



European
Network on
Statelessness

ADDRESSING THE RISKS OF STATELESSNESS AMONG CHILDREN IN MIGRATION IN EUROPE

Report on the findings of participatory action research by ENS
members in five European countries

June 2022

◀ STATELESS
JOURNEYS ▶

1. Introduction

After reviewing available literature on the risks of statelessness facing children and young people in migration in Europe, ENS identified that the voices and views of stateless children, young people, and their families - and those working with them to resolve their cases - are rarely heard.¹ The accounts of stateless children and young people, those at risk of statelessness and their parents, and the documents they hold, are key to understanding how statelessness is produced and negotiated in the migratory context. With the support of Comic Relief, under its #StatelessJourneys initiative, ENS has worked with five of its members in five European countries (Albania, Bulgaria, the Czech Republic, Spain, and Ukraine) to document and reflect on their legal casework with children and families in migration affected by (risks of) statelessness between October 2020 and April 2022. This report presents a synthesis of the findings and learning from this project.

Not having a nationality or lacking proof of nationality can make it difficult for children to access other fundamental rights such as birth registration, healthcare, and education, as well as social security, housing, and independence and livelihood opportunities as they grow older. It is harder to protect children from immigration detention, trafficking, exploitation, and abuse if they are stateless, and statelessness may put them at greater risk. Despite international and regional obligations to fulfil every child's right to acquire a nationality and have their best interests taken as a primary consideration, only half of European States have full legal safeguards in place to prevent children from growing up without a nationality.² A birth certificate is essential evidence of a child's family ties and place of birth, and therefore helps confirm or secure their acquisition of a nationality. However, children in migration can face barriers to the accurate registration and documentation of their births.³

The research set out to document some of the myriad causes of statelessness among children in migration, the diverse profiles of children affected, and the complex legal casework and approaches required to try to resolve and realise every child's right to a nationality. The

¹ ENS (2020) Literature review and mapping study: Risks of statelessness among the children of refugees in Europe: <https://www.statelessness.eu/updates/publications/literature-review-and-mapping-study-risks-statelessness-among-children>

² ENS (2015) No child should be stateless: <https://www.statelessness.eu/updates/publication/no-child-should-be-stateless>

³ ENS & the Initiative for Children in Migration (2020) No child should be stateless: Ensuring the right to a nationality for children in migration in Europe: <https://www.statelessness.eu/updates/publication/no-child-should-be-stateless-ensuring-right-nationality-children-migration>

project also sought to develop methodologies for involving affected children and their families in the casework and advocacy required to resolve their nationality problems. This report describes the methodology, the profiles of children and families included in the research, causes of their statelessness, outcomes sought and approaches taken with families to resolving their nationality problems, as well as analysing some of the emerging trends from the project.

2. Methodology & partner organisations

In July 2020, ENS published the findings of a literature review and mapping it commissioned to understand what further research and advocacy was needed to inform and progress its work with members across Europe to prevent and reduce statelessness among children in migration.⁴ The review recommended:

“...participatory, action research that sets out to attempt to achieve tangible benefits for children, and documents which strategies work, which do not, and why. Participatory means working with refugee families to try to achieve these outcomes for their children, while including them in reflection and analysis on what is working and what is not.”

Drawing on this review, ENS developed a research framework and guidance and put out a call to its membership for organisations doing legal casework with refugee children and young people affected by statelessness to apply to participate in action research activities to document and learn from this work. Each applying organisation was asked to identify a group of (four to five) refugee or migrant children or young people affected by (risk of) statelessness with whom they were working and who (to the best of their knowledge) would like to participate in the project. They were asked to commit to working with refugee children/young people in a safe and participatory way to facilitate their input and involvement (including through provision of interpreting and translation where needed, and participating in safeguarding training); to be familiar with relevant law, policy, statistics, and literature relating to the children/young people they were working with and possess the relevant skills and capacities to undertake action research (legal/policy analysis, advocacy, participatory engagement, etc.); to be able to demonstrate that there is a real possibility of achieving – or contributing to - one or more of the tangible outcomes identified in the research framework for the children or young people with whom they were working; and to

⁴ These can be read in detail in the mapping report:

<https://www.statelessness.eu/updates/publications/literature-review-and-mapping-study-risks-statelessness-among-children>

identify the key stakeholders who can help them achieve these outcomes (both targets and allies) including, for example, registry officials, government agencies, courts, civil society, UN bodies, and Ombudspersons.

The tangible outcomes identified in the research framework included:

- introducing or enforcing safeguards in nationality laws to ensure that a child who would otherwise be stateless can acquire a nationality;
- ensuring that a determination of statelessness leads to a child being able to acquire a nationality as early as possible and within a known time frame;
- promoting and effectively implementing the right to immediate birth registration;
- providing for birth registration even if the period within which the birth should have been declared has expired;
- ensuring that documentary proof of birth is issued in all cases; and
- securing the right of stateless children to have access to their birth certificate and any civil status documents concerning them.

