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Country context (optional)

Please use this field to provide any relevant contextual or background information about the country's law, policy, and practice, or the stateless population, to help contextualise the information in the survey (optional question).

1. Poland is not party to either the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.
2. There is no definition of a stateless person in Polish law, and in practice the term "stateless" is interpreted inconsistently.
3. Poland has no dedicated statelessness determination procedure and protection status in place. The existing legal pathways for the regularisation of the status of stateless people are inadequate.
4. The safeguard to prevent statelessness of children born in Poland is not sufficient.
5. There are no clear legal safeguards against the detention of persons where no reasonable prospect of removal exists, including for stateless people who are particularly affected by this issue.
6. Certain stateless people, people with undetermined nationality, and undocumented people fleeing the war in Ukraine face challenges to access meaningful protection, due to deficiencies in the Polish legal framework related to statelessness.

International and Regional Instruments

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|-------------------|---|---|---|--|
| IOB.1.a | 1954 Convention | Is your country party to the 1954 Statelessness Convention? | UN Convention Relating to the Status of Stateless Persons, 1954 | No | Polish Ministry of Foreign Affairs, Internetowa Baza Traktatowa (online treaty database): https://traktaty.msz.gov.pl/ (Polish (PL)) Polish text of the Conventions available at: http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54c0b8844 (PL) |
| IOB.1.b | | If yes, when was ratification/accession? | | Does not apply | |
| IOB.1.c | | Are there reservations in place? Please list them. | Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people. | Does not apply | |
| IOB.1.d | | Does the Convention have direct effect? | Best practice is that the Convention has direct effect, though this may depend on the legal regime. | Does not apply | |
| IOB.2.a | 1961 Convention | Is your country party to the 1961 Statelessness Convention? | UN Convention on the Reduction of Statelessness, 1961 | No | Polish Ministry of Foreign Affairs, Internetowa Baza Traktatowa (online treaty database): https://traktaty.msz.gov.pl/ (PL) |
| IOB.2.b | | If yes, when was ratification/accession? | | Does not apply | |
| IOB.2.c | | Are there reservations in place? Please list them. | As above | Does not apply | |
| IOB.2.d | | Does the Convention have direct effect? | As above | Does not apply | |
| IOB.3.a | Other conventions | State party to European Convention on Nationality 1997? Please list any reservations. | European Convention on Nationality, 1997 | Poland signed the Convention but has not acceded to it. No reservations were made. | Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures |
| IOB.3.b | | State Party to European Convention on Human Rights 1950? Please list any relevant reservations. | European Convention on Human Rights, 1950 | Yes, Poland is party to the Convention. No reservations were made. | Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/signatures?p_auth=cOI2D9Yu |
| IOB.3.c | | State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations. | Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 | No. | Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/200/signatures?p_auth=cOI2D9Yu |
| IOB.3.d | | Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive)? Please list any relevant reservations. | Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive) | Yes. No reservations. | EUR-Lex database : http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32008L0115 |
| IOB.3.e | | State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations. | Convention on the Rights of the Child, 1989 | Yes. No reservations, but Poland has made two declarations: 1. The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in Articles 12-16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family; | UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en |

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| | | | | 2. With respect to Article 24(2)(f), of the Convention, the Republic of Poland considers that family planning and education services for parents should be in keeping with the principles of morality. | |
| IOB.3.f | | State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations. | International Covenant on Civil and Political Rights, 1966 | Yes. No reservations. | UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en |
| IOB.3.g | | State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations. | International Covenant on Economic, Social and Cultural Rights, 1966 | Yes. No reservations. | UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&lang=en |
| IOB.3.h | | State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations. | Convention on the Elimination of all Forms of Discrimination Against Women, 1979 CEDAW, Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness | Yes. No reservations. | UN Treaties Database: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en |
| IOB.3.i | | State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 | Yes. Two reservations were made upon signature: 1. Under Article 28, the Polish People's Republic does not consider itself bound by Article 20 of the Convention. 2. The Polish People's Republic does not consider itself bound by Article 30(1) of the Convention. | UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en |
| IOB.3.j | | State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations. | International Convention on the Elimination of All Forms of Racial Discrimination, 1965 | Yes. No reservations. | UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en |
| IOB.3.k | | State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations. | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 | No. | UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-13&chapter=4&lang=en |
| IOB.3.l | | State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations. | Convention on the Rights of Persons with Disabilities, 2006 | Yes, with reservations: Reservation made upon signature: "The Republic of Poland understands that Articles 23.1 (b) and 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto." Reservations made upon ratification: "The Republic of Poland understands that Article 23.1 (b) and Article 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto, unless that right is guaranteed by the national law." "Article 23.1(a) of the Convention refers to the recognition of the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses. By virtue of Article 46 of the Convention the Republic of Poland reserves the right not to apply Article 23.1(a) of the Convention until relevant domestic legislation is amended. Until the withdrawal of the reservation a disabled person whose disability results from a mental illness or mental disability and who is of marriageable age, cannot get married" | UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4 |

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| | | | | <p>without the court's approval based on the statement that the health or mental condition of that person does not jeopardize the marriage, nor the health of prospective children and on condition that such a person has not been fully incapacitated. These conditions result from Article 12 § 1 of the Polish Code on Family and Guardianship (Journal of Laws of the Republic of Poland of 1964, No. 9, item 59, with subsequent amendments)."</p> <p>Interpretative Declaration made upon ratification: "The Republic of Poland declares that it will interpret Article 12 of the Convention in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct."</p> | |
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Stateless Population Data

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| POP.1.a | Availability and sources | Does the State have a standardised 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence). | <p>CEDAW, Gen. Rec. 32 (2014): States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>International Recommendations on Statelessness Statistics (IROSS) (endorsed by UN Statistical Commission in 2023): States should use standardised definition of statelessness and consistent indicators for collecting statelessness data.</p> <p>Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023): States and relevant actors should collect rigorous and comparable data on stateless populations, including data disaggregated by sex, gender, age, and disability status, in accordance with the international recommendations on statelessness statistics and in consultation with relevant stakeholders.</p> | <p>The use and the interpretation of the term 'stateless' is not consistent in records held by different authorities. In the 2021 census, and the one carried out before that in 2011, two relevant categories were applied: 'stateless' (understood as a person without any nationality) and 'undetermined nationality'. Both categories may have significance in estimating the stateless population in Poland, as the census results were based on self-declared answers by interviewees and no additional verification followed. In the census of 2011, 2,020 persons residing in Poland declared they were stateless while in relation to 8,805 no nationality was established (mostly due to the fact that over 75% of those persons were homeless and lacked any documentation). In 2021, another public census was carried out. On 27 November 2023, final results of the census were published, recording 66 stateless persons and 341 persons with undetermined nationality. These figures are surprisingly low, especially when taken into consideration with the fact that the overall number of foreigners living in Poland has doubled since the last census. It is unclear what the reasons are for the decreased number of stateless persons.</p> <p>The census data is disaggregated by gender and place of birth (Poland or abroad).</p> <p>According to the data provided by the official government website with statistics on migration, as of December 2024, there are 269 stateless persons and 34 people with undetermined nationality holding valid documents (different types of residence cards).</p> <p>In the first half of 2024, the Border Guard accepted 11 applications for international protection from persons with undetermined nationality and one application from a stateless person.</p> <p>Furthermore, in the first half of 2024, the Border Guard detained five stateless persons for crossing (or attempting to cross) the border towards Poland, contrary to the regulations. In one case it concerned the external EU border (air road) and in four cases the internal EU borders (3 - Lithuania, 1 air road). In addition, the Border Guard detained eight people with undetermined nationality, all cases concerned crossing of the external border of the EU (with Belarus).</p> <p>12 stateless persons were detained in the first half of 2024 by the Border Guard for irregular stay, including four on the territory of Poland, one on the section of the border with Belarus, six on the section of the border with Ukraine and one on the air border. One person with unspecified nationality was found to be performing work without permission in Poland in the first half of 2024.</p> | <p>Statistics Poland, Population: demographic and social status and structure, 2013: http://stat.gov.pl/spisy-powszechnie/nsp-2011/nsp-2011-wyniki/ludnosc-stan-i-struktura-demograficzno-spoleczna-nsp-2011,16,1.html (PL)</p> <p>National Census of Population and Housing 2021. Report on preliminary results, 23 May, 2022 Source: https://stat.gov.pl/spisy-powszechnie/nsp-2021/nsp-2021-wyniki-wstepne/raport-zawierajacy-wstepne-wyniki-nsp-2021,6,1.html</p> <p>www.migracje.gov.pl</p> <p>Information on asylum applications, Office for Foreigners: www.udsc.gov.pl</p> <p>www.strazgraniczna.pl</p> |
| POP.1.b | | Do public authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly | As above | The 2021 Polish census used the category 'undetermined nationality' as well as 'stateless'. The Office for Foreigners uses the term 'without nationality' and 'undefined nationality'. The Polish Border Guard in its internal records applies several other terms. | Statistics Poland, Population: demographic and social status and structure, 2013: http://stat.gov.pl/spisy-powszechnie/nsp-2011/nsp-2011-wyniki/ludnosc-stan-i-struktura-demograficzno-spoleczna-nsp-2011,16,1.html (PL) |

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| | | represented (e.g. Palestinian)? Please explain and provide any available figures. | | <p>According to the Border Guard Headquarters (BG HQ): ‘a stateless person’ is defined as ‘a foreigner of no state affiliation [descriptive term that could also be translated simply as stateless], a foreigner stripped of nationality or claiming to be a national of the so-called unrecognised state’. The second category used by the BG HQ, persons of ‘unknown nationality’ is defined as: ‘persons that are not defined as stateless, those that do not claim being national of any state, claim potential affiliation with many states or – even though they indicate a state affiliation - were not recognised by that state as a national’. A third category used by BG HQ is persons whose ‘nationality was not confirmed’, understood as ‘persons with no identity documents, whose personal details (including nationality) are accepted based on oral statements, which are subsequently verified’. These terms are used in internal record of the BG and are not published on a regular basis.</p> <p>According to information provided by the Ministry of Digital Affairs in 2016, there were 1,328 people registered in the <i>Powszechny Elektroniczny System Ewidencji Ludności</i> (PESEL) (universal electronic population register) holding the status of a stateless person. None of the quoted data sources make an estimation on the number of stateless persons who are undocumented in Poland. The Office for Foreigners publishes statistics on international protection requests by people recorded as ‘stateless’, ‘undefined nationality’ and ‘Palestinian’, for example, as well as from other countries of origin where stateless people may be more highly represented.</p> | <p>National Census of Population and Housing 2021. Report on preliminary results, 23 May, 2022 Source: https://stat.gov.pl/spisy-powszechne/nsp-2021/nsp-2021-wyniki-wstepne/raport-zawierajacy-wstepne-wyniki-nsp-2021,6,1.html</p> <p>Information provided by the Border Guard Headquarters, Management Board of Department for Foreigners, in reply to an information request about statistics on stateless persons and definitions used, submitted by the Halina Niec Legal Aid Center in 2016.</p> <p>Statistics from PESEL: written answer to a formal information request by Halina Niec Legal Aid Center in 2016.</p> <p>Statistics Poland: https://stat.gov.pl/en/</p> <p>Urząd do Spraw Cudzoziemców (Office for Foreigners), Statistics: https://udsc.gov.pl/en/statystyki/</p> <p>Office for Foreigners Migration Statistics: www.migracje.gov.pl Urząd do Spraw Cudzoziemców (Office for Foreigners), Information of the Head of the Office for Foreigners on implementation of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (uniform text in Journal of Law of 2016, item 1836) in the scope of performing the obligations of the Republic of Poland under the Geneva Convention Relating to the Status of Refugees and the New York Protocol Relating to the Status of Refugees in 2017, March 2018: https://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2017-2/</p> <p>https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html</p> <p>https://www.gov.pl/web/udsc/zestawienia-roczne</p> |
| POP.1.c | | What is UNHCR’s estimate for the stateless/at risk of statelessness population or population with undetermined nationality and what is the source for this estimate? | As above | <p>UNHCR relies on data from the Polish Census of 2011 and 2021 and does not have other estimates.</p> <p>UNHCR estimates that there were 1,533 stateless people in Poland in 2023 and 1,487 in mid-2024.</p> | <p>Information provided by UNHCR Country Office in Poland.</p> <p>UNHCR, Refugee Data Finder</p> |
| POP.1.d | | Have there been any surveys or mapping studies to estimate the stateless population in the country? | As above | <p>UNHCR Poland commissioned a mapping study of statelessness in Poland that was published in September 2019.</p> | <p>UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, available at: https://www.refworld.org/docid/5da58e7e4.html</p> |

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| POP.1.e | | Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures. | As above | There are no other estimates available. | |
| POP.1.f | | Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe. | As above | <p>Poland does not apply a uniform definition of the term stateless. The Border Guard applies a multitude of terms in their internal statistics, partially overlapping which may blur the overall understanding of the size of this population. The data collected during the last census is based on self-declared answers, which means that the actual status of the interviewees was not verified. There are no estimates of the number of stateless undocumented persons. The available statistical sources provide an overview of stateless people who either hold valid legal residence permits or who are subject to one of the protection or regularisation procedures. Undocumented stateless persons are not reflected in these statistics, which gives grounds to believe that the overall population of persons without nationality in Poland is actually higher.</p> <p>There is no legal definition of the term "stateless persons" so some of the asylum applicants or recognised refugees may have a nationality ascribed incorrectly.</p> <p>Since 2022, the term "stateless person" is mentioned directly in the law on temporary protection and the Head of the Office for Foreigners issues temporary protection certificates to stateless persons who resided in Ukraine (permanent residence permits). When asked how is the fact of being stateless recognised in the said procedure the Head of the Office for Foreigners provided the following response: "Since there is no clear legal definition in the Polish law of a stateless person, the Head of the Office for Foreigners relied on art. 3 p. 2 of the Act on foreigners read with art. 2 p 9 of the Act on international protection (auxiliary), when establishing who can be considered as a stateless person. When identifying if a person can be considered as stateless in practice the Head of the Office for Foreigners considers travel and identity documents issued by Ukrainian authorities."</p> | Written response of Office for Foreigners to HNLAC's inquiry. |
| POP.1.g | | Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the State also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting). | As above. EASO/EUAA, Practical guide on registration (2021) : States should collect information from applicants for international protection about their nationality(ies) and potential lack of nationality. When registering families, it is important to collect this data for each family member. | <p>There are no general statistics for stateless persons so there is no case of over-reporting. Separate data sources quote the number of stateless asylum seekers, recognised refugees, and persons with other types of residence.</p> <p>According to statistics published by the Office for Foreigners, in 2024 there were two applications for international protection lodged by stateless people and 16 by people of undefined nationality. No stateless people were granted refugee status.</p> <p>Number of applications for international protection 2024 (until 30 September 2024): Stateless persons: 2 Undetermined nationality: 16</p> <p>Positive decisions on refugee status issued in 2024: Stateless persons: 0 Undetermined nationality: 0</p> <p>Positive decisions on supplementary protection issued in 2024: Stateless persons: 0 Undetermined nationality: 2</p> | <p>Information on recognised refugees who are stateless, Office for Foreigners Migration Statistics: www.migracje.gov.pl</p> <p>Information on asylum applications, Office for Foreigners: www.udsc.gov.pl</p> <p>www.migracje.gov.pl</p> <p>UNHCR, Data portal: https://data.unhcr.org/en/situations/ukraine/location/10781</p> <p>https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html</p> <p>Written reply of Office for Foreigners to HNLAC inquiry, dated 3.11.2022</p> <p>Response by UNHCR to HNLAC's inquiry.</p> |

