REPORT
2013

THE INVISIBLE

STATELESS PERSONS IN POLAND

Legal Aid Center
The Halina Nieć

Legal Aid Center
The Halina Nieć

The Halina Niec Legal Aid Center
Ul. Krowoderska 11/7
31-141 Kraków
Tel: 12 633 72 23
Fax: 12 423 32 77
www.pomocprawna.org
biuro@pomocprawna.org

REPORT:

THE INVISIBLE

STATELESS PERSONS IN POLAND

Executive Summary

Kraków, December 2013

This Report concludes a 11-month long research carried out within the framework of "The Invisible – Stateless Persons in Poland" project funded by the Stefan Batory Foundation. The full report is available in Polish.

Authors:
Anna Strama
Anna Pilaszek

Editor:
Katarzyna Przybysławska

Cover design:
Ewa Górska

Cover photo:
deusXFlorida/Flickr.com

1. INTRODUCTION

The right to citizenship is one of the fundamental human rights guaranteed by the Universal Declaration of Human Rights, however many people residing in Poland are still deprived of it. Persons with no citizenship, and therefore not benefitting from protection of any state, are often pushed to the margins of society, functioning in a legal vacuum, and not being able to exercise their basic rights. The main acts of international law containing comprehensive regulation to reduce statelessness and the rights that should be guaranteed to stateless persons are the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). Poland is one of four European Union countries (next to Estonia, Malta and Cyprus) which have not acceded to the two above-mentioned conventions yet. Accession to the Convention would not only mean that Poland accepts the need to respect the rights of stateless persons, but could consequently lead to regulating and improving their legal status and ensure that they are able to exercise their basic rights.

This report, *The Invisible – Stateless Persons in Poland*, is the product of a eleven month's work conducted by two researchers from the Halina Niec Legal Aid Center. The research project began in January 2013 and continued to be done until December 2013. The Polish version of the report was published in November 2013 therefore the information gathered in this publication includes developments up until November 2013.

The study gives an overview of the causes, types and backgrounds of statelessness and of the global efforts against statelessness. However, the main goal of this study was to collect and analyze data regarding situation of stateless persons in Poland, that could illustrate the dimension of the statelessness problem in our country. Thus, the report focuses on providing insights into fundamental issues surrounding statelessness but more importantly discusses some of the key issues faced by this group of stateless individuals in Poland aiming to explain why the Halina Niec Legal Aid Center is of the opinion that national provisions don't address the issue of statelessness in a comprehensive manner. In this context, the report also canvasses the current international legal regime for the protection of stateless persons and the reduction of statelessness, and suggests what Poland should do in order to comply with and accede to the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

The report concludes with recommendations of measures for the Polish government to take to ensure that stateless individuals receive the rights and responsibilities that will enable them to participate as full members of society. It offers some policy suggestions for both improving administrative practices and the institutional groundwork for the treatment of stateless persons, and reducing statelessness.

2. STATELESSNESS – A WORLDWIDE OVERVIEW

Although already more than 60 years elapsed since the birth of the Universal Declaration of Human Rights which provides for the right to nationality, it is estimated that as many as 12 million people are living in *de iure* or *de facto* statelessness worldwide. The causes and backgrounds of statelessness are varied. Main causes of statelessness, that can be avoided by States, are as follows:

- Conflict of laws - one of circumstances when nationality legislation in one State conflicts with that of another State, leaving an individual without the nationality of either State. For example, the State in which the individual was born, grants nationality by descent only (*jus sanguinis*), but the individual's

parents are nationals of another State that grants nationality on the basis of place of birth only

- Transfer of territory or sovereignty – in case of territory transfer persons living on certain area can become stateless in their own country of origin; lack of adequate regulations or committing legal deadlines for pledging a nationality may lead to statelessness in such cases
- Discriminative practices - there are numerous administrative and procedural issues that lead to the loss of nationality. For instance, some States automatically alter a woman's nationality status when she marries a non-national. A woman may then become stateless if she does not automatically receive the nationality of her husband or if her husband has no nationality
- Lack of birth legislation - even though States are generally advised to keep written records of all decisions on nationality, some countries do not issue the birth certificates for their nationals what can lead to *de facto* statelessness

The world's concern with statelessness began in the aftermath of the First World War. Cases of statelessness abounded as a result of border changes following the war, massive flights of people from post-revolutionary Russia, who were denied Soviet citizenship, and the denationalization of particular ethnic groups in multiethnic states, among other factors. The Hague Codification Conference of 1930, which produced three instruments-the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, the Hague Protocol Relating to a Certain Case of Statelessness, and the Special Protocol Concerning Statelessness-was the first attempt to cope with statelessness by way of treaties. The instruments, however, confined their focus on the prevention of statelessness, and were not aimed at improving the status of stateless persons.

