

Input by civil society to the 2021 EASO Asylum Report

Fields marked with * are mandatory.

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C o l l e a g u e s ,

The production of the *EASO Asylum Report 2021* is currently underway. The annual [Asylum Report series](#) present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policy or practice in 2020 (and early 2021) by topic as presented in the online survey.

Please note that the EASO Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2021 contributions will be published on the EASO webpage. Contributions to the 2020 EASO Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the EASO Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EASO's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

Nina Gregori - *EASO Executive Director*

*Please complete the online survey and submit your contribution to the 2021 EASO Asylum Report by **Thursday, 25 February 2021**.*

Instructions

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- New developments and improvements in 2020 and new or remaining challenges; and
- Changes in policies or practices, transposition of legislation or institutional changes during 2020.

Please ensure that your responses remain within the scope of each section.

Contributions by topic

1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

As of February 2021, there are still very limited mechanisms and tools in Europe to identify and register initial indications of statelessness at the border and during registration procedures. There is still no regional guidance on how to identify and record (risk of) statelessness among refugees and migrants, and different countries have different recording mechanisms (including e.g. how they record Palestinians). It is very positive that last year's EASO Annual Report included a focus on statelessness and awareness of the issue has certainly grown amongst civil society actors and in some EU+ States as more visibility is given to statelessness in the migratory context. In part, this has been facilitated through ENS and partners' Stateless Journeys initiative, which provides information and practical tools for refugee response actors (www.statelessjourneys.org). However, there is still generally limited awareness of statelessness among officials; there is no clear definition of a stateless person nor reference to the 1954 Convention in the EU asylum acquis; most EU+ States still do not have a statelessness determination procedure established in law to which officials can refer individuals if they claim to be stateless; there is a lack of available information about who may be stateless or at risk of statelessness, and a lack of training and tools to facilitate accurate identification and registration. This can lead to officials conflating country of origin or former residence with country of nationality or recording an imputed nationality based on language or accent. Crucially, it also leads to protection needs and States' obligations under the 1954 Convention being unfulfilled as they remain unidentified.

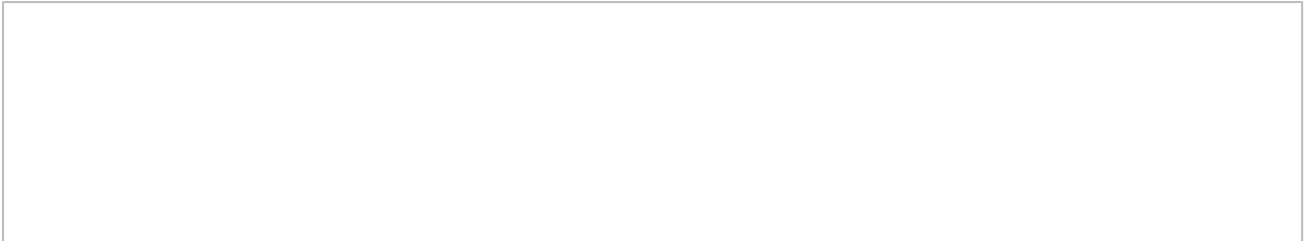
For this reason among others, ENS published detailed comments and recommendations on the legislative proposals currently being negotiated as part of the New Asylum & Migration Pact and wider CEAS reform, which can be accessed here: <https://www.statelessness.eu/updates/publications/statelessness-and-eu-pact-asylum-and-migration-analysis-and-recommendations>

In Spain, the Supreme Court found that the initiation of the procedure for the recognition of statelessness status does not require the applicant to be in the national territory: it is sufficient for the applicant to be at a border point. (Decision 2660/2020 (appeal no. 3661/2019)).

