of at least two members of the Committee.<sup>234</sup> In addition to demonstrating knowledge of the Slovak language, the applicant must prove his/her knowledge of the facts of the Slovak Republic.

Afterwards, the respective District Office, a Diplomatic Mission or a Consulate of the Slovak Republic abroad sends the application to the Citizenship Department of the Mol. The Citizenship Department requests the State authorities concerned to provide a notification in case of any criminal proceedings, extradition proceedings, procedures for

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<sup>229</sup> *Ibid*, page 6.

<sup>230</sup> The following documents shall be submitted with the official application form: questionnaire, curriculum vitae, identity document, birth certificate, civil status certificate, residence card or proof of last permanent residence in Slovakia in case of a former citizen, an extract from a Criminal Record, a confirmation from the Tax Office, the Customs Office and the Municipality of the payment of taxes and fees, an extract from the Commercial Registry/Trade Register or a certificate of employment and a copy of an employment contract, a confirmation of the employer on the payment of income tax and the payment of insurance premiums to public health insurance, social insurance and old-age pension insurance, a confirmation from the health insurance company of the payment of insurance premiums to public health insurance and the duration of the insurance relationship, proof of study, a confirmation of registration as a job seeker, a confirmation of receipt of pension benefits, a confirmation of the source of income sufficient to finance the stay of the applicant and his/her relatives in the territory of the Slovak Republic, if voluntarily unemployed. Those documents that do not apply to the applicant shall be replaced by an affidavit justifying the reasons for failure to submit.

<sup>231</sup> See at: <https://www.minv.sk/?udelenie-statneho-obcianstva-slovenskej-republiky-1>.

<sup>232</sup> The applicant is asked questions related to him/her and her/his relatives, as well as general questions, including questions from history, geography, social and political development in the Slovak Republic. The individual is required to read aloud a randomly selected article from the press in the Slovak language and write a summary of the article in a time limit of 30 minutes.

<sup>233</sup> See Section 8 (6) of the Citizenship Act.

<sup>234</sup> Pursuant to Section 8 (8) of the Citizenship Act.

the execution of the European arrest warrant, administrative expulsion procedures or withdrawal procedures of asylum status against the applicant.<sup>235</sup>

According to a general rule applied towards foreigners, Slovak citizenship can be granted to an applicant who is not a Slovak citizen and who has a continuous permanent residence in Slovakia for at least eight years immediately preceding the submission of an application. However, this condition does not apply to several cases, e.g. a recognized refugee has to prove refugee status for at least four years preceding the submission of the application a former minor has to prove continuous permanent residence in Slovakia that had lasted at least three years before the child reached the age of eighteen years an unaccompanied minor whose legal representative or guardian is a Slovak citizen, or a legal entity appointed by a Slovak Court, has to fulfil the condition of having a permanent residence in Slovakia for at least two years immediately preceding the filing of the application (this length of residence does not apply to minor children under two years of age); or a person who was born in Slovakia has to meet the condition of having permanent residence in Slovakia for at least three years immediately preceding the submission of the application.<sup>236</sup>

As regards the exemption from the length of previous residence in Slovakia, the most favourable regime applies to stateless applicants who are obliged to fulfil the condition of continuous residence in Slovakia for a period of at least three years prior to submitting the application.<sup>237</sup> This is the only exemption applied to stateless applicants in the procedure for granting Slovak citizenship. Other conditions are applied equally.

The Act is silent when it comes to a definition of “continuous residence” in case of stateless applicants. According to the Citizenship Department, this term is, in practice, interpreted to include only a permanent residence or a temporary residence permit issued according to the Act on the Residence of Foreigners. Stateless persons with tolerated residence or the “Remaining” status are, therefore, precluded from acquiring Slovak citizenship as their lawful stay in Slovakia is considered by the Citizenship Department as “temporary”.<sup>238</sup> This is also the case when a stateless person resides even longer than three consecutive years in Slovakia with such residence/status. The Director of the Citizenship Department suggested that such persons may apply to the Minister of Interior of the Slovak Republic for an exemption pursuant to Section 7 (2) (b) of the Citizenship Act. The outcome of this procedure is, however, unpredictable. This approach of the Citizenship Department suggests that the interpretation of the term of “continuous residence” in cases of stateless applicants is extensive. It should also be noted that the requirement of “continuous residence” in the duration of three years prior to applying is interpreted to last even during the decision-making period of the application.<sup>239</sup>