In Europe the statelessness has arisen mainly in contexts of state succession and political developments. In 90's the breakup of the Soviet Union, Yugoslavia and Czechoslovakia caused enormous difficulties for people who were regarded by the new governments as belonging somewhere else - even when they had resided in their current location for many years. Those territorial changes led to increasing numbers of stateless persons, especially those belonging to national minorities (i.e. Roma).

The UN High Commissioner for Refugees (UNHCR) estimates that there are about 250,000 stateless persons in Eastern Europe. These figures can be shocking, particularly when we realize the problem of statelessness and its consequences, including almost complete marginalization of stateless persons. Their exclusion from participation in the political process undermines the reciprocal relationship between duties and rights. Many face discrimination in their daily lives: they may be denied employment, freedom of movement, housing or access to education and health care or detained because they do not have personal identification documents that are valid.

The international community, however, become more and more aware that States are obliged to resolve problems of statelessness based on the principles contained in international treaties. This growing awareness should be estimated positively insofar as it concerns few issues, including growing number of treaties that deal with statelessness. There are several international treaties that contribute to the protection of stateless persons and the stabilization of their status, as well as to the reduction of statelessness with varying degrees of specificity, including the Universal Declaration of Human Rights (art. 15(1)), the International Covenant on Civil and Political Rights (arts. 2(1), 12(4), 24(2) and (3)), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5), the Convention on the Elimination of All Forms of Discrimination against Women (art.9(1)), the Convention on the Nationality of Married Women (arts. 1 and 2), the Convention on the Rights of the Child (art. 7(1)) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 29).

This awareness can be observed also on a regional level. For instance, Europe has adopted the European Convention on Nationality of 1997 under the initiative of the Council of Europe. Its arts. 4, 6(2) and 7 have direct reference to statelessness. Moreover, in 1996 the Venice Commission of the Council of Europe adopted the Declaration on the Consequences of State Succession for the Nationality of Natural Persons. This propelled the Council of Europe to develop the Convention on the Avoidance for Statelessness in Relation to State Succession in 2006. Simultaneously, the right to a nationality has met recently an attention of International Human Right Courts, including European Court on Human Rights and European Court of Justice.

It should be noted, however, that the effective realization of the right to nationality requires concretization in legal provisions, both on national and international level and implementation adequate administrative procedures that lead to protect stateless persons, stabilize their status, and to the reduction of statelessness. The principal international instruments that deal with those issues are:

A. Convention Relating to the Status of Stateless Persons

B. Convention on the Reduction of Statelessness

2.1. Convention Relating to the Status of Stateless Persons

The idea to resolve problems of statelessness based on the principles contained in international treaties after Second World War was born during 1951 Geneva Conference (United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons) where statelessness was dealt with in conjunction with the refugee question. The United Nations General Assembly had resolved to convene the Geneva Conference to draft and sign a Convention Relating to the Status of Refugees and a protocol relating to the status of stateless persons. Yet the conference adopted only the Convention Relating to the Status of Refugees, and no protocol was made for stateless persons. The issue however surfaced again during the 1954 in New York Conference, where it was decided that a separate convention referring to the issue of statelessness should be drafted instead of a protocol attached to the Refugees Convention.

One of the issues that were debated mainly during the New York Conference, was whether to include *de facto*[1] stateless persons within the scope of the convention. Consequently, it was concluded to leave *de facto* statelessness out of the scope of the Convention. Thus, the definition of *de iure* statelessness is itself to be found in the 1954 Convention relating to the Status of Stateless Persons, according to which a stateless person is "a person not considered as a national by any State under the operation of its law" but there is not one, clear definition in the international treaty regime of *de facto* statelessness.