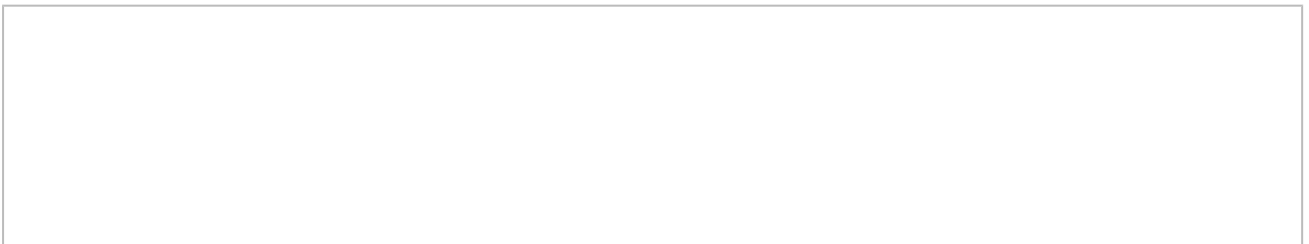
2. Access to information and legal assistance (including counselling and representation)

There is still a significant lack of information and resources for all actors on statelessness and nationality problems, although this has improved a little with the publication of leaflets aimed at refugees and asylum seekers on the Stateless Journeys website. In addition to leaflets in English, Arabic and Farsi published in 2019, a French translation was added in 2020. However, it is not clear how widely used these are and whether any other actors are providing information about statelessness to refugees and asylum seekers arriving in Europe.

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)



4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)



5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)



6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

ENS published a briefing in 2020 - Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers - which highlights both good practice and barriers to birth registration facing specific groups including asylum seekers in some European countries. The briefing highlights practices such as requiring identity and civil status documentation of both parents in order to register a birth and/or issue a birth certificate, which can lead to a risk of statelessness for children born to refugees/asylum seekers (e.g. in Germany). In Norway, there are barriers to acquiring a birth certificate for parents without a residence permit and social security/bank ID. It has been reported in both Greece that asylum seekers are facing barriers to birth registration in some parts of the country due to administrative hurdles. In France, a birth certificate may not be issued unless a positive decision is made on the asylum claim at which point it can be issued by OFPRA (see Statelessness Index 2020 update, forthcoming on 24 March 2021). Birth certificates in Greece are only issued to people registered with a municipality, and only Greek nationals are allowed by law to register with a municipality. The lack of a birth certificate proving family links and place of birth puts children at risk of statelessness and should be addressed in the context of reception of applicants for international protection to ensure all births of children born in transit or whilst in asylum reception facilities are duly registered and birth certificates issued.

In a groundbreaking case concerning the Netherlands - Denny Zhao v Netherlands, Communication No. 2918/2016 - the Human Rights Committee found the Netherlands violated a child's rights by registering the child as having "nationality unknown" in his civil records, as this left the child unable to be registered as stateless, receive international protection and acquire a nationality (art 24 ICCPR).

In the Czech Republic, the Municipal Court in Prague found that stateless persons should be allowed in accommodation centres for asylum seekers. The court stated that "Not admitting applicants for status of a stateless person to an asylum seekers' accommodation centre is an unlawful action" and "The (Ministry) is hereby prohibited to continue the breach of applicants' right to housing in accommodation centre, and the (Ministry) is also ordered to enable the applicants' to use housing in the accommodation centre until the entry in force of their decision on application for a status of a stateless person" (Decision no. 5A 168/2019 of 26 Oct 2020).

7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

Stateless people are at particular risk of arbitrary immigration detention (see ENS 2017 report Preventing the Arbitrary Detention of Stateless Persons) and European countries still have many gaps in their legal frameworks to prevent the arbitrary detention of stateless persons (see 2020 Statelessness Index update, forthcoming 24 March 2020). There is very little data available on the nationality status of detainees, which makes monitoring very difficult. The use of immigration detention in France for example has increased year-on-year since 2015. In 2019, 53,000 people were subject to immigration detention, but there is no information available as to the number of stateless people detained. French law contains some safeguards against arbitrary detention that are pertinent to stateless people. For example, a country of removal must be set prior to detention and can be appealed separately from the decision to detain. However, people who may be stateless or at risk of statelessness are reportedly detained.