The organisations selected to participate in the project were Tirana Legal Aid Society (TLAS) in Albania,⁵ Foundation for Access to Rights (FAR) in Bulgaria,⁶ Organisation for Aid to Refugees (OPU) in the Czech Republic,⁷ Convive-Fundación Cepaim in Spain,⁸ and Right to Protection (R2P) in Ukraine.⁹

3. Research participants

As anticipated, the cohort of children, young people and families who participated in the research represent a wide variety of profiles in terms of their countries of origin, migration journeys, personal circumstances, and reasons for their (risk of) statelessness.¹⁰ They included children who were born on the territory of the research country, children born in transit or in a parent's country of origin, unaccompanied refugee children and young people and children

⁵ For more information about TLAS, see: <http://www.tlas.org.al/en>

⁶ For more information about FAR, see: <http://farbg.eu/>

⁷ For more information about OPU, see: <https://www.opu.cz/cs/>

⁸ For more information about Convive-Fundación Cepaim, see: <https://www.cepaim.org/>

⁹ For more information about R2P, see: <https://r2p.org.ua/?lang=en>

¹⁰ To read more about which groups of children in migration are at risk of statelessness and why, see: ENS & the Initiative for Children in Migration (2020) No child should be stateless: Ensuring the right to a nationality for children in migration in Europe: <https://www.statelessness.eu/updates/publication/no-child-should-be-stateless-ensuring-right-nationality-children-migration> and ENS (2020) Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers: <https://www.statelessness.eu/updates/publication/birth-registration-and-prevention-statelessness-europe-identifying-good>

and young people in single and two-parent families who had been granted international protection, and those whose residence or protection status remained insecure. This section provides an overview of the profiles of the research participants and the causes of their (risk of) statelessness.

3.1 Profiles of the children and young people included in the research

Several of the children and young people who participated in the research belong to recognised stateless minorities, including Sahrawi children in Spain, Palestinian children and young people in Bulgaria and Albania, and a child of a Latvian non-citizen parent in the Czech Republic. Other children had parents originating from countries with sizeable stateless populations and recent histories of conflict or State succession, including Kosovar families in Albania, families from Uzbekistan, Kazakhstan, and Ukraine in the Czech Republic, from the Russian Federation in Ukraine and Spain, and from Uzbekistan and Tajikistan in Ukraine. In other cases, children and families originated from countries with protracted refugee situations and from which significant numbers of refugees have arrived in Europe, including Syria, Afghanistan, Iraq, and Eritrea. In other cases, the parents' specific origins and circumstances had led to risks of statelessness arising from complex individual or systemic factors, including conflicts in the nationality laws of parents' countries of nationality, situations of domestic abuse, and alleged national security concerns.

Some of the research participants were born in their parent(s) country of nationality or former habitual residence. For example, two brothers were born in Gaza before seeking international protection in Bulgaria with their mother. Others were born in transit en route to the country where they sought protection. For example, a child born to a mother from Cameroon in Morocco who then travelled on to Spain where they claimed asylum. Many of the children were born in the country where the research took place. For example, children born to parents seeking asylum, statelessness status, or another form of protection whilst their residence or protection status in the country remained unclear.

3.2 Causes of (risk of) statelessness among research participants

3.2.1 Inherited statelessness

Several of the children and young people in the research inherited their statelessness from their parent(s), who themselves are stateless refugees. For example, children born to Palestinian parents, or a family from Ukraine in which the parents had been citizens of the Former-USSR but did not obtain Ukrainian nationality when that country gained independence and remained stateless for many years before seeking asylum in the Czech

Republic. The Czech authorities have not recognised the family's statelessness and communication with the Embassy of Ukraine has proven difficult, so the family remains in limbo, unable to prove either their statelessness or any potential entitlement to Ukrainian nationality. In another family, a child born in the Czech Republic was unable to acquire any nationality, as her mother is a Latvian 'non-citizen' which impacted on the child's entitlement to Latvian nationality.¹¹

3.2.2 Refugee parent/s unable to approach embassy to register child

In the Latvian case, as in other cases in Spain and the Czech Republic, the child's father is a refugee whose claim for asylum is pending, preventing the parent from approaching the embassy to confirm the child's acquisition of their nationality due to fear of persecution. It is often a requirement for a parent to register their child born abroad with their embassy, within a certain period of time, for the child to acquire that country's nationality. This practical step is often impossible for the children of refugees who have fled persecution in their country of nationality, so are afraid of approaching the authorities of their State of nationality thus leaving their children in limbo without the possibility of (ever) acquiring proof of nationality.