The Convention provides for civil, economic and social rights. The degrees to which those rights should be guaranteed by the contracting states differ however according to the nature of each right. National treatment is accorded with respect to freedom of religion, artistic rights and industrial property, access to courts, rationing, elementary education, public relief, certain labor standards, and social security subject to some limitations. Stateless persons

[1] According to the "*Study of Statelessness"* produced in 1949 by the Secretary-General *„Stateless persons de facto are persons who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals".*

should enjoy treatment “not less favorable than that accorded to aliens generally in the same circumstances” with respect to property rights, the right of association, wage-earning employment, self-employment, practice of liberal professions, housing, education other than elementary education, and freedom of movement. In respect of many of these rights, the contracting states should give treatment as favorable as possible. With respect to some rights, when a stateless person is in a contracting state which is not his/her country of habitual residence, the contracting state should give him/her treatment as favorable as that accorded to a national of that country. Except when specifically stipulated by the Convention, the contracting states should accord to stateless persons “the same treatment as is accorded to aliens generally” and those who have resided in a contracting state for three years or more enjoy exemption from legislative reciprocity. The issuance of identity papers and travel documents and protection from expulsion are key devices for stabilizing the status of stateless persons. Most of the provisions of the Convention are identical to provisions in the 1951 Refugees Convention, but in respect of some rights and benefits the latter accords more favorable treatment. The Refugees Convention provides for most favorable treatment with respect to the right of association and wage-earning employment. Some of the protections which the Refugees Convention gives are not accorded by the Convention Relating to the Status of Stateless Persons.

2.2. Convention on the Reduction of Statelessness

The prevention and elimination of statelessness is the ultimate goal of the international community. However, statelessness inevitably occurs as long as the granting of nationality remains a sovereign preserve of states. The Convention on the Reduction of Statelessness is the principal international instrument to reduce the conflict of nationality laws leading to statelessness. The Convention was signed in 1961 and had secured 55 states parties until November 2013.

To reduce statelessness occurring at birth, the Convention imposes an obligation on each contracting state to grant its nationality to persons born within its territory who would otherwise be stateless. Such nationality can be granted at birth by operation of law, but can also be granted upon application or by operation of law upon reaching a certain age and satisfying certain conditions. A child acquires at birth the nationality of a contracting state *iure soli*, if he/she is born in wedlock and his/her mother has the nationality of that state and if he/she otherwise would be stateless. When nationality is granted upon application or by operation of law upon reaching a certain age, the application should be allowed or the nationality should be granted by operation of law sometime within the period beginning no later than at the age of 18 years and ending no earlier than at the age of 21 years. A contracting state may make the granting of its nationality conditional upon residence within its territory for a period not exceeding five years immediately preceding the application and not exceeding ten years in all, and/or upon the person having neither been convicted of an offence against national security nor been sentenced to imprisonment for five years or more. The age and residence conditions should be foregone if one of the person’s parents had the nationality of the contracting state at the time of the person’s birth. A child also acquires the nationality of a contracting state *iure sanguinis*, even when he/she was not born in that state, as long as one of his/her parents possessed the nationality of that state at the time of the person’s birth and he/she would otherwise be stateless. In order to reduce statelessness occurring after birth, the Convention makes the loss of nationality conditional upon the possession of another nationality so that the person does not become stateless. The Convention also restricts the deprivation of nationality. There are, however, many exceptions to the rules against the deprivation or loss of nationality, through which statelessness can still occur in a wide range of circumstances. The exceptions are as follows:

Art. 7 (4) A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

(5) In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

Art. 8 (1) A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

(2) Notwithstanding the provisions of paragraph I of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

(3) Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person:

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

Poland has not acceded to the Convention on the Reduction of Statelessness. Should Poland accede to the Convention, the following considerations are needed:

- while a person born in Poland both of whose parents are unknown or stateless acquires Polish nationality, a person born to a foreigner and a stateless person or a person of unknown nationality becomes stateless, if he/she fails to acquire *iure sanguinis* the nationality of the foreign state which one of his/her parents possesses. Therefore, the Nationality Act should expand *ius soli* to embrace all persons who would otherwise be stateless.

