

Foundation for Access to Rights, Institute on Statelessness and Inclusion and European Network on Statelessness

Joint Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review

Bulgaria

Introduction

1. The Foundation for Access to Rights (FAR), Institute on Statelessness and Inclusion (ISI) and European Network on Statelessness (ENS) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Bulgaria.
2. This submission draws on information and analysis of practice from the work of FAR in providing direct legal assistance and other services to stateless people in Bulgaria, as well as ENS's Statelessness Index, which covers Bulgaria.¹ The submission provides an overview of the key gaps in Bulgarian law, policy and practice in relation to the protection of stateless persons and prevention and reduction of statelessness, focusing in on key remaining protection gaps facing stateless people in Bulgaria.
3. The Foundation for Access to Rights (FAR) is a Bulgarian non-governmental organisation founded in the public interest. Its mission is the achievement of the following objectives: establishment of effective mechanisms to guarantee access to rights in practice and effective protection against arbitrary deprivation of rights; increasing institutional and public awareness, sensitivity and commitment to the need to address systemic problems in access to basic human rights in Bulgaria; development of a favourable legislative environment in line with European and International standards for the protection of human rights and the establishment of best practices on access to rights. FAR is a member of the European Network on Statelessness.
4. The Institute on Statelessness and Inclusion² is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 50 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 35th UPR Sessions.
5. The European Network on Statelessness (ENS)³ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 145 members in 41

¹ <https://index.statelessness.eu/country/bulgaria>.

² For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

³ For more information about the European Network on Statelessness, see: www.statelessness.eu.

European countries. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.

Previous UPR of Bulgaria under the First and Second Cycle

6. Bulgaria was previously reviewed during the 8th and 22nd sessions of the UPR, in 2010 and 2015 respectively. During the first cycle, Bulgaria received five recommendations from Azerbaijan, Bosnia and Herzegovina, Brazil, Germany and Slovenia to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which it accepted and implemented two years later. During the second cycle, Bulgaria received no recommendations related to nationality and statelessness.

Bulgaria's International obligations

7. Bulgaria acceded to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 2012. However, it retains reservations to Articles 7, 21, 23, 24(1), 24(3), 27, 28 and 31 of the 1954 Convention, which have an impact on the rights of stateless people in the country. So far, reservations to the provisions on identity papers (Article 27) and travel documents (Article 28) have had the most tangible impact in Bulgaria as they have been interpreted by the competent authorities as excluding stateless persons who reside irregularly in Bulgaria from the status of a stateless person or from residence rights in the country. Improvements are expected following the entry into force in October 2019 of amendments to the Bulgarian law.
8. Bulgaria has international obligations to protect the right to a nationality and protect the rights of stateless persons under international and regional treaties to which it is a party. These include, among others the International Covenant on Civil and Political Rights (ICCPR - article 24.3), the International Covenant on Economic, Social and Cultural Rights (ICESCR - articles 2.2 and article 3), the Convention of the Rights of the Child (CRC - articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW - article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD - article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (CRPD - article 18) and the International Convention for the Protection of All persons from Enforced Disappearance (CED - article 25). Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights.
9. Bulgaria has ratified the European Convention on Nationality, but it retains reservations to Articles 11, 12, 16 and 17. These reservations relate to the fact that under Bulgarian law, there is no requirement to provide reasons for decisions on applications to acquire Bulgarian nationality and decisions to deprive persons of their Bulgarian nationality. These decisions are also not subject to appeal. There are no remedies against refusal or deprivation of Bulgarian nationality. Bulgaria is also not a state party to the European Convention on the Avoidance of Statelessness in Relation to State Succession.

10. In 2018, the Human Rights Committee welcomed “the amendments to the Law on Foreigners of 2016 and 2017, establishing a statelessness determination procedure, prohibiting the short-term detention of unaccompanied children and introducing new alternatives to detention for irregular migrants”.⁴ However, access to the statelessness determination procedure has been impeded in practice by the risk of immediate detention of irregularly residing stateless persons who present to the authorities in order to submit their statelessness application.

National Law

11. Bulgaria’s nationality law is mainly found in the Law on Bulgarian Citizenship (*Закон за българското гражданство*), which stipulates the conditions for acquisition of Bulgarian nationality by birth and by naturalisation, as well as the conditions for loss of Bulgarian nationality. In December 2016, Bulgaria introduced a statelessness determination procedure (SDP), elaborated in the Law on Foreign Nationals in the Republic of Bulgaria (*Закон за чужденците в Република България*) and its Implementing Rules. In April 2019, Bulgaria further amended its statelessness law to provide for the right to a continuous residence permit (for a renewable period of up-to-one year) for holders of stateless status. The latter amendments will enter into force on 24 October 2019.

