



EMN Ad-Hoc Query on 2019.37 IE and LU AHQ on nexus between recognition of stateless status and the right of residence

Requested by Anne SHERIDAN on 18 March 2019

Protection

Responses from EMN NCP Belgium, EMN NCP Sweden, EMN NCP Lithuania, EMN NCP Latvia, EMN NCP Greece, EMN NCP Slovakia, EMN NCP Austria, EMN NCP Finland, EMN NCP Estonia (9 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.



Background information:

The EMN Platform on Statelessness plans to hold a technical meeting, hosted by the LU and IE EMN NCPs, in Dublin in May 2019. The theme of the meeting will be to explore the interrelationship between recognition of statelessness and residence permits granted to stateless persons in Member States. This discussion will build on the findings of the EMN Inform on Statelessness published in November 2016. One of the findings of that Inform was that: "Only a few MS grant a residence permit to an individual as a consequence of his/her recognition as a stateless person. In the large majority of MS, recognised stateless persons must apply for a residence permit on other grounds if they wish to regularise their status. In some cases, this can be complicated because recognised stateless persons may not fulfil the criteria (i.e. they do not have the financial means or cannot meet the evidence requirements)." The EMN Inform was based on ad hoc queries launched in February 2015 and May 2016. In order to update the information which will be used as a basis for discussion at the technical meeting, and to obtain further detail on the challenges that can arise, we would like to ask the following questions:

Questions

- 1. 1. Has your Member State ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness?**
- 2. 2. Has your Member State introduced a dedicated Statelessness Determination Procedure since November 2016?**
- 3. 3. If your Member State has a dedicated Statelessness Determination Procedure, do you grant residence permits automatically to recognised stateless persons (is the right of residence to stateless persons granted on the basis of their statelessness?) Yes/No. Please explain.**
- 4. 3a. What are the rights attached to these residence permits?**
- 5. 4. If your Member State has a dedicated Statelessness Determination Procedure, but a recognised stateless person is not granted a residence permit in your Member State, what kind of status can the person be given? Is a tolerated stay provided in this case?**
- 6. 4a. What are the rights attached to that status?**
- 7. 5. If your Member State does not have a dedicated Statelessness Determination Procedure, do you grant a different type of residence permit to stateless persons?**
- 8. 6. As an update since the previous ad hoc queries, on what basis can stateless persons access social rights (education, employment, healthcare) in your Member State? How do stateless persons access these rights in practice?**
- 9. 7. Does your Member State offer any special supports to stateless persons to help them apply for residence permissions (e.g. waivers from eligibility criteria, information campaigns, (free) legal assistance)?**
- 10. 8. If your Member State does not provide a recognition of statelessness to legally resident stateless individuals, how do individuals access rights designated for stateless persons (e.g. travel documents, preferential pathways to naturalisation)?**

Responses

EMN NCP Belgium

Wider Dissemination: Yes

Martine HENDRICKX, Practitioners (Government Officials only)

1. Yes, both.

2. No.

3. No. As mentioned in the previous AHQs, when you are recognised as a stateless person in Belgium, you do not automatically receive a right of residence. You are subject to the general residence. To obtain a right of residence in Belgium, you must submit to the Immigration Office an 'application for authorisation to stay on the grounds of an impossibility to return' (Article 9bis of the Immigration Act). During the application on the basis of Article 9bis, nothing will change in your residence situation, even if you are recognised as a stateless person: you will remain without a legal residence, unless you already had a legal residence right on another basis.

4. If a recognised stateless person receives a positive decision on his/her regularisation application, and therefore receive a right of residence, s/he will receive an electronic A card. That is a temporary right of residence.

5. The stateless person can introduce other residence procedures as foreseen in the Immigration Act, for example an application for international protection. No tolerated stay is foreseen.

6. n/a

7. No, if a recognised stateless person receives a positive decision on his/her regularisation application, and therefore receive a right of residence, s/he will receive a proof of temporary registration in the foreigners' register - or also called a electronic A card. It is a temporary right of residence.

8. Access to the labour market, education and training as well as health care and social aid does not depend on the determination of statelessness but on the residence permit that the stateless person can obtain. No changes since previous AHQs.

9. No.

10. Proof of the recognition of statelessness is needed.

EMN NCP Sweden

Wider Dissemination: Yes

Marie BENGTTSSON, EMN NCP Sweden

1. Yes

2. No Statelessness may be determined when an application for a residence permit is filed with the Swedish Migration Authority or when a person registers with the tax authorities. In this case, the tax authorities have the possibility to make further investigations regarding the statelessness of the applicant. Statelessness may also be determined when a stateless person applies for Swedish nationality, in cases where the authorities have doubts regarding the identity of the applicant.
3. Sweden do not have a dedicated statelessness determination procedure.
4. Not applicable
5. Not applicable
6. Not applicable
7. No. They will be treated as everyone else.
8. No changes. In Sweden social rights are connected to the registration in the peoples registry and everyone with a residence permit valid longer than 12 months are allowed to register in the peoples registry and will get the same social benefits as everyone else living in the country.
9. No
10. A stateless person can apply for alien's passport or travel documents. For naturalisation the time the stateless person must have lived in the country is 4 years, instead of normally 5.