3. STUDY OF SITUATION OF THE STATELESS IN POLAND

1. Methodology

The first component of the project *"The Invisible - Stateless Persons in Poland"* was to research and carry out a mapping of the impact of statelessness on foreigners living in Poland. The research covered both quantitative and qualitative methods. Giving the fact, that the project addressed the specific problem of the lack of an adherence to UN Statelessness Conventions by Poland, and the lack of specific statelessness determination procedures, the following research objectives, which afterwards became a base for the lobbing activities were set:

- To verify the scope of the statelessness phenomenon in Poland
- To encourage the participation in the research of stateless persons and persons of undetermined nationality in order to gather detailed and comprehensive data concerning problems that statelessness creates to individuals living in Poland
- To identify areas, in which the current legislation does not resolve problems faced by the stateless population in Poland, including legal loopholes that can lead to statelessness or lack of guarantees to realization of fundamental legal rights of this group
- To propose legislative amendments to existing legislation

1.2. Quantitative methodology

The verification of the actual number of stateless persons residing in Poland has turned out to be problematic due to the fact that there is no appropriate statelessness determination procedure, nor a generally accepted legal definition of a stateless person.

Additional difficulties arose from the marginalization of the stateless population in Poland combined with the lack of legalization procedures tailored to needs of stateless persons. As a result many stateless persons reside within the territory of Poland "in hiding", which in turn causes the lack of an appropriate measure of the evaluation of this phenomenon.

In the course of the study the HNLAC analyzed the statistical data provided by the Head of the Office for Foreigners on the amount of procedures conducted with the participation of persons without citizenship both before the Head of the Office for Foreigners and competent governors.

The existing data provided by the Office for Foreigners was considered as the base to select three main Governors' Offices for files examination (the main criteria was the number of proceedings conducted with the participation of stateless persons). Four data sources were used: the administrative data from the Polish Central Statistical Office, Border Guards Headquarter, Office for Foreigners and Ministry of Internal Affairs. Using these data sources information on two groups were collected: concerning persons registered as stateless and persons of unknown/undetermined nationality residing in Poland.

- Relevant findings:

There is no clear and comprehensive statistical data on the number of stateless persons residing in Poland. Moreover, the available data may be flawed because of the way it is collected (qualitative interviews) and the fact that stateless persons who cannot regulate their situation on the territory of the Republic of Poland may not want to disclose the fact of their illegal residence. The available data shows that the group of people without citizenship in

Poland is relatively small, however it does not change the fact that the rights of each person must be respected.

According to the Polish Central Statistical Office, 8800 persons of undocumented nationality were staying in the Republic of Poland as of 2011. 2020 out of this number were considered stateless. However the methods used to establish this figure relied on the foreigners own declarations (the data was gathered based on declaration of individuals, as the employees of the Central Statistical Office did not have a right to verify documents of the constituents).

The above data does not differentiate *de iure* and *de facto* stateless persons. Even if the Office uses the notion of undocumented persons it does not involve the division for *de iure* and *de facto* stateless persons introduced by the international law doctrine. Therefore some of them can be in fact not stateless due to the fact that under the operation of law existing in their country they could receive the travel document. Some of the rest are actually stateless, but are not recorded as *de iure* or *de facto* stateless, a fact which needs to be taken into consideration.

Moreover, according to the administrative data collected by the Polish Central Statistical Office, only 233 persons were stateless as of 2011. This figure however, based on answers received from administrative bodies, represents only a portion of the total cases of statelessness, many of which are unreported due to the fact that there are no adequate statistics gathered by public administration bodies. As was established during the research, the Border Guard and Office for Foreigners do not keep separate statistics on cases where lack of reliable identity documents of a foreigner lead to grant him/her a tolerated stay in Poland.

There is also no precise data concerning granting the tolerated stay to persons with undocumented nationality residing in Poland. Compared to the statistical data gathered from the Border Guard Headquarter, concerning the number of applications for confirming identity of foreigners by foreign authorities and the number of received confirmations in 2011 and 2012, the number of people who received tolerated stay in 2012 is very low. (see p.6).