Statelessness Determination & Protection

12. The wording of the definition of a stateless person in the Law on Foreign Nationals, and *de-facto* exclusion provisions requiring lawful residence, mean that the interpretation of who is stateless under Bulgarian law is significantly narrower than under the 1954 Statelessness Convention. Positively, there is no time limit for access to the SDP, no fee, there is a right to an interview and an appeal, free legal aid is provided by NGOs, and there is cooperation between asylum and SDP decision-makers. However, an application can only be made in writing in Bulgarian, the burden of proof lies with the applicant and the standard of proof is higher than in asylum procedures. Decisions are given in writing with reasons within six months, although in practice there have been cases of 'silent rejections' whereby no acknowledgement or extension is communicated within the timeframe. There is no protection during the SDP so applicants have no access to basic services and may be detained during the procedure. Recognition as a stateless person may now lead to the granting of a year-long renewable residence permit, which should improve the situation for recognised stateless people in the country once new provisions come into force in October 2019.
13. Despite these welcome positive developments, there are a series of remaining issues in the protection of stateless persons in Bulgaria that still need to be addressed.

⁴ Human Rights Committee, Concluding observations on the fourth periodic report of Bulgaria, CCPR/C/BGR/CO/4 (2018), para 3 (d).

Lack of access to the statelessness determination procedure

14. Access to the statelessness determination procedure is very difficult in practice, even in cases of lawfully residing stateless persons. The Migration Directorate often does not accept applications presented to them, citing different arguments including alleged lack of prospects of success of the application and requirements to present applications at specific times of day (e.g. “reception time is only on Wednesday from 10:30 to 11:30 am”). Irregularly staying stateless persons run a real risk of being detained during the negotiation process of having their applications admitted for review. An additional deterrent to stateless people in an irregular situation seeking statelessness determination is that there have been cases of the competent authorities issuing return orders to irregularly residing stateless persons when they present to apply for stateless status.

Lack of protection during the procedure for applicants for statelessness status

15. Applicants for stateless status currently do not have any rights in Bulgaria, such as a right to stay on the territory of the country or access to means of subsistence during the statelessness determination procedure. Irregularly staying stateless persons in Bulgaria do not have any access to minimum social rights such as the right to work and the right to social assistance and access to social services. These persons usually do not have any permanent income and live in stressful insecurity every day in order to provide food and accommodation for themselves and their families.

Burden of proof and remedies in the statelessness determination procedure

16. The first-instance decision-making authority in Bulgaria for statelessness determination, the Migration Directorate, has developed the practice of discontinuing the procedure if the applicant is unable to present any document requested by the authorities within a short timeframe (usually three days).⁵ Discontinuation of the SDP instead of rejecting the stateless status application on its substance weakens the effectiveness of remedies for applicants, because, even if they win the case in court, the court can only oblige the Migration Directorate to continue the procedure. The court is not competent to pronounce on the substance of the application. Thus, applicants might face numerous subsequent discontinuations which in practice serve to excessively prolong the decision on the application.

No access to the labour market and the health care system by holders of statelessness status

17. Recently, the Bulgarian law provided the possibility to obtain a ‘continuous’ residence permit after a person is granted statelessness status. Positively, this gives recognised

⁵ According to the official statistics of the Migration Directorate as of 26 August 2019 (Ministry of the Interior, Decision No.812104/26.08.2019 to grant access to public information), in 2019 so far the Migration Directorate has issued only 1 decision to refuse the status of a stateless person and 9 decisions to discontinue the statelessness determination procedure.

stateless people the right to legally reside in Bulgaria, protecting them from being treated as undocumented immigrants and facing the risk of detention. However, the residence permit includes important restrictions, which denies them the opportunity to finally achieve a real sense of belonging or to contribute on an equal basis with the rest of society. According to the Law on Labour Migration and Labour Mobility, people with a 'continuous' residence permit are not given access to the labour market and cannot sign a labour contract. This rule has some exceptions, but stateless persons are not included on the list of exceptions. Holders of 'continuous' residence permits are also outside the scope of the health insurance system and thus health care to stateless persons is not covered by the National Health Insurance fund.

Poor identification of statelessness

18. A persistent challenge documented in research relates to the proper identification of stateless persons in Bulgaria.⁶ For example, upon detention in Bulgaria stateless persons are usually assigned a country of origin that they are deemed to have come from or with which they have some cultural or historical links. In removal and detention orders, stateless persons are identified as citizens of those countries. According to the official statistics of the Migration Directorate as of 26 August 2019,⁷ in 2019 so far only two stateless persons have been detained (the same statistics state that in 2018 zero stateless persons were detained). This suggests poor identification of statelessness on the part of the authorities, as in 2019, FAR has provided legal aid to 12 detained stateless persons at the Bousmansti detention centre alone.

