

# STATELESS PERSONS FROM UKRAINE SEEKING PROTECTION IN POLAND

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# REPORT



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 **UNHCR**  
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## **Stateless persons from Ukraine seeking protection in Poland**

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## Introduction

Since the beginning of the war in Ukraine in February 2022, Poland has transformed within weeks from a country hosting a small number of asylum-seekers and refugees into one of the main refugee-hosting countries in the world. As of June 2023, more than 1.6 million refugees from Ukraine had registered for a national identity number (PESEL).

Shortly after the EU Council Implementing Decision 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC triggered the temporary protection directive mechanism, Poland has enacted its own legislation in this regard. Protection of citizens of Ukraine has been regulated by the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country of 12 March 2023.<sup>1</sup>

Additional, non-Ukrainian categories of persons eligible for temporary protection, as specified in the Council's Decision included the stateless fleeing Ukraine, although in their case, specific requirements need to be fulfilled. Protection status of non-Ukrainian refugees from Ukraine in Poland is regulated by the 2003 on granting protection to foreigners within the territory of the Republic of Poland.<sup>2</sup>

Although Ukraine has one of the largest stateless populations in Europe, including many undocumented persons and a high rate of Roma either stateless or at heightened risk of statelessness, the recorded number of such persons registered for temporary protection in Poland is almost negligible.

There are many reasons for this under-representation of stateless persons among those benefiting from protection. Some are linked to the formulation of inclusion criteria of the Council Decision - requiring the proof of permanent legal stay or a protection status in Ukraine of those stateless applicants. In many cases these conditions alone exclude Ukraine's stateless from protection, since their prior-war status was mostly lacking official recognition and documentation. Another crucial problem lies however with the weakness of Polish system regarding statelessness. Poland has not acceded to any of the four core statelessness conventions, does not have a legal definition of statelessness nor a dedicated statelessness determination procedure and its practical interpretation of statelessness is varied. These deficiencies have been highlighted by the Ukrainian humanitarian crisis, when the mass influx of refugees called for effective identification and qualification under the temporary protection criteria, stateless being one of the enumerated categories of eligible categories.

Statelessness and risk of statelessness which is often the case for undocumented persons is a vulnerability factor. It has to be underlined that stateless persons may find themselves in especially precarious situation when it comes to effectively accessing protection, ensuring its continuation and risk of forced or premature return.

As it was reiterated in UNHCR Position on Voluntary Return to Ukraine (June 2023) any decisions to return must be well-informed and fully voluntary - and made without inducements for premature return, including restrictions on refugees' ability to access legal status, documentation, national social protection systems and other rights and assistance in host countries.<sup>3</sup>

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<sup>1</sup> Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000583>

<sup>2</sup> Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf>

<sup>3</sup> UNHCR Position on Voluntary Return to Ukraine (June 2023) point 10.

Premature return, induced by negative push factors, could have an adverse impact on refugees' ability to take free and voluntary decisions and potentially undermine the sustainability of returns.

It for these reasons that UNHCR has been consistently calling on states to ensure access to protection and rights for all refugees, with a specific focus on vulnerable groups, stateless persons among them.<sup>4</sup>

## Executive Summary

This report, prepared by the Halina Nieć Legal Aid Center (HNLAC), analyzes the challenges faced by stateless persons from Ukraine who have sought refuge in Poland since the Russian invasion in February 2022. Poland's temporary protection system, based on EU temporary protection directive was quickly enacted in response to the crisis and provides a pathway for Ukrainian nationals to access legal status and critical services. However, stateless individuals - who lack recognized nationality and often face severe documentation issues - encounter significant barriers within this framework.

## Key Findings

### 1. Legal and Administrative Barriers:

- Certain categories of stateless persons face exclusion from Poland's temporary protection due to stringent entry requirements and the lack of a dedicated statelessness determination procedure.
- Without a legal definition or uniform recognition of statelessness in Poland, many applicants are classified inconsistently, impacting their eligibility for support.

### 2. Documentation Requirements:

- Many stateless individuals, particularly Roma, former USSR citizens, and children born in non-government-controlled areas (NGCAs) like Crimea, lack necessary documentation to prove legal residence in Ukraine before February 2022. This renders them ineligible for protection under current Polish law.
- Ukraine's own statelessness determination process, established only shortly before the conflict, has limited reach, leaving many stateless persons unrecognized and without formal documentation.

### 3. Interpretation Challenges:

- Polish authorities' restrictive interpretation of "statelessness" as only those with specific, officially recognized status limits the application of protections, effectively excluding those most in need.
- Inconsistent terms used by various Polish agencies, such as "undetermined nationality" or "stateless," complicate data collection and hinder clear identification processes.

### 4. Access Issues at the Border:

- Stateless individuals and undocumented persons fleeing Ukraine often encounter challenges at the Polish border, where lack of documentation can result in entry denial. The lack of an individual assessment of statelessness status at the border may exacerbate risks of exclusion from protection.

### 5. Vulnerable Groups:

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<sup>4</sup> UNHCR Position on Voluntary Return to Ukraine (June 2023) point 23.

- High-risk groups include undocumented Roma, former USSR citizens, children born in NGCAs, internally displaced persons (IDPs), and those fleeing Russian-controlled regions. These individuals frequently face compounded obstacles, such as a lack of legal support, poverty, and social stigmatization, which further hinder their access to protection.