Year	Applications for readmission	Applications for identity confirmation outside readmission	Negative answer/No answer
2011	362	316	281
2012	368	299	346
2013 – First half	146	106	123

1.3. Qualitative methodology

Another element of the methodology was to obtain a better understanding of the situation and profile of stateless population in Poland. These studies - in particular, the interviews conducted with stateless persons residing in our country - show the real face of statelessness and allow to understand the situation of stateless people in Poland.

As part of the qualitative research the HNLAC researchers carried out the following activities:

- analysis of the records of proceedings conducted before the competent authorities of the public administration
- interviews with employees of Governors' Offices
- interviews with stateless persons staying within the territory of the Republic of Poland

- ***Files Examination***

In the course of the project, the HNLAC researchers have applied to the selected Governors' Offices (Governors of Malopolska, Lower Silesia and Mazovia districts) and the Office for Foreigners for granting an access to files concerning proceedings in which the party was a stateless person or a person with undocumented nationality.[2] The use of this instrument allowed the researchers to verify the practice of granting permission for tolerated stay and other forms of protection.

- Relevant findings:

There are several forms of protection that foreigners can apply for in Poland: refugee status, supplementary protection, permit for tolerated stay, political asylum, temporary protection (issued by the Head of the Office for Foreigners). Legalization of stay may be obtained through temporary and permanent residence permits (issued by the Governors' Offices). Stateless persons residing in Poland are most likely to receive either refugee status, supplementary protection or tolerated stay. As a rule legal, documented stay in Poland is a prerequisite when applying for residence permits issued by the Governors' Offices and stateless persons more often than not fail to meet this condition.

According to the Office of Foreigners out of 10 753 motions, 41 undocumented foreigners were applying for refugee status in 2012. In this period 1 such person was granted refugee status, two received permission for tolerated stay, 24 cases were dismissed, and 2 persons received negative decisions issued by the I instance authority.

During files' examination conducted in Governors Offices and Office for Foreigners, cases concerning both *de facto* and *de iure* statelessness were identified. Some of persons whose cases were examined were even internationally recognized as stateless persons holding travel documents issued by foreign authorities in accordance with the Convention Relating to the Status of Stateless Persons. Out of 17 case files of people applying for international protection with the Head of the Office for Foreigners, 12 foreigners were granted refugee status (10 of which have declared that they were living in Syria previously).[3]

The case-files analysis showed that the decision-makers often are aware of the fact that stateless persons may more likely face discrimination and the denial of their human rights in their countries of origin but at the same time they are of the opinion that being *de iure* or *de facto* stateless does not necessarily signify persecution (a "well-founded fear of persecution" is the crux of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees). It could be noted here that in one case the fact that the applicant was stateless and therefore denied enjoyment of the basic human rights in his country of origin was directly linked to granting him protection (refugee status). Nevertheless, in another case the fact that the applicant relied on the lack of identity and travel documents was regarded as acting in bad faith (applying for refugee status rather because of impossibility of executing expulsion order rather than out of well-founded fear of persecution). Thus, in order to establish the fact of persecution, the Office for Foreigners always performs evidentiary proceedings that take the form of interrogation. Information gathered this way forms an

[2] Research covered period from January 1, 2012 to March 31, 2013;
[3] The assessment period covered proceedings which began on or after 1 January 2011;

important element of evidence that serves a.o. identifying the foreigner. Those activities should not however include contacting third country diplomatic posts and authorities in country of origin – measures that are usually undertaken by authorities in statelessness determination procedure when examining whether the person is stateless or not.

The case files' analysis revealed that there is a specific set of evidence admitted within the RSD and expulsion proceedings with regard to establishing nationality of foreigners. These include among others, documentary evidence provided by applicants, personal interviews, linguistic analysis, verification of knowledge of the country of origin (within the RSD procedure), documentary evidence, personal interviews, witnesses, information gathered from foreign consular authorities (during expulsion proceedings). Still, there are no guidelines covering the structure of the evidence submitted, therefore it is decided with much flexibility on a case by case basis. The case file analysis did not reveal instances of decision-makers contacting the foreign authorities which competence covers issues of nationality (diplomatic authorities only). There are no time-limits set with regard to awaiting responses from the foreign authorities.