3.2.3 Parents with insecure status or who lack documentation

In several cases, the parents' insecure status or lack of documentation was a contributing or exacerbating factor in the child's (risk of) statelessness. In the Czech Republic and Albania, parents' outstanding asylum claims prolonged children's statelessness as the law requires parents to have legal residence for a stateless child to acquire nationality.¹² In Ukraine, the competent authorities refused to accept the documents of several participating children on grounds that the parents were asylum seekers, which is not in line with the law (and was subsequently challenged through the courts during the research). Parents' lack of documentation also presented barriers in several cases to registering the births of children born in the research countries or in transit. For example, in the case of a Cameroonian mother whose child was born in transit in Morocco – both she and her daughter lacked any documentary proof of their family links or identity.

3.2.4 Gaps, conflicts, and discrimination in nationality laws

In some cases, specific issues relating to the nationality laws of the parent/s countries of nationality were a key cause or contributing factor in the child's (risk of) statelessness. For

¹¹ See <https://index.statelessness.eu/country/latvia> for more information on statelessness in Latvia.

¹² The safeguard for otherwise stateless children born in Albania was amended in 2020, but practice is still unclear. See <https://index.statelessness.eu/country/albania> for more information.

example, in a case in Bulgaria, a Belgian father had failed to register his child with the Belgian authorities as required under Belgian law and was no longer in contact with the mother or child. The Bulgarian authorities had registered the child as Belgian, but the child had not actually acquired Belgian nationality. In another case, the root cause of the child's statelessness was the gender discriminatory nationality law in Iraq, which limits women's ability to confer Iraqi nationality on their children born abroad, resulting in the child in this case being born stateless in Bulgaria.

3.2.5 Imputed nationality and errors in birth registration

In several cases in the research, imputed nationality or mistakes during birth registration contributed to creating or exacerbating risks of statelessness. Information recorded at birth varies from country to country but usually one or more of the child's nationality, the parents' nationality(ies), the place of birth of child (and parents), and the names of parents, is recorded. In two cases in Bulgaria, for example, the child's nationality was incorrectly assumed to be the same as one of the parents without verifying whether the child did or could actually acquire that nationality, thus masking their statelessness and necessitating complex legal casework to rectify the mistakes made in the civil registration process.

3.2.6 Children born in conflict zones

In the case of one participating family, the children were born to a national of the country of research in a conflict zone abroad where civil registration systems had collapsed, so their births were never registered. The mother and children were repatriated to the country of research but lacked any basic documentation determining their place of birth or family links, so faced significant difficulties later acquiring these and proving their entitlement to their mother's nationality.

4. Strategies and approaches to resolving (risks of) statelessness among children in migration

Over the course of the project, partners worked with families to document which legal strategies worked to resolve the statelessness issues faced by children and young people in different European countries, and which did not. The research framework guided partners to document the outcome sought in each case; current barriers; anticipated challenges; relevant decision-makers and allies; methods proposed and taken in legal casework and in seeking the views of children and families; what worked well and what didn't; the outcome achieved; the significance of the case for the partner's wider work; and whether the family wanted to be

further involved in the project or follow-up activities. The outcomes that lawyers and families decided to pursue, and the strategies taken, were often very context- and situation-specific, so varied quite significantly. This section provides an overview of these different strategies and approaches and gives some illustrative examples from each country. The next section presents some common trends and learning from across the different participating countries.

4.1 Albania

In Albania, the outcome sought in three of the cases was citizenship for the child, and in the other two cases it was obtaining refugee status for the minor or family (ultimately leading to a route to citizenship). At the time of research, Albania was in the process of reforming its law and policy relating to civil registration, nationality, and statelessness. It recently amended procedures to facilitate birth registration (2018), strengthened the safeguard in nationality law for children born stateless on the territory (2020), and was in the process of adopting a statelessness determination procedure (SDP) in amendments to the Law on Foreigners (2021).¹³ However, some of these changes were yet to be fully implemented.

A key barrier identified in two cases where parents originated from Kosovo was the lack of identity documents and insecure status of the parents at the time of the children's birth in Albania, preventing them from acquiring Albanian citizenship. In another case of an unaccompanied asylum-seeking minor from Palestine, there were difficulties securing documents from the country of origin, issues with the refugee claim, and undetermined citizenship. In the case of a family from Afghanistan, the lack of birth certificates for their three minor children, and their inability to acquire any documentation proving identity and family links from their country of origin were key issues. The fifth case concerned an Albanian national mother who had recently been repatriated from a camp-setting in a conflict zone where her two children had been born (of different fathers both absent and presumed foreign nationals), but never registered and had no identity documents.