## 6. Risk of Arbitrary Detention:

- Poland lacks safeguards against prolonged detention of stateless individuals, leaving those unable to establish a legal stay vulnerable to indefinite detention if removal is not feasible.

## Summary of Recommendations:

To close protection gaps and uphold Poland's humanitarian obligations, HNLAC recommends the following actions:

- **Adopt International Standards:** Poland should accede to the 1954 and 1961 statelessness conventions, introducing a legal statelessness determination process in line with international guidelines.
- **Define and Consistently Apply 'Statelessness':** A clear definition of statelessness in Polish law, combined with training for relevant authorities, would enhance accurate classification and support.
- **Simplify Documentation Requirements:** Reduce documentary prerequisites and consider alternative verification methods, especially for children, undocumented persons, and individuals fleeing NGCAs.
- **Ensure Detention Safeguards:** Implement legal protections to prevent prolonged or arbitrary detention of stateless persons, in accordance with EU Return Directive standards.
- **Strengthen Outreach and Support Services:** Focus on identifying and assisting stateless individuals from minority and vulnerable groups, offering them access to legal resources and clear information in accessible languages.

Through these policy adaptations, Poland can enhance its ability to support stateless persons from Ukraine, mitigating current humanitarian risks and ensuring compliance with international protection standards.

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# Part 1: Situation in Ukraine

## 1. Stateless persons and persons at risk of statelessness in Ukraine

Accurate data on Ukraine's stateless population remains scarce and disputed. Estimates for the size of the stateless population in Ukraine vary significantly. In 2021, UNHCR reported over 35,000 people who were stateless or had "undetermined nationality", only 6,176 of whom were recorded as legally residing in Ukraine<sup>5</sup>. Many tens of thousands more are thought to be at risk of statelessness including 10-20% of the Roma population and 55% of children born in non-government-controlled areas (NGCA) and Crimea since 2014. UNHCR indicates that approximately 69.4 thousand children born in areas not controlled by the government have not yet received a Ukrainian birth certificate and are at risk of statelessness.<sup>6</sup>

As of March 2020, the World Bank estimated presence of 999,000 unregistered citizens (without a national ID) in Ukraine at the age of 15+. Although not all will be stateless, most will be unable to prove their Ukrainian citizenship through documentation and may be at increased risk of statelessness.

According to the Ukrainian Ministry of Justice, from 24.08.1991 to 25.04.2021: 1,674,835 birth records of children born in Ukraine indicate the absence of citizenship of both parents. It may be therefore assumed that parents and children at the moment of birth registration were persons with undetermined nationality or stateless persons.<sup>7</sup>

Another source of data, albeit outdated and contested in the light of other estimates is the All-Ukrainian Population Census from 2001. This census includes potentially overlapping categories: 82,550 stateless persons and 40,464 people who did not specify their nationality. Moreover, the Census report records only 47,917 Roma, a number most likely under-representing the total number of Roma in Ukraine. Since the Roma community has been identified to be at a heightened risk of statelessness, as many of Ukrainian Roma are also undocumented, the under-reporting of Roma in the census leads to underestimation of the number of stateless/at risk of statelessness individuals of Roma origin as well.

It should be also underlined, that the 2001 Census data relied on self-identification of those filling in the questionnaire and thus information on nationality may not be fully reliable, as in many cases there may exist factors discouraging the census respondents from declaring their Roma identity or their lack of documentation and or citizenship. The results are thus biased and should be treated with caution.

Although a pilot census was conducted in 2019, the comprehensive census, originally planned for 2020, has been rescheduled for 2023 due to war<sup>8</sup> therefore no newer Census data for Ukraine is currently available.

According to the State Migration Service of Ukraine, 5,815 stateless persons were residing in Ukraine with a residence permit as of the end of 2020. One can assume that many more are living in Ukraine undocumented.

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<sup>5</sup> UNHCR website on stateless persons: <https://www.unhcr.org/ua/en/stateless-persons>

<sup>6</sup> European Network on Statelessness: Statelessness Index Survey results (Ukraine): [https://index.statelessness.eu/sites/default/files/ENS\\_Statelessness\\_Index\\_Survey-Ukraine-2022\\_0.pdf](https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Ukraine-2022_0.pdf)

<sup>7</sup> UNHCR website on stateless persons: <https://www.unhcr.org/ua/en/stateless-persons>

<sup>8</sup> Source: State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: <http://2001.ukrcensus.gov.ua/publications/#p14>

The stateless and at risk of statelessness population in Ukraine is therefore one of considerable size, composing of various categories of persons whose reasons for lack of citizenship vary. Among them - Roma, being one of the largest groups of undocumented persons in Ukraine represent the category of persons with the highest proportion of stateless and those at risk of statelessness. There are also other specific categories of persons at heightened risk of statelessness, who may consequently experience difficulties in accessing protection in Poland after they flee Ukraine due to war.