EMN NCP Lithuania

Wider Dissemination: Yes

Vytautas EŽERSKIS, EMN NCP Lithuania

1. Yes, both.
2. No.
3. n/a
4. n/a
5. n/a
6. n/a
7. As there is no particular procedure established, stateless persons fall under the same regulation as other foreigners, applying for residence permits.
8. Stateless persons have to fulfill the same conditions as the ones applied to other foreigners (access to the labour market, education and training as well as health care and social aid depends on the type of the residence permit that the stateless person can obtain).

9. Persons under the age of 16 are exempt from the state fee for issuing and changing the stateless person's travel document. Municipalities also cover state fees to other vulnerable persons (including stateless persons who are long-term residents) for the processing of citizenship documents or applications for a residence permit, and the issue/change of passports, identity cards or residence permits. In addition, stateless persons who are asylum seekers receive free legal aid.

10. If a stateless person has the right to reside in Lithuania (possesses a residence permit), s/he can obtain a travel document of the stateless person, which is issued according to the 1954 Convention relating to the Status of Stateless Persons. The general citizenship procedures is applied to the stateless persons, seeking to obtain the Lithuanian citizenship.

EMN NCP Latvia

Wider Dissemination: Yes

Stanislavs LOPATINSKIS, EMN NCP Latvia

1. Latvia is a party to the 1954 and the 1961 Conventions

2. No. Statelessness Determination procedure is introduced since 2004.

3. Yes. According to Immigration Law stateless person can receive a temporary residence permit for 5 years. After this period a permanent residence permit can be received (person has to pass an exam of Latvian language at elementary level – at least A2). Stateless persons are eligible for some facilitations: to receive a temporary residence permit, person shall present a valid travel document, pay the reduced state fee, and submit only application and photo.

4. As stateless persons are considered to be third-country nationals, they are entitled to the same rights as third-country nationals with residence permits. The extent of rights depends on the type of residence permit.

5. N/A

6. N/A

7. N/A

8. Stateless person who has received residence permit has the right to employment without restrictions, right to education, access to social security system. Access to social security system is guaranteed under the same conditions as third country nationals legally residing in the country. The extent of social security system depends on the type of residence permit and employment. Stateless persons with a temporary residence permit have only a partial access to the social security system. The permanent residence permit provides the same amount of social assistance that the state and local government provide to citizens. Medical assistance shall be provided against payment from insurance companies, employers, patients themselves or from other resources. Only stateless person who has a valid permanent residence permit has the right to the health care granted by the state. Employed stateless person in Latvia may receive all social guarantees arising from employment relationships. Stateless person with a valid residence permit may obtain the status of unemployed and the job-seeker, may participate in non-formal education events at the State Employment Agency. In order to receive a service, a person turns to the relevant authority and presents a personal identification document and residence permit.

9. To receive a temporary residence permit, stateless person shall present a valid travel document, pay the reduced state fee, and submit only application and photo. The decision by which a person is recognized as a stateless person sets out in detail the next steps to receive a travel document of a stateless person and require a temporary residence permit, as well as the amount of the state fees. If stateless person has any additional questions, he/she can contact any of the 30

divisions of the Office of Citizenship and Migrations Affairs or call to the info phone of the Office of Citizenship and Migrations Affairs and receive an individual consultation.

10. N/A

EMN NCP Greece

Wider Dissemination: Yes

Athena BALOPOULOU, Practitioners (Government Officials only)