In the course of the assessment of the application, the Citizenship Department does not verify the statelessness status of the applicant.<sup>240</sup> The stateless status of the applicant is, according to the Citizenship Department, apparent not only from the residence card or a travel document issued by the respective FPD, but also from the common information system.<sup>241</sup> Given this approach, it can be concluded that the residence permit and the recognition of statelessness status by the FPD of the applicant have a significant impact on the naturalization process of stateless persons in Slovakia. Without meeting these two conditions, a stateless person would otherwise not be able to successfully apply for Slovak citizenship pursuant to Section 7 (2) (h) of the Citizenship Act.

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<sup>235</sup> Pursuant to Section 8a (4) of the Citizenship Act.

<sup>236</sup> The Citizenship Act also enables the grant of Slovak Citizenship to a person that has “residence” in Slovakia for at least ten years, providing that the residence is again “continuous”, and the person has already been granted a permanent residence permit at the time of submission of the application. For other exemptions from eight years of permanent residence, please, see Section 7 (2) of the Citizenship Act.

<sup>237</sup> Pursuant to Section 7 (2) (h) of the Citizenship Act.

<sup>238</sup> Information provided by the Director of the Citizenship Department, Interview dated 07 November 2019.

<sup>239</sup> This is partially due to the jurisprudence of the Slovak Courts that confirmed such extensive interpretation, e.g. decision of the Supreme Court of the Slovak Republic no. 2Sžo/107/2014, dated 26 October 2016.

<sup>240</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 01 October 2019.

<sup>241</sup> Information provided by the Director of the Citizenship Department, Interview dated 07 November 2019.

As mentioned above, the assessment of the application lodged by a stateless person is the same as that of a regular applicant.<sup>242</sup> The Citizenship Department also carefully assesses the integration of a stateless applicant into Slovak society and the economic benefit that the applicant presents for the country. An example of this thorough assessment is a decision on rejecting an application of a stateless person in 2012 based on the following reasons “(...) the applicant has been studying since (...) at the (...), but has not yet completed his bachelor’s degree, which was to be completed in 2011. For this reason, it will be possible to assess the applicant’s sufficient integration into society based on the outcome of the completion of his studies and his proper integration into the labour process in the Slovak Republic.”<sup>243</sup> In this decision, the stateless status of the applicant was not taken into consideration. In another case of a stateless applicant, Slovak citizenship was denied at first due to the fact that the applicant was unemployed during half of the period of the three years of residence prior to the submission of the application. Based on this, it was subsequently concluded that he did not represent a sufficient economic benefit for the country. This conclusion was later dismissed by the higher administrative authority and the applicant was granted Slovak citizenship.<sup>244</sup>

According to the 1954 Convention<sup>245</sup> Slovakia has an obligation “as far as possible to facilitate the assimilation and naturalization of stateless persons” and “in particular make every effort to expedite naturalization proceedings”. Pursuant to Section 8a (7) of the Citizenship Act, the Citizenship Department should decide on the application within 24 months from the delivery of the application. In cases where statements of other State authorities are required, and the decision is dependent on such statements, the period of 24 months is suspended pending the delivery of this statement. In general, the Citizenship Department in its decision-making practice shall reflect public interests including security aspects, opinions of the respective Foreign Police Department, the Slovak Intelligence Service and other relevant State authorities. The general length of the procedure in respect of granting Slovak citizenship is considered lengthy in all cases, not just those concerning stateless persons.