Arbitrary and prolonged detention of stateless persons

19. The grounds for immigration detention in Bulgarian law include to effect removal, and to initially establish identity and assess administrative measures to be taken. There are limited safeguards against the arbitrary detention of stateless people, as the identification of a country of removal is not required by law prior to issuing a removal decision and ordering detention. This remains so, despite the 2011 European Court of Human Rights ruling in the *Auad v Bulgaria* case,⁸ which found (among others) a violation of Article 5 of the Convention (right to liberty and security) on the basis that *"legal certainty is required in respect of each and every element relevant to the justification of detention and a lack of clarity over the destination country could hamper effective scrutiny of the authorities' actions."*⁹
20. The problem is aggravated by the poor identification of statelessness upon (and during) detention. Bulgaria has adopted the maximum time limit of detention permissible under EU law, 18 months. Despite legislative amendments in 2017 that introduced two less coercive measures in addition to weekly reporting (a financial guarantee and a passport surrender), these have not yet been applied in practice as alternatives to detention. The

⁶European Network on Statelessness and Foundation for Access to Rights, [Protecting Stateless Persons from Arbitrary Detention in Bulgaria](#), 2016.

⁷ Obtained by FAR as part of the [Statelessness Index](#) update: Ministry of the Interior, Decision No.812104/26.08.2019 to grant access to public information.

⁸ European Court of Human Rights, Judgment on the Case of Auad v. Bulgaria (Application no. 46390/10), 11 October 2011.

⁹ European Court of Human Rights, Information note on the Court's case law, No 145, October 2011, available at: https://www.echr.coe.int/Documents/CLIN_2011_10_145_ENG_895347.pdf

law provides that detention should be a last resort, but in practice irregular migrants are almost automatically subject to removal and detention orders upon identification. Some procedural safeguards are in place, but these are often not implemented in practice. For example, the law provides that detainees must be informed in writing of the reasons for detention, but in practice this is given in Bulgarian only and interpreters are rarely present, so there is a lack of awareness about legal aid and available remedies. People released from detention are not routinely issued with documentation and have no access to other rights.

Protecting the Right to a Nationality - Prevention and Reduction of Statelessness

21. Bulgaria has relatively strong safeguards in its nationality law to prevent childhood statelessness. Children born on the territory automatically acquire Bulgarian nationality if they would otherwise be stateless. Children born to Bulgarian parents abroad (and foundlings) also acquire citizenship at birth automatically. However, in the case of adoption of a foreign child by Bulgarian nationals, there is a potential risk of statelessness. The child does not automatically acquire Bulgarian nationality on adoption but must apply for nationality before the age of 18 (with the adoptive parents' consent if under 14). Birth registration takes place within seven days of birth and late registration is possible in law and practice, although a court procedure is required if more than a year has passed. Cases of health services reporting undocumented migrants to the immigration authorities may constitute a barrier to civil registration in practice for some high-risk groups. Withdrawal of nationality is provided for in law and is not permitted if it results in statelessness.
22. The Bulgarian Constitution provides that the granting and withdrawal of Bulgarian nationality is a sovereign power of the President of the Republic. The acts of the President of the Republic are not subject to appeal. Bulgaria has made reservations to Articles 11 and 12 of the European Convention on Nationality in this regard. There are no remedies against refusal, withdrawal or deprivation of Bulgarian nationality. Although the Law on Bulgarian Citizenship provides that one shall not be deprived of Bulgarian nationality in case the person would remain stateless, there are no remedies if the provision is not observed, such as, for example, if statelessness is not identified.

Recommendations

23. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to the Bulgarian Government:
 - I. Take concrete steps to facilitate access to the statelessness determination procedure (SDP) for all persons on the territory who wish to submit an application under the SDP, regardless of their legal status in the country.
 - II. Introduce a temporary residence permit for applicants for stateless status, granting rights in line with people seeking asylum, and thus ensuring access to minimum social rights and subsistence, and facilitating access to the procedure.

- III. Issue a reasoned decision in writing where an applicant is found not to be stateless by the competent authority, rather than discontinuing the procedure, in order to guarantee the individual an effective remedy.
- IV. Make appropriate amendments to the Law on Labour Migration and Labour Mobility and the Law on Health Insurance, so that holders of statelessness status in Bulgaria can work and pay for their health insurance, which will allow them to lead a dignified and fulfilling life as equal members of the society.
- V. Take steps to improve the identification of statelessness prior to issuing a removal or detention order, to prevent cases of countries of origin being arbitrarily assigned to individuals subject to removal/detention proceedings.
- VI. Implement the measures indicated by the European Court of Human Rights in the case of *Auad v. Bulgaria* that “*the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge.*”¹⁰
- VII. Follow the burden of proof test, stipulated by the Court of Justice of the European Union in the Mahdi case C-146/14 PPU, when reviewing the length of detention to ensure that there is a real prospect of removal within the specific time limit, and thus prevent unlawful detention.
- VIII. Reform the national legal framework to provide for a right to appeal decisions relating to acquisition or loss of Bulgarian nationality.
- IX. Withdraw remaining reservations to the 1954 Convention Relating to the Status of Stateless Persons and the European Convention on Nationality, and accede to the European Convention on the Avoidance of Statelessness in Relation to State Succession.

¹⁰ European Court of Human Rights, Judgment on the Case of Auad v. Bulgaria (Application no. 46390/10), 11 October 2011, Paragraph 139