**These categories include the following:**

- 1. Roma people who lack civil documentation to acquire/confirm their Ukrainian nationality**
- 2. Former citizens of the USSR who were unable to acquire Ukrainian nationality in 1991 and have remained stateless due to lack of access to legal aid and other factors**
- 3. People from non-government-controlled areas (NGCA) and Crimea and those internally displaced who have been unable to obtain/renew personal documents since 2014**
- 4. Russian nationals living permanently in Ukraine**
- 5. Children, especially unaccompanied children and those separated from their parents**
- 6. Refugees, asylum seekers and migrants**
- 7. Undocumented persons**

### **1.1. Roma people**

Ukraine has one of the largest Roma populations in Europe with a disproportionately high rate of undocumented, stateless and at risk of statelessness among this group. While unofficial estimates by international organizations and the European Commission against Racism and Intolerance (2011<sup>9</sup>) suggest there are between 200,000 to 400,000 Roma living in Ukraine, a considerable portion lacks official documents, making accurate figures elusive. The reluctance of Roma to declare their ethnicity due to discrimination fears further complicates this issue.

According to Ukrainian NGO Right 2 Protection<sup>10</sup>, approximately 10-20% of the estimated 400,000 Roma people in Ukraine lack the necessary documents for proving or establishing their Ukrainian citizenship, rendering them stateless or at risk of statelessness. The percentage of undocumented Roma is significantly lower according to UNHCR sources claiming only 4 to 8% do not hold any documents. Whereas the Report of the Ombudsman of Ukraine "The Conditions of the Implementation of the Roma State Policy" (2015), stated that 17% of Roma respondents were undocumented<sup>11</sup>.

The 2001 All-Ukrainian Population Census records only 47,917 Roma, a number likely under-representing the total number of Roma in Ukraine and thus also leading to underestimation of the number of stateless individuals of Roma origin.

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<sup>9</sup> Findings from the fourth cycle of monitoring from 08.12.2011

<sup>10</sup> European Network on Statelessness blog: <https://www.statelessness.eu/updates/blog/assisting-stateless-people-trapped-ukraine-report-ground>

<sup>11</sup> European Network on Statelessness: Statelessness Index Survey results (Ukraine): [https://index.statelessness.eu/sites/default/files/ENS\\_Statelessness\\_Index\\_Survey-Ukraine-2022\\_0.pdf](https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Ukraine-2022_0.pdf)



Once in Poland undocumented Roma from Ukraine may face insurmountable obstacles in accessing temporary protection. Considering the fact that many of them come undocumented, they are not able to register for temporary protection, as they do not fulfil the criteria calling for a proof of permanent legal residence in Ukraine. As part of socially marginalized and impoverished minority in Ukraine they are at heightened risk of double stigmatization and exclusion in Poland. Additionally, those not speaking Ukrainian or Russian may face difficulties in accessing relevant information on their status and legal options, once in Poland.

## **1.2. Former citizens of USSR and their descendants**

Ukraine has long grappled with a persistent issue of statelessness among former citizens of the Soviet Union. Many lack necessary documentation and faced hurdles in proving their permanent residence in Ukraine, resulting in the inability to obtain Ukrainian citizenship. This problem encompasses individuals who were unable to secure Ukrainian citizenship from the former USSR as well as ethnic Ukrainians residing in other republics during their dissolution as well as their descendants. Addressing these historical challenges remains a crucial task for ensuring comprehensive solutions to statelessness in the country.

Once in Poland this group is bound to face formal barriers excluding them from protection. As holders of USSR passports they are not able to easily confirm their „new” citizenship before a Ukrainian consulate and they would be required to contact Migration Services in Ukraine. Lack of valid documentation is also an obstacle in migration regularization procedures. They may, in principle apply for international protection, with a hope of being granted complementary protection.

## **1.3. IDPs and persons from Crimea, Donetsk and Luhansk**

Statelessness profoundly affects internally displaced persons in Ukraine and residents in regions like Crimea, Donetsk, and Luhansk, which have fallen outside of Ukrainian authorities control. The conflict in eastern Ukraine since 2014 and the Russian occupation of Crimea have created an unstable legal environment, raising questions about their citizenship and limiting their rights and access to services.

These populations face significant barriers in obtaining essential documents whereas the documents issued by the authorities of non-government-controlled areas (NGCA) and Crimea are not recognized abroad and may be not sufficient to establish the Ukrainian citizenship of their holders.

Children born in these areas face particular vulnerability. Limited access to procedures confirming Ukrainian citizenship exposes them to statelessness risks. Establishing citizenship for these children is challenging due to restricted access to birth databases in occupied territories, posing significant hurdles in their legal recognition and access to essential rights. Addressing these complexities is vital to preventing statelessness among vulnerable populations whereas when persons with documents from NGCA and Crimea seeking to benefit from temporary protection in Poland may find difficulties in qualifying for protection status due to lacks in documentation.

These persons hold Donieck and Lugansk issued "passports" respectively, and do not hold Ukrainian passports. Once they decide to leave for Poland that they may experience difficulties in passing the numerous Ukrainian checkpoints, crossing the Ukrainian border and later registering as temporary protection beneficiaries under the "Special law" in Poland, as well as accessing the Diia app.

Since the NGCA are seen as subjected to Russian rule, the Ukrainian consulates are not providing any assistance to these persons abroad. They are unable to receive Ukrainian passports while in Poland and prove their Ukrainian citizenship. In order to benefit from a procedure of restoring Ukrainian

documentation they would have to go back to Ukraine and approach the Migration Service, which in many cases is impossible.