One of the interviewed lawyers raised concerns regarding the communication and cooperation of the Citizenship Department with the applicant in the course of the proceedings. The Citizenship Department did not proceed, in the particular case described in detail below, in close cooperation with the applicant, which caused not only uncertainty for the applicant but also a delay in the proceedings. The applicant was also not provided with a possibility to exercise her procedural rights (e.g., the right to inspect the case file and right to make representations prior to issuing a decision) which has led to an unexpected outcome of the procedure and an infringement of the applicant’s rights as a party to the proceedings.<sup>246</sup>

If all conditions for being granted Slovak citizenship are fulfilled, the Citizenship Department may grant the stateless applicant Slovak citizenship. However, there is no legal claim to being granted Slovak citizenship. Subsequently, a stateless person has to make a pledge to the Slovak Republic (making the pledge shall apply to persons older than 14 years of age) at the respective District Office, Diplomatic Mission or Consulate of the Slovak Republic abroad which leads to the issuance of a Certificate on granting citizenship of the Slovak Republic. The receipt of the Certificate represents not only the completion of the whole process but also the acquisition of citizenship *per se*.

Prior to receiving the Certificate, an administrative fee in the amount of EUR 700<sup>247</sup> must be paid by the stateless person, according to the Act on Administrative Fees.<sup>248</sup> The Act foresees some exemptions for foreigners who have been granted asylum, Internally Displaced Persons (IDPs) from Ukraine from the Chernobyl area, or foreigners above 65 years of age. However, stateless persons who were granted Slovak citizenship are not among

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<sup>242</sup> Information provided by the Ministry of Interior of the Slovak Republic, dated 01 October 2019.

<sup>243</sup> Information obtained from the anonymized decisions provided by the Ministry of Interior of the Slovak Republic.

<sup>244</sup> Information provided by a lawyer of the Human Rights League, Interview dated 15 November 2019.

<sup>245</sup> Pursuant to Article 32 of the 1954 Convention.

<sup>246</sup> Information provided by a lawyer of the Human Rights League, Interview dated 15 November 2019.

<sup>247</sup> In 2021, based on the suggestions of the UNHCR and The Human Rights League, the Act on Administrative Fees has been changed and the administrative authority may reduce or waive the fee for a stateless person.

<sup>248</sup> Available at: <https://bit.ly/2XJkXUv>.

## Case of Cornelia

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**Name:** Cornelia\*

**Age and sex:** About 29 years, female

**Country of birth:** Republic of the Congo

**Length of stay in Slovakia:** 13 years

**Claimed cause of statelessness:** Renunciation of citizenship

**Status:** Permanent residence for an unlimited period of time

*“Being stateless is sometimes psychologically difficult. A person is happy, when he can identify himself with a particular state, tribe or ethnicity. When he has a sense of belonging, right to decide on State affairs, such as by voting in parliamentary or presidential elections. Sometimes State officials stare at me when I tell them that I am stateless. In some situations, I am forced to say that I have Congolese nationality even though I have nothing to confirm that. It is emotionally hard.”*