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| | | | | <p>Number of applications for international protection 2023: Stateless persons: 12 Undetermined nationality: 17</p> <p>Positive decisions on refugee status issued in 2023: Stateless persons: 4 Undetermined nationality: 0</p> <p>Positive decisions on supplementary protection issued in 2024: Stateless persons: 1 Undetermined nationality: 1</p> <p>According to Office for Foreigners in 2024: stateless persons held the following residence permits: 269 including: Permanent residence: 151 Refugee status: 36 Temporary residence: 34 Tolerated stay permit: 21 Permit on humanitarian grounds: 17 Supplementary protection: 8 EU long-term residence: 1 EU citizen's family member: 1</p> <p>2024: persons with undetermined nationality held the following residence permits: 34 including: Permanent residence: 14 Temporary residence: 2 Tolerated stay permit: 5 Permit on humanitarian grounds: 8 Supplementary protection: 5</p> <p>In 2023: stateless persons held the following residence permits: 314 including: Permanent residence: 148 Refugee status: 41 Temporary residence: 37 Tolerated stay permit: 21 Permit on humanitarian grounds: 15 Supplementary protection: 10 EU long-term residence: 11 EU citizen's family member: 2 Temporary protection: 29</p> <p>2023: persons with undetermined nationality held the following residence permits: 54 including: Permanent residence: 16 Tolerated stay permit: 8 Permit on humanitarian grounds: 12 Supplementary protection: 3 Temporary protection: 15</p> | |
| POP.2.a | Stateless in detention data | Does the State record and publish figures on stateless people held in immigration detention? If yes, please provide. | UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Improve quantitative and qualitative data on stateless populations. | This information is not publicly available. The Border Guard is the agency responsible for managing immigration detention (guarded centre for foreigners) but does not publish statistical data about the nationality of the detainees. Information about the nationality and/or country of origin is however collected and processed, and it | ENS, 2015, Protecting stateless persons from arbitrary detention in Poland: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland |

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| | | | <p>CEDAW, Gen. Rec. 32 (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> | <p>is possible to receive this information upon a formal request.</p> <p>The HNLAC has submitted an information request and from the Border Guard reply it follows that one stateless person was placed in detention in 2022 (41 days of detention), no alternative measures for stateless persons were ordered, while 31 persons with undetermined nationality were detained and alternatives to detention were ordered in relation to one person with undetermined nationality.</p> <p>No stateless persons were released from detention due to unreturnability and one person with undetermined nationality was released due to unreturnability.</p> <p>The Border Guard also replied that there are no official guidelines for establishing statelessness or undetermined nationality for the purposes of data collection, prolonging detention and issuing return decisions and carrying out return process.</p> | <p>Response from the Border Guard to an information request submitted by HNLAC.</p> |
| POP.2.b | | Does the State record and publish figures on people released from immigration detention due to unremovability? If yes, please provide. | As above | This information is not publicly available. | |

Statelessness Determination and Status

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|----------------------------------|--|--|--|--|
| SDS.1.a | Definition of a stateless person | Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details. | 1954 Convention : Articles 1(1) & 1(2). | There is no legal definition of a stateless person in Polish national law. | |
| SDS.2.a | Training | Is there training to inform different public authorities about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?) | UNHCR Executive Committee, Conclusion No. 106 (LVII) (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons. HRC, Resolution 53/16 on the right to a nationality (2023) : States should ensure the effective implementation of nationality laws, including through awareness-raising and publicity, and training of public officials, including judges and local leaders, that is gender-responsive and sensitive to race and diversity, informed by meaningful consultation and engagement with stateless leaders and communities and wider civil society. | There are no such dedicated trainings available to governmental bodies and public officials. | |
| SDS.2.b | | Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency). | UNHCR, Good Practices Papers – Action 6 (2020) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. UNHCR, Geneva Conclusions (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. HRC, Resolution 53/16 on the right to a nationality (2023) : as above | There is no systematic judicial training nor training for lawyers on statelessness available in Poland. To date the only such trainings were organised by the Halina Niec Legal Aid Center in cooperation with ENS (trainings for Border Guard officials and Office for Foreigners staff). | Halina Niec Legal Aid Center: www.pomocprawna.org |
| SDS.3.a | Existence of a dedicated SDP | Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated statelessness status (proceed to Question 4a). 2. There is no dedicated SDP leading to a dedicated statelessness status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes | UNHCR, Handbook on Protection (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR, Good Practices Papers – Action 6 (2020) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention. | Group 2 - There is no dedicated SDP but there are other administrative procedures in which statelessness can be identified. | |

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| | | <p>through which stateless people could regularise their stay and/or access their rights (proceed to Question 11a).</p> <p>3. There is a dedicated statelessness status but no formal procedure for determining this (proceed to Question 17a).</p> | | | |
| SDS.11.a | Procedures in which statelessness can be identified and other routes to regularisation (Group 2) | <p>If there is no dedicated SDP leading to a statelessness status, are there any procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.)?</p> | <p>ECHR: Article 8 ENS (2013): For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. ECTHR, Hoti v. Croatia (2018): [the State has a] positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of [their] further stay and status determined.</p> | <p>Statelessness may come up as a legally relevant fact in many proceedings requiring the determination of nationality, but none of them is tailored to make a determination of statelessness nor lead to protection on the grounds of statelessness. These procedures include primarily:</p> <ol style="list-style-type: none"> 1. International protection procedure 2. Return proceedings as these typically include a component of identification, including nationality assessment and determining the country of origin/return. In the case of stateless persons, return proceedings may result in granting a residence permit for humanitarian reasons (if additional, specific conditions are met) or in a tolerated stay permit (in case of unreturnability). 3. Regularisation proceedings may also be of relevance but have limited scope. 4. Amnesty proceedings for undocumented stateless persons but these are not accessible on a regular basis. | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> <p>NB: available translated versions of these acts are not in line with the currently binding versions.</p> |
| SDS.11.b | | <p>Are there any other routes through which stateless people could regularise their stay and/or access their rights without their statelessness being identified or determined?</p> | <p>1954 Convention UNHCR, Handbook on Protection (2014): It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.</p> | <p>It is possible to regularise stay in Poland if a person is identified as unreturnable during return proceedings - even if this identification does not entail identification of statelessness. In such a case a permit for tolerated stay may be issued, provided that it has been established that the country of former habitual residence will not accept the returnee. A permit for tolerated stay regularises the stay of the foreigner in Poland but does not entitle them to cross the border. People with this type of permit are entitled to work without the need to obtain a permit. They have access to healthcare and social assistance. A person granted tolerated stay is obliged to report to the Commander in Chief of the Border Guard Division in their current place of residence, as well as notify of any change to place of residence.</p> <p>A permit to stay may also be issued on humanitarian grounds if obliging the person to return:</p> <ol style="list-style-type: none"> 1) may result only in them going to a country where, according to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950: <ol style="list-style-type: none"> a) their right to life, freedom and personal safety would be endangered or b) they could be subjected to torture, inhuman or degrading treatment or punishing, or c) they could be forced to work, or d) they could be deprived of the right to a fair trial or punished without legal basis, or 2) would breach their right to family or private life, as defined by the regulations of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, or 3) would breach the child’s rights, defined in the Convention on the Rights of a Child, adopted by the General Assembly of the | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |

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| | | | | United Nations on 20 November 1989, and thus substantially pose a threat to their psychophysical development. | |
| SDS.12.a | Access to procedures (Group 2) | Please provide details on how statelessness may be identified in other procedures, which authority is competent to examine and/or identify statelessness and evaluate appropriateness to the national context. | <p>UNHCR, Handbook on Protection (2014): States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise.</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is important that examiners develop expertise while ensuring that the procedures are accessible. Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p> | The identification of statelessness is part of the more general identification process and the assessment of nationality. There are no legally set criteria for this process and they are understood as technical steps taken by the authorities aimed at ensuring that the administrative proceedings may be continued. In order to determine the nationality/statelessness of a person in such proceedings (listed in SDS.10.a.), all available sources of information and all available evidence is examined as well as the applicable nationality laws of the declared country of origin. The competent authority depends on the type of procedure: the international protection procedure is run by a centralised body (Office for Foreigners); the regularisation procedures and return proceedings are run locally by the Voivode’s Office (for the former) and the Commander in Chief of the relevant Border Guard division (the latter). However, there are no dedicated procedures that would be conducted with the sole aim of identifying statelessness. | <p>National Contact Point to the European Migration Network in Poland, Establishing Foreigners’ Identity for International Protection. Challenges and Practices (2013), available in English at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/20a_poland_national_report_establishing_identity_for_international_protection_final_en_oct2012_en.pdf</p> <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |
| SDS.12.b | | Are there obligations in law on authorities to consider a claim of statelessness? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the procedure must be guaranteed.</p> <p>EASO/EUAA, Practical guide on registration (2021): Determining if applicants are stateless is essential when assessing the need for international protection. At registration, it is vital to collect information and detect possible cases of statelessness, but it is not appropriate to determine a person’s statelessness at the registration stage. Statelessness determination should be carried out only by a competent decision-making authority at an appropriate point in time following the final assessment of an asylum claim.</p> | Not applicable. | |
| SDS.12.c | | Are there clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention and/or be identified as stateless? | <p>1954 Convention</p> <p>UNHCR, Handbook on Protection (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p> | Not applicable. | |
| SDS.12.d | | Is there cooperation between agencies that may have contact with stateless people? | UNHCR, Good Practices Papers – Action 6 (2020) : Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice. | The authorities responsible for carrying out administrative procedures in the case of stateless persons (protection or return proceedings) cooperate with the Border Guard for the identification of the person and their nationality. | <p>National Contact Point to the European Migration Network in Poland, Establishing Foreigners’ Identity for International Protection. Challenges and Practices (2013), available in English at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/20a_poland_national_report_establishing_identity_for_international_protection_final_en_oct2012_en.pdf</p> |

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| <p>SDS.13.a</p> | <p>Assessment (Group 2)</p> | <p>Who has the burden of proof when determining or identifying statelessness (in law and practice)?</p> | <p>UNHCR, Handbook on Protection (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). UNHCR, Good Practices Papers – Action 6 (2020): SDPs must take into consideration the difficulties inherent in proving statelessness. UNHCR, Geneva Conclusions (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. ECtHR, Hoti v. Croatia (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.</p> | <p>There is no ‘statelessness status’ in Polish law, but in the process of identification, which includes the assessment of nationality, the burden of proof is shared between the individual and the authorities. As it follows from the Polish Code on Administrative Procedure, in principle the burden of proof in administrative proceedings rests with the competent authority, but the applicant also enjoys the right to participate in evidence proceedings.</p> | <p>Code of Administrative Procedure, Act of 14 June 1960 Journal of Laws 1960 No. 30, item 168: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> |
| <p>SDS.13.b</p> | | <p>What is the standard of proof to evidence statelessness, in law and in practice?</p> | <p>UNHCR, Handbook on Protection (2014): States are advised to adopt the same standard of proof as in refugee status determination (‘reasonable degree’). UNHCR, Good practices in nationality laws (2018): The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence. ECtHR, Hoti v. Croatia (2018): If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p> | <p>There is no specific set standard of proof to evidence statelessness. Statelessness may be identified as a result of identification and nationality assessment within other protection/migration/return procedures. Standard rules apply. In practice, primary sources of evidence include documents issued by the country of origin/former habitual residence, interviews, and assessments of language command.</p> | <p>Code of Administrative Procedure, Act of 14 June 1960 Journal of Laws 1960 No. 30, item 168: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> |
| <p>SDS.13.c</p> | | <p>Is there clear guidance for decision makers on how to identify or determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, accurate and reliable country of origin information relating to statelessness, etc.)?</p> | <p>ENS (2013): Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances. Asylos, Principles for Conducting Country of Origin Information Research on Statelessness (2023)</p> | <p>There are no such guidelines prescribed by law. The process of identification, which includes the assessment of nationality, is carried out by a specialised division of the Border Guard (Division of Identification and Returns), relying on their internal procedures. The Border Guard uses a variety of information sources including Polish registries, EURODAC, Visa Information System (VIS), Interpol, fingerprinting, external experts (including language experts), consular interviews, and identification missions.</p> <p>The primary source of COI used by the Office for Foreigners is „Światowid”. The Światowid Portal provides access to thematic studies prepared by the Department of Information on Countries of Origin of the Office for Foreigners and external experts. In practice, this is the most used and referenced source of COI, however, other sources of information are also used (such as the EUAA), although less frequently.</p> | <p>Światowid Portal, available at: https://portalswiatowid.udsc.gov.pl/</p> |
| <p>SDS.14.a</p> | <p>Procedural safeguards (Group 2)</p> | <p>Is free legal aid available to stateless people generally?</p> | <p>UNHCR, Handbook on Protection (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means. ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p> | <p>Free legal aid (state funded) is provided at the appeal stage of the international protection procedure and at the judicial review stage of administrative proceedings. There is no such legal aid granted by the State in return proceedings and at present such aid is provided by NGOs only to a limited extent.</p> | <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |

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| SDS.14.b | | Is free interpreting available to stateless people? | <p>UNHCR, Handbook on Protection (2014): The right to assistance with interpretation/translation [is] essential.</p> <p>ENS (2013): Assistance should be available for translation and interpretation.</p> | <p>An interpreter is provided free of charge in return proceedings and international protection proceedings whenever necessary. Written justifications (reasons) of decisions denying protection or obliging to return are only in Polish.</p> | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |
| SDS.14.c | | Are there other procedural safeguards in place in procedures through which stateless people may have their statelessness identified or determined, or regularise their stay (e.g., decisions given in writing with reasons, right to an interview, time limit, right of appeal, audits in decision-making, etc.)? | <p>UNHCR, Handbook on Protection (2014): States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months. An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP.</p> | <p>Poland has no separate procedure dedicated to establishing statelessness. Statelessness may be determined as a legally relevant fact in the course of other decisions, related to regularisation of stay or granting of protection. These are the administrative procedures that have common safeguards in place:</p> <p>All decisions in the regularisation procedure, international protection procedure, and return procedure are delivered in writing with reasons for the decision included.</p> <p>There is a right of appeal (two-instance procedure) and the right to pursue judicial review.</p> <p>Interviewing the applicant in the international protection procedure is mandatory (except for manifestly unfounded applications). There is no obligation to interview in return proceedings nor in the regularisation proceedings. Any legally relevant fact should be disclosed during the interview.</p> <p>There are statutory time-limits established in these procedures but these time-limits may be extended in case of complicated cases, and in practice they are often are.</p> | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> <p>Code of Administrative Procedure, Act of 14 June 1960 Journal of Laws 1960 No. 30, item 168: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> |
| SDS.15.a | Protection (Group 2) | Are there any rights granted to stateless people on the basis of their statelessness? If yes, please provide details. | <p>UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.</p> | <p>Identification of a person as stateless in Poland does not result in automatic permission to stay nor rights. If a person is identified as unreturnable during return proceedings a permit for tolerated stay may be issued, provided that it has been established that the country of former habitual residence will not accept the returnee. A permit for tolerated stay regularises the stay of the foreigner in Poland but does not entitle them to cross the border. People with this type of permit are entitled to work without the need to obtain a permit. They have access to healthcare and social assistance. A person granted tolerated stay is obliged to report to the Commander in Chief of the Border Guard Division in their current place of residence, as well as notify of any change to place of residence.</p> <p>A permit to stay may also be issued on humanitarian grounds if obliging the person to return:</p> <ol style="list-style-type: none"> 1) may result only in them going to a country where, according to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950: <ol style="list-style-type: none"> a) their right to life, freedom and personal safety would be endangered or b) they could be subjected to torture, inhuman or degrading treatment or punishing, or c) they could be forced to work, or d) they could be deprived of the right to a fair trial or punished without legal basis, or | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |

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| | | | | <p>2) would breach their right to family or private life, as defined by the regulations of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, or</p> <p>3) would breach the child’s rights, defined in the Convention on the Rights of a Child, adopted by the General Assembly of the United Nations on 20 November 1989, and thus substantially pose a threat to their psychophysical development.</p> | |
| <p>SDS.15.b</p> | | <p>Are stateless people otherwise able to access their rights under the 1954 Convention and other international law? Please state whether stateless people can access the below rights and whether access is subject to any conditions:</p> <ul style="list-style-type: none"> - right to reside - travel document and identity document - work - healthcare - social security - education - housing - family reunification - right to vote - consular protection abroad. <p>If provided, please add a copy of an anonymised travel and/or identity document to question RES.4.a. (last page).</p> | <p>1954 Convention UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. States parties are encouraged to facilitate the reunification of those with recognised statelessness status with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.</p> <p>1967 European Convention on Consular Functions: Article 46</p> <p>International Law Commission’s 2006 Draft Articles on Diplomatic Protection: Article 8(1)</p> | <p>There is no “statelessness status” in Poland. Access to the rights listed is conditional upon residence status. Stateless persons who received a certain type of permit to reside in Poland enjoy the bundle of rights linked to this type of permit. There is no special treatment afforded to them on the sole basis of their statelessness. As stipulated in the section above, stateless persons in Poland often cannot access “regular” types of residence permits but they can qualify to receive a permit for tolerated stay or a permit to stay on humanitarian grounds.</p> <p>Stateless persons staying irregularly on the territory of Poland do not have the right to work. Stateless persons who received tolerated stay or permission to stay on humanitarian grounds are entitled to work in Poland without the need to apply for a work permit.</p> <p>The 2004 Act on Social Assistance stipulates that foreigners with tolerated stay are only eligible for certain forms of assistance including meals and shelter, necessary clothing and designated benefits for vital livelihood needs, including medicine and others. Some additional assistance is available for those stateless who were granted a permit to stay based on humanitarian grounds (among others, monthly allowance 800 PLN per child).</p> <p>Stateless persons who received tolerated and humanitarian stay have access to public healthcare under the same conditions and scope as Polish citizens. Stateless persons staying irregularly can only enjoy healthcare as medical rescue in emergency situations.</p> <p>The Polish Act on Foreigners provides for two distinct types of travel documents that may be issued to foreigners: a Polish travel document for a foreigner (Article 252) allowing for multiple border crossings and a temporary Polish travel document for a foreigner (Article 267) allowing for a single border crossing, when the foreigner with residence status in Poland is returning to Poland after they lost their document abroad. Stateless people would be recorded as 'without nationality' under the nationality field, although there are no clear guidelines on this. A Polish travel document is issued, as a rule, to foreigners with permanent residence permits, and those granted supplementary protection or humanitarian residence, who do not have a valid travel document from their own country (they lost it, cannot extend its validity or they never obtained it), while a temporary Polish travel document is issued, as a rule, to foreigners with permanent residence permits, and those granted supplementary protection, refugee status or humanitarian residence who lost their document while abroad and wish to return to Poland. Holders of a tolerated permit can only be granted the temporary travel document in case they are qualified for resettlement, relocation or they wish to leave Poland or are obliged to leave Poland.</p> | <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (PL)</p> <p>Ordinance of the Minister of Internal Affairs and Administration on citizenship, 28 June 2023: https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/obywatelstwa-ktorych-posiadanie-uprawnna-do-ubiegania-sie-o-wydanie-21848687</p> <p>Ordinance of the Minister of Internal Affairs and Administration on citizenship, 1 January 2025: https://sip.lex.pl/#/act/22090782/3546410/zmiana-rozporzadzenia-w-sprawie-obywatelstw-ktorych-posiadanie-uprawnna-do-ubiegania-sie-o...?cm=RELATIONS</p> <p>The Halina Niec Legal Aid Center, Belarus: citizenship, foreign passports and information obligation: https://www.pomocprawna.org/en/belarus-citizenship-foreign-passports-and-information-obligation</p> |

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| | | | | <p>No consular protection abroad is granted to holders of these documents, their function is only to enable border crossings - multiple in the case of a Polish Travel Document and single - in the case of a Temporary Travel Document.</p> <p>As for the duration of residence types available to stateless persons - the decision giving consent for tolerated stay does not have any time limit. The consent is valid as long as the conditions for issuing it still apply. The same rule applies to humanitarian status. These permits are associated with certain documents, proving residence status, which must be renewed over time.</p> <p>1) Humanitarian stay: a residence card valid for two years may be issued by the Border Guard. Fingerprints must be provided, and the document collected in person (if over 13 years). It can be renewed before it expires. Whilst valid, the residence card confirms the holder's identity and authorises them to cross the border multiple times without the need for a visa (if they also hold a travel document).</p> <p>2) Tolerated stay: the Border Guard issues a document entitled 'permit for tolerated stay', which confirms the holder's identity (not nationality) but does not entitle the holder to cross the border. It is valid for two years and can be renewed before expiry. Fingerprints are required and the document must be collected in person (if over 13 years).</p> <p>People with a permit for tolerated or humanitarian stay are entitled to work without the need to obtain a permit. They have access to healthcare and social assistance. A person granted tolerated stay is obliged to report to the Commander in Chief of the Border Guard Division in their current place of residence, as well as notify of any change to place of residence.</p> <p>People with a permit for humanitarian stay are eligible for family reunification, while those with a tolerated stay are not. Neither of these categories of permits allows the holder to enjoy the right to vote in elections in Poland.</p> <p>Following recent legal developments in Belarus regarding deprivation of nationality and non-renewal of passports of Belarusians abroad, the issuance of a Polish travel document for a foreigner to Belarusians has been regulated by the Ordinance of the Minister of Internal Affairs and Administration on citizenship from 28 June 2023. This ordinance allows an individual to apply for a Polish travel document for a foreigner under the conditions specified in Article 252a paragraph 1 of the Act of 12 December 2013 on foreigners (this ordinance has been issued based on Art. 252a section 2 of the Act of 12 December 2013 on foreigners (Journal of Laws of 2023, items 519, 185 and 547). The ordinance was extended until the end of 2024 and then extended again until 30 June 2025.</p> <p>Under the above-mentioned Ordinance Belarusian nationals may apply for the issuance of a Polish travel document for a foreigner on a preferential basis. In a regular procedure a Polish travel document for a foreigner is issued to a foreigner who has lost their travel document or whose travel document has been destroyed or has expired, and it is not possible for the foreigner to obtain a new</p> | |
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| | | | | <p>travel document, when the foreigner has been granted certain enumerated types of residence permits in Poland:</p> <ol style="list-style-type: none"> 1) permanent residence permits; 2) long-term EU resident residence permit; 2a) a temporary residence permit referred to in Article 186 paragraph 1 point 9; 3) subsidiary protection; 4) residence permit for humanitarian reasons. <p>Under the Ordinance, Belarusian nationals may receive a Polish travel document even if they have not had a travel document before. There is also no need to prove that it is impossible for this person to obtain a new travel document from the authorities of their country of nationality.</p> <p>Moreover, a person who applies for the issuance of a document may also have a temporary residence permit granted on a basis other than the provisions of Article 186 paragraph 1 item 9 of the Act on Foreigners.</p> <p>The condition for Belarusian nationals to benefit from the possibility of obtaining a Polish travel document under this preferential basis is to submit an application for its issuance between 1 July 2023 and 30 June 2025.</p> | |
| SDS.16.a | Temporary protection for people fleeing war (Group 2) | Does the State guarantee access to the territory to everyone fleeing Ukraine, regardless of nationality, documentation, or residence status? Please describe any barriers for stateless people, people with undetermined nationality, or undocumented people in accessing the territory. | <p>EU Temporary Protection Directive (2001) EU Council Implementing Decision (2022) establishing the existence of a mass influx of displaced persons from Ukraine & European Commission, Operational guidelines ENS, Briefings on access to protection for stateless people fleeing Ukraine: Everyone fleeing the war in Ukraine should be guaranteed access to the territory.</p> | <p>The Polish authorities state that all those fleeing the conflict in Ukraine may enter Poland. However, in the first months of the conflict, there were reports of discrimination on both the Polish and the Ukrainian side of the border. Undocumented people are allowed to enter, but face delays as they must undergo identity checks and may be detained for this purpose. There is limited information about any discrimination at the border in 2024.</p> <p>According to official data of the Border Guard, in the first half of 2024, entry to Poland was refused to 24 stateless people arriving from Ukraine. In 23 cases, the reason was the lack of a valid visa and in one case there was another (not specified) reason. Additionally, 10 people with undetermined nationality arriving from Ukraine were refused entry. In eight cases, the reason was the lack of a valid visa and in two cases there were other (not specified) reasons.</p> | |
| SDS.16.b | | Does the State offer a temporary form of protection to stateless people, people with undetermined nationality, or undocumented people from Ukraine (through the EU Temporary Protection Directive or another mechanism)? Is temporary protection accessible to all stateless people who have fled Ukraine, regardless of their documentation status? If the State grants temporary protection more broadly than required by the EU TPD, or to people fleeing from another country other than Ukraine, please state so. Please describe any other barriers for stateless people, people with undetermined nationality, or undocumented people in receiving | <p>EU Temporary Protection Directive (2001) EU Council Implementing Decision (2022) establishing the existence of a mass influx of displaced persons from Ukraine & European Commission, Operational guidelines ENS, Briefings on access to protection for stateless people fleeing Ukraine: European countries must extend temporary forms of protection to all stateless people and those with undetermined nationality who cannot meet current eligibility requirements, due to their statelessness or documentation status. Lack of documentation should not prevent access to international protection or other forms of protection. European countries and the European Commission should be vigilant and take action to address any segregation, discrimination, and antigypsyism, and ensure equal access to rights and protection for all those fleeing Ukraine.</p> | <p>On 12 March 2022 the Polish Parliament passed the Act on Assistance for Ukrainian Nationals in Connection With the Armed Conflict on the Territory of that Country (so called "Special Act on Ukraine"). This act is an implementation of the EU Decision 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. The Polish Special Act on Ukraine only implements the Temporary Protection Directive (TPD) in relation to Ukrainian nationals and their spouses (irrespective of nationality) and Ukrainians holding Pole's Card, their spouses and minor children (irrespective of their nationality). However, non-Ukrainian children of a Ukrainian national (one who does not have a Pole's Card) are not covered by the scope of this act.</p> <p>Ukrainian nationals can benefit from protection through a simple process of registration for a special ID number: PESEL-UKR. A digital app - Diia.pl - serves as a digital residence document to confirm their status. In order to cross the border and re-enter Poland, a person must present their passport along with Diia.pl</p> | <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> <p>Act of 12 March 2022 on Assistance for Ukrainian Nationals in Connection with the Armed Conflict on the Territory of that Country (so called „Special Act on Ukraine”): https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220000583/U/D20220583Lj.pdf</p> <p>European Network on Statelessness, Poland: Information for stateless people and those at risk of statelessness fleeing Ukraine (April 2022): https://www.statelessness.eu/sites/default/files/2022-09/ENS_Country_briefing-Poland.pdf</p> <p>Response by UNHCR to HNLAC's inquiry.</p> |

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| | | <p>temporary protection, asylum, or other protection.</p> | | <p>digital document.</p> <p>Temporary protection in relation to other categories of persons (third-country nationals and stateless people) included in the EU Council Decision, is granted in Poland based on a procedure regulated in the Act on Granting Protection To Foreigners. Persons covered by these acts can apply for a certificate confirming they are TPD beneficiaries. The certificate is issued by the Office for Foreigners.</p> <p>Since the outbreak of the war in Ukraine on 24 February 2022, until 31 December 2022, 62 stateless persons and 26 persons with undetermined nationality from Ukraine were granted temporary protection in Poland. According to UNHCR, between 1 January 2024 and 30 June 2024, 58 people of 'unknown nationality' from Ukraine were granted temporary protection.</p> <p>The statutory conditions for stateless and third-country nationals to be granted temporary protection are very stringent.</p> <p>Temporary protection is available to stateless persons married to Ukrainian nationals (under the Special Act on Ukraine) and to those falling under of the two categories:</p> <ul style="list-style-type: none"> – stateless persons who can prove that before 24 February 2022, they were legally residing in Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and are unable to return to their country or region of origin in safe conditions, – stateless persons (and their family members) who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine. <p>There are at least two problematic issues preventing many stateless persons from Ukraine from applying for temporary protection in Poland:</p> <ol style="list-style-type: none"> 1. There is a risk that interpretation of statelessness by the Polish Office for Foreigners responsible for the TPD procedure in their cases may be inconsistent. As mentioned before, the application of the term „statelessness” has been inconsistent in the past and thus there is a risk of applying it in an unjustifiably strict manner, narrowing down the category of eligible persons. The biggest risk is that statelessness here will be understood as tantamount to holding an officially recognised status of a stateless person - as Ukraine has introduced a statelessness determination procedure shortly before the war (May 2021). It should be noted however, that for the purposes of the TPD procedure, statelessness may be established independently, by the Polish Office for Foreigners, as a legally relevant fact in this process. The standard of fair procedure can only be met however if a uniform definition of statelessness is applied and interpreted in line with international law. 2. Another problem lies in the requirement to demonstrate that the stateless person was legally residing in Ukraine on the basis of a valid permanent residence permit. Though stateless population in Ukraine is large, the statelessness determination procedure has only recently been introduced. Many stateless persons and persons at risk of statelessness remain unidentified and many lack adequate documentation. Such persons would be unable to demonstrate the above condition and as a result would be unable | |
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| | | | | <p>to benefit from temporary protection. The low number of stateless persons applying for temporary protection in Poland may therefore be due to the fact that many of them would be unable to fulfil the statutory requirements even though Ukraine was the country of their former habitual residence, they cannot safely return to Ukraine, and they have no other State that would take them back.</p> <p>3. In order to benefit from temporary protection, people fleeing Ukraine must register on a PESEL database. Registration is made upon a written request in a simplified procedure, where personal data (including nationality) can be established based on copies of documents or in some cases - in lack of documents - even based on oral statements. Therefore, it is not known how many persons that registered for PESEL may have been considered Ukrainian nationals, even though they are actually stateless.</p> <p>As of 13 December 2022, 1,294 certificates of temporary protection were issued.</p> <p>Since there is no clear legal definition in the Polish law of a stateless person, the Head of the Office for Foreigners relied on art. 3 p. 2 of the Act on foreigners read with art. 2 p 9 of the Act on international protection (auxiliary), when establishing who can be considered as a stateless person. When identifying if a person can be considered as stateless in practice the Head of the Office for Foreigners considers travel and identity documents issued by Ukrainian authorities).</p> | <p>Written reply from the Head of the Office for Foreigners to a formal request for information submitted by HNLAC</p> |
| <p>SDS.16.c</p> | | <p>Are there longer-term solutions providing adequate protection for stateless people and/or others who were receiving temporary protection? [Section complete, proceed to DET]</p> | <p>ENS, Briefings on access to protection for stateless people fleeing Ukraine: The EU and European countries should ensure that longer-term solutions, including after the expiry of the EU TPD, are found and designed, including to provide adequate protection for stateless people and people with undetermined nationality.</p> <p>ECRE, Transitioning out of the Temporary Protection Directive (2024): Exit strategies from the TPD regime should ensure that no one, including stateless persons, is left behind after March 2025.</p> | <p>There are no dedicated long-term solutions in place that would be designed for third country nationals, including stateless persons, benefiting from temporary protection.</p> <p>For Ukrainian TPD holders, a new type of residence permit with facilitated criteria has been designed: 'CUKR' status. The amendment to the law on assistance to Ukrainian nationals in connection with the armed conflict on the territory of that country, which came into force on 1 July 2024, introduced a new path for further legalisation of residence for Ukrainian nationals under temporary protection. It will be possible to receive a residence card valid for three years for people meeting the following conditions:</p> <ul style="list-style-type: none"> - the applicant was a holder of the TPD status on 4 March 2024; - the applicant was a holder of the TPD status on the day of submitting the application for a residence card, - the applicant was a holder of TPD status for at least 365 days. <p>The application for a residence card can be submitted exclusively in electronic form using the online service provided by the Head of the Office for Foreigners on a dedicated form. The provisions regarding this process will enter into force only with the launch of the dedicated online service in 2025. No details are known yet.</p> <p>Stateless people and third country nationals, not covered by this permit, may apply for international protection and will likely be able to when temporary protection expires.</p> | |