Another important difficulty is linked to the fact that several years ago Ukraine has transferred all its civil registry records online, and so, persons issued with Donieck/Lugansk documents are left with "paper" copies of some documents only, as they are not included in these digitally transferred registries. This may lead to statelessness, especially in relation to children whose only documentation amounts to NGCA-issued birth certificates.

Persons coming to Poland from Crimea may experience the same difficulties, however most adults are still keeping their Ukrainian documents (or they have both Russian and Ukrainian passports).

According to Ukrainian NGO Right 2 Protection, 55% of children born in Donetsk and Luhansk and 88% of children born in Crimea were reported to lack Ukrainian birth certificates or personal documents, putting them at risk of statelessness.<sup>12</sup>

Persons from the above categories who cannot effectively establish their Ukrainian citizenship, can still be granted temporary protection only if they provide proof of permanent legal residence in Ukraine and demonstrate that they cannot return to their country of origin in safe conditions.

Another important obstacle is that such persons may face difficulties in registering for temporary protection due to a requirement of „legal entry” within the meaning of art 2.1. of the Polish Act on assistance to Ukrainian citizens. Since they usually leave the NGCA through Russia and hold no proof of crossing the border, Polish authorities may assume that their entry was not in fact „legal”. Although this interpretation is flawed as this condition was formulated to be applied in the context of legal entry through the Polish border (and not the border between Ukraine and Russia), the practice of denials of registration for protection based on this assumption has already been established.

Those NGCA residents who are unable to fulfil these requirements may either apply for international protection (refugee status/subsidiary protection) or be granted a permit to stay based on humanitarian grounds or a tolerated stay permit, as a result of return procedure (this procedure is initiated ex officio, and not by application lodged by the foreigner).

#### **1.4. Russian nationals living permanently in Ukraine**

Another group at risk is Russian nationals who have been living permanently in Ukraine. Many of them moved to Ukraine in pursuit of employment as high skilled workers, university teachers, experts etc. After the break-out of war a considerable percentage of them left for Russia, however noticeable numbers are currently fleeing to Poland to seek protection as the Russian forces have begun a policy of arresting Russian nationals working at universities for example.

Once they arrive in Poland, they may be faced with backlash and have difficulties in accessing protection. Some have married Ukrainian nationals while in Ukraine and cannot return to Russian Federation due to a risk of persecution.

HNLAC records indicate a number of legal questions concerning the possibility of renunciation of Russian nationality with the hope of receiving Ukrainian nationality. Russian law imposes a condition, however, that all such persons should first present a proof of new nationality, before they are allowed

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<sup>12</sup> European Network on Statelessness blog: <https://www.statelessness.eu/updates/blog/assisting-stateless-people-trapped-ukraine-report-ground>

to renunciate Russian nationality, which is a safeguard against statelessness in line with the 1961 Reduction of Statelessness Convention.

Under present circumstances, this requirement often effectively disqualifies such persons from submitting a successful application. They are left in a Catch-22 situation: once they apply for Ukrainian nationality, they are first issued a "temporary certificate" that only proves that they are in the process of naturalization. This procedure may take very long. The temporary certificate is not enough however to be granted the required permission to renunciate Russian nationality. It is also not sufficient to receive any kind of assistance from the Ukrainian consulate in Poland, which results in pushing this category of refugees into a protection gap.

While in Poland Russian nationals may be granted temporary protection only if they provide proof of permanent legal residence in Ukraine and demonstrate that they cannot return to their country of origin in safe conditions.

They may however face difficulties in registering for temporary protection due to a requirement of „legal entry” to Poland. Men of conscription age are leaving Ukraine in an irregular manner and travel via Russia or Transnistria. They may take different routes afterwards but they enter Poland legally. For example they would go via Transnistria to Romania and then fly to Poland from there. When trying to register for PESEL UKR they are rejected however based on the fact that they did not fulfil the condition of "legal entry".

The "legal entry" premise (art 2.1. of the Polish Act on assistance to Ukrainian citizens) is however formulated as the entry into Poland. Thus, Polish authorities are not competent to decide upon the legality of crossing the Ukrainian border, prior to entering Poland. As this matter concerns draft evaders, however, this matter is highly politicized and the described practice persists.

Those who are unable to fulfil the statutory requirements for temporary protection may either apply for international protection (refugee status/subsidiary protection) or be granted a permit to stay based on humanitarian grounds or a tolerated stay permit, as a result of return procedure (this procedure is initiated ex officio, and not by application lodged by the foreigner).

## **1.5. Children**

The Russian invasion has left Ukrainian children, particularly unaccompanied and separated ones, vulnerable to statelessness. Since the war's onset, many entered Poland without proper documentation, relying solely on birth certificates or even without any identification. Limited access to Ukrainian databases and concerns about destruction during hostilities pose challenges in confirming their place of birth and citizenship.

Based on the provisions of the Polish Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country, the Ministry of Family and Social Policy maintains a registry for unaccompanied Ukrainian minors. However, there is no mandatory registration system for Ukrainian nationals, including separated minors. Many rely on the PESEL database, accessible not only through official documents but also their copies or oral statements, lacking comprehensive nationality verification.

In cases involving separated minors, a factual guardian (not yet legally appointed) can register a child with the PESEL database. These complexities highlight the urgent need for streamlined processes and legal safeguards to protect these vulnerable children from the risk of statelessness.