The use of immigration detention has also increased in the Netherlands year-on-year in recent years. In previous years, information has been published on the number of people in detention with 'unknown nationality'. For example, 3.7% of the 3,181 people who entered detention in 2017 were recorded as having 'unknown nationality', but this data is no longer available. A report by the Dutch Ombudsperson published in 2020 mentions that in practice an (unspecified) number of people are re-detained on a regular basis due to

not cooperating or due to the country of origin refusing return of the individual. This is of concern, as the Netherlands lacks a dedicated statelessness determination procedure to determine whether such individuals may in fact be stateless and require protection under the 1954 Convention and face insurmountable barriers to return to any country with which they may have links.

In Belgium too, there is no mechanism to identify statelessness in decisions to detain, and people seeking international protection are routinely detained at the border including on grounds of statelessness (see Statelessness Index 2020 update, forthcoming 24 March 2021). A proposed country of removal should be identified prior to detention and detention should only be a measure of last resort, but current practice suggests otherwise. Referral to the judicial procedure to determine statelessness could be a possibility, but long delays in obtaining a court date and the lack of suspensive effect mean that the person could be removed before a decision is made. The new Belgian Government pledged in 2020 to make alternatives to detention more effective, limit the duration of detention and improve detention and return procedures, which is welcome.

In Bulgaria, there are limited safeguards against the arbitrary detention of stateless people, as the identification of a country of removal prior to detention is not required and there is no routine referral to the existing statelessness determination procedure. Some procedural safeguards are in place, but these are often not implemented in practice, and have been particularly impacted by the COVID-19 pandemic in 2020 (see Statelessness Index 2020 update, forthcoming).

In Italy, issues have been raised in 2020 regarding access to effective remedies for people held in immigration detention. Detainees can only appeal to the Court of Cassation against the “initial validation and subsequent extensions of detention.” The remedy can only challenge violations of law (not the merits of the claim) and the appeal does not have suspensive effect (i.e. the person remains in detention). The remedy is mostly ineffective as it ordinarily takes the Court of Cassation approximately one year to issue a decision, often long after the detainee has been repatriated or released for reaching the maximum detention timeframe. It is often difficult for lawyers to contact clients in detention. All pre-removal centres have adopted a policy of removing mobile phones from detainees, which makes it extremely difficult for them to maintain a channel of communication with their legal representative. COVID-19 restrictions have also made it very difficult for lawyers to access detention centres in 2020 (see Italy Statelessness Index 2020 update, forthcoming).

In the Czech Republic, the Regional Court in Pilsen found on 14 Sept 2020 that detention of an applicant for statelessness status was an unlawful act. The court officially states that applicants for statelessness status cannot be detained because they are lawfully staying on the territory (Decision no. 14A8/2020).

Further information is available on 27 countries covered by the Statelessness Index (<https://index.statelessness.eu>) and 2020 updates will be available from 24 March 2021.

8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)

Statelessness can impact on first instance asylum procedures in different ways (see www.statelessjourneys.org) and awareness and knowledge of this remains relatively limited among key actors as there is a lack of guidance and tools available to decision makers, and a lack of reference to statelessness and obligations under the 1954 Convention in EU asylum acquis. There is also a lack of mechanisms in European countries to ensure that where an individual claims to be stateless or where there are indications of statelessness during international protection procedures, that they are referred to a dedicated statelessness determination procedure (SDP) to have their stateless status determined in line with international standards. This is important to ensure that if refused refugee or subsidiary protection, an individual's protection needs under the 1954 Convention are adequately assessed in line with due process standards and with procedural safeguards. This determination is also important regardless of whether an individual is granted another form of international protection, as statelessness will impact on their access to other rights, their inclusion and citizenship rights, the rights of any children, and their ability to return upon cessation of protection. In 2020, Malta acceded to the 1954 Convention, leaving among EU MS, only Poland, Cyprus and Estonia yet to accede to the Convention. EU MS who lack procedures to operationalise their obligations under the Convention must join countries like France, Spain, Italy, Hungary, Latvia, and Bulgaria who have dedicated SDPs in place, and introduce these in law urgently. Some progress was made in this regard in the Netherlands at the end of 2020, as a revised draft bill for the introduction of an SDP was laid before Parliament. However, aspects of the draft law are concerning, particularly as it does not provide for any right to residence or protection under the 1954 Convention as an outcome of the proposed procedure.