Therefore, given the fact that statelessness does not always imply persecution and the possibilities of establishing statelessness are limited in course of the RSD procedure the best way to identify stateless persons properly is by establishing separate statelessness determination procedure. Furthermore, it has to be noted that there is no formal and structured procedure with regard to establishing the identity and nationality of applicants within the RSD procedure (even such as internal administrative guidelines for decision makers). Thus, establishing a separate, structured stateless determination procedure could be of benefit also in this regard. Additionally, in the context of *de facto* statelessness, the most important form of protection is a permission for tolerated stay. According to the Polish provisions, a foreigner shall be granted the permit for tolerated stay on the territory of the Republic of Poland i.a. if the expulsion is unenforceable due to reasons beyond the authority executing the decision on expulsion and beyond the foreigner such as lack of proper identity documents. In practice, this kind of permission can be granted by Governor's Office in expulsion procedure or by the Head the Office for Foreigners *ex officio* after the decision on refusal of granting protection could not have been executed.

Nevertheless, in practice the process aiming at granting the tolerated stay permit to a foreigner whose identity cannot be established is divided into two stages. First, expulsion order has to be delivered (be it in refugee procedure or expulsion proceedings), once it cannot be executed, the second procedure with regard to granting the tolerated stay is initiated. A person who is refused protection (including tolerated stay) receives the decision on expulsion and then when he/she fails to be identified and is likely to be *de facto* stateless – the person is granted the tolerated stay. Although the law expressly states that in this case the permission for tolerated stay should be granted *ex officio*, there is no guarantee that authorities will initiate the proper procedure what often leaves such persons in a legal limbo. Additionally, it has to be taken into account that those who are in the refugee procedure receive the social assistance for the period of the proceedings and for the period of 14 days from the date of delivery of the final decision in this case (in form of accommodation, food, financial aid and medical healthcare and are allowed to work after 6 months from the day of submitting the application) but those who can't be expelled due to the fact of unconfirmed identity and who received the decision on expulsion are not allowed to receive any kind of assistance and are expected to leave Poland in common with all other unsuccessful asylum-seekers.

What is more, many victims of this system have little possibility themselves to be heard and are in many cases silenced by their fear of further discrimination, particularly because they are under the risk of detention due to the fact that provisions relating to the use of

administrative detention are not adapted to the situation of stateless persons. There are no regulations that would guarantee that *de facto* stateless persons (in a situation in which there are no specific steps taken by the authorities in order to obtain a travel document for him/her, or when these steps do not bring any results) will be released from the detention center. Therefore, stateless persons often are exposed to detention for a maximum period of time, even when the execution of the expulsion decision is impossible. Therefore these practices are unsustainable when we realize that expulsion is unenforceable due to reasons beyond the foreigner and because of this fact the foreigner should be allowed for instance to engage in gainful economic activity, which a stateless person badly needs.

Also, process of granting the tolerated stay on grounds of unenforceable expulsion may last very long, even a few years, because of its *"discretionary"* nature and evidentiary difficulties. A review of case files and statistics gathered from the Border Guard Head Office (?) indicates that there are no evidentiary guidelines (e.g. how many times should the foreigner contact the authorities of his/her "country of origin" in order to prove that he/she is stateless). The testimonies of stateless persons also reflect difficulty in confirming in every case where statelessness or "unreturnability" was an issue whether the individual had in fact taken all reasonable steps to establish whether consular authorities would treat him or her as a national. This should, however, be viewed in light of the inherent difficulties and limitations that individuals who are in limbo may face. As such, there is a clear need to identify a more balanced and systematic approach to such enquiries and to questions of proof.

Given the above into consideration we are of the opinion that an efficient statelessness determination procedure has the potential to help to identify those who could and could not be removed.

- ***Qualitative methodology: interviews with stateless persons***

The HNLAC researchers conducted semi- structured interviews with stateless persons within the territory of Poland. Interviews were preceded by distributing information about the project among the target group. Written information about the project was spread both in open centers for foreigners (via the Office for Foreigners), as well as in selected Governor Offices.