When in Poland, separated Ukrainian minors face potential statelessness risks, especially those who entered the country without proper identification. To mitigate this, Polish courts have implemented a

simplified procedure to appoint temporary legal guardians for these minors. As of May 2022, 16,335 applications were submitted, with 15,654 decisions made<sup>13</sup> - a number that proves the number of children in need of such guardianship.

Identifying children without passports or photo IDs is a crucial element of the system. Limited access to Ukrainian databases and potential destruction due to military operations create challenges in confirming their birthplace and parentage, impacting their ability to establish nationality. Children born in occupied territories face added hurdles, as Ukrainian authorities might lack access to relevant birth databases. Without proper confirmation of identity and nationality, these children are at risk of statelessness, emphasizing the urgent need for efficient procedures to protect their rights.

## **1.6. Refugees, asylum seekers and migrants**

In Ukraine, the issue of statelessness extends to refugees, individuals seeking international protection, and migrants who remained stateless prior to leaving their home countries due to territorial conflicts, minority discrimination, or gaps in citizenship laws. Regrettably, there is a lack of specific data regarding stateless refugees or asylum seekers in Ukraine. Efforts to address the challenges faced by these vulnerable populations are hindered by this data gap, highlighting the need for enhanced monitoring and support mechanisms.

Once in Poland, only specific categories of persons from the above mentioned groups may access temporary protection:

- those holding valid permanent residence permit issued in accordance with Ukrainian law who are unable to return to their country or region of origin in safe conditions
- those who were granted international protection or equivalent national protection in Ukraine
- leaving all those with pending protection procedures and those without permanent legal residence in a protection gap.

Alternative legal venues that can be explored by this group include applying for international protection (refugee status/subsidiary protection) or being granted a permit to stay based on humanitarian grounds or a tolerated stay permit, as a result of return procedure (this procedure is initiated ex officio, and not by application lodged by the foreigner).

One significant element here is the interpretation of the „equivalent national protection in Ukraine”.

Ukraine has introduced a statelessness identification procedure shortly before the war.

Under the 2020 law, an applicant for statelessness status has temporary status during the procedure enabling access to some rights. Recognized stateless people are able to acquire a temporary residence permit,

## **1.7. Undocumented persons**

As in many other countries in the world, in Ukraine too statelessness and risk of statelessness often coincide with lack of documentation. Although Ukraine has a special identification and identity setting procedure allowing for restoration of lost documentation, this procedure is only accessible to those who can present other supporting documentation, including a birth Ukrainian passport of one of the

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<sup>13</sup> Prawo.pl website <https://www.prawo.pl/prawnicy-sady/opiekun-tymczasowy-dla-ukrainskich-dzieci-statystyki-marzec-maj,515115.html>

parents. The procedure is run by the State Migration Service (SMS) and can only be initiated in Ukraine and not via a Ukrainian consulate abroad. These requirements narrow down the category of persons who can be granted Ukrainian documentation if they were not properly documented from birth.

As already stated above, the percentage of undocumented persons living in Ukraine is very high with an especially high proportion of Roma affected by this problem.

As of February 2022, stateless individuals and those at risk of statelessness in Ukraine face significant obstacles. In 2020, Ukraine introduced a statelessness determination procedure, allowing such individuals, regardless of their legal status, to apply for recognition as stateless persons. Upon a positive verification, they receive a temporary residence permit, with the option to obtain a permanent residence permit after two years. Although the procedure became available in May 2021, the escalating war led to the temporary closure of access to population registers by the Ukrainian government, disrupting the process. While access has been reinstated, the fate of individuals who left Ukraine during the application consideration period remains uncertain.

Once in Poland, undocumented persons face problems in accessing protection. Since they lack documentation their stay in Poland is regarded as irregular, exposing them to a risk of apprehension and detention.

Polish law does not have a safeguard against such prolonged detention that would mirror the standard of article 15 sec 4 of the EU Return Directive. For those stateless and undocumented persons who have failed to regularize their stay, prolonged detention is therefore a risk.

## 2. Statelessness Determination Procedure in Ukraine

Ukraine introduced a statelessness determination procedure in 2021 with a goal to determine who is stateless on its territory and grant them legal protection.<sup>14</sup>

The provisions establishing conditions of the procedure were enacted in Ukrainian law in July 2020, introducing the definition of a stateless person in line with the 1954 Convention. In April 2021 the by-laws setting the procedural framework were implemented and the procedure became available for applicants since May 2021, only several months before the war.<sup>15</sup>

Under these provisions an applicant for statelessness status receives a temporary status (temporary identity document) for the duration of the procedure, enabling access to some rights, notably, including the right to work. A positive decision and recognizing that the applicant is stateless results in issuing a temporary residence permit, and then permanent residence after two years. Recognized stateless persons can apply for facilitated naturalisation only three years since their recognition as stateless (a deadline shortened from the original requirement of 7 years).