Cornelia was born to Congolese parents in the Republic of the Congo. Her father was politically active in opposition and when the war erupted in 1997, he had to flee the country. Cornelia’s mother wanted a better life for her, so she sent Cornelia with her cousin to live with their uncle in Slovakia when she was just 16 years old. Cohabitation with her uncle, who pretended to be their father in Slovakia, was difficult and Cornelia ended up in a foster home. Since she was a minor when this happened, the Foreign Police granted her permanent residence for an unlimited period of time. Despite her unfortunate personal situation, she was able to complete high school and university studies in Slovakia. Given the political background of her father, the Congolese embassy refused to provide her with assistance when she needed to verify her birth certificate, an extract from a criminal record or a new passport. Her Congolese nationality was useless to her, so she decided to renounce it. The Foreign Police acknowledged her new stateless status and issued her a Foreigners Travel Document instead. In 2014, Cornelia applied for Slovak citizenship as a stateless person. The procedure on her application took almost five years. During this time, Cornelia gave birth to a son, a Slovak citizen after his father; completed her master’s degree and found a qualified job. To her surprise, her application was rejected on the ground that the grant of citizenship is not in the interest of the Slovak Republic. The reasoning of the decision contained a number of allegations, such as that Cornelia did not speak Slovak or that she had committed an offence with relation to her residence. On the other hand, the decision did not contain any justification as to why the grant of citizenship was not in the interest of the Slovak Republic, nor did it deal with the fact that Cornelia was stateless. The decision-maker even initiated contact with the Foreign Police with a request to cancel her residence, as her parents were Congolese nationals. Cornelia appealed against this decision. The Minister of Interior annulled the contested decision, stating that the Citizenship Department delayed the proceedings, wrongly assessed the fact that Cornelia was not a stateless person and violated several of her procedural rights. Among other things, the Minister of Interior imposed on the Citizenship Department an obligation to consider in the new proceedings that Cornelia is a stateless person and the mother of a Slovak citizen. After the case was referred back, the Citizenship Department discontinued the proceedings on the ground that Cornelia did not meet the requirement of continuous residence in the Slovak Republic. Cornelia had a complicated second pregnancy, during which she went to visit her child’s father in another Member State, where she eventually had to remain due to health complications after giving birth. This event took place in the fifth year of the proceedings on her application for Slovak citizenship and led to the discontinuation of the proceedings. The second negative decision also did not include any assessment of the fact that the applicant was a stateless person. Cornelia could not appeal this decision, but instead had to file an action to the administrative court where representation by an attorney is needed. Cornelia represents an example of a stateless person whose statelessness has not been taken into consideration in the decision-making process by the Citizenship Department.

\* Name changed to protect privacy.

these groups. In this regard, UNHCR also points out that stateless persons “*have to bear the onerous cost of the administrative fee*”.<sup>249</sup>

In case the outcome of the procedure is adverse for the applicant, a “remonstrance” against such a negative decision to the Minister of Interior, who has the authority to carry out an administrative review of the legality of such a decision and the procedure which preceded it, can be submitted. The Minister’s decision is subject to further judicial review by the Regional Court, whose verdict may subsequently be reviewed by the Supreme Court. The applicants do not have an explicit right to free legal aid pursuant to the Act on the Provision of Legal Aid to Persons in Material Need.

According to the Citizenship Act, Slovak citizenship “*shall be equal irrespective of the acquisition title thereof*”.<sup>250</sup>

### 4.3 Summary of main findings

Prevention of statelessness at birth:

- **A child born in Slovakia who does not have the citizenship of any State is eligible for Slovak citizenship after fulfilling the conditions prescribed by law.**
- **A child may acquire Slovak citizenship if born in Slovakia and the parents have no citizenship, or the parents are foreigners and the child does not acquire the citizenship of any of them at birth.**
- **Foundlings whose parents are unknown are considered to be Slovak nationals.**
- The burden of proof that a child is not a citizen of any other country lies solely on the parents.
- Both parents must have, at the time of submitting the application for Slovak citizenship on behalf of their child, legal residence in Slovakia supported by identity documents and other documents on their personal status.

Naturalization:

- **Stateless applicants may apply for Slovak citizenship after three years of continuous residence in Slovakia instead of eight years.**
- The term of continuous residence is interpreted by the Citizenship Department as only covering cases of permanent or temporary residence.
- Stateless persons with tolerated residence or “Remaining” status are excluded from the possibility to successfully apply for Slovak citizenship.
- The time allocated to the Citizenship Department to decide on the application for Slovak citizenship (24 months which can be extended) is lengthy.
- There is a lack of free legal advice and representation available to stateless applicants.
- **The success rate of applications for Slovak citizenship submitted by stateless persons is very high.**

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<sup>249</sup> See UN High Commissioner for Refugees (UNHCR), UNHCR Submission on Slovakia: 32nd UPR session, December 2018, available at: <https://bit.ly/2XHPIt4>.

<sup>250</sup> Pursuant to Section 10 of the Citizenship Act.

### Prevention of statelessness upon change of civil status:

- Slovak citizenship shall be retained by Slovak citizens who acquire citizenship of another State by marriage with a foreign national. However, the marriage shall be concluded between a man and a woman only, same-sex marriages or civil partnerships are excluded from the protection regime.