In each case, the strategies taken were tailored to the child or family following a needs assessment and collection and analysis of available documents by paralegals and lawyers. A range of different actors were involved including the asylum authorities, civil registries, ministries of interior and education, embassies, social workers, teachers, translators, psychologists, NGOs, UNHCR, the police, and in one case the anti-terror department. Families were closely involved in discussions with relevant authorities and consulted. The two

¹³ For more information on the legal and policy framework relating to statelessness in Albania, see <https://index.statelessness.eu/country/albania>

cases relating to refugee status determination are still pending. In the three cases relating to acquisition of citizenship, all the children were successfully registered and either acquired Albanian citizenship or are awaiting presidential confirmation of citizenship. In two cases, court procedures were required, and in one case, also DNA testing to prove parentage. At least three of the Albanian cases are of strategic relevance as they highlight gaps in current law and policy, for example, the requirement that parents have legal residence for children born on the territory to acquire Albanian citizenship. One of the cases has set an important precedent providing guidance on how to respond to cases of parents repatriated from a conflict zone with unregistered and undocumented children.

Case Study - Rita

A family of five – mother, father, and three children – of Kosovar origin approached TLAS for assistance to regularise their stay in Albania and acquire Albanian citizenship for their children, who were at risk of statelessness, including 16-year-old Rita. Rita's father had been granted international protection, but her mother had irregular residence status. Rita and her siblings were also born in Albania, but her citizenship had been recorded as 'unknown' in her birth certificate and the names and dates of birth of both her mother and father on the family's documents were recorded incorrectly. At the time of Rita's birth, the law prevented her (and her siblings) from acquiring Albanian citizenship due to the irregular residence status of her parents. TLAS supported the parents to acquire original documents with the correct names and date of births and to meet with the Department of Asylum and Ministry of Internal Affairs. First an administrative and then a civil court procedure was then required to correct the documents, regularise the family's residence status, and acquire and confirm citizenship for all family members. Rita and her siblings were all eventually registered as Albanian citizens, having lived their whole childhoods without any proof of citizenship.

4.2 Bulgaria

Four cases were included in the research in Bulgaria. In two of them the outcome sought was acquisition of Bulgarian nationality, in one case for a stateless child born in Bulgaria to an Iraqi mother, and in another, for a Palestinian family with subsidiary protection. In another case, a Palestinian family was seeking protection either as refugees or stateless persons, with one child in the family also seeking Bulgarian nationality on grounds of being born stateless in the country. In the final case, the outcome sought was the correction of an imputed nationality on the birth certificate of a child born in Bulgaria to a Belgian and a Ghanaian parent.

Each case has its own complexities and challenges, so methods and strategies to approach and resolve each were carefully considered in consultation with the families and adapted

during the research process in response to decisions received from the authorities and courts. The imputed nationality case raised issues of asylum determination, civil registration, family law, parental rights, and domestic abuse, as well as the risk of statelessness. Lawyers took a careful step-by-step approach to considering all options through both court and administrative procedures, seeking expert reports to inform relevant procedures, and adapting approaches to try new strategies where one was unsuccessful. In the case of the Palestinian family seeking protection, careful consideration was given to the complexities of securing refugee protection for Palestinian refugees in Bulgaria, including the asylum authorities' failure to apply Article 1D of the Refugee Convention,¹⁴ as well as the respective rights applicants are entitled to under the asylum process, as opposed to the statelessness determination procedure, in which applicants have limited rights and may be subject to detention.¹⁵

At the time of writing, the final outcomes in all cases were still pending, though significant progress had been made towards exploring different strategies and options, and in all cases, the families reported feeling heard and supported. The work to address issues relating to parental rights and to change incorrectly recorded nationality status in birth certificates, as well as the work to ensure correct application of Article 1D of the Refugee Convention in Palestinian refugee status determination cases is of strategic importance to the project partner and is providing important learning – as well as potentially setting precedent – for similar cases in the future.

¹⁴ ENS & BADIL (2022) Palestinians and the search for protection as refugees and stateless persons: <https://www.statelessness.eu/updates/publications/palestinians-and-search-protection-refugees-and-stateless-persons>

¹⁵ For more information on the legal and policy framework relating to statelessness in Bulgaria, see <https://index.statelessness.eu/country/bulgaria>

Case Study - Adnan

Adnan was born in Sofia in 2021 to a Palestinian stateless family seeking international protection in Bulgaria. The nationality in Adnan's birth certificate was initially recorded as 'unshown' ('непоказано'). FAR supported his father to meet with the municipal civil registry authorities, who advised him to file an application to establish and recognise Adnan as a Bulgarian national. Fees of 70 leva, two photographs, and copies of both parents' asylum registration cards were required to submit the application. At the bank, the fee had to be deposited in the name of the FAR lawyer, because Adnan's father's asylum registration card was not accepted as proof of identity. The municipal authorities forwarded the application to the Ministry of Justice to check whether Adnan was stateless and should be recognised as a Bulgarian national by law, which was confirmed and established in June 2022 under Article 10 of the Bulgarian Citizenship Act. The family was later required to present proof of permanent address and Adnan was issued a Bulgarian identity number 'EGH' and registered in the population registry.