Although introducing the procedure has been widely recognized as a crucial step towards eliminating statelessness in Ukraine and providing the stateless with a way out of a legal limbo, there are some limitations, restricting the applicability of the procedure. The applications are accepted only by a

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<sup>14</sup> BRIEFING: Update on access to protection for stateless refugees from Ukraine, European Network on Statelessness, 28 April 2022, available at: [https://www.statelessness.eu/sites/default/files/2022-04/ENS\\_briefing-Statelessness\\_Temporary\\_Protection\\_Directive-Apr\\_2022.pdf](https://www.statelessness.eu/sites/default/files/2022-04/ENS_briefing-Statelessness_Temporary_Protection_Directive-Apr_2022.pdf)

<sup>15</sup> Law of Ukraine On the Legal Status of Foreigners and Stateless Persons № 3773-VI of 22 September 2011: <http://zakon2.rada.gov.ua/laws/show/3773-17/print1498457630285946>, Law of Ukraine on Amending Certain Legislative Acts of Ukraine regarding Recognition as a Stateless Person №693-IX of 16 June 2020: <https://www.refworld.org/pdfid/5f2196bb4.pdf>, Law of Ukraine on Citizenship of Ukraine № 2235-III of January 18, 2001: <http://zakon3.rada.gov.ua/laws/show/2235-14>, Order of the Cabinet of Ministers of Ukraine No 317 of 24 March 2021 "Certain issues of recognition as a stateless person" <https://zakon.rada.gov.ua/laws/show/317-2021-%D0%BF#Text>

limited number of territorial departments of the State Migration Services, there is no translation offered for those in need of it, the procedure was not widely advertised and many stateless are not informed about it. What is more in some cases applicants are obliged to submit documents proving their place of residence and other documents, which cannot be obtained without an ID, which disqualifies those undocumented from the process.<sup>16</sup>

According to UNHCR<sup>17</sup>, as of 30 June 2023, 1,150 statelessness determination applications have been admitted by the SMS in Ukraine. 835 applicants have been recognized as stateless persons and approximately 700 of received a temporary registration permit. 69 applications have been rejected as they were nationals of other countries; 10 applications have been suspended as the SMS established that the applicants are citizens of Ukraine. Consideration of other applications is pending.

When compared to the estimated size of stateless population of Ukraine, these numbers are disproportionately low, indicating that only a fraction of those stateless have learnt about the procedure and decided to submit an application.

The systemic and practical shortcomings of the procedure as highlighted above narrow down the potential for becoming identified as a stateless and receiving the respective documentation. As a result one may assume that there are many cases of stateless persons who left Ukraine since 24 Feb 2022 due to war, but who have not had a chance to be formally recognized as stateless by the Ukrainian authorities. Once in Poland, they may experience a number of difficulties in accessing protection and ensuring the legality of their stay, since they would struggle to prove their statelessness and fail to provide any supporting documentation to corroborate their status. A considerable percentage may also remain undocumented and face difficulties not only in Poland but also when trying to return to Ukraine.

## Part 2: Situation in Poland

### 1. Access to temporary protection for stateless persons from Ukraine

In response to Russian invasion of Ukraine on 24 February 2022 causing a situation of mass arrivals of displaced people from Ukraine unable to return to their homes, the EU has decided to trigger the temporary protection mechanism for the first time in its history.

Following the call of the home affairs ministers, on 2 March 2022, the Commission proposed to activate the Temporary Protection Directive<sup>18</sup>. On 4 March 2022, the Council unanimously adopted the Implementing Decision<sup>19</sup> giving those fleeing war in Ukraine the right to benefit from temporary protection. On 27 September 2023, ministers reached a political agreement on the extension of the temporary protection until 4 March 2025.

The Council Decision sets out in Article 2(1) and 2(2) the specific groups of persons to whom the temporary protection or adequate protection under national law shall apply. These provisions

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<sup>16</sup> BRIEFING: Update on access to protection for stateless refugees from Ukraine, European Network on Statelessness, 28 April 2022, available at: [https://www.statelessness.eu/sites/default/files/2022-04/ENS\\_briefing-Statelessness\\_Temporary\\_Protection\\_Directive-Apr\\_2022.pdf](https://www.statelessness.eu/sites/default/files/2022-04/ENS_briefing-Statelessness_Temporary_Protection_Directive-Apr_2022.pdf)

<sup>17</sup> UNHCR website of stateless persons: <https://www.unhcr.org/ua/en/stateless-persons>

<sup>18</sup> Council Directive 2001/55/EC <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=L:2001:212:0012:0023:EN:PDF>

<sup>19</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.071.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A071%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.071.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A071%3ATOC)

encompass not only Ukrainian citizens but also certain other categories of persons previously residing in Ukraine and unable to safely return, including the stateless.

Pursuant to Article 2(1) of the Council Decision, temporary protection as provided for in Directive 2001/55/EC applies to:

(1) Ukrainian nationals residing in Ukraine who have been displaced on or after 24 February 2022 and their family members;

(2) Stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022 and who have been displaced from Ukraine on or after 24 February 2022, and their family members.

Pursuant to Article 2(2) of the Council Decision, temporary protection as provided for in Directive 2011/55/EC or adequate protection under Member States' national law shall apply to stateless persons and nationals of third countries other than Ukraine who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country [of origin] or region [within their country] of origin.

EU member states may decide to apply more generous criteria to their temporary protection schemes. Polish law adopting the council decision and directive standards clearly differentiates between Ukrainian nationals and their spouses and other persons fleeing Ukraine. The former are covered by protection under the „Special” Law on assistance to Ukrainian citizens in connection with the armed conflict on the territory of the country<sup>20</sup> and are guaranteed a wide access to rights upon a simple registration procedure in the PESEL-UKR number database. 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, by virtue of applicable provisions enshrined in the Act on granting protection to foreigners within the territory of the Republic of Poland<sup>21</sup>.