### Prevention of statelessness in the context of renunciation, loss or deprivation of nationality:

- Former Slovak citizens who were released from the State bond can apply for its re-acquisition, conditional on at least two years of continuous residence prior to submitting the application for Slovak citizenship (reduced period in comparison to a general rule of eight years of permanent residence).
- Slovak citizens who automatically lost their Slovak citizenship upon acquisition of the citizenship of another State based on explicit consent may re-acquire it under simplified conditions.
- The statements concerning the existence or non-existence of the citizenship or loss of Slovak citizenship are not issued as decisions rather just the statements of the administrative authority.

# 5. CONCLUDING REMARKS AND RECOMMENDATIONS

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## 5.1 Concluding remarks

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The phenomenon of statelessness in Slovakia has generally received very little attention despite some positive legal developments that have occurred in the past ten years. There is a corresponding lack of research on the situation of statelessness in Slovakia, as well as a lack of targeted assistance aimed at stateless persons. Whilst Slovakia is a party to both the 1954 and 1961 Conventions since April 2000, their incorporation into Slovak legislation has not been accompanied by a deeper understanding of statelessness and its implications allowing for a harmonized interpretation and application of the concept by Slovak authorities. Numerous obligations arising out of the 1954 Convention for Slovakia have not been reflected in national legislation or applied in practice. Slovakia still maintains its reservation to Article 27 of the 1954 Convention. The transposition of provisions of the 1961 Convention into national legislation and practice can be regarded as more favorable in comparison to the transposition of the 1954 Convention, although some shortcomings have also been identified in this regard.

The population census in 2011, shows that there are 1,523 individuals who identify themselves as stateless and 393,100 individuals who do not have their nationality. As of 31 August 2019, only 46 stateless persons had a valid residence permit in Slovakia. Despite collecting several data from various registers and databases, it has not been possible to establish finite and complete data on the number of persons who are or may be stateless in Slovakia. One of the main reasons for the incomplete documentation is the lack of a statelessness determination procedure as well as the self-identification method used so far without subsequent verification in the population census. Another problem is the absence of a unified definition of a stateless person and a uniform method for applying this definition in practice which may lead to an incorrect determination and registration of the person's nationality or stateless status by the relevant State authorities. Moreover, various State authorities do not recognize each other's views concerning the person's statelessness.

The identification of stateless persons remains the most challenging area, resulting in serious consequences for stateless persons' ability to access their rights under the 1954 Convention. Although the 1954 Convention does not explicitly impose an obligation on State parties to put in place a statelessness determination procedure, adoption of such procedure is inevitable for the fulfilment of the obligations under the 1954 Convention and in line with UNHCR's guidance on the implementation of the Convention obligations.

Slovakia has not established a separate statelessness determination procedure yet. However, in 2012 a new type of permanent residence for stateless persons was introduced within the Act on the Residence of Foreigners. Though not officially deemed to be a statelessness determination procedure *per se*, it is a procedure that comes closest to it. This is due to the fact that the outcome of the procedure is either the grant of a residence permit or rejection of the application but not the actual recognition of the statelessness status of the applicant that would otherwise have general validity. Major shortcomings of this procedure are the absence of a procedural framework and the unpredictability of its outcome, i.e., the status of statelessness does not automatically provide the applicant with the right to permanent residence, as the decision to grant this type of residence permit is within the discretion of the BBFP. Submitting the application for this type of residence neither provides the stateless applicant with a right to be "lawfully in" the country, nor does it entitle the applicant to State-funded accommodation or health care. Permanent residence for five years is currently available only to those stateless persons who can prove, within the procedure, that they are stateless, i.e., they fulfill the definition of a stateless person.



Notwithstanding the above, permanent residence for five years, once granted, provides stateless persons with residential stability and access to facilitated naturalization, including through the waiving of the fulfillment of several conditions, such as the submission of a valid travel document, proof of accommodation and proof of sufficient means.

