

**POLICY NOTE: Refugees from Ukraine: stateless persons and persons at risk of being stateless.
Most important challenges**



21 November 2022

Introduction:

About HNLAC:

HNLAC is a non-governmental organization registered in Poland, operating since 2002. HNLAC's main objective is to protect human rights by providing free legal council to persons at risk of social exclusion and discrimination, including foreigners, asylum seekers, refugees and stateless persons. HNLAC is acting as UNHCR implementing partner in Poland. Since the beginning of the war in Ukraine HNLAC is a part of the Open Kraków Coalition working to promote the rights of Ukrainian refugees in Poland.

HNLAC's work for stateless persons:

HNLAC is acting as UNHCR implementing partner in Poland and is a member of the European Network on Statelessness. Both UNHCR and ENS mandate covers protecting stateless persons rights. Apart from providing free legal aid, HNLAC published reports and mapping studies concerning stateless persons in Poland. Being an active member of ENS and its Advisory Committee HNLAC engages in awareness raising and advocacy concerning rights of stateless persons.

HNLAC's work for Ukrainian refugees, including minors:

Since the beginning of the war, HNLAC provides free legal aid for refugees coming from Ukraine, including stateless persons, via 13 legal info points in Kraków, Rybnik, Wrocław, Poznań and Lublin. The HNLAC also operates a dedicated helpline for refugees from Ukraine and a special number for cases related to children. Additionally, HNLAC is working closely with a group of dedicated legal advisors and attorneys providing free legal assistance in cases requiring appointment of a temporary legal guardian for unaccompanied and separated minors. HNLAC prepared a draft of a standard procedure on dealing with unaccompanied minors and their protection needs, which was presented to the local authorities.

Stateless persons fleeing from Ukraine – access to protection

Analysis:

According to information published by the European Network on Statelessness: *The last census in Ukraine recorded 82,550 stateless people, and in 2021 UNHCR estimated there to be at least 35,000 stateless and people with 'undetermined nationality'. Other sources suggest there could be many tens of thousands more, including a significant proportion of the Roma population as well as children born in Crimea, Luhansk and Donetsk since 2014¹.*

¹ <https://www.statelessness.eu/statelessness-ukraine-crisis>

The Polish law differentiates between Ukrainian nationals and their spouses and other persons fleeing Ukraine. The former have wide access to rights based on the Law on helping Ukrainian citizens fleeing armed conflict. Stateless persons fleeing Ukraine may not benefit from the said law, but may register with the Head of the Office for Foreigners to receive temporary protection.

In Poland there is no statelessness determination procedure in place, therefore a stateless person may have difficulties in proving their status and showing they actually are stateless.

At the same time, in Ukraine statelessness determination procedure was introduced relatively recently and not many people had the possibility to apply for stateless person's status in Ukraine.

Points of concern:

If a stateless person applies for temporary protection in Poland but has no official document proving they are indeed stateless, they may have problems with accessing protection and rights that go with it. In Poland there is no legal procedure where a stateless person may prove they are indeed stateless.

Recommendations:

Stateless determination procedure has to be established, so that stateless persons access to protection is effectively guaranteed.

Unaccompanied and separated minors – stateless or at risk of being stateless. Identification and protection concerns.

Analysis:

Since the beginning of the war, as the main concern was safety and security of Ukrainian people, many Ukrainian children may have entered Poland without a passport or other document confirming their identity and descent. Some of them may have entered only with birth certificates or even without any documents indicating their identity and nationality.

There is a register of unaccompanied minors from Ukraine run by the Ministry of Family and Social Policy. There is no obligatory registration system for Ukrainian nationals, including separated minors. Many of them register with PESEL database. Registration with PESEL database was and is possible based not only on official documents but also based on their copies or – in lack of thereof – even oral statements. There is no full legal verification of nationality in case of PESEL database registration.

In case of separated minors a factual guardian (not yet legally appointed) can register a child with PESEL database.

Factual guardians of separated minors may be appointed by the court as their temporary legal guardians in a simplified procedure. According to the accessible data, as of beginning of May 2022 Polish courts received 16335 applications to appoint a temporary legal guardian, 15.654 of which were decided upon².

² <https://www.prawo.pl/prawnicy-sady/opiekun-tymczasowy-dla-ukrainskich-dzieci-statystyki-marzec-maj,515115.html>

Points of concern:

Some of the children may have entered Poland without a passport or other ID with a photograph. It is crucial to identify them and establish their nationality as soon as possible, given the possible difficulties with accessing Ukrainian databases and archives or even possible destruction of databases or archives as a result of military operations. In that case a child may have problems with confirming where they were born and to what parents, as a consequence with proving their nationality, what may effectively render them stateless.

Some of the children that arrived from Ukraine may have been born in occupied territories. In case they don't possess a passport, establishing their nationality may be challenging, since Ukrainian authorities currently may not have access to databases of births on the occupied territories or such access may be hindered. Such children may thus be at risk of being stateless if Ukrainian authorities will not be able to confirm their identity and/or nationality.

Recommendations:

- It is recommended to identify children who may have challenges with proving their nationality and thus be at risk of being stateless.
- It is recommended to establish a register of separated minors, which would include information on types of ID documents they possess.
- It is recommended to gather data from the registry of unaccompanied minors with respect to the type of ID documents they possess.
- It is important to inform temporary legal guardians to undertake necessary and possible steps to establish child's nationality, in case they lack necessary documents.
- It is important to raise this issue in dialogue with Ukrainian partners.

CONTACT:

Katarzyna Przybyszewska
Anna Strama

biuro@pomocprawna.org
Web: www.pomocprawna.org
Facebook: @pomocprawna.org
Twitter: @cpphn
Instagram: @cpphn



Halina Nieć Legal Aid Center
Forum Pomocy Prawnej im. Haliny Nieć
Ul. Krowoderska 11/7
31-141 Kraków
Tel: +48 693 390 502
Fax: 12 423 32 77