4.3 Czech Republic

Five cases were included in the research in the Czech Republic. The outcomes sought included statelessness status determination in the cases of three families, all of whom originated from the former-USSR, including one of mixed parentage in which the mother is a Latvian non-citizen and the father a refugee from another former-Soviet State. The fourth case concerned a stateless family from Kazakhstan with a stateless child born in the Czech Republic, for whom the outcome sought was Czech citizenship. The final case concerned an Armenian-Cuban family in which the child is stateless, and the family is seeking international protection.

The cases in the Czech Republic were challenging in different ways, but one of the key systemic barriers was that there is no dedicated statelessness determination procedure, so statelessness determination, although possible in theory, is a complex and lengthy legal process, which requires expert advice and advocacy. In at least one of the cases, delays on the part of the embassy of the country with which the family had links, exacerbated waiting times. Further key barriers included the requirement to present a valid travel document to regulate permanent residence, and the requirement that at least one parent has legal residence in the Czech Republic for a child born stateless on the territory to acquire Czech

nationality. This prevented two of the children in the research from resolving their statelessness through this route.¹⁶ Some of the Czech cases also had additional complexities including family members with serious health issues, and issues of family separation, so, a range of different actors and agencies were involved in supporting the families.

Case study - Mia

Mia was born to refugee parents (one from Central America and one from a former Soviet State), who met in a refugee camp in the Czech Republic while in the asylum process. Mia's parents feared persecution in their home countries and so were unable to contact their embassies in the Czech Republic to register their baby's birth and acquire a nationality. They filed an asylum application for Mia indicating her statelessness, but this was never examined, and her nationality was recorded as being the same as her mother's. All three asylum claims were initially refused, so the family appealed to the regional courts. After more than three years in limbo, the regional court overturned the negative decision in Mia's mother's claim, recognising the persecution her family had faced in their home country. The court then overturned the negative decision in Mia's claim without a hearing, but her statelessness was still never considered. The Ministry appealed on procedural grounds, but the Supreme Administrative Court agreed with the arguments OPU helped Mia put forward and rejected the appeal. Mia's parents tried very hard to resolve their daughter's statelessness and get protection for the family. They were frustrated by unnecessary delays and the fact that the Ministry ignored their daughter's statelessness and even disputed the regional court's decision, delaying her case even further. Mia and her mother were eventually granted subsidiary protection and her father's asylum case is being reconsidered with the help of OPU. However, Mia's statelessness remains unresolved for now.

The strategies chosen in each case involved first seeking regularisation or citizenship for the children (and/or parents) through administrative routes, which in three cases resulted in refusals from the competent authority, and in a fourth, a refusal is expected. Partners then worked with the families to consider - and in four cases, pursue - solutions through the courts. In three cases, the outcomes from the litigation process are still pending. In the case of the Armenian-Cuban child, the court case regarding international protection for the

¹⁶ For more information on the legal and policy framework relating to statelessness in the Czech Republic, see <https://index.statelessness.eu/country/czech-republic>

mother and child was successful, and the case was successfully returned back to the Ministry for reconsideration which, in the end, granted subsidiary protection to the mother and child while the father's case is still pending. However, the statelessness of the child was not mentioned or considered by the court or by the Ministry.

4.4 Spain

Five cases were included in the research in Spain. Three cases relate to children of Sahrawi origin, one of whom was seeking statelessness status with his parents; the other two were seeking confirmation of their Spanish nationality having been born stateless in Spain. A fourth case related to a child born in transit in Morocco to a Cameroonian mother who then travelled on to Spain and claimed asylum. The fifth case was a family of Russian origin seeking international protection in Spain, including one child who was born in Spain who is at risk of statelessness due to the inability to confirm whether the child has acquired Russian or any other nationality.

Some of the key barriers identified in the Spanish cases include delays in the statelessness determination procedure, leading to issues accessing reception support and the right to work for parents, as well as making the civil registration process for children born in Spain to parents seeking statelessness status more complex. Evidence from the research suggests that practice varies between different civil registry offices in different regions in terms of how the safeguard in nationality law for a child born on the territory who would otherwise be stateless is interpreted and applied in practice. In some civil registry offices, parents are required to have a positive decision on a statelessness status claim before the child may be registered as Spanish (as evidenced by the case in Mérida in the research); whereas in others (for example, in the case included in the research in Toledo) the child was duly registered, and his Spanish nationality confirmed while his mother's SDP application was still pending.