Stateless persons can also be identified within various other procedures in Slovakia, e.g., the asylum procedure, administrative expulsion procedure, detention procedure, citizenship, etc. One of the most frequently used in this respect is the asylum procedure conducted by the Migration Office. Stateless asylum-seekers have the same procedural rights and safeguards as other asylum-seekers without any preferences or special approaches. The stateless status of the asylum-seeker is neither a reason for granting international protection nor humanitarian asylum in Slovakia.

In general, stateless persons shall be protected against expulsion based on the provisions of the Act on the Residence of Foreigners governing the administrative expulsion procedure. For this protection regime to be triggered, it is necessary that a person be identified as a stateless person within the administrative expulsion procedure. In practice, however, it often happens that a stateless person is not identified and instead is issued a decision on administrative expulsion alongside an entry ban. This adverse consequence can be attributed to the absence of tools and guidelines available to the respective authorities that carry out such a procedure. The available statistical information also suggests that detention was used in most of the cases of stateless persons that were issued with a decision on administrative expulsion. Similarly concerning is the finding that the respective authorities sometimes consider the institute of detention as a “prolonged branch” of the administrative expulsion procedure that enables them to establish the identity and nationality or its absence of the detained person. The fact that many stateless persons are often identified only after several months in detention (if identified at all) is considered to be one of the negative consequences of the lack of a statelessness determination procedure.

Another type of residence permit or “lawful stay” available to stateless persons is the “Remaining” status or the tolerated residence. The “Remaining” status is frequently used in cases of stateless persons who do not qualify for permanent residence for five years (they do not possess any evidence of their statelessness, do not have a clean criminal record, are designated as “undesirable” persons, etc.) or persons who are “unreturnable”. None of these options can, however, be considered as a permanent and durable solution to the situation of stateless persons since neither of these allows its holder to work, carry out business activities, be part of the public health insurance system, apply for a different type of residence (except for permanent residence for five years as a stateless person), obtain identity or travel documents, and also successfully apply for Slovak citizenship. The granting of remaining status or tolerated residence is, therefore, contrary to the obligations of the Slovak Republic provided in Articles 17, 18, 19, 28 and 32 of the 1954 Convention.

In terms of prevention and reduction of statelessness, the Citizenship Act generally provides strong protection against statelessness of children born in Slovakia and against statelessness upon a change in civil status. Room for improvement can be identified in respect of sharing the burden and standard of proof in cases of applications lodged by parents on behalf of their stateless children born in Slovakia. Reduction of statelessness is also facilitated by naturalization where the most favorable regime applies to stateless applicants who need to, among other things, meet the condition of only three years of continuous residence in Slovakia prior to submitting the application. In this case, however, the length of the procedure and the high administrative fee constitute an obstacle to the access and effectiveness of the proceedings. This procedure also revealed deficiencies concerning the communication and cooperation with the applicant in the course of the procedure and the exercise of the applicant’s procedural rights. Despite these shortcomings, the success rate of applications for Slovak citizenship submitted by stateless persons is very high.

The Citizenship Act also officially provides for two ways of losing Slovak citizenship. The first one is renunciation while the second one is the automatic loss of citizenship upon acquisition of citizenship of another State. The automatic loss of citizenship does not apply to children or persons who have acquired foreign citizenship by

marriage with a foreign national. Former Slovak nationals have simplified access to the re-acquisition of Slovak citizenship based on Section 7 (2) (b) of the Citizenship Act in conjunction with the Ordinance no. 1/2015.

## **5.2 Recommendations**

In light of the above, the researchers of this study present the following summary of recommendations aimed at bringing the Slovak legal framework, practice and administrative capacity fully in line with the standards set out in the 1954 and 1961 Conventions. In implementing these recommendations, reference should be made to UNHCR's Handbook on the Protection of Stateless Persons and UNHCR's other guidance on statelessness issues, in particular 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.

### 5.2.1 General recommendation

**It is recommended that an accessible, fair and efficient statelessness determination procedure is established** in order for Slovakia to effectively meet its obligations towards stateless persons under the 1954 Convention. The procedural standards and safeguards that should govern fair and efficient statelessness determination procedures are set out in the UNHCR Handbook on Protection of Stateless Persons.