1. Greece has ratified the 1954 Convention by Law N.139 Gov. Gazette A 176/25-08-1975.
2. No. However, a law has been drafted in this respect and is being processed.
3. [Not applicable]
4. [Not applicable]
5. [Not applicable]
6. [Not applicable]
7. A stateless person may apply for a residence permit on other grounds that may cumulatively apply to his/her situation, such as an application for international protection, application for a work permit or a humanitarian residence permit.
8. 7. As mentioned above, given that there does not yet exist a dedicated Statelessness procedure , a stateless person has to apply for a type of residence permit which is suitable for his personal situation, such as a refugee permit. If such an application is approved, the stateless person will have access to all rights that are granted for example to beneficiaries of international protection. In Greece, when applying for international protection, the applicant is granted a provisional applicant's card which enables him/her to reside legally in Greece until a final decision on his/her application is delivered and to have access to basic social rights such as employment, education and healthcare.
9. -
10. The Greek Nationality Code (L.3284/2004 as ratified by L.3838/2010 and L.4604/2019 and currently in force) includes special provisions for the acquisition of the Greek nationality by stateless persons who live on Greek territory, with the aim of facilitating this specific category of foreigners. More specifically: a) According to the provisions of par.2b and 2c of article 1 of L.3838/2010, which constitute a subsidiary application of the jus soli principle in the greek nationality law, a person born on Greek territory shall acquire the Greek nationality by birth provided that he/she does not acquire any other nationality by birth or is of unknown nationality. The above mentioned provisions constitute consolidated provisions of the Greek nationality law and prove the diachronic intention of the Greek State to grant Greek citizenship to stateless persons that live on Greek territory, applying in this way the imposed by international law principle, according to which everyone should have by birth – at least – one nationality. In this case the possession of a residence permit is not required. The Ministry of Interior (its regional offices or/and both the central office in case assistance is requested) investigate the citizenship status of the applicant and provided that statelessness at birth is sufficiently proved, a decision for the acquisition of Greek citizenship is issued by birth due to statelessness. b) According to the provisions of articles 2 & 4 of L.3838/2010, stateless persons face a preferential pathway to naturalization as Greek citizens, ie they are liable to a reduced required time period of legal

residence in Greece (3 years instead of 7) as well as a reduced deposit fee (100 euro instead of 550). In order to apply for the Greek citizenship by naturalization as stateless, the applicant must hold a travel document or special type of residence permit/identity card that clearly states that he/she is stateless. Therefore, in this case, the possession of a specific type of residence permit is prerequisite for the naturalization as a stateless person, meaning that if there is no procedure or mechanism to issue such a document, the naturalization of these people cannot be facilitated as mentioned above.

EMN NCP Slovakia

Wider Dissemination: Yes

Simona MESZAROSOVA, EMN NCP Slovakia

1. YES
2. Slovakia is one of 12 countries in which there is a certain mechanism for identifying or determining whether a person is stateless and subsequently granting protection or residence and related rights. Currently, however, the mechanism in place is considered incomplete as regards the procedural framework. Although the Slovak Republic has introduced into the Act on Residence of Aliens the possibility of granting permanent residence for five years to a stateless person, there is still no unified stateless determination procedure in Slovakia.
3. Under the Aliens Residence Act, the Ministry of the Interior can grant a permanent residence for five years even without meeting the conditions laid down in this Act, even repeatedly: a) to a stateless person (a stateless person is a person that no state based on its law considers to be its own citizen). To prove this fact, it is sufficient if s/he proves that s/he does not have the nationality of the state: a) in which s/he was born, b) in which he had his previous stay or residence, and c) of which the nationality his/her parents and siblings have.
4. A person can be granted a permanent residence permit of 5 years in the above mentioned cases.
5. N/A
6. See 3A)
7. N/A
8. There are no specific conditions for stateless persons in Slovakia. If these persons are granted residence in accordance with the Act on the Residence of Aliens, these persons shall enjoy the same rights as other TCNs with permanent residence.
9. See Q3
10. N/A

EMN NCP Austria

Wider Dissemination: No

EMN NCP Finland

Wider Dissemination: Yes

Tuukka Lampi, EMN General

1. Yes, both.

2. According to the nationality act of Finland, The Finnish Immigration Service will determine citizenship status at the request of a public authority or the party, if the matter is of importance with regard to the existence of Finnish citizenship or some right or obligation related to it, the correctness of any entry in the public authorities' personal registers, the alien's residence in Finland or some other reason equivalent to these. In this procedure, a person can be determined as stateless.

3. No. Determination of statelessness is considered a separate procedure and does not automatically grant a right to a residence permit. However, being stateless does not prevent a person from applying for a residence permit for any category (family ties, work, studies, international protection etc.)

4. N/A

5. If the criteria for international protection are met, a stateless person can be granted international protection in the same way as any other person. If the criteria for international protection are not met, but refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their previous country of residence or of their vulnerable position, they may still be granted a residence permit on compassionate grounds (as per section 52 of the Finnish Aliens Act). Furthermore, a stateless person can also be granted a residence permit under section 51 of the Aliens Act, if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country. The prerequisite for issuing such a permit, however, is that the person is not intentionally refusing or trying to obstruct his return. Hence, even a stateless person can be given a negative decision and can be expected to return, if a legal return to their previous country of permanent residence is considered possible.