In the Czech Republic, the District Court of Prague 7 accepted a damages claim for an excessively lengthy procedure on stateless determination: the Ministry of the Interior has to pay 40 000 CZK for immaterial damage and 33 000 CZK for expenses linked to the person's previous detention. This is the very first case where the Ministry compensates someone for immaterial damage regarding lengthy administrative procedure (Decision Nr. 12 C 2/2019)

Sudita Keita v. Hungary (ECtHR 42321/15) concerned a stateless person of Somali origin whose legal status in Hungary was uncertain for a period of almost 15 years, without access to healthcare, employment or the enjoyment of his private life. The court found that Hungary failed to provide an effective and accessible procedure that would allow him to regularise his stay in the country and end this uncertainty.

9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)

10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

There continues to be a lack of comprehensive information on statelessness and nationality rights in country of origin information, though some progress has been made in this regard. In July 2020, ARC and Dutch Refugee Council published a comprehensive commentary on EASO's COI reports on Syria between Dec 2019-May 2020, which highlighted gaps in relation to information provided on statelessness and barriers to civil registration (see https://www.ecoi.net/en/file/local/2032701/Commentary-EASO-COI-on-Syria_July2020.pdf).

11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

13. Return of former applicants for international protection

It is vital that mechanisms are in place to identify statelessness in the context of return procedures and decisions to detain, in order to safeguard against the arbitrary detention of stateless people. Referral mechanisms must be in place from return proceedings to procedures to determine statelessness and grant protection status to stateless persons under the 1954 Convention; and attention should be paid in this regard to relevant case law from ECtHR e.g. *Kim v. Russia*, *Auad v. Bulgaria*, and the newly issued *ALIMURADOV v. RUSSIA* and *MARDONSHOYEV v. RUSSIA*.

The Frontex Consultative Forum Annual Report 2019, published in 2020, made relevant recommendations in this regard, stating that 'the Agency should support the early identification, referral and documentation of stateless persons' and recognised the 'fundamental rights challenges for stateless persons in return procedures'. The European Parliament in its Feb 2020 Report on the Recast Return Directive adopted our (and FRA's) proposal to include reference to the 1954 Convention in Recital 44 of the Directive.

14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

16. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))

Relevant cases listed above throughout answers

17. Other important developments in 2020

References and sources

18. Please provide links to references and sources and/or upload the related material in PDF format

Links are provided throughout.

19. Feedback or suggestions about the process or format for submissions to the EASO Asylum Report

Please upload your file

The maximum file size is 1 MB

Contact details

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I accept the provisions of the EASO [Legal and Privacy Statements](#)

Useful links

[EASO Asylum Report 2020 \(https://easo.europa.eu/asylum-report-2020\)](https://easo.europa.eu/asylum-report-2020)

[Executive Summary -EASO Asylum Report 2020 \(https://easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020-Executive-Summary.pdf\)](https://easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020-Executive-Summary.pdf)

[Bibliography for the EASO Asylum Report 2020 \(https://easo.europa.eu/sites/default/files/easo-asylum-report-2020-bibliography.pdf\)](https://easo.europa.eu/sites/default/files/easo-asylum-report-2020-bibliography.pdf)

[Summary of legislative, institutional and policy developments in asylum in EU+ countries in 2019 \(https://easo.europa.eu/sites/default/files/easo-asylum-report-eu-developments.pdf\)](https://easo.europa.eu/sites/default/files/easo-asylum-report-eu-developments.pdf)

[Online database with data and latest asylum trends \(https://easo.europa.eu/asylum-trends-easo-asylum-report-2020\)](https://easo.europa.eu/asylum-trends-easo-asylum-report-2020)

[Online database for EU+ developments \(https://easo.europa.eu/eu-developments\)](https://easo.europa.eu/eu-developments)

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