The other cases illustrate two very current issues and causes of risks of statelessness among children in migration. Firstly, the risk that may arise when a child is born to a refugee parent in transit and their birth is not registered. In this case, the mother also lacked proof of identity and nationality, and determining the child's nationality was further complicated by the mother's fear of gender-based persecution from her own and the child's father's family. The final case illustrated clearly the difficulties faced by applicants for international protection who lack identity documents and proof of family links in registering a child born in exile with the authorities of their country of nationality to acquire confirmation and proof of the child's nationality.

In each case, lawyers and reception support staff worked with the families to resolve the children's cases through the relevant administrative procedures, in some cases accompanying them to civil registry offices, or seeking information from authorities abroad; in others, they advocated with competent authorities to speed up delayed procedures, and supported families to explore their options and gather necessary evidence and documents. Two of the three Sahrawi cases were resolved favourably for the children, with one acquiring statelessness status and one having their Spanish nationality confirmed. In the third case, the family left Spain before the child's nationality could be confirmed. In the case of the child born in transit, mother and child are now documented as applicants for international protection in Spain, but their status remains precarious, as attempts to retrieve records of the child's birth from Morocco failed, and, if refused protection, they would return to an irregular situation. A court in another region of Spain has recently ruled that a child born in transit should have their birth registered in Spain, which may provide a helpful precedent in support of this case.¹⁷ In the final case, the outcome is still pending a decision on the family's application for international protection. At the time of writing, the family was working with their lawyer to attempt to recoup any documentary evidence of their identity and consider whether they could approach the consulate of the Russian Federation to acquire proof of nationality for the child born in Spain.

Case study – Anna

Anna's mother, Mayi, is a refugee from Cameroon. She became pregnant on her migratory journey and gave birth to Anna in Morocco, but she had no documentary proof of the birth. Anna and Mayi arrived in Spain by boat, undocumented, and claimed asylum in 2018. Mayi had left her home country as a minor, so she also did not have any identity documents and did not know if her own birth had ever been registered. Cepaim contacted the hospital in Morocco where Anna was born to try and acquire documentary proof of Anna's birth, and made attempts through the Cameroonian embassy in Spain to confirm Mayi and Anna's nationality, but without success.

For the first years of her life, there was no administrative record anywhere of Anna's existence. Once in Spain, her healthcare and schooling were provided at the discretion of local service providers in the community where she was accommodated. After four years of procedural attempts to regularise Anna and her mother's protection and nationality status, Anna's case was finally resolved through the courts. The first instance court and then, following an appeal by the State, the provincial court, confirmed that the 'the best interests of the minor' were the most important consideration in Anna's case. The courts ordered Anna's birth to be registered and recognised her as Spanish 'by birth' as she would otherwise be stateless.

¹⁷ Judgment of the Provincial Court of Guipúzcoa (Spain), no. 341/2022, 11 May 2022, available at: <http://caselaw.statelessness.eu/caselaw/spain-judgement-court-appeals-gipuzkoa-11-may-2022> .

4.5 Ukraine

Five cases were included in the research in Ukraine. All five cases related to families seeking international protection in Ukraine, in four there were two parents and multiple children (from the Russian Federation, Tajikistan, Uzbekistan, and Afghanistan), and the fifth case related to a single mother from Eritrea and her child. In all cases, the child participating in the research was at risk of statelessness and the outcome sought was acquisition or confirmation of Ukrainian nationality for the child. During the research phase of the project, lawyers identified a range of barriers to each child's acquisition or confirmation of nationality, the main one being the refusal by the State Migration Service (SMS) to accept documents relating to citizenship acquisition or confirmation from children whose parents are asylum-seekers. In each case, strategies were considered with the families, which included a range of options initially through administrative procedures before the SMS, followed by subsequent court procedures where they received a refusal from the SMS. In three cases, petitions were submitted to the ombudsperson to advocate on a range of issues, including an unlawful decision on the part of the SMS not to accept an application for one of the children due to a parent not being able to present a travel document, and a refusal by the SMS to implement a court decision in favour of one of the families. In one case, a favourable decision was received from the Appeal Court, which resulted in a positive outcome for the family; however, if it had been appealed further by the SMS there may have been the possibility to secure a precedent through a High Court procedure.