Analysis of the situation of stateless persons at this stage of the research was based on the use of a questionnaire prepared by the HNLAC. Topics pivoted on issues related to the causes of statelessness, the possibility of obtaining an identity document and permissions for stay, as well as day-to-day problems and basic knowledge about legal provisions concerning statelessness.

- Relevant findings:

One of the aims of "*The Invisible – Stateless Persons in Poland"* project was to identify the basic problems that stateless people face, when staying on the Polish territory.

The research covered 10 half-structured interviews with stateless persons concerning the causes of their statelessness, migration history, the use of administrative detention, access to employment, public healthcare, social benefits, marriage registration, travel and identity documents.

Information obtained in course of the interviews was supplemented with the analysis of the existing legal framework with regard to the aforementioned domains.

The interviews revealed common grounds, where stateless persons' rights are not properly secured. The most important problem mentioned by the interviewees seems to be the lack of adequate procedure in course of which they would be able to regularize their situation, as many of them are trapped in a legal limbo. Not owning a passport they cannot leave the Polish territory and at the same time receive a residence and work permit in Poland.

Due to the fact that undocumented stay in Poland and lack of identity documents does not preclude the possibility to file a motion to be granted refugee status (unlike other procedures with regard to obtaining residence permit), the interviewees perceived this procedure as most suitable, although they were aware that statelessness does not in of itself imply persecution. The interviewees indicated that it would be difficult for them to obtain evidence confirming that they are indeed stateless.

All of the people interviewed expressed grave concerns over the possibility of being detained in a guarded center for foreigners, bearing in mind that maximum period of detention in Poland is 12 months. These concerns were even more substantial when expressed by people who resided in Poland for many years and established a family life here and whose undocumented status was beyond their control and independent of their actions. Administrative detention deters people from attempting to regularize their stay, especially when there are no guarantees of obtaining a residence permit in course of the existing procedures (e.g. with regard to the 'permit for tolerated stay') and a foreigner's stay is already undocumented. According to the Foreigners Act a foreigner can be detained if expulsion proceedings were commenced and there is a risk of absconding, a foreigner has been issued a return decision, a foreigner did not leave the Polish territory within the fixed time-limit or the foreigner crossed or attempted to cross the border illegally. A risk of absconding is defined inter alia by undetermined identity of the foreigner. With regard to asylum seekers, according to the Act on granting protection to aliens within the territory of the Republic of Poland if the decision on refusal to grant the refugee status is delivered to the foreigner prior to the expiry of the period of placement of the foreigner in the guarded centre, the period of stay may be extended for a specified period of time, necessary to execute the decision on expulsion. The aforementioned provision is a basis for the extension of administrative detention with regard to persons not holding travel documents and is often automatically referred to by the Regional Courts which do not take into consideration facts such as the frequency of requests to foreign consular authorities and different avenues explored by the Polish authorities and the foreigners themselves with regard to obtaining a travel document.

Most of the people interviewed could not regularize their stay in Poland and therefore sign a legal employment contract. Inability to work was mentioned as having substantial impact on everyday life and life plans. People interviewed emphasized their will and need to work and obtain income, which was regarded as more important than obtaining social benefits. Respondents raised the fact that the possibility to sign a legal employment contract would secure the labor rights and limit the possibilities of becoming a victim of a fraud and discrimination as well as enable to fulfill tax obligations. It should be noted that asylum seekers can under certain circumstances apply for a work permit in the course of the RSD procedure such opportunity was not provided however to those applying for the permit for tolerated stay due to the fact that expulsion was not possible.

Respondents mentioned lack of access to social benefits and public healthcare with regard to lack of access to employment. Lack of identification procedure in course of which they would be able to regularize their stay and consequent lack of access to public healthcare leads to a situation where stateless people decide to attend medical treatment only in emergency situations, as they are often not able to cover the costs of such treatment. In principle, the most likely way for stateless persons to regularize their stay in Poland is by obtaining the permit for tolerated stay. Consequently, those with permit for tolerated stay only have access to basic social benefits covering shelter, meal and necessary clothing. Those with permit for tolerated stay have access to public healthcare under the same circumstances as Polish citizens. While basic needs of asylum seekers are secured in the course of the RSD procedure with regard to healthcare and social benefits, and recognized refugees can profit from the integration assistance, no such guarantees are provided to those applying for the permit for tolerated stay or receiving it.