### 5.2.2 Identification and registration of statelessness

**It is recommended that:**

- 1. a uniform definition of a stateless person is incorporated in the relevant national legislation in line with Article 1 (1) of the 1954 Convention,**
- 2. a National Action Plan is developed for State authorities on how to determine and/or register a person as stateless,**
- 3. a unified approach is taken when it comes to registering persons with “unknown”, “unspecified” and “unidentified” nationality,**
- 4. the Foreigners Travel Document is issued to every stateless person that is lawfully staying in the territory of the Slovak Republic in order to ensure compliance with Article 28 of the 1954 Convention,**
- 5. specialized trainings for the administrative officials of various authorities coming into contact with stateless persons are provided,**
- 6. activities aimed at raising awareness among the relevant actors of civil society organizations are undertaken,**
- 7. a mechanism for inter-institutional collaboration is established.**

### 5.2.3 Determination of stateless persons and the rights attached to the status

**It is recommended that the current administrative fee of EUR 165,50 for the application of permanent residence for five years be abolished or at least reduced as far as possible** to make this procedure available to every person at risk of statelessness.

**It is recommended that:**

- 1. a clear procedural framework on permanent residence for five years is adopted within the Act on the Residence of Foreigners and that the Administrative Procedural Code is re-applied in this procedure,**
- 2. applicants who are not authorized to stay in Slovakia be permitted to apply for permanent residence for five years,**
- 3. the applicant for permanent residence for five years is provided with a right to be “lawfully in” the territory of the Slovak Republic for the entire duration of the proceedings,**

4. the practice of sharing the burden of proof between the applicant and the respective authority in the procedure on the application for permanent residence for five years is reflected in the provisions of the Act on the Residence of Foreigners,
5. a time limit is introduced in Act no. 162/2015 Coll., the Administrative Court Code for the judicial review of an adverse outcome of the procedure on application for permanent residence for five years,
6. applicants for permanent residence for five years have access to free and qualified legal aid,
7. the individuals awaiting a decision on their application for permanent residence for five years receive the same standard of treatment as asylum-seekers in Slovakia,
8. the grant of permanent residence for five years shall be automatic when it is established in the procedure that the applicant is stateless,
9. manifestly “unreturnable” persons are included in the stateless definition and treated similarly to stateless persons who fulfil the stateless definition pursuant to Article 1 (1) of the 1954 Convention,
10. the ground of statelessness is added to the list of grounds for granting humanitarian asylum,
11. the responsible authority carries out an assessment of impediments to expulsion in the context of Section 81 (3) of the Act on the Residence of Foreigners in each case,
12. detention is not used in cases of persons who are stateless or are at risk of statelessness,
13. stateless persons and “unreturnable” persons with “Remaining” status or tolerated residence are allowed to work, do business and are included in the public health system solely on the basis of their stateless status,
14. recognized stateless persons are included as beneficiaries of integration programs to the same extent as recognized refugees and beneficiaries of subsidiary protection.

#### 5.2.4 Prevention and reduction of statelessness

It is recommended that:

1. the tolerated residence and the “Remaining” statuses are considered as a “residence” in terms of Section 7 (2) (h) of the Citizenship Act,
2. the statutory period for serving a decision in cases of citizenship applications lodged by stateless persons is reduced from 24 months to one year,
3. the burden of proof is shared between the parents of a stateless child born in Slovakia and the Citizenship Department,
4. the provision regarding the loss of Slovak citizenship pursuant to Section 9 (1) (b) of the Citizenship Act is repealed,
5. the Citizenship Department proceeds in close cooperation with the applicant and enables the individual to exercise the relevant procedural rights in the course of the proceedings
6. access to information and free legal aid is provided for stateless persons seeking naturalization,
7. to reflect upon whether addressing the statelessness of the applicant should take precedence over the public interest in relation to the non-suspension of the proceedings in accordance with Section 8a (4) of the Citizenship Act,
8. Slovak citizenship is retained in cases of acquisition of another citizenship in relation to a civil partnership or a same-sex marriage concluded by a Slovak citizen abroad.

# STATELESSNESS