Due to the escalation of the war in Ukraine in February 2022 towards the end of the research phase of the project, it has not been possible to follow-up with all the families in the research to document their current circumstances. Our project partners have bravely continued their vital work supporting refugees, internally displaced, and stateless people during the conflict, but their work has understandably shifted to respond to the urgent needs of those they work with at this time.¹⁸ Administrative and court procedures relating to statelessness determination and confirmation/acquisition of nationality were suspended in many parts of the country, and continue to be disrupted at the time of writing, although some are beginning to be restored.¹⁹ Most people seeking asylum in Ukraine, including the families that took part in this project, have left the country. The risk of statelessness for children born in Ukraine to refugee parents has increased with this further displacement. Like the

¹⁸ <https://www.statelessness.eu/updates/blog/assisting-stateless-people-trapped-ukraine-report-ground>

¹⁹ For more information about statelessness in the context of the Ukraine crisis, see: <https://www.statelessness.eu/statelessness-ukraine-crisis>

participating children in other countries, many cannot acquire a nationality from their parents due to being refugees or conflicts or discrimination in nationality laws. Unlike the children in other project countries, however, the children born in Ukraine have now also lost their links to Ukraine, their country of birth and are likely to face significant barriers to acquiring a nationality.

Case study – Asma

Asma was born in Ukraine to an Eritrean mother seeking asylum in the country. Due to legal and practical barriers, Asma cannot acquire Eritrean nationality from her mother and her father is absent, so Asma would be stateless unless she acquires Ukrainian nationality. Asma's mother filed a claim for acquisition of Ukrainian nationality for her on the basis that she would otherwise be stateless, but this was rejected on the bureaucratic ground that her mother's passport was being held by the State Migration Service while her asylum claim was pending. R2P submitted a claim to the court to appeal this decision in October 2021, but while the court procedure was pending, Asma's mother's passport expired. Asma's mother cannot apply for confirmation of her child's Ukrainian nationality without a valid passport, nor can she renew her passport with the Eritrean authorities as she has well-founded fears of persecution in that country. At the time of the escalation of the war in Ukraine in February 2022, Asma's case was still pending and R2P have been unable to contact the family since.

5. Common trends

Common trends can be identified from the research across the five countries in terms of some of the main causes of the (risks of) statelessness experienced by children and young people, but the variety of backgrounds and situations of the affected children and families, as well as exacerbating or contributing factors, including for example in three cases, gendered abuse or persecution, highlight the need for response actors to take an intersectional approach to identifying and responding to statelessness and be alert to potential risks of statelessness in different profiles and circumstances. Exacerbating law, policy and practice gaps, one of the most common challenges faced by children and families to resolve their statelessness was their lack of documentary proof of family links, birth registration, or identity, and, in many cases across the different research countries, parents' irregular residence or protection status in the country impacted on a child's ability to resolve their statelessness. In all cases, complex legal casework and support coordinated by expert lawyers

with the input of a range of different agencies and actors was vital to resolving the children's statelessness.

Two key systemic issues emerged from the research, which are further explored below: a) the lack of adequate or effective safeguards to prevent statelessness among children born on the territory, and b) the lack of adequate mechanisms to identify and determine statelessness.

5.1 Safeguards in nationality laws to prevent statelessness at birth

All five of the research countries are party to the 1961 Convention on the Reduction of Statelessness, which requires that children born on the territory who would otherwise be stateless are granted nationality either automatically or upon application in line with the standards set out in the Convention.²⁰ All have at least partial safeguards in place to implement these obligations to stateless children born on the territory, but the research highlights gaps and flaws in these safeguards, both in law and in practice.

In all countries, there were cases of parents facing barriers to their children acquiring nationality on grounds of statelessness due to their own residence or documentation status, or due to other flaws in procedures. This included authorities unlawfully requesting documents from parents that should not have been required in Ukraine; wrongly assuming children had acquired the nationality of a parent without verification in Bulgaria; and applying an unnecessary additional requirement that parents be formally recognised as stateless prior to confirming a child's acquisition of nationality in Spain. In the Czech Republic, the safeguard is not in line with the 1961 Convention as it stipulates that parents must have legal residence in the country before the child can acquire Czech nationality. The negative impact of this legal gap on children and families in migration was clear from the research. The research also highlights the complex practical challenges faced by children, families, and their representatives in resolving a child's nationality status where parents are refugees. Two of the cases in Spain illustrated how children born in exile, either in transit or whilst in the asylum process, can face lengthy delays and uncertainties in determining their nationality status due to the circumstances of their parents, including fear of persecution or inaction on the part of consular authorities.

It is important to note that there were also examples of good practice highlighted through the research. In one case in Spain, the automatic safeguard in Spanish nationality law for a child born stateless in the country to acquire nationality was correctly applied and implemented by

²⁰ 1961 Convention

the civil registry office in Toledo, despite the mother's insecure residence status at the time. In three cases in Albania, although court procedures were required to resolve issues with parents and/or children's lack of documentation, the children were successfully registered, and their Albanian nationality confirmed.