Detention

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| DET.1.a | Immigration detention | <p>Please provide a brief overview of whether immigration detention powers are provided for in law and applied in practice, and whether alternatives to detention are considered.</p> <p>Please provide the legal source(s) and, if available, refer to other publications and sources of information about the law, policy, and practice on immigration detention.</p> | <p>ICCPR: Article 9 ECHR: Article 5 EU Return Directive: Article 15 UNHCR, Handbook on Protection (2014): Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention. HRC, Report of the Special Rapporteur (2012): The obligation to always consider alternatives before resorting to detention should be established by law. International Detention Coalition (2015): Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p> | <p>According to Polish law, a foreigner may be placed in detention only on the basis of a court decision delivered in writing. The relevant principles are prescribed within the Act on Foreigners and the Code of Criminal Procedure. The application for placing a foreigner in detention or prolongation of detention is submitted by the Border Guard.</p> <p>According to the Act on Foreigners, immigration detention can be ordered in the following situations:</p> <ol style="list-style-type: none"> 1. it is probable that a return decision without a possibility of voluntary departure period will be issued; 2. a return decision without a possibility of voluntary departure period has been issued; 3. the foreigner has not left Poland within the voluntary departure period and his immediate removal is not possible; 4. it is necessary to ensure transfer of a person to a non-EU or Schengen country, under the EU Dublin Regulation or based on international agreement and an immediate transfer is not feasible; 5. the foreigner does not comply with the duties imposed on him by the decision ordering alternatives to detention. <p>Additionally, the Border Guards release a person from detention when the ground for detention is no longer valid. The person is also released when granted a tolerated stay permit, which can be issued on the basis that enforcing a return order is not legally or factually possible.</p> <p>If the foreigner has lodged an application for international protection, detention is permissible in the following situations:</p> <ol style="list-style-type: none"> 1. when it is necessary to establish their identity; 2. in order to collect information necessary to determine the reasons on which the application for international protection is based where this information could not be obtained in the absence of detention, in particular when there is a high risk of absconding; 3. if the foreigner is in pre-removal detention in accordance with the EU Returns Directive and the foreigner had the opportunity to apply for protection before and it can be substantiated that the application for international protection is submitted merely in order to delay or frustrate the enforcement of the return order; 4. for reasons of state security or public order; or 5. according to the Dublin Regulation, where there is a serious risk of absconding and an immediate transfer is not possible. <p>The risk of absconding is interpreted as a situation, when the asylum applicant, inter alia:</p> <ol style="list-style-type: none"> 1. Is not in the possession of identity documents when submitting the asylum application 2. Has crossed or attempted to cross the border contrary to the law, unless he/she is arriving directly from a territory where their life or freedom has been threatened with persecution or there was a risk of serious harm and the applicant has presented credible reasons for irregular entry to the territory of Poland and has submitted asylum application immediately after crossing the border, or; | <p>Code of Criminal Procedure, Act of 6 June 1997, Journal of Laws Item 1997, Item 555: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (PL)</p> <p>AIDA report on immigration detention in Poland: https://asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/place-detention/</p> <p>Global Detention Project report on immigration detention in Poland: https://www.globaldetentionproject.org/countries/europe/poland and: https://www.globaldetentionproject.org/wp-content/uploads/2018/10/Immigration-Detention-in-Poland-October-2018-WEB.pdf</p> <p>Article 401(5), Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL)</p> <p>Article 88(b)(2), Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (PL)</p> <p>Sieniow, T. (2016), Report: Monitoring the use of alternatives to detention of foreigners in Poland: 2014–2015, The Rule of Law Institute Foundation: http://panstwoprawa.org/wp-content/uploads/2016/09/Stosowanie-alternatyw-do-detencji-cudzoziemcow_ca%C5%82o%C5%9B%C4%87.pdf (PL)</p> <p>Article 403, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL)</p> <p>Office of the Ombudsperson, Situation of foreigners in guarded centres guarded centres in times of crisis on the border between Poland and Belarus, 2022:</p> |

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| | | | | <p>3.Has entered Poland during the period for which their data were entered to the list of undesirable foreigners in Poland or to Schengen Information System in order to refuse entry.</p> <p>Analysis of the above-mentioned detention grounds indicates that they are in line with the standard of ECHR article 5(1)(f). The only doubt concerns the first of the enumerated grounds mentioning the probability of issuing a return decision without a possibility of voluntary departure period. The mere possibility of issuing such a decision seems an excessive interpretation of the premises of ECHR 5(1)(f).</p> <p>According to the Act on Foreigners and the Act on Granting Protection, when deciding on a detention order in relation to a foreigner in international protection proceedings as well as in return proceedings, the court is obliged to consider non-custodial measures. There is no provision in either of these acts that explicitly establishes the rule that detention should be used as a measure of last resort.</p> <p>There are several alternatives to detention prescribed in law. The Act on Foreigners provides for: regular reporting to the Border Guard, paying a bail, relinquishing travel documents, and/or residing in an indicated place of residence. The Act on Granting Protection lists the same measures, except for handling in the travel documents.</p> <p>In 2022 the Ombudsman's Office issued a report describing harsh conditions in detention centres as well as a practice of "mass detention" by courts (upon no individual verification of each case).</p> | <p>https://bip.brpo.gov.pl/sites/default/files/2022-06/Raport%20KMPT%20-Sytuacja%20cudzoziemców%20w%20ośrodkach%20strzeżonych%20w%20dobie%20kryzysu%20na%20granicy%20Polski%20i%20Białorusi.pdf</p> |
| DET.1.b | | Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice. | <p>ICCPR: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment (Article 7).</p> <p>ECtHR, Auad v. Bulgaria (2011): In cases of detention with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities' diligence in handling the deportation.</p> <p>EU Return Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> | Detention for the purpose of removal can be ordered even where it is merely probable that a return decision without a possibility of voluntary departure period will be issued. A final assessment of the country of removal is thus not a precondition of ordering detention. | Article 403, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) |
| DET.1.c | | Is there a clear obligation on authorities to release a person when there is no reasonable prospect of removal? Please describe the situation in law and in practice. | <p>EU Return Directive: When it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.</p> <p>UN Working Group on Arbitrary Detention (2018): When the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.</p> <p>ECtHR, Auad v. Bulgaria (2011), Mikolenko v. Estonia (2009), Mardonshoyev v. Russia (2019), Gashkov and Satirov v. Russia (2022)</p> | <p>If the competent authority leading the return procedure comes to the conclusion that removal is impossible, the person in question would be granted a permit for tolerated stay and released from detention.</p> <p>An explicit safeguard obliging the relevant authority to release a foreigner in case "it appears that a reasonable prospect of removal no longer exists for legal or other considerations (...)"[article 15(4) of the Return Directive] is not prescribed in relevant Polish law.</p> <p>The Polish law provides that the Border Guards may release a person from detention centre upon establishing that "because of legal or factual reasons execution of return order is not possible".</p> <p>In practice, the assessment of the possibility of removal may be lengthy and, as such, it contributes to the extended detention of</p> | Article 403, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) |

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| | | | | the person in question. The law also allows for extension of detention of a foreigner pending their return when there is a "reasonable assumption that the period of execution of the decision on obliging the foreigner to return will be extended", inter alia, due to the fact that the foreigner does not cooperate with the Border Guard authority in the execution of this decision (art.403 sec.31.1. Act on Foreigners). In practice, the lack of cooperation of the foreigner is sometimes imputed when the assessment of nationality is unsuccessful. | |
| DET.2.a | Identification of statelessness | Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention. | <p>ECtHR, Auad v. Bulgaria (2011) ECtHR, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR, Handbook on Protection (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. CMW, General comment No. 5 (2021): States should avoid detaining migrants who have specific needs, which includes stateless persons. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. ICJ, Migration and International Human Rights Law (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p> | There are no explicit legal grounds determining the results of finding that the foreigner to be detained (or already placed in detention) is stateless. Identifying statelessness may however render the decision of removal unenforceable and thus lead to granting a permit for tolerated stay (and release from detention). There is no dedicated SDP. | Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) |
| DET.2.b | | Is there a definition of vulnerability in law? If yes, does it explicitly include statelessness? If not, please note whether statelessness is considered to be a factor increasing vulnerability. | <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): Statelessness should be explicitly included in the definition of vulnerability. Vulnerability should always be determined and assessed on an individual basis.</p> | There is a definition of „persons with special needs” prescribed in the law (Act on Granting Protection to Foreigners). Statelessness is a factor that can be relevant in granting a permit for tolerated stay or humanitarian stay but is not per se considered as a factor increasing vulnerability. | Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (PL) |
| DET.2.c | | Are individual vulnerability assessments carried out before a decision to detain (or soon after)? | <p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Return Directive: Article 16(3) EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons. Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons (2013): European entities should assess the situation of LGBTI persons in detention. PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): There should be a clear legal obligation to screen and</p> | Stateless persons are not defined as a vulnerable group. Although there are specific grounds prohibiting detention in certain cases of vulnerability, there is no legally determined procedure for carrying out such assessments before taking a decision on detention. In practice, everyone entering detention is subjected to a basic vulnerability screening upon placement. Detention is prohibited in the case of unaccompanied minor asylum seekers and unaccompanied minors under the age of 15, where there is a presumption that the person has been subjected to violence, if detention would pose a threat to life or health of the detainee, in the case of disabled asylum seekers. | Przybyslawska, K. (ed), Pajura, M.(2013), Report: Vulnerable Foreigners in Poland: Identification, Detention and Judicial Practice, 2012-2013, Halina Niec Legal Aid Center: https://docs.wixstatic.com/ugd/1fb8cf_3878e7a2673c41dea0d5cb_a811c1e26c.pdf |

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| | | | <p>assess individuals’ vulnerability before a decision to detain is taken and before individuals are placed into situations of deprivation or restriction of liberty.</p> | | |
| DET.2.d | | <p>Are stateless people detained in practice?</p> | <p>As above.</p> | <p>There is no publicly available data on detention and the status of detainees. However, the practice of the Halina Niec Legal Aid Center in providing legal assistance in migration detention corroborates the view that stateless persons or those at risk of statelessness may be found in detention.</p> | <p>European Network on Statelessness, 2015, Protecting stateless persons from arbitrary detention in Poland: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland</p> |
| DET.3.a | Procedural safeguards | <p>Are there adequate procedural safeguards in place for individuals in immigration detention (e.g. maximum period of detention, automatic release at the end, decisions in writing, regular periodic reviews, judicial oversight, legal aid, etc.)?</p> | <p>ICCPR: Article 9(4) ECHR: Article 5(4) EU Return Directive: Articles 12, 13 and 15(5) HRC, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. CMW, General comment No. 5 (2021): States parties are obligated to adopt legislative and other measures, allocate adequate resources, and provide relevant training to comply with the CMW. There should be a maximum period for immigration detention established in legislation, with automatic release at the end of that period, and which precludes re-detention. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law. UNHCR, Handbook on Protection (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. UNGA, Body of Principles (1988): Anyone who is arrested shall be informed at the time of the reason for their arrest. Equal Rights Trust, Guidelines (2012): Stateless detainees shall receive their order of detention in writing and in a language they understand. To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities. Detention should always be for the shortest time possible. International Commission of Jurists, Migration and International Human Rights Law: A Practitioners’ Guide (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it. ECtHR, Kim v. Russia (2014): The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> | <p>The Law on Foreigners specifies that the maximum length of migration detention is 18 months. The maximum detention of asylum seekers is 6 months according to the Act on Granting Protection).</p> <p>A decision to order the placement of a foreigner in detention is delivered in writing and includes reasoning. Decisions are translated.</p> <p>Detention can only be ordered and extended by decision of a court, at the request of the Border Guard. The extension of detention by a court constitutes a de facto periodic review of detention. If removal to the country of origin is deemed unenforceable, the person is granted a permit for tolerated stay or a permit for stay on humanitarian grounds (depending on the circumstances of the case) and released but there are no set deadlines prescribed in law nor evident from practice that are understood as “reasonable time”.</p> <p>Upon the lapse of court ordered period of detention, the foreigner’s release is automatic.</p> <p>Detainees have a right to appeal the detention order and the decision on extension of this measure to the court. The appeal should be filed within seven days of receiving the order (or its translation) and the court has seven days to examine the request. In practice the courts take approximately three weeks to decide the appeal. A detainee can also file an application for release to the Border Guard under the Act on Foreigners (e.g. if detention would threaten life or health) or to the Head of the Office for Foreigners under the Act on Protection if there is a high probability that international protection will be granted. If these applications are refused, the decision of the Border Guard or Head of Office for Foreigners can be appealed to court. Under the Act on Protection, the initial detention period of an applicant for international protection is 60 days. If the individual files an application for protection from detention (following a court order under the Act on Foreigners), and there are valid reasons for detention under the Act on Protection, it can be extended by 90 days. In both cases, if asylum proceedings have not been concluded during the period of 60 or 90 days and the grounds justifying detention still exist; detention can be extended up to six months.</p> <p>Foreigners may apply for legal aid in detention proceedings before the court, but in practice this right is not often exercised.</p> | <p>Article 403, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf(PL)</p> <p>Helsinki Foundation for Human Rights (HFHR), Country report: Poland: 2022 update, Asylum Information Database (AIDA), 2022, http://www.asylumineurope.org/reports/country/poland</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf(PL)</p> |

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| | | | ECtHR, Mardonshoyev v. Russia (2019) : The length of the detention should not exceed that reasonably required for the purpose pursued. | Free legal aid in detention if offered by several NGOs. | |
| DET.3.b | | Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP? | Equal Rights Trust, Guidelines (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees. | Yes, all detainees are provided with written information in a language they understand on their rights, obligations, contact details of NGOs providing assistance as well as UNHCR. | Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (PL) |
| DET.3.c | | Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal? | Equal Rights Trust, Guidelines (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality. | Under the Act on Foreigners, if a return order is issued for someone without valid documentation, the Border Guard should file a motion for redocumentation to the appropriate diplomatic representation or authority in the country of origin. If redocumentation is impossible, the Commander in Chief of the Border Guard may issue a Temporary Polish Travel Document, valid for seven days, to allow the person to cross the Polish Border. The Act on Foreigners does not further specify the process for assessment of nationality and redocumentation and no deadlines are set. If the removal order cannot be enforced due to reasons beyond the control of the Border Guard and individual, a permit for tolerated stay is granted. If the removal order cannot be enforced due to enumerated humanitarian grounds, a residence permit based on humanitarian grounds is issued. | Arts. 268(2), 325& 351, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) European Network on Statelessness,2015, Protecting stateless persons from arbitrary detention in Poland: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland |
| DET.4.a | Protections on release | Are people released from detention issued with identification documents (including confirmation of their statelessness status) and protected from re-detention? | 1954 Convention : Article 27 UNHCR, Handbook on Protection (2014) : Being undocumented cannot be used as a general justification for detention. CMW, General comment No. 5 (2021) : There should be a maximum period for immigration detention established in legislation, with automatic release at the end of that period, and which precludes re-detention. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. Detaining stateless persons when there is no real prospect of removal would render the detention arbitrary, and the detained stateless person must therefore be immediately released. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | If the detention order is lifted due to unenforceability of the removal order, a permit for tolerated stay should be issued, which regularises stay in Poland. If the removal order cannot be enforced due to enumerated humanitarian grounds, a residence permit based on humanitarian grounds is issued. There is no practice of officially confirming the fact of statelessness, unless lack of nationality is part of the written justification of a decision. Polish law stipulates the maximum periods of detention - in relation to foreigners in return procedure and those seeking protection. Upon the elapse of court-ordered detention period, the person is automatically released from detention. | Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) |
| DET.4.b | | If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law? | CJEU, Kadzoev, C-357/09 PPU (2009) : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. | Unenforceability of the removal order is the basis for issuing a permit for tolerated stay. This status grants access to social assistance, education and healthcare and gives the right to work. | Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (PL) |