The stateless persons encounter grave problems with regard to the possibility of getting married. The main obstacle mentioned by the interviewees was lack of identity documents, required by the Registry Office. It was also mentioned that in some of the Registry Offices residence permits were required, even though the legal stay on the Polish territory is not a legal prerequisite to conclude marriage. In Poland, non-citizens wishing to get married are required to submit a birth certificate, valid identity document and a certificate of no impediment translated by sworn translator. As far as the Polish legislator exempted stateless persons of the obligation to submit a certificate of no impediment, the stateless persons still face problems when required to submit identity document, which they often do not possess. As there is no identification procedure established in Poland the question arises when a person is actually regarded as stateless and therefore is exempted from the obligation to submit a certificate of no impediment. The stateless persons in Poland have the possibility to apply for a Polish Temporary Identity Document, still they have to substantiate that it is in the best interest of the Polish State and they have no possibility of obtaining a different type of ID.

Lack of identity and travel documents was mentioned as an obstacle to enjoy the basic rights such as access to public healthcare, social benefits, possibility to get married but it is also perceived as impediment with regard to applying for a residence permit (even when such a possibility arises i.e. with regard to securing their right to private and family life). Those with no identity documents also mentioned the impossibility to open a bank account or obtain a driving license. Another problem arising of lack of documents concerned impossibility to travel, what implied lack of possibility to visit relatives in countries of origin as well as seeking evidence of identity and legal bond with the country of origin. The interviewees often came to Poland with a valid travel document which was later stolen or expired, while the consular authorities refused to issue a new document. According to the Polish law foreigners can obtain the following travel documents: the Geneva Passport issued to the recognized refugees, Polish Travel Document issued, as a rule, to non-citizens with permanent residence permits, Temporary Polish Travel Document issued, as a rule, to non-citizens with residence permits by the Polish consular authorities. Travel documents are not issued to persons who obtained the tolerated stay.

4. SUMMARY AND RECOMMENDATIONS

At the 2011 UN High Level Rule of Law Conference the EU pledged that all Member States not yet parties would ratify the 1954 Convention and consider acceding to the 1961 Convention. Therefore, in view of above mentioned EU pledge to accede to the 1961 Convention and to the 1954 Convention and in order to allow Poland to strengthen its commitment to international standards including notably in the context of the ongoing reform of the immigration law, the HNLAC puts forward the following recommendations:

- Poland should accede to the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961, which constitute the legal framework for the protection of the rights of stateless persons, as well as preventing the formation of statelessness;

- Poland should introduce a procedure in which a person having no legal ties to any State and not benefiting from the protection of any State can have their status considered;

- The absence of statelessness determination procedure impacts on a stateless persons' ability to obtain, for instance, travel documents, and to make representations to Polish Authorities to obtain Polish nationality as specified in Article 30 of the Polish Citizenship Act 2009 (as amended);

- Polish law should introduce a formalized procedure for determining the identity, nationality and origin of foreigners pending their legalization of stay on the territory of Poland. Appropriate procedures should be developed in order to identify stateless persons, both *de iure* and *de facto;*

- Polish Citizenship Act should be amended in order to ensure that all children born in Poland who do not acquire any nationality at birth are considered Polish citizens until the contrary is proved;

- In case of implementation of statelessness determination procedure, in order to ensure the effectiveness of the protection offered by the Polish Authorities, unlawful stay should not be considered as a ground for rejection the statelessness status. Moreover, similarly to asylum seekers foreigners in statelessness determination procedure should be provided with accommodation and financial support, as well as health care services;

- In case of implementation of stateless determination procedure, it is advisable to secure the basic needs of applicants with respect to ensuring access to the basic social benefits and public healthcare, as well as issuing work permits, similarly as in course of the refugee procedure;

- Poland should introduce national legislation protecting persons whose expulsion from the territory of the Republic of Poland is not possible from arbitrary detention. Detention is admissible for as long as the authorities pursue the deportation proceeding with due diligence, with regard to establishing identity of a foreigner and obtaining a travel document. Detention ceases to be acceptable, if the circumstances of the case show that obtaining a travel document and carrying out the expulsion will not be possible.