5.2 Lack of adequate mechanisms to identify and determine statelessness

In many of the cases included in the research across the different countries, the lack of mechanisms or capacity to identify statelessness (risks) and lack of adequate procedures to determine statelessness were key factors contributing to children's (prolonged) statelessness. All research countries are party to the 1954 Convention relating to the Status of Stateless Persons and other relevant human rights instruments, which require them to grant adequate protection and rights to stateless people on their territory.²¹ To do so, they must have mechanisms in place to identify who is stateless on their territory, and should put in place dedicated statelessness determination procedures (SDP) that are fair, efficient, and easily accessible, in line with UNHCR guidelines.²²

In many cases included in the research, the (risks of) statelessness of children and families was missed by authorities at all levels. Civil registry officials in Bulgaria failed to identify that a child born in Bulgaria to an Iraqi mother was born stateless due to that country's gender discriminatory nationality laws. In another case, they attributed a nationality to a child on his birth certificate without verifying whether the child had in fact acquired that nationality from his parent. In several cases in the research, children and families of Palestinian origin were formally identified and registered by asylum authorities as having the nationality of 'Palestine', masking their potential statelessness and protection needs under the 1954 Convention. In one case in the Czech Republic, the court failed to consider a child's statelessness despite its relevance to the case. In other cases, the identification and resolution of the risk of statelessness was hampered by the failure of consular authorities to respond to requests for information about their potential nationals.

Three of the five participating countries have operational SDPs.²³ The Czech Republic provides for statelessness to be identified and determined through other administrative

²¹ ENS (2021) Statelessness determination and protection in Europe: good practice, challenges, and risks: <https://www.statelessness.eu/updates/publications/statelessnessindex-briefing-statelessness-determination-and-protection-europe>

²² UNHCR (2014), Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons: <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR-Handbook-on-Protection-of- Stateless-Persons.pdf>

²³ Bulgaria, Spain, and Ukraine. Albania has recently adopted legislation to establish an SDP, but this was not yet operational at the time of the research.

procedures, but the process is ad hoc and very complex, and does not lead to rights based on statelessness. Even in the three countries with functioning SDPs, there are gaps and challenges in the procedures, which manifested during the research as having an impact on the nationality problems faced by children. For example, SDP applicants have very limited rights in most research countries. In Bulgaria, lawyers worked with one of the families to assess the relative risks of applying for statelessness status as opposed to pursuing a further application for another form of international protection, which provided for more rights and security for the family during the procedure. In Spain, delays in the SDP decision-making process caused additional hurdles for parents to resolve their children's nationality status and left them feeling frustrated without the right to work.²⁴ In the Czech Republic, the lack of an adequate SDP and access to protection status left parents with fewer options to regularise their stay in the country and thereby ensure their children could resolve their statelessness through acquisition of Czech nationality.

6. Conclusions and recommendations

The findings of this research illustrate the myriad causes of statelessness among children in migration and the diverse profiles of children affected. They also shine a light on the complex legal casework and approaches required in different European countries to try to resolve and realise every child's right to a nationality, as well as some of the core common issues faced by children and families in trying to resolve their statelessness. Through the encouragement of a participatory approach to casework and involving children and families in decisions about the strategies taken to resolve their nationality problems, the project has sought to provide a platform for affected children and their families to tell their stories and give their views on what needs to change. It has also showcased the often ground-breaking and tireless work of our members across Europe to support them in very challenging circumstances. The project has proven that this approach works. Several cases in the research resulted in positive outcomes for the children and families concerned. In all cases, families and children reported feeling heard, supported, and informed about their cases, even where systemic or other external factors affected or delayed positive outcomes.

In addition to this report, affected families and their lawyers have worked with ENS to produce a short film describing their experiences. Watch the film [here](#).

Drawing on the research process and findings, we make the following recommendations:

²⁴ A recent change to the law in Spain means that as of April 2022, SDP applicants now have the same access to reception support and rights during the procedure as asylum seekers [ADD LINK/REF].

- States should address gaps in safeguards in nationality law, policy and practice to ensure every child who would otherwise be stateless acquires a nationality as soon as possible after birth in line with 1961 Convention
- States should introduce effective SDPs in line with good practice and ensure these are accessible and that applicants' rights are assured
- States must pay special attention to the best interests of children of refugees born in exile who are unable to acquire proof of birth registration and/or nationality due to their parents' status as asylum seekers or refugees, including by registering births of children on their territory who were born in transit and never registered, and granting nationality where children cannot register with a parent's embassy of nationality due to their status as asylum-seekers/refugees
- NGOs and legal aid providers should invest in and develop more participatory methodologies to casework
- Donors should resource and foster the expertise required to enable organisations to invest time and capacity in resolving complex cases of children affected by statelessness

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