

UPR Pre-session In view of the 37th Working Group Session

8-11 December 2020

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Written statement relating to
the right to a nationality and
stateless persons

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österreich

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European
Network on
Statelessness

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On behalf of Asylkoordination Österreich, Diakonie Flüchtlingsdienst, the European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI), my presentation focuses on two issues concerning Austria's international commitments to reduce and end statelessness and to safeguard the rights of stateless people living in Austria:

- 1) children's right to a nationality,
- 2) statelessness determination and access to social rights.

Children's right to a nationality

As set out in Article 7 of the Convention on the Rights of the Child, every child has a right to acquire a nationality. States have a further obligation to ensure that no child is born stateless. However, each year since 2010, the number of children at risk of statelessness in Austria has grown. Most of them will remain stateless for their entire childhood, which clearly goes against their best interest. Under Austrian nationality law, children born stateless in Austria (e.g. because they inherit their parents' status) do not acquire Austrian nationality automatically. They can only apply for nationality if they have lived lawfully in Austria for at least ten years (with five years' continuous residence preceding the application), are between 18 and 20 years-old and have not been convicted of certain offences or for a certain period of time. The timeframe of two instead of three years once reaching the age of majority is not in line with Austria's international obligations.

On the acquisition of Austrian nationality by descent, Austria committed to addressing the limitations for children born out of wedlock on accessing Austrian nationality, and to ensuring non-discrimination, as recommended by Portugal during the second UPR cycle. However, the regulations have not yet been amended.

Both of these issues were addressed by the United Nations Office of the High Commissioner for Refugees in its statelessness mapping report of Austria, by the Committee on the Elimination of all forms of Discrimination Against Women during its 73rd session, and by the Committee on the Rights of the Child during its 83rd session.

Statelessness determination and access to social rights

Stateless people can only fully access their rights enshrined in the 1954 Convention and participate in society once their stateless status is identified and established, which is best fulfilled through a dedicated statelessness determination procedure. In the absence of a dedicated procedure in Austria, statelessness may only be identified through other administrative procedures, including in applications for international protection or the procedure for acquiring a residence permit. However, the identification of statelessness by a federal or provincial authority does not result in any legal status and no procedure exists in national law that provides for a right of residence by virtue of being stateless. Furthermore, there is no definition of a stateless person in Austrian law nor specific training and guidelines for civil servants on how to identify and assess statelessness, leading to inconsistent practice. Without legal residence, stateless people lack adequate protection and have access only to emergency medical care and primary education.

Finally, housing for stateless persons who are in the asylum procedure has been reported as inadequate, in particular in light of the current COVID-19 pandemic. Like other marginalised

groups, stateless people should not be forced to stay in crowded facilities since this results in increased risks of infection.

Recommendations

Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Austria:

- I. Establish a legal basis for the automatic acquisition of Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless.
- II. Amend Article 14 of the Austrian Nationality Act in line with the 1961 Convention and allow children born stateless in Austria to acquire Austrian nationality until the age of 21.
- III. Amend Article 7 of the Austrian Nationality Act to ensure that children born to Austrian fathers out of wedlock acquire Austrian nationality retroactively upon establishment of fatherhood
- IV. Introduce a legal definition of a stateless person into Austrian legislation in accordance with Article 1 of the 1954 Convention.
- V. Establish a fair and accessible statelessness determination procedure in line with UNHCR guidance and good practice, which provides a legal basis for granting residence and rights to people determined to be stateless.
- VI. Do not discriminate in COVID-19 responses on any grounds including nationality, documentation, or migration/residence status.