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| | | | <p>Equal Rights Trust, Guidelines (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p> | | |
| DET.5.a | Return and readmission agreements | <p>Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements? Please also describe whether the child’s right to a nationality, and their enjoyment of other fundamental rights in the country of return, are taken into consideration before a decision to return a child is made.</p> | <p>UNHCR, Handbook on Protection (2014): Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness. UNCRC, MKAH v Switzerland, no 95/2019 (2021): The State in which a stateless child applies for international protection has an obligation under Article 7 CRC to consider whether, if the child was returned to another country, their right to a nationality would be fulfilled (as well as other rights under the CRC).</p> | <p>Stateless people are mentioned in readmission agreements concluded by Poland, inter alia, in the agreements between Poland and the Republic of Kazakhstan, Armenia and Moldova. Statelessness is explicitly mentioned in the agreement between Poland and the Republic of Kazakhstan. A stateless person is defined as a person ‘who has no evidence confirming his possession of nationality of any state’. This definition does not comply with the 1954 Convention as it clearly shifts the burden of proof onto the stateless person and equates the lack of evidence in their possession with the absence of nationality. The appendix to the agreement lists documents that are to be recognised as proof of a link of a person to one of the state-parties to the agreement. In case of stateless persons, the type and categories of required documents is very broad and as a result, the agreement may allow for readmission of stateless persons with a merely incidental link to the country in question (e.g. a visa, driving license, service card etc.). There is no prescribed procedure for verifying the status or statelessness of the person in question. Another example is the Protocol for the implementation of the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting citizens of both States. The Protocol includes a list of documents for nationality determination and presumption. Interestingly, in the section devoted to documents that may be used as reference in presuming Vietnamese nationality several types of documents indicating only indirectly a link to Vietnamese nationality are mentioned e.g. Army identity card, ship-crew passport, household registration book, most recent polling card, driving license. There is no prescribed procedure for verifying the status or statelessness of the person in question. In the Implementing protocol between the Government of the Republic of Poland and the Government of the Republic of Moldova to the Agreement between the European Community and the Republic of Moldova on readmission of persons residing without authorisation, one of the documents proving or indicating a presumption of nationality is a marriage certificate. The Agreement between the European Community and Ukraine on the readmission of persons, which is binding also in Polish-Ukrainian relations, defines a stateless person as ‘any person who does not hold a nationality’. The list of documents used to substantiate an application for readmission is similar to the agreements quoted above and is very broad.</p> <p>The general rule that requires the court to take into account all relevant information in the assessment of the best interest of the child also applies, including their status in the return country.</p> | <p>Implementing protocol between the Government of the Republic of Poland and the Government of the Republic of Moldova to the Agreement between the European Community and the Republic of Moldova on readmission of persons residing without authorization: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150000777/O/D20150777.pdf (PL)</p> <p>Protocol for the implementation of the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting citizens of both States, http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20051561306/O/D20051306.pdf (PL)</p> <p>Agreement between the European Community and Ukraine on the readmission of persons: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.332.01.0046.01.ENG</p> <p>Agreement between the Government of the Republic of Poland and the Government of the Republic of Kazakhstan on the readmission of persons: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001623/O/D20171623.pdf (PL)</p> |
| DET.5.b | | Are you aware of cases of stateless people being returned under such agreements? | | No. | |

Prevention and Reduction

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| PRS.1.a | Naturalisation | In what timeframe do stateless people who are residing on the territory acquire the right to apply for naturalisation, and how does this compare to others with a foreign nationality? | <p>1954 Convention: Article 32</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p> <p>ENS (2013): The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.</p> <p>Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023): States should lower legal and practical hurdles to citizenship and establish pathways for naturalisation that are equally accessible to women and men.</p> | <p>A stateless person may acquire nationality (after birth) in the procedure for granting nationality by the President of Poland or in the procedure for recognition of nationality by the Voivode. However, there is no definition in law of a ‘stateless person’. The procedure before the President is discretionary. The terms of the 2009 Polish Citizenship Act are very general and indicate that the President has the power to confer Polish nationality on foreigners (Art.18).</p> <p>The second possibility for a stateless person is to use the procedure before the Voivode, which is non-discretionary. The Voivode shall recognise as a Polish national a person who has resided uninterrupted on a legal and permanent basis for at least two years in Poland.</p> <p>The procedure on being recognised as a Polish citizen provides special provision for persons "not having any nationality". The waiting period for such persons is shorter than the general rule (two years instead of three years). Still the main precondition is having a permanent residence permit, which for stateless person may be a significant obstacle or barrier. The said safeguard would be effective if a stateless person could first be recognised as such and obtain a permanent residence based on that fact.</p> <p>In both procedures the stateless person’s residence in Poland must be regularised and confirmed by proper documents (residence permit, ID) which is often a serious obstacle for stateless people. In the procedure before the President, this condition is not formulated explicitly in the Polish Citizenship Act, but the sub-statutory regulations require a residence permit to be presented together with the application for conferral of nationality.</p> <p>Additionally, it is required that a person applying for Polish nationality provides a birth certificate, which may also pose significant problems for stateless persons.</p> <p>In the procedure before the Voivode, the required length of stay is shorter than the standard three years, but it must be permanent residence, which is a more stringent condition. A stateless person may be acknowledged as a Polish national if they have continuously resided within the territory of the Republic of Poland over a period of at least two years, on the basis of a permanent residence permit or EU long-term residence permit.</p> <p>The procedure before the President is very lengthy and can take up to 12 months or longer. There is no appeal right in case of rejection. If the procedure before the Voivode can be concluded on the basis of evidence presented by the applicant, it should be immediate. If a case requires an investigation, it should be resolved within a month, or within two months in complex cases (unless the applicant is at fault). An appeal may be submitted to the Minister of Interior within 14 days against a decision of the Voivode, and a further appeal may be filed against a decision of the Minister at the Provincial Administrative Court in Warsaw.</p> | <p>Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf</p> <p>Additional source of information on the procedures (in English): https://www.gov.pl/web/mswia-en/apply-for-polish-citizenship</p> |

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| PRS.1.b | | Are there requirements relating to 'good character' or previous criminal convictions that could prevent some stateless people from naturalising? If yes, please describe. | CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state. | Yes, the person must not pose a threat to national security. The application forms also request documents confirming professional achievements and political and social activity, although these documents are not related to a specific requirement in the law, they are part of the examination conducted by the Voivode in this procedure. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Article 11: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.1.c | | Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements for naturalisation? Please describe the requirements and cost of the procedure for stateless adults and children. Are there any direct or indirect barriers to naturalisation caused by discriminatory laws, policies, or practices? | 1954 Convention : Article 32 UNHCR, Good Practices Papers – Action 6 (2020) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. UNHCR, Background Note on Discrimination in Nationality Laws and Statelessness (2021) : States should remove or amend discriminatory legal provisions, rules, policies, or practices that directly or indirectly act as barriers to naturalisation. HRC, Resolution 53/16 on the right to a nationality (2023) : States should refrain from enacting or maintaining discriminatory nationality legislations, policies, and practices with a view to avoiding statelessness, and eliminating discrimination against all women and girls in the acquisition of nationality. | There are no such exemptions, the general rules apply. In addition to the residence requirements, the procedure before the Voivode requires the applicant to submit official confirmation of knowledge of the Polish language, confirmed with an official certificate (obtaining such a certificate depends on passing the exam, both the exam and certificate are conditioned on paying a fee) certificate of graduation from an educational institution in the Republic of Poland or a certificate of graduation from an overseas school with Polish language of instruction. The forms also ask for documents confirming: stable and regular source of income of the foreigner on the territory of the Republic of Poland and a legal title to occupy residential premises, professional achievements, and political and social activity. Although these documents are not related to a specific requirement in the law, they are part of the examination conducted by the Voivode in this procedure. The forms also ask for information on the valid ID document/passport, which in case of stateless persons may become a problem. Moreover, the person must not pose a threat to national security. There is no application fee for acquisition of Polish nationality in the procedure before the President. There is a fee of 17 PLN (3.70 EUR) if a proxy is appointed, unless they are the person's spouse, parent, child, or sibling (which should be proven by documents). In the procedure before the Voivode, the application fee is 219 PLN (48 EUR). If the application is refused a refund may be requested. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Article 30: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf Polish Government Website: https://www.gov.pl/web/uw-mazowiecki/granting-of-polish-citizenship-by-the-president-of-the-republic-of-poland |
| PRS.2.a | Stateless born on territory | Is there a provision in law for stateless children born on the territory to acquire nationality, regardless of sex, gender, or residence status of their parents? [If yes, continue to PRS2b. If no, proceed to PRS2i] | 1961 Convention : Article 1 CRC : Article 7 ECN : Article 2 Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. HRC, Resolution 53/16 on the right to a nationality (2023) : States should facilitate the acquisition of nationality by children born on their territories or to their nationals abroad who would otherwise be stateless. Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023) : States should implement the CEDAW and uphold their obligations under the CRC, to ensure the child's right to acquire their parents' nationality without discrimination on the basis of sex or residency status, and review and reform nationality laws and practices relating to nationality that discriminate on any prohibited grounds, including on the basis of sex or gender. | The provision grants Polish nationality only to foundlings and children whose parents are unknown, stateless or with undetermined nationality. Remaining cases of children born on the Polish territory, who would otherwise be stateless, are not covered. This safeguard does not fully encompass the scope of protection afforded by the 1961 Convention. No reference to sex, gender or residence status of parents is mentioned in Polish nationality law. | Polish Citizenship Act of 2 April 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |

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| | | | <p>European Parliament resolution (2018): The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.</p> <p>European Parliament Resolution (2019): States should find a solution to the issue of stateless children within and outside the EU. The European Commission should promote the child's right to acquire a nationality.</p> <p>Human Rights Committee, D.Z. v. Netherlands (2020): States must adopt every appropriate measure to ensure that every child has a nationality when they are born.</p> <p>UNCRC, MKAH v Switzerland, no 95/2019 (2021): Article 7 CRC requires States to take positive action to implement the right to acquire a nationality.</p> | | |
| PRS.2.b | Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application.</p> <p>ENS, No Child Should Be Stateless (2015): The 1961 Convention and the European Convention on Nationality oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.</p> | The provision is automatic (for a foundling or child born to stateless parents, or to parents whose nationality is undetermined). | Article 14(2) & 15, Polish Citizenship Act of 2 April 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf | |
| PRS.2.c | Are parents provided with information about their child's nationality rights and relevant procedures, including where the child would otherwise be stateless or has undetermined nationality? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Contracting States are obliged to provide detailed information to parents of children who would otherwise be stateless or of undetermined nationality about the possibility of acquiring the nationality, how to apply and about the conditions which must be fulfilled. If the child concerned can acquire the nationality of a parent immediately after birth, States that opt to not grant nationality to children in these circumstances must assist parents in initiating the relevant procedure with the authorities of their State or States of nationality.</p> | No such information is provided to parents. | | |
| PRS.2.d | Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): The test is not an inquiry into whether a child's parents are stateless.</p> <p>ENS, No Child Should Be Stateless (2015): Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on.</p> | Yes, the parents must be stateless, their nationality undetermined, or unknown. | Polish Citizenship Act of 2 April 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf | |
| PRS.2.e | Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice. | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities, but in the case of children the State assumes a greater share of the burden of proof. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate</p> | No. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf | |

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| | | | standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected. Human Rights Committee, D.Z. v. Netherlands (2020) : The burden of proof must be shared between the claimant and the authorities of the contracting State to obtain evidence and to establish the facts as to whether an individual would otherwise be stateless. | | |
| PRS.2.f | | Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence. | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. CRC : Articles 3 & 7 Committee on the Rights of the Child, Concluding observations on the Netherlands (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. ECN : Article 6(2)(b) | No – the provision is automatic. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf |
| PRS.2.g | | Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence. | Committee on the Rights of the Child, Concluding observations on Czech Republic (2011) : The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State. ENS, No Child Should Be Stateless (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention. | No. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf |
| PRS.2.h | | What are the age limits and fees (if any) for making an application for nationality for a stateless person born on the territory? | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. Where Contracting States grant nationality to individuals who would otherwise be stateless upon application, they are encouraged to accept such applications free of charge. ENS, No Child Should Be Stateless (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child. | The provision is automatic, so no application is required and there are no fees. However, this provision only applies to foundlings, children whose parents are stateless or have undetermined nationality, or whose parents are unknown. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf |
| PRS.2.i | | Are there specific provisions to protect the right to a nationality of children born to refugees? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. UNHCR, Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child (2021) : The best interests principle applies to | There are no such provisions in place, but beneficiaries of international protection and stateless persons enjoy a facilitated access to naturalisation (a shorter residency requirement). | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf |

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| | | | all children within the territory of the State, irrespective of their status. | | |
| PRS.3.a | Foundlings | Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure. | 1961 Convention : Article 2 ECN : Article 6(1)(b) | Foundlings are granted nationality by law, automatically. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.3.b | | Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth. | There is no age limit imposed, and "newborn" status is not legally defined. In practice cases of foundlings concern primarily newborns. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.3.c | | Can nationality be withdrawn from foundlings if this leads to statelessness? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality. | No. A foundling is granted Polish nationality ex officio and there is no decision issued that could be later revoked. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.4.a | Adoption | Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired? | 1961 Convention : Article 5 European Convention on the Adoption of Children (2008) : Article 12 ENS, No Child Should Be Stateless (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin. | Foreign adoption does not interfere with the Polish nationality of the minor child. If the foreign parents want to confer their nationality to an adopted Polish child and the law on nationality binding in their country of origin does not allow for dual nationality, they may submit an application to the President of Poland asking for consent for renunciation of nationality. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.4.b | | Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process. | ECN : Article 6(4)(d) European Convention on the Adoption of Children (2008) : Article 12 Committee on the Rights of the Child, Concluding Observations on Switzerland (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. | According to the Polish Citizenship Act, a minor child adopted by (a) Polish national(s) acquires Polish nationality if the full adoption has been completed before the child turns 16. In this case, the child is considered as possessing Polish nationality from birth. There are no identified gaps that would lead to statelessness as the adoption leads to obtaining Polish nationality by virtue of the law (Art.16). The child cannot lose their nationality due to annulment of the adoption (there is no explicit provision in the law but there is no legal ground for such loss of nationality). Polish nationality is also not lost due to foreign adoption. If the minor has turned 16 at the time of adoption, they may obtain Polish nationality through a process of 'acknowledgment' of Polish nationality (Art. 30). According to this article, the minor foreigner is acknowledged as a Polish national if they are in the parental custody of a Polish national (including adoption) who has resided uninterruptedly within the territory of the Republic of Poland legally under a permit to settle, a long term resident's EC residence permit, or a right of permanent residence, whereas the other custodial parent is not a Polish national and has duly declared consent to the acknowledgment of Polish nationality of the minor. Children over 16 need to consent for the acknowledgement to take effect. Another option for adopted children over 16 is the 'conferral' of Polish nationality (Art. 18). Conferral is carried out by the President of Poland at their discretion and there are no specific conditions. | Arts. 16, 18, & 30, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |

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| PRS.5.a | ius sanguinis | Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless? | <p>1961 Convention: Article 4</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child.</p> | All children with at least one Polish parent are Polish nationals by law (<i>ius sanguinis</i>), irrelevant of their place of birth. Nevertheless, there are practical problems concerning children born abroad, which may result in their statelessness. | Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.5.b | | Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)? | <p>ECtHR, Genovese v. Malta (2011): The State must ensure that the right to nationality is secured without discrimination.</p> <p>CEDAW, Gen. Rec. 32 (2014): Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed.</p> <p>UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness (2024): Nationality laws which do not grant women equality with men in conferring nationality to their children are a cause of statelessness.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 4</p> <p>HRC, Resolution 53/16 on the right to a nationality (2023): States should eliminate discrimination against all women and girls in the conferral of nationality on their children.</p> | <p>Even though Polish nationality at birth is acquired ex lege (meaning that registration is not a condition for a child to acquire Polish nationality at birth), in practice, registration in Poland (or transcription of the birth certificate) is sometimes made a condition for receiving a passport or Polish ID at the Polish embassy. This means that for a child to avail themselves of nationality in some cases registration in Poland is required. Recent cases of children raised by same-sex partners abroad show that obtaining a passport is sometimes problematic. Poland does not regulate same-sex partnerships and the transcription of a birth certificate where two persons of the same sex are named as parents proves to be impossible.</p> <p>See also the CJEU judgment from June 2022. The Court of Justice of the European Union delivered a preliminary ruling in a case concerning a child born in Spain to a Polish mother and a Irish mother. The Spanish authorities had issued a birth certificate recording both mothers, but the Polish authorities refused to issue a Polish birth certificate that recognised the parenthood of both mothers, even though this left the child at risk of statelessness. The CJEU held that Poland must issue identity documents to that child, without requiring the prior transcription of a birth certificate into the national register and must recognise the birth certificate issued in another Member State that enables the child to travel and reside in the EU with his or her parents.</p> | <p>ENS (2015) Ending Childhood Statelessness: a study on Poland, p.13: https://www.statelessness.eu/sites/www.statelessness.eu/files/Poland.pdf</p> <p>UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, available at: https://www.refworld.org/docid/5da58e7e4.html</p> <p>Network of European LGBTIQ* Families Associations (NELFA), Freedom of movement in the European Union: Obstacles, cases, lawsuits (case study collection): http://nelfa.org/inprogress/wp-content/uploads/2020/01/NELFA-fomcasesdoc-2020-1-1.pdf</p> <p>Halina Nieć Legal Aid Center, Child Statelessness in Poland: Analysis of Law and Practice, 2020: https://www.pomocprawna.org/lib/i5r5fu/Analysis-Child-Statelessness-Poland-2020-kilwe9dl.pdf</p> <p>Court of Justice of the European Union, Case C-2/21, Rzecznik Praw Obywatelskich, 24 June 2022, https://curia.europa.eu/juris/document/document.jsf?text=&docid=262081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=792348</p> |
| PRS.6.a | Birth registration | Does the law provide that all children are registered immediately upon birth regardless of ethnicity, disability, illness, the migration or residence status, sexual and/or gender identity of their parents, or other characteristics? | <p>CRC: Article 7</p> <p>ICCP: Article 24(2)</p> <p>ECHR: Article 8</p> <p>CoE, Recommendation CM/Rec(2009)13 (2009): Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown.</p> <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7</p> <p>UN Sustainable Development Goal 16.9</p> <p>CRC, General comment No. 15 (2013): Universal free birth registration is a prerequisite for barriers to children's access to health services to be identified and eliminated.</p> <p>Joint general recommendation No. 31 CEDAW and No. 18 CRC (2019): A national system of compulsory, accessible and free birth registration should be established in order to effectively prevent harmful practices.</p> | <p>The Civil Status Records Act stipulates that all births must be registered within 21 days of a birth card being issued by the hospital, which is then transferred to the local Civil Registry Records Office. Legal residence of parents is not required but the parents registering the child need to hold ID documents. If the parents are undocumented, they may wait for the hospital to proceed with registration (which is mandatory after 21 days from birth) or their identity must be established for them to register the birth of the child. No mention as to sexual and/or gender identity of parents is made, nor are there any references to ethnicity, disability or illness. If the child is born at a hospital it is the hospital that reports the birth to the civil registry and the parents need to make an appointment with the civil registry office within 14 days to declare the name of the child.</p> <p>According to Polish law however same-sex parents cannot be registered as parents in the act of birth. The act of birth includes information on „mother” and „father” of the child.</p> | Civil Status Records Act of 28 November 2014, Item 1741: http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140001741 (PL) |

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| | | | <p>European Parliament, Resolution on LGBTIQ rights in the EU (2021): Calls on States to overcome discrimination against rainbow persons and families.</p> <p>UNHCR, Best Interests Procedure Guidelines (2021): The best interests procedures involve the referral of children to multisectoral services, based on the specific needs of the child and their family, including birth registration.</p> <p>UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021): All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that only opposite sex parents may register the birth of children should be reformed.</p> <p>HRC, Resolution 52/25 on birth registration (2023): States must register all births without discrimination of any kind. Efforts should be made to register all children as early as possible, but not later than one year after their birth.</p> <p>HRC, Resolution 53/16 on the right to a nationality (2023): States should identify and remove physical, administrative, procedural and any other barriers that impede access to registration, establish or strengthen existing institutions at all levels responsible for birth registration, and remove policies requiring proof of marriage for a parent to register their child's birth.</p> <p>Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023): States should uphold the equal right to register births and access birth certificates without discrimination, including on the basis of sex, gender, or marital status.</p> <p>Standing Committee of European Doctors (2024): Doctors must be enabled to practice free from undue interference of administration.</p> | | |
| <p>PRS.6.b</p> | | <p>Are all children issued with birth certificates upon registration, regardless of ethnicity, disability, illness, their or family members' residence status/documentation, or parents' sexual or gender identity? If no, please describe legal status of documentation issued.</p> | <p>HRC, Resolution 20/04 on the right to a nationality (2012): Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members.</p> <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents.</p> <p>CRC, General Comment No. 7 (2005): States parties should take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families.</p> <p>HRC, Resolution 53/16 on the right to a nationality (2023)</p> <p>HRC, Resolution 52/25 on birth registration (2023)</p> | <p>Every child born in Poland, regardless of the nationality, ethnicity, disability, illness, their or their family members' residence status/documentation, should be registered at a Civil Registry Office so that the birth certificate can be drawn up. The birth certificate is issued based on the written notification of birth, issued by a doctor, a midwife or a healthcare facility. The institutions have three days to forward the information about the birth to the Civil Registry Office. The parents of the child should officially register their child within 21 days following the birth chart preparation date. If they fail to do so, the Civil Registry Office will issue the birth certificate ex officio, choosing a name for the child and informing the parents. Documents required during registration include: ID card or passport of the person reporting the birth and marriage certificate if the parents are married. There are no fees for birth registration.</p> <p>Regarding the limitations to registration due to parents' sexual or gender identity: Polish law does not allow same-sex parents to be included on the birth certificate of a child. There are credible reports describing cases where the birth certificate mentioning the names of both same-sex parents (one of which was Polish) was</p> | <p>Act on Polish Passports https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/dokumenty-paszportowe-19204808</p> <p>Commissioner on Human Rights https://bip.brpo.gov.pl/pl/content/rpo-senat-ustawa-dyskryminacja-dzieci-zwiazki-jednoplciowe</p> |

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| | | | <p>Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023) ECtHR, G.T.B. v. Spain (2023): States have a positive obligation to assist the child in obtaining a birth certificate and identity documents.</p> | <p>drafted abroad but later the official transcription of this certificate and recording it in the Civil Status Records was denied. This problem is subject to legal proceedings in several cases.</p> <p>There are no similar reports concerning registration of children born in Poland. According to law, the registration of a child born to same-sex parents would be possible, but it would be impossible to include both same-sex parents in the record.</p> <p>A connected problem concerns the provisions of the Act on Polish Passports which requires the provision of the data of the "mother and father" of the child, in order to issue a passport to a child. For same-sex couples this creates a barrier that was communicated inter alia by the Commissioner on Human Rights. What is more, according to art. 43 of this Act: "To issue a passport to a person without legal capacity or with limited legal capacity who is under 18 years of age, the consent of that person's mother and father is required."</p> <p>Article 33, paragraph 1, point g states that the application for issuing a passport document shall include, among other things, the PESEL number of the person to whom it is to be issued. Meanwhile, Polish nationals born abroad whose birth certificates indicate same-sex parents very often encounter a refusal to issue a PESEL number.</p> <p>Art. 35 of the Act makes it practically impossible for children of Polish nationals who, according to their foreign birth certificate, have same-sex parents, to obtain a temporary passport. This is also the case for children with one unknown parent. Art. 35, points 3, 4 and 5 introduce a requirement that in the application for a temporary passport for a person who does not have a PESEL number, the "names and surnames of the mother and father of the person to whom the temporary passport is to be issued", "the maiden names of the mother and father of the person to whom the temporary passport is to be issued" and "the PESEL numbers of the mother and father of the person to whom the temporary passport is to be issued, if they have been assigned" must be indicated.</p> <p>The requirement to indicate "mother and father" (this means the obligation to indicate data on both the mother and father) is impossible to meet for children whose foreign birth certificates indicate two mothers or two fathers. A desirable change would be to abandon the requirement to indicate data on "mother and father" when applying for a temporary passport.</p> <p>Article 43 of the Act requires the consent of "mother and father" to issue a passport to a person under 18 years of age, who does not have legal capacity or has limited capacity. Therefore, an analogous problem arises.</p> | |
| <p>PRS.6.c</p> | | <p>Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a</p> | <p>CRC: Articles 3 & 7</p> | <p>The child's nationality is not determined upon birth registration. The birth certificate does not include information about the nationality or residence status of parents.</p> | |

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| | | formal procedure, if information on both parents is recorded etc.) | | | |
| PRS.6.d | | If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines, competent authority, and whether the child's best interests are taken into consideration. | <p>CRC: Articles 3 & 7 1961 Convention: Articles 1 & 4 UNHCR, Guidelines on Statelessness No. 4 (2012): States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years. HRC, CCPR General comment No. 17 (1989): States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. UNHCR, Best Interests Procedure Guidelines (2021) Human Rights Committee, D.Z. v. Netherlands (2020)</p> | A person born to Polish parent(s) outside of Poland and/or who has never possessed any documents proving their Polish nationality (e.g. a Polish passport or ID), can obtain an official certificate confirming their Polish nationality or its loss. The Citizenship Sections of the Voivode Offices in Poland have the power to issue a decision confirming Polish nationality or its loss. The national can apply for a Polish passport at a Polish Consulate with this certificate. This is a procedure designed specifically for the purposes of confirming the existence or lack of a Polish nationality, there is no equivalent possibility in relation to persons without declared links to Poland, including children of refugees, migrants or parents of other nationalities. There are no explicit safeguards in place that would ensure that a child does not remain with undetermined nationality for a period over five years. Nationality is not recorded at birth. The fact that at least one of the parents recorded in the birth certificate is Polish is enough to prove Polish nationality of the child. If the parents are not Polish, the birth certificate does not indicate what is the child's nationality. Therefore, the issue of uncertain nationality or statelessness could become evident only in later proceedings, for example if the child is denied a passport. | Chapter 7 Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf |
| PRS.6.e | | Are there credible reports to suggest that, in practice, children are prevented from registering their birth (or their birth certificate issued abroad is not recognised) because of parents' migration or residence status, sexual and/or gender identity, because they were born as a result of a surrogacy agreement, or other reasons (please specify)? | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration: States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees: States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2018): Calls on Member States to take immediate corrective measures to stop discriminatory birth registration. European Parliament, Resolution on LGBTIQ rights in the EU (2021): Emphasises the importance of the recognition of birth certificates in all EU Member States regardless of the sex of the parents. HRC, Resolution 52/25 on birth registration (2023) UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021): All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that</p> | <p>Polish law does not allow to include same-sex parents on the birth certificate of a child. There are credible reports describing cases where the act of birth mentioning the names of both same-sex parents (one of which was Polish) was drafted abroad but later the official transcription of this certificate and recording it in the Civil Status Records was denied.</p> <p>Poland does not regulate same-sex partnerships and the transcription of a birth certificate where two persons of the same sex are named as parents proves to be impossible. This creates obstacles in the acquisition of a Polish passport and ID, which are essential to evidence the acquisition of nationality and exercise the rights attached to it (see PRS.4.b).</p> <p>On 24 June 2022, the CJEU considered the question for a preliminary ruling submitted by the Regional Administrative Court in Kraków. The Court pointed out that regardless of whether Polish law recognises same-sex couples and the possibility of their parenthood, the child of such a couple must be able to obtain an identity card or passport enabling him to travel around the European Union and stay with his parents, regardless of whether they are of the same gender.</p> <p>The Court justified its decision primarily with the need to ensure the absolute right to free movement within the territory of the European Union (Article 20(2)(a) and Article 21(1) TFEU), protect the right of citizens to lead an ordinary family life (Article 7 of the EU Charter), as well as the protection of children's rights, which requires that administrative proceedings concerning children be guided primarily by their best interests and the right to maintain a</p> | <p>Polish Commissioner of Human Rights on case from Krakow referred a request for preliminary ruling to the European Court of Justice (case C-2/21 https://bip.brpo.gov.pl/pl/content/rpo-pytanie-prejudycjalne-dzieci-rodzicow-jednej-plci-postanowienie-tsue)</p> <p>Court of Justice of the European Union, Case C-2/21, Rzecznik Praw Obywatelskich, 24 June 2022, https://curia.europa.eu/juris/document/document.jsf?text=&docid=262081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=792348</p> <p>Network of European LGBTIQ* Families Associations (NELFA), Freedom of movement in the European Union: Obstacles, cases, lawsuits (case study collection): http://nelfa.org/inprogress/wp-content/uploads/2020/01/NELFA-fomcasesdoc-2020-1-1.pdf</p> <p>Halina Nieć Legal Aid Center, Child Statelessness in Poland: Analysis of Law and Practice, 2020: https://www.pomocprawna.org/lib/i5r5fu/Analysis-Child-Statelessness-Poland-2020-kilwe9dl.pdf</p> <p>II OSK 2552/16 Supreme Administrative Court, 10 October 2018: http://orzeczenia.nsa.gov.pl/doc/013EB55F39</p> <p>Supreme Administrative Court, case II OPS 1/19, 2 December 2019: http://orzeczenia.nsa.gov.pl/doc/0CB4DBF3D4</p> <p>III SA / Kr 233/19, Provincial Administrative Court in Kraków, 4 June 2019</p> |