Non-Ukrainians who are not covered by the law on assistance to Ukrainian citizens, but who belong to the category of displaced persons mentioned in Article 2(1) and (2) of the Council Implementing Decision stating the existence of a mass influx of displaced persons from Ukraine, may benefit from temporary protection under the Act on granting protection to foreigners within the territory of the Republic of Poland. This applies to:

1. stateless persons or citizens of third countries other than Ukraine who can prove that before 24 February 2022, they were legally residing in Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and are unable to return to their country or region of origin in safe conditions

2. stateless persons or citizens of third countries other than Ukraine (and their family members<sup>22</sup>) who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine.

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<sup>20</sup> Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220000583/U/D20220583Lj.pdf>

<sup>21</sup> Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf>

<sup>22</sup> The following persons are considered as family members if the family was already located and residing in Ukraine before 24 February 2022: spouse. minor and unmarried children or children of the spouse, regardless of whether they were born in or out of wedlock or adopted, other close relatives who lived together as a single family at the time when the circumstances leading to the mass influx of displaced persons occurred and who were wholly or partly dependent on the above-mentioned person at the time.

Statutory conditions for stateless and third country nationals to be granted temporary protection in Poland are thus very stringent. Temporary protection is available to stateless persons married to Ukrainian nationals and to those falling under of the two categories:

- stateless persons who can prove that before 24 February 2022, they were legally residing in Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and are unable to return to their country or region of origin in safe conditions,
- stateless persons (and their family members) who, before 24 February 2022, enjoyed international protection or equivalent national protection in Ukraine.

There are several problematic issues and critical elements preventing many stateless persons from Ukraine from applying for temporary protection in Poland:

### **1.1. Interpretation of the term „stateless” and proper identification in Poland**

There is a risk that interpretation of statelessness by the Polish Office for Foreigners responsible for the TPD procedure in their cases may be inconsistent. The application of the term „statelessness” by Polish authorities has been inconsistent in the past and thus there is a risk of applying it in a unjustifiably strict manner, narrowing down the category of eligible persons and excluding those in need of protection.

The lack of uniform interpretation of statelessness may be exemplified by previous data collection exercises in Poland. The 2001 and 2021 Polish census used the category "undetermined nationality" as well as "stateless". The Office for Foreigners uses the term "without nationality" and "undefined nationality". The Polish Border Guard in its internal records applies several other terms however. According to the Border Guard Headquarters (written reply to an inquiry of HNLAC on statelessness data collection): "a stateless person" is defined as "a foreigner of no state affiliation, a foreigner stripped of nationality or claiming to be a national of the so-called unrecognised state". The second category used by the BG HQ, persons of "unknown nationality" is defined as: "persons that are not defined as stateless, those that do not claim being national of any state, claim potential affiliation with many states or – even though they indicate a state affiliation - were not recognised by that state as a national". A third category used by BG HQ is persons whose "nationality was not confirmed", understood as "persons with no identity documents, whose personal details (including nationality) are accepted based on oral statements, which are subsequently verified".

Internal BG records indicate that the practical interpretation of statelessness in Poland is not consistent, which directly impacts the credibility of data on statelessness. In public records related to migration (website "migracje.gov.pl") two terms are used: "without nationality" (similar but not tantamount to "stateless") and "undetermined nationality"(similar to the term "at risk of statelessness").

There is no legal definition of a person with undetermined nationality. However, UNCHR uses the following working definition for the purposes of collecting statistical data: "A person may be assessed as being with undetermined nationality following a review that verifies the following: they lack proof of possession of any nationality; and either A) have links to more than one State (on the basis of birth, descent, marriage or habitual residence); or B) are perceived and treated by authorities in the State of residence as possessing such links to other States."

The HNLAC has long recommended that Polish authorities adopt a definition of statelessness that is in line with the 1954 Convention Relating to the Status of Stateless Persons, whereas a dedicated



procedure allowing to identify stateless persons should be introduced. Until these changes are made, all Polish statistics related to statelessness should be regarded with certain caution. These interpretation differences have been also described in the report summarizing the statelessness mapping study by UNHCR.<sup>23</sup>

In the context of stateless persons fleeing war in Ukraine, the biggest risk is that statelessness for the purposes of granting temporary protection will be understood as tantamount exclusively to holding an officially recognized status of a stateless person. As Ukraine has introduced a statelessness identification procedure shortly before the war and by virtue of Resolution No. 317 also approved the templates for documents issued to stateless persons recognized in this procedure, the risk is that Polish authorities would restrict the identification of stateless persons eligible for temporary protection only to those holding such documents.

In order to verify this, in June 2023 the Halina Nieć Legal Aid Center has directed a request for information to the Polish BG, asking about the identification of stateless persons from Ukraine fleeing to Poland due to war. One of the primary questions concerned the interpretation of the term „stateless” for the purposes of temporary protection. The BG replied that the term „stateless” is attributed to a person „holding a travel document issued on the basis of the 1954 Convention Relating to the Status of Stateless Persons”. The BG also explained that the term „refugee” is applied to persons „holding a travel document issued under the Geneva Convention of September 28, 1954, or individuals possessing a document issued by a state that recognizes the person as a refugee for other reasons” and the term „person with undetermined nationality” is attributed to persons „who are neither stateless nor refugees and whose citizenship is unknown. This also applies to individuals who do not possess an identity/travel document during official activities or possess documents where citizenship is not specified”.