6. If a person is issued a permit under section 52, he is issued a one year permit with the option of extension. The person will have right to work and a right to family reunification. As section 52 of Aliens Act states: Issuing a residence permit does not require that the alien have secure means of support. If aliens are issued with a residence permit under subsection 1, their family members are issued with a residence permit under section 47(3) of the Aliens Act. If unaccompanied minor children who have entered Finland are issued with a residence permit under subsection 1, their minor siblings residing abroad are issued with a continuous residence permit. A requirement for issuing a residence permit is that the children and their siblings have lived together and that their parents are no longer alive or the parents' whereabouts are unknown. Another requirement for issuing a residence permit is that issuing the permit is in the best interest of the children. Issuing a residence permit does not require that the alien have secure means of support. A residence permit under section 51 is always issued as a temporary permit for one year at a time and does not have an option of extension. For each subsequent permit the circumstances are determined separately. A temporary permit issued under section 51 does not grant rights to family reunification, but does grant the right to work. The Aliens Act section 51 states: Issuing a residence permit does not require that the alien have secure means of support. If aliens are issued with a residence permit under subsection 1, their family members residing abroad are not issued with a residence permit on the basis of family ties

7. N/A

8. Statelessness does not bring any special rights in Finland. Stateless people have access to same social rights as all legal residents in Finland.

9. No. When applying for a residence permit, stateless people have no special provisions. The application procedure is the same in all residence permit categories, as it would be for others. A residence permit is granted, if the applicant fulfills the criteria.

10. Stateless persons have a reduced minimum requirement of residence for citizenship. An involuntarily stateless person may be granted Finnish citizenship if he or she is and has been permanently resident and domiciled in Finland: a) for the last four years without interruption; or b) for a total of six years since reaching the age of 15 years with the last two years without interruption. Otherwise the minimum requirements for residence above are five and seven years, respectively. According to section 9 of the nationality act of Finland, A child acquires Finnish citizenship by birth if the child is born in Finland and does not acquire the citizenship of any foreign State at birth, and does not even have a secondary right to acquire the citizenship of any other foreign State. Furthermore, a child who is born in Finland acquires Finnish citizenship through the place of birth, if his or her parents have refugee status in Finland or if they have otherwise been provided protection against the authorities of their State of nationality. An additional requirement is that the child does not acquire either parent's citizenship except through registration of the child's birth with the authority of the parent's State of nationality, or through another procedure requiring the assistance of the authorities of this State. If the protection referred to above was given to only one of the parents, it is also required that the child does not acquire the other parent's citizenship by birth nor has even a secondary right through birth to acquire it.

EMN NCP Estonia

Wider Dissemination: Yes

Barbara ORLOFF, EMN NCP Estonia

1. No.
2. No.
3. N/A
4. N/A
5. N/A
6. N/A

7. While there exists no dedicated administrative Statelessness Determination procedure in which a person can be determined to be stateless, individuals can nonetheless be identified as stateless when their identity is being determined in the context of the asylum procedure, or in procedures for the application and extension of residence permits and identity and travel documents. Stateless persons can apply for a residence permit on the same grounds as other third-country nationals. Former USSR residents, who now hold the status of persons with undetermined citizenship, mostly hold a long-term residence permit in Estonia. Persons with undetermined citizenship do have slightly preferable provisions for receiving a residence permit. Some of the conditions that are stipulated in Aliens Act do not apply to TCNs who have settled in Estonia before 1 July in the year 1990 and who has factually resided and resides in Estonia and has not left to reside in another state and whose residence is Estonia does not pose a threat to the interests of the Estonian state. The only conditions that do apply are that the person has to have a permanent legal income which ensures his or her own subsistence in Estonia and no facts exist which are the basis for the refusal to issue a residence permit.

8. Stateless persons have access to social rights on the same grounds as any other legally staying TCN.

9. Persons with undetermined citizenship do have more preferable provisions for receiving a residence permit. Please see the answer to Q 5.

10. Legally resident stateless individuals are entitled to receive an Aliens passport. According to the Citizenship Act a minor under 15 years of age who was born in Estonia or who immediately after birth takes up permanent residence in Estonia together with his or her parent(s) is granted Estonian citizenship by naturalisation as of the moment of his or her birth, provided his/her parents or single parent whom no state recognises under valid laws as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. Thus, children born to stateless persons in Estonia should be granted Estonian citizenship automatically via naturalization. Parents may 'opt out' on behalf of their child within one year from birth. As of 2019 it is possible to conclude an agreement with a TCN who wishes to acquire Estonian citizenship for the purpose of completing the course of language training. Under the agreement, the TCN undertakes to take language training courses until they achieve the level of B1 in Estonian, to comply with the conditions provided in section 6 of this Act and to submit the application for Estonian citizenship within one year of passing the examination for the level of B1 in Estonian. A TCN who has concluded the agreement and who has been granted unpaid study leave for participating in language training is paid, for each language proficiency level, compensation equal to 20 calendar days' pay according to their average salary. The upper limit for calculating the compensation is the Estonian annual average gross monthly salary last published by Statistics Estonia.