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| | | | <p>only opposite sex parents may register the birth of children should be reformed.</p> <p>Court of Justice of the European Union, V.M.A. v Bulgaria, Case C-490/20 (2021): Domestic authorities of an EU Member State are required to issue a birth certificate and identity documents to a child who is a national of that state and was born in another EU Member State, including when the birth certificate contains two parents of the same sex.</p> <p>ECtHR, Mennesson v. France (2014): States must grant legal recognition of parent-child relationship legally established abroad for children born through surrogacy.</p> <p>ECtHR, D.B. and others v. Switzerland (2022): Domestic law must provide a possibility of recognition of a legal parent-child relationship between the child born abroad through surrogacy to a same-sex couple and the intended parent.</p> | <p>constant, personal relationship and direct contact with each of the parents.</p> <p>In the opinion of the CJEU, issuing an identity document to a citizen in order to enable him to move around the territory of the European Union is an absolute obligation of an EU Member State. It cannot be prevented by internal national procedures, which, as in this case, require the transcription of a birth certificate into the national register.</p> <p>The Court also emphasised that Art. 21 sec. 1 TFEU grants EU citizens the right to lead a normal family life both in the Member State where they reside and in the Member State of which they are nationals. This right includes the presence of immediate family members. In this context, the Court also pointed to the second role of the child's identity card as a document indicating his parents as persons authorised to travel with that child.</p> <p>In particular, it was emphasised that the obligations of the State as interpreted by the CJEU do not mean that it is necessary to generally allow same-sex parenthood in national law or to recognise the bond of parents of such persons with the child to a wider extent than is necessary to ensure the rights of this child under EU law.</p> <p>In this case, it means that the refusal to transcribe the birth certificate to the Polish register is not in essence a decision inconsistent with European Union law - however, the lack of such transcription cannot be the basis for refusing to issue an identity document enabling a minor citizen to travel around the European Union and stay with his family.</p> <p>The decision of the CJEU thus results in the obligation of Polish authorities to issue to a minor national of Poland an identity card or a passport confirming his/her nationality, as well as the family name entered in the foreign birth certificate of this child. This obligation exists regardless of the transcription of such a birth certificate into the Polish register by the transcription marital status, and the obligation to recognise the filial relationship attested in that birth certificate, in order to enable that child to exercise, without hindrance, with each of its two parents, irrespective of their sex, the right to move and reside freely within the territory of the Member States, guaranteed by Article . 21 sec. 1 TFEU.</p> <p>However, the conclusions drawn from the CJEU case are yet to be consistently implemented by Polish authorities. Currently, only four city mayors issue identity cards based on foreign birth certificates (Gdańsk, Kraków, Warsaw, and Poznań). Parents who apply for an identity card at any other city or municipal office face the risk of having their application denied. Although such decisions are overturned by provincial governors, this requires filing an appeal and entails several weeks of waiting for a final resolution and the issuance of the document. During this time, children born to same-sex couples remain undocumented, at risk of statelessness, and cannot leave the country in which they were born. Similarly, consular officials issue decisions denying passports due to the lack of a transcribed birth certificate. As with decisions denying identity cards, these are overturned by the Ministry of the Interior and Administration after an appeal, ultimately resulting in at least several weeks of waiting for a resolution and the issuance of a passport.</p> | <p>http://www.orzeczenia-nsa.pl/wyrok/iii-sa-kr-233-19/akty_stanu_cywilnego_akta/3642bf.html</p> <p>III SA/Kr 1400/1 -Wyrok WSA w Krakowie, Judgment of the Regional Administrative Court in Krakow: http://orzeczenia.nsa.gov.pl/doc/431B8D990D</p> <p>II OSK 2419/13 - Wyrok NSA, Judgment of the Supreme Administrative Court: http://orzeczenia.nsa.gov.pl/doc/A7BCB1D1A8</p> <p>III SA/Kr 1217/19 - Case before Regional Administrative Court in Krakow in which the court referred a request for preliminary ruling to the European Court of Justice (case C-2/21(PPU). https://bip.krakow.wsa.gov.pl/287/269/komunikat-w-sprawie-o-sygn-iii-sakr-121719.html</p> <p>II SA/Wr 312/20 - Wyrok WSA, Judgment of the Regional Administrative Court in Wrocław: https://orzeczenia.nsa.gov.pl/doc/E510A7C33F</p> <p>II OSK 1330/17 - wyrok NSA, Judgement of Supreme Administrative Court of 11 Feb 2020 http://www.orzeczenia-nsa.pl/wyrok/ii-osk-1330-17/akty_stanu_cywilnego/142f4ec.html?q=&symbol=605_6052&haslo=Akta+stanu+cywilnego&sad=Naczelny+S%C4%85d+Administacyjny&skarzony=Wojewoda&okres=2020_02</p> <p>A.D.-K. and others v Poland, no 30806/15 (Communicated case)</p> <p>Case concerns the denial of transcription of the birth certificate of the child of a same-sex couple</p> <p>https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22A.D.-K.%20v.%20Poland%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%22%22COMMUNICATEDCASES%22%22%22itemid%22:%5B%22001-192049%22%22%7D</p> <p>Polish Commissioner on Human Rights: https://bip.brpo.gov.pl/pl/content/rpo-dzieci-zwiazki-jednoplciowe-dokumenty-ms-projekt-opinia</p> <p>Polish Society of Anti-Discrimination Law report: Latest Judgments of the ECtHR and CJEU in Cases Concerning LGBT+ Individuals, 4 March 2024: https://www.ptpa.org.pl/site/assets/files/1029/najnowsze_orzeczenia_w_sprawach_osob_lgbt_a4_fin_2.pdf</p> |
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| | | | | <p>The CJEU decision triggered amendments to Polish law, which were adopted on 15 August 2024. The changes concerned the Act of 28 November 2014 - the Law on Civil Status Records. According to the amendments, the head of the Civil Registry Office will refuse to transcribe a foreign birth certificate if someone wants to register a same-sex relationship in Poland, or if a child's foreign birth certificate lists same-sex parents (amended Article 107 section 3). There are no exceptions for same-sex marriages or civil partnerships. However, the amendments foresee the possibility to register the birth of the child with same-sex parents listed on their birth certificate on the basis of Article 99 of the Act, without transcription of their foreign birth certificate, in the form of a substantive and technical act. This does not entail any specific documentation but only a record of the fact that the child was born abroad.</p> <p>Nevertheless, the registration of the child will be more difficult in a situation where two fathers are recorded on the foreign birth certificate and the child was born abroad, for example as a result of surrogacy. When the mother cannot be identified - defined in the provision as the person who gave birth to the child - the procedure for children with unknown parents or for adults whose identity cannot be determined "due to their disability" will be applied. In this case, the birth certificate will be drawn up on the basis of a ruling of the guardianship court (Article 62 - Law on Civil Status Records).</p> <p>Surrogacy: In addition to the issues raised above, there has been one case, which concerns the transcript of a foreign birth certificate issued to a child born by a surrogate mother. The biological father is a Polish national and the foreign certificate does not include the data of the mother. The court decided that the denial of transcript of the birth certificate would result in inability of issuing a Polish identity document to the child and hence would deter him from effectively benefiting from Polish nationality.</p> | |
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| | | | | | <p>Surogacy: II OSK 2129/16 - Wyrok NSA, Judgement of Supreme Administrative Court of 29 August 2018: http://www.orzeczenia-nsa.pl/wyrok/ii-osk-2129-16/akty_stanu_cywilnego_akta/1b9b1c6.html?q=&symbol=605_6052&haslo=Akta+stanu+cywilnego&sad=Naczelny+S%C4%85d+Administracyjny&skarzony=Wojewoda&okres=2018_08</p> |
| PRS.6.f | | <p>Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)? If not, is there a clear firewall to prohibit the sharing of information by other entities with immigration authorities?</p> | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC and Joint General Comment No. 3 (2017) CMW and No. 22 (2017) CRC: Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children’s personal data, in particular biometric data, should only be used for child protection purposes.</p> <p>CoE, ECRI General Policy Recommendation No. 16(2016): States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector.</p> | <p>There are no such requirements. There is no such clear firewall but no cases of reporting in such situations were recorded.</p> | <p>Halina Niec Legal Aid Center</p> |
| PRS.6.g | | <p>Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice.</p> | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration.</p> <p>HRC, Resolution 20/04 on the right to a nationality (2012): Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.</p> <p>HRC, Resolution 52/25 on birth registration (2023)</p> | <p>The Civil Status Records Act stipulates that all births must be registered within 21 days of a birth card being issued by the hospital, which is then transferred to the local Civil Status Records Office. If the birth is not registered during the prescribed time limit, the Head of the Civil Status Records Office records the birth acting ex officio. There are no legal obstacles to late registration nor reports of such obstacles encountered in practice.</p> | <p>Civil Status Records Act of 29 September 1986 (Journal of Laws No. 212, Item 1264</p> |

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| | | | <p>CRC, General Comment No 7 (2005): States should facilitate late registration of birth and ensure that children who have not been registered have equal access to health care, protection, education and other social services.</p> <p>CRC, General comment No. 20 (2016): The lack of birth registration can result in significant additional complications during adolescence. Adolescents who have not been registered at birth or immediately after should be provided with free late birth certificates and civil registration.</p> <p>Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023): States should reduce or remove administrative and financial barriers, such as late registration fees, that inhibit or delay registration.</p> | | |
| PRS.6.h | | Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines. | As above | No. | |
| PRS.7.a | Reducing <i>in situ</i> statelessness | Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details. | UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 | There are no such programmes. | |
| PRS.7.b | | Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless or without their nationality confirmed/determined? Please provide details and source of information. | <p>1961 Convention: Article 9</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 4</p> <p>HRC, Recommendations of the Forum on Minority Issues (2019): States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.</p> | There are no such reports. Cases of statelessness are few and far between and concern various nationality groups and in most situations, persons of migrant background are affected. | European Network on Statelessness, 2015, Protecting stateless persons from arbitrary detention in Poland: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland |
| PRS.7.c | | Has the State implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.) | <p>1961 Convention</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Actions 1 & 8</p> <p>UNHCR, Good Practices Paper - Action 1 (2022): States generally address and resolve situations of statelessness through law and policy reform enabling stateless persons to acquire nationality automatically by operation of law, through a simple registration process, or through naturalisation. Non-automatic procedures are generally a less effective way to resolve statelessness because they require the person concerned to take certain steps to acquire nationality.</p> <p>UN Guiding Principles on Internal Displacement (1998): Principle 20</p> <p>HRC, Resolution 53/16 on the right to a nationality (2023): States should undertake initiatives to ensure that persons belonging to national or ethnic, religious and linguistic minorities, including those in hard-to-reach areas or nomadic persons, are aware of and able to exercise their rights, including the right of everyone to a nationality. Measures taken should be developed, designed, implemented and reviewed with the effective and equal participation</p> | No such measures have been implemented. | |

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| | | | <p>of persons belonging to national or ethnic, religious and linguistic minorities.</p> <p>HRC, Resolution 52/25 on birth registration (2023) Report of the UN Special Rapporteur on Violence against women and girls, nationality laws and statelessness (2023): States should conduct public awareness-raising campaigns, establish accessible civil registration units, and implement outreach programmes in remote and marginalised communities. States should sensitise and train health workers and civil registry officials with regard to statelessness and in a gender-sensitive manner.</p> <p>ENS, Statelessness and the prohibition on discrimination against Romani communities (2023): States must protect against arbitrary differential treatment and implement non-discriminatory policies to prevent the further marginalisation of persons already in a position of vulnerability. States should adopt and implement effective policies and measures to combat intersecting forms of discrimination, including in relation to Romani people who are also stateless or without their nationality confirmed/determined.</p> | | |
| PRS.8.a | Deprivation of nationality | <p>Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.).</p> | <p>1961 Convention: Article 8 & 9 ECN: Article 7(3) UDHR: Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary: Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6</p> <p>HRC, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009): para. 23</p> <p>UNHCR Guidelines on Statelessness No.5 (2020): the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification).</p> <p>ILEC Guidelines (2015): Deprivation of nationality must have a firm legal basis, should not be interpreted extensively or applied by analogy and deprivation-provisions must be predictable.</p> <p>CoE, PACE Resolution 2263 (2019): States should repeal any laws that would allow arbitrary deprivation of nationality; provide for safeguards against statelessness; abolish or refrain from introducing administrative procedures allowing for the deprivation of nationality not based on a criminal conviction; refrain from depriving minors of their nationality.</p> <p>ECtHR, Usmanov v. Russia (2020): A decision on deprivation of nationality must assess the</p> | <p>There is no provision for deprivation of Polish nationality in national law. People who have lost their Polish nationality under regulations in force prior to 1 January 1999 may apply for restitution or granting of Polish nationality. The loss of Polish nationality is governed by the Constitution of the Republic of Poland which provides that a Polish national shall not lose Polish nationality except by renunciation thereof. Therefore, a Polish national cannot lose Polish nationality, except at their own request. According to the Polish Citizenship Act, a Polish national loses Polish nationality at their request, but only after the President of the Republic of Poland has granted consent for the renunciation. Loss of Polish nationality shall come into force 30 days from the date of the issuance of a respective decision by the President, or after a shorter period, should the President decide accordingly. The consent to renounce Polish nationality granted to parents, applies to children under their custody. The approval for renouncing Polish nationality by both parents is extended to children under their parental custody. The approval for renouncing Polish nationality by only one parent is extended to children under their parental custody, if a) children are under their sole custody, or b) the other parent declared their consent before the proper authority (e.g. a Consul) that children could renounce Polish nationality. Children over 16 should express their prior consent before a proper authority (e.g. a Consul) for renunciation of Polish nationality. The applicant for renunciation needs to present documentary evidence proving that they hold or have been promised the nationality of another state, but this safeguard is insufficient, as there is no explicit requirement to prove that minor children covered by the application also hold another nationality and will not become stateless as a result of the renunciation procedure.</p> | <p>Article 46, 49, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf</p> <p>Article 34(2) of The Constitution of the Republic of Poland of 2nd April, 1997, Journal of Laws of 1997, No. 78, item 483: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm</p> |

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| | | | <p>consequences for the person and whether the measure is arbitrary.</p> <p>CJEU, Rottmann (2010): Decisions withdrawing nationality must be afforded a reasonable period of time in order to try to recover the nationality of their Member State of origin.</p> <p>CJEU, JY (2022): Decisions to revoke an assurance that nationality will be granted must be proportionate and consistent with EU law.</p> <p>CJEU, Tjebbes (2019): The loss of nationality must respect the principle of proportionality and national authorities must perform an individual assessment of the consequences for the applicants.</p> | | |
| PRS.8.b | | <p>Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, decision in writing with reasoning, judicial oversight, appeal, time limit, subject to prior sentencing)?</p> <p>Please state if deprivation of nationality is only ever carried out in pursuance of a legitimate purpose, is provided for by law, is necessary, proportionate, in accordance with procedural safeguards, and in accordance with the right to respect for private and family life. Please also state if a reasonable period of time is afforded to allow recovery of the nationality of the State of origin in case of withdrawal of nationality.</p> | <p>1961 Convention: Article 8(4)</p> <p>ECN: Articles 10 to 13</p> <p>ECHR: Article 8</p> <p>Charter of Fundamental Rights: Article 7</p> <p>Principles on Deprivation of Nationality: Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation.</p> <p>ILEC Guidelines (2015): The consequences of a decision to deprive somebody of their nationality must be assessed against the principle of proportionality. Adequate procedural safeguards are essential. Decisions should only take effect when the (judicial) decision cannot be challenged anymore.</p> <p>CoE, PACE Resolution 2263 (2019): States should abolish or refrain from introducing administrative procedures allowing for the deprivation of nationality not based on a criminal conviction; refrain from depriving nationals of their nationality.</p> <p>ECtHR, Usmanov v. Russia (2020)</p> <p>CJEU, Rottmann (2010)</p> <p>CJEU, JY (2022)</p> <p>CJEU, Tjebbes (2019)</p> | Polish law does not allow for deprivation of nationality (see above). | |
| PRS.8.c | | <p>Are provisions on deprivation of nationality applied in practice? Have they been applied even where it results in (risk of) statelessness? If available, please provide any sources of data or information on cases that resulted in statelessness.</p> | | No such provisions exist in Polish law. | |
| PRS.8.d | | <p>Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness?</p> | <p>1961 Convention: Article 7</p> <p>ECN: Articles 7 and 8</p> | <p>There is a safeguard against statelessness in provisions regarding renunciation of Polish nationality, but it is not sufficient. The loss of Polish nationality is governed by the Constitution of the Republic of Poland, which provides that a Polish national shall not lose Polish nationality except by renunciation. Therefore, a Polish national cannot lose Polish nationality, except at their own request. According to the Polish Citizenship Act, a Polish national loses Polish nationality at their request, but only after the President of the Republic of Poland has granted consent for the renunciation. Loss of Polish nationality shall come into force 30 days from the date of the issuance of a respective decision by the President, or after a shorter period, should the President decide accordingly.</p> | <p>Article 46, 49, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf</p> <p>Article 34(2) of The Constitution of the Republic of Poland of 2nd April, 1997, Journal of Laws of 1997, No. 78, item 483: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm</p> |

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| | | | | The consent to renounce Polish nationality granted to parents, applies to children under their custody. The approval for renouncing Polish nationality by both parents is extended to children under their parental custody. The approval for renouncing Polish nationality by only one parent is extended to children under their parental custody, if a) children are under their sole custody, or b) the other parent declared their consent before the proper authority (e.g., a Consul) that children could renounce Polish nationality. Children over 16 should express their prior consent before a proper authority (e.g., a Consul) for renunciation of Polish nationality. The applicant for renunciation needs to present documentary evidence proving that they hold or have been promised the nationality of another state, but this safeguard is insufficient, as there is no explicit requirement to prove that minor children covered by the application also hold another nationality and will not become stateless as a result of the renunciation procedure. | |
| PRS.8.e | Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice. | <p>Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards.</p> <p>UNHCR Guidelines on Statelessness No.5 (2020): Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct.</p> <p>CoE, PACE Resolution 2263 (2019): States should review provisions allowing for deprivation of nationality on terrorism grounds in light of international human rights obligations, refrain from applying this measure and envisage and prioritise wider use of other counter-terrorism measures.</p> | There are no such provisions in place. | | |
| PRS.8.f | Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice. | <p>ICCPR: Article 26</p> <p>1961 Convention: Article 9</p> <p>ECN: Article 5</p> <p>Principles on Deprivation of Nationality: Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals.</p> <p>CoE, PACE Resolution 2263 (2019): States should not discriminate between citizens on the basis of the way in which they have acquired nationality, in order to avoid indirect discrimination against minorities.</p> | There are no such provisions in place. | | |
| PRS.8.g | Are there safeguards to prevent derivative loss of nationality (i.e., loss of nationality on the basis that a parent or a spouse has been deprived of that nationality)? Please describe the potential impact of deprivation on children and spouses. | <p>1961 Convention: Article 6</p> <p>CRC: Articles 2(2), 7 and 8</p> <p>CEDAW: Article 9(1)</p> <p>Principles on Deprivation of Nationality: States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents,</p> | There is no provision in Polish law allowing for deprivation of nationality. There is, however, the possibility of renunciation of nationality. During this procedure, the applicant for renunciation needs to present documentary evidence proving that they hold or have been promised the nationality of another State, but this safeguard is insufficient, as there is no explicit requirement to prove that minor children covered by the application also hold | <p>Article 46, 49, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009as%20enacted_ENGLISH.pdf</p> <p>Article 34(2) of The Constitution of the Republic of Poland of 2nd April, 1997, Journal of Laws of 1997, No. 78, item 483: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm</p> | |

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| | | | <p>legal guardians, or family members (Principle 9.7). The derivative loss of nationality is prohibited (Principle 9.8).</p> | <p>another nationality and will not become stateless as a result of the renunciation procedure (see: PRS.8.d)</p> | |
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Resources

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| RES.1.a | Published judgments | Please list the most relevant judgments relating to statelessness and include links to the cases (where available). | | Within the framework of Polish law statelessness may be addressed in international protection proceedings and return proceedings, which are administrative procedures (no courts are involved). The matter of statelessness may also be addressed marginally in court decisions regarding the application of administrative detention. | <p>Centralna Baza Orzeczeń Sądów Administracyjnych (National Database of Decisions of the Administrative Courts): http://orzeczenia.nsa.gov.pl/cbo/query (PL)</p> <p>III SA/Kr 1400/1 -Wyrok WSA w Krakowie, Judgment of the Regional Administrative Court in Krakow: http://orzeczenia.nsa.gov.pl/doc/431B8D990D Case concerns the denial of transcription of the birth certificate of the child of a same-sex Polish couple in the UK. The issue of access to a Polish identity document confirming Polish nationality is discussed.</p> <p>II OSK 2419/13 - Wyrok NSA, Judgment of the Supreme Administrative Court: http://orzeczenia.nsa.gov.pl/doc/A7BCB1D1A8 Case concerns the denial of transcription of the birth certificate of the child of a same-sex Polish couple living in the USA. Does not mention statelessness explicitly.</p> <p>II OSK 1020/11 - Wyrok NSA, Judgment of the Supreme Administrative Court: http://orzeczenia.nsa.gov.pl/doc/680560D84F Case concerns the acquisition of Polish nationality by an applicant originating from Ukraine. The court inter alia states that the subjective conviction of the applicant that he is stateless is not enough to establish statelessness.</p> <p>III SA/Kr 1217/19 - Case before Regional Administrative Court in Krakow in which the court referred a request for preliminary ruling to the European Court of Justice (case C-2/21(PPU)). Information on the case: https://bip.krakow.wsa.gov.pl/287/269/komunikat-w-sprawie-o-sygn-iii-sakr-121719.html</p> <p>This case concerns the refusal of transcript of a child born in Spain to same-sex parents, the nationals of Ireland and Poland. The lack of transcript became an obstacle in obtaining a Polish passport and ID number for the child.</p> <p>On 24 June 2022, the CJEU considered the preliminary question submitted by the Regional Administrative Court in Kraków. The Court indicated that regardless of whether Polish law recognises same-sex couples and the possibility of their parenthood, the child of such a couple must be able to obtain an identity card or passport enabling him to travel within the European Union and reside with his parents, regardless of whether they are of the same sex.</p> <p>The Court based its decision primarily on the need to absolutely ensure the right to free movement within the territory of the European Union (Article 20(2)(a) and Article 21(1) TFEU), to protect the right of citizens to lead a normal family life (Article 7 of the EU Charter), and to protect the rights of the child, which requires that in administrative proceedings concerning children,</p> |

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| | | | | | <p>the primary consideration be their best interests and the right to maintain a permanent, personal relationship and direct contact with each of their parents.</p> <p>The issuance of an identity document to a citizen in order to enable him to move around the territory of the European Union is, according to the CJEU, an absolute obligation of an EU Member State. It cannot be hindered by internal national procedures, which assume - as in this case - the transcription of a birth certificate into a national register.</p> <p>The Court also emphasised that Article 21(1) TFEU grants citizens the right to lead a normal family life both in the Member State in which they reside and in the Member State of which they are a national. This right is linked to the presence of members of their immediate family. In this context, the Court also pointed to the second role of the child's identity card as a document indicating the child's parents as persons authorised to travel with the child.</p> <p>It was emphasised in particular that the state obligations established by the CJEU do not mean that there is a need to generally allow same-sex parenthood in national law or to recognise the bond between the parents of such persons and the child to a greater extent than is necessary to ensure the child's rights derived from EU law.</p> <p>In this case, this means that the refusal to transcribe a birth certificate into the Polish register is not in its essence a decision inconsistent with European Union law – however, the lack of such a transcription cannot be the basis for refusing to issue an identity document enabling a minor citizen to travel within the European Union and stay with his family.</p> <p>CJEU Decision C-2 21.pdf Resolution preliminary question 9.12.2020.pdf</p> <p>II OPS 1/19 - Uchwała NSA, Resolution of the Supreme Administrative Court: https://orzeczenia.nsa.gov.pl/doc/0CB4DBF3D4</p> <p>Case concerns the refusal of transcript of a foreign child born to same-sex parents (both Polish nationals). The court observed that even though the transcript is impossible, the child is still entitled to Polish documents. The resolution discusses in length the different views expressed in Polish jurisprudence on this topic.</p> <p>II SA/Wr 312/20 - Wyrok WSA, Judgment of the Regional Administrative Court in Wrocław: https://orzeczenia.nsa.gov.pl/doc/E510A7C33F</p> <p>Case concerns the refusal of transcript of a foreign child born to same-sex parents. The court observed that even though the transcript is impossible, the child is still entitled to Polish documents.</p> <p>II OSK 2552/16 - Wyrok NSA, Judgment of the Supreme Administrative Court: https://sip.lex.pl/orzeczenia-i-pisma-</p> |
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| | | | | | <p>urzedowe/orzeczenia-sadow/ii-osk-2552-16-wyrok-naczelnego-sadu-administracyjnego-522680649</p> <p>Case concerns the refusal of transcript of a foreign child born to same-sex parents. The court decided that the refusal of transcript amounts to a violation of the rights of the child.</p> <p>II OSK 1330/17 - wyrok NSA, Judgement of Supreme Administrative Court of 11 Feb 2020</p> <p>Case concerns the denial of transcription of the birth certificate of the child of a same-sex couple (1 is a Polish national). The issue of access to a Polish identity document confirming Polish nationality is discussed. The Court states that denial of transcript is no obstacle to confirm Polish nationality in other procedures.</p> <p>http://www.orzeczenia-nsa.pl/wyrok/ii-osk-1330-17/akty_stanu_cywilnego/142f4ec.html?q=&symbol=605_6052&haslo=Akta+stanu+cywilnego&sad=Naczelnny+S%C4%85d+Administracyjny&skarzony=Wojewoda&okres=2020_02</p> <p>Similar case: II OSK 2284/18 - Wyrok NSA, Judgement of Supreme Administrative Court of 17 Feb 2021</p> <p>II OSK 2129/16 - Wyrok NSA, Judgement of Supreme Administrative Court of 29 August 2018</p> <p>The case concerns the transcript of a foreign birth certificate issued to a child born by a surrogate mother. The biological father is a Polish national and the foreign certificate does not include the data of the mother. The court decided that the denial of transcript of the birth certificate would result in inability of issuing a Polish identify document to the child and hence would deter him from effectively benefiting from Polish nationality.</p> <p>http://www.orzeczenia-nsa.pl/wyrok/ii-osk-2129-16/akty_stanu_cywilnego_akta/1b9b1c6.html?q=&symbol=605_6052&haslo=Akta+stanu+cywilnego&sad=Naczelnny+S%C4%85d+Administracyjny&skarzony=Wojewoda&okres=2018_08</p> <p>A.D.-K. and others v Poland, no 30806/15 (Communicated case)</p> <p>Case concerns the denial of transcription of the birth certificate of the child of a same-sex couple</p> <p>https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22A.D.-K.%20v.%20Poland%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22COMMUNICATEDCASES%22%2C%22itemid%22:%5B%22001-192049%22%5D%7D</p> <p>For the overview of cases see: D. Pudzianowska, P. Korzec, Citizenship 'on paper'. On the risk of statelessness of Polish children raised in same-sex unions abroad, National Taiwan University Law Review</p> <p>II OSK 128/19 Judgment of Supreme Administrative Court: https://sip.lex.pl/#/jurisprudence/523411643</p> <p>The case concerned the refusal to confirm the nationality of a girl born in Canada through surrogacy. Her birth certificate listed two fathers as her parents: her biological father (a Polish national) and his husband.</p> |
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| | | | | | <p>Both the administrative bodies and the Provincial Administrative Court in Warsaw refused to confirm nationality due to the so-called "public order clause", understood to mean that the Polish legal system is unaware of surrogacy agreements and same-sex parenthood.</p> <p>On 16 February 2022, the Supreme Administrative Court (ref. II OSK 128/19) repealed both the judgment of the Provincial Administrative Court and the preceding decisions of the administrative bodies. It obliged the Mazovian Voivode to issue a decision confirming Polish citizenship within 30 days of the announcement of the judgment.</p> <p>In justification for the ruling, the Supreme Administrative Court indicated that the state cannot act as if confirming citizenship in a situation where a provision of substantive law clearly provides for the obligation to do so is "a favour".</p> <p>The Court also stressed that the evidentiary proceedings conducted by the authorities - especially the need to provide genetic tests that confirmed the biological bond between the child and the father - were a disproportionate hardship to which the girl was exposed. Polish Ombudsman on HR joined the proceedings, supporting the parents.</p> |
| RES.2.a | Free legal assistance | Are there specialised lawyers or organisations providing free advice to stateless people or people with undetermined nationality? If yes, please describe. | UNHCR, Handbook on Protection (2014) : Applicants must have access to legal counsel. | Among various entities offering legal advice, only two Polish NGOs (Helsinki Foundation for Human Rights and the Halina Nieć Legal Aid Center) have been actively providing legal assistance to stateless persons or those at risk of statelessness. | Halina Nieć Legal Aid Center: www.pomocprawna.org Helsinki Foundation for Human Rights: www.hfhr.pl |
| RES.3.a | Literature | Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available). | | | <p>Przybyslawska, K. (2012), Sytuacja bezpaństwowców na Bliskim Wschodzie a międzynarodowe standardy ochrony praw człowieka, in: Marcinko, M. (ed), Ochrona praw człowieka w wymiarze regionalnym, Jagiellonian University, Krakow: http://www.zpmp.law.uj.edu.pl/documents/17903628/4b5d72a8-12e2-46ae-9ee2-441351f62d12 (PL)</p> <p>Dyduch, J. (2014), Bezpaństwowość, in: Florczak, A., Lisowska, A., Organizacje międzynarodowe w działaniu, Wydawnictwo OTO, Wrocław: http://www.repozytorium.uni.wroc.pl/Content/62930/19_Joanna_Dyduch.pdf (PL)</p> <p>Pudzianowska, D. (2019), Bezpaństwowość w prawie publicznym, Wolters Kluwer Polska, https://sip.lex.pl/komentarze-i-publicacje/monografie/bezpanstwowosc-w-prawie-publicznym-369453738</p> <p>Pudzianowska D. (2020), D. Pudzianowska, P. Korzec, Human Rights and the Protection of Stateless Persons in the Case Law of the European Court of Human Rights, Polish Yearbook of International Law, 2020, ss. 179-196</p> |

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| | | | | | <p>D. Pudzianowska, „Opatrzność” czy „nieopatrność” ustawodawcy? O ochronie bezpaństwowców w prawie polskim [w:] Prawo administracyjne dziś i jutro, J. Jagielski, M. Wierzbowski (red.), Wolters Kluwer, Warszawa 2018, s. 683-692</p> <p>D. Pudzianowska, M. Szczepanik, Wokół problemu bezpieczeństwa dzieci w Polsce [w:] Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych, D. Pudzianowska (red.), Wolters Kluwer, Warszawa 2016, s. 79-95</p> <p>D. Pudzianowska, O koncepcji bezpieczeństwa w prawie publicznym, [w:] M. Grzywacz, J. Jagielski, D. Kijowski, Prawo administracyjne wobec współczesnych wyzwań. Księga Jubileuszowa dedykowana Profesorowi Markowi Wierzbowskiemu, Warszawa 2018, s. 129-134.</p> <p>D. Pudzianowska, Standardy dotyczące procedur ustalania bezpieczeństwa w prawie międzynarodowym, [w:] Standardy współczesnej administracji i prawa administracyjnego, red. Z. Duniewska, M. Stahl, A. Rabięga-Przyłęcka, Wolters Kluwer – Wydawnictwo Uniwersytetu Łódzkiego, Warszawa 2019</p> <p>D. Pudzianowska, P. Korzec, Citizenship 'on paper'. On the risk of statelessness of Polish children raised in same-sex unions abroad, National Taiwan University Law Review</p> |
| RES.4.a. | Examples of identity and travel documents | Please insert pictures of anonymised identity and/or travel documents issued to stateless people in your country (if applicable). If the country issues several documents, please specify what each document is. | | | |