## **1.2. Access to Poland and border practice relating to stateless persons from Ukraine**

In the same written reply, the BG informed that between February 24, 2022, and December 31, 2022, Polish Border Guard processed the entry of 3,796 stateless persons, recognized refugees and persons with undetermined nationality from Ukraine.

In the first half of 2023, 619 such individuals were processed. The Border Guard does not record data on the countries of origin declared by these individuals or the number of unaccompanied minors among them.

During the same reporting period, in relation to the above categories of persons fleeing Ukraine, the BG issued:

8 decisions on denial of entry to stateless persons and 6 persons with undetermined nationality (24.02.2022 – 31.12.2022)

34 decisions on denial of entry issued to stateless persons and 12 persons with undetermined nationality (01.01.2023 – 30.06.2023)

The main reason for these decisions was lack of documents required to enter Poland - visas and/or passports.

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<sup>23</sup> UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, available at: <https://www.refworld.org/docid/5da58e7e4.htm>

Additionally the BG informed that in 2022 there were 30 persons and in 2023 19 persons with undetermined nationality who were allowed to enter Poland from Ukraine, but who were placed in detention by court order.

Several conclusions may be formulated based on the above statistics. Although the BG has not specified the division between stateless persons, persons with undetermined nationality and recognized refugees coming to Poland from Ukraine since the break out of conflict in that country, it is clear that most of the 3,796 in 2022 and 619 in 2023 were either stateless and/or undocumented (which in the BG's interpretation is tantamount to „undetermined nationality“). Notably, only a very small percentage of those undocumented persons were not allowed through the border, nevertheless the fact that there were stateless represented in this number (8 in 2022 and 34 in 2023) is still worrying, especially since according to the official interpretation of the BG, those would be persons holding a travel document issued on the basis of the 1954 statelessness convention, whose status as stateless was clear during border control.

It has to be noted here, that in case of lack of documentation required to enter Poland the BG may still take a decision allowing entry, upon an individual assessment of the circumstances, which in the majority of cases they did - as is evident from the comparison of the supplied numbers. One can therefore assume, that in cases of those denied entry the BG was not convinced as to their prior residence in Ukraine and assumed that their reason for coming to Poland is other than seeking protection due to war. No official explanation of the reasons for rejection at the border was provided, however.

Another conclusion stemming from the above statistics is that during border control, the BG has not been carrying out any individual assessment of statelessness to those without documentation confirming that they were recognized as stateless in Ukraine. Such practice creates concerns as to the proper identification of such persons, lack of which may lead to effectively excluding them from adequate protection.

Narrowing down the definition of a stateless persons only to those already recognized as such means falsely recording stateless persons as „persons with undetermined nationality“ and/or undocumented. When qualified as a person with undetermined nationality and/or undocumented, the person in question is most likely unable to be granted temporary protection based on the Directive criteria.

For the purposes of granting protection under Temporary Protection Directive, statelessness may be, however, established independently, by the Polish Office for Foreigners, as a legally relevant fact in this process, even in absence of documents issued based on 1954 Convention. Limiting the recognition of statelessness status only to those already determined as stateless in Ukraine is an unjustifiably restrictive approach, especially since Ukraine's statelessness determination procedure has not yet been widely applied to the overwhelming majority of the stateless population and its impact so far has been minuscule.

For these reasons, statelessness should be assessed by Polish authorities independently of the Ukrainian statelessness determination procedure. The standard of fair procedure before Polish authorities can only be met however if a uniform definition of statelessness is applied and interpreted in line with international law. The lack of such definition enacted in Polish law thus remains a considerable obstacle.

### **1.3. The requirement of permanent legal residence in Ukraine**

Another problem restricting access to protection of stateless persons from Ukraine lies in the requirement to demonstrate that they were legally residing in Ukraine on the basis of a valid

permanent residence permit. Though stateless population in Ukraine is large, the statelessness identification procedure has only recently been introduced. It's overall impact on the scope of statelessness in Ukraine remains symbolic at best. Many stateless persons and persons at risk of statelessness are still unidentified or left prior to being identified and many lack adequate documentation. Such persons would be unable to demonstrate the above condition and as a result would be unable to benefit from temporary protection.

Moreover, according to information on the border practice provided by the BG, the term „stateless” is interpreted in a restrictive manner, and attributed only to individuals „holding a travel document issued on the basis of the 1954 Convention Relating to the Status of Stateless Persons”. It thus follows that only those stateless who were already recognized as such could benefit from temporary protection under this criterion. The statelessness determination procedure was however only opened to applications in 2021, and in case of a positive decision the applicant is granted a temporary residence permit first, being able to apply for a permanent permit after 2 years. These deadlines mean that in practice almost none of the applicants for protection in Poland would be able to fulfill both of these conditions: proving permanent legal stay in Ukraine and holding a stateless person certificate.

#### **1.4. Equivalent protection in Ukraine**

According to the Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, stateless persons may benefit from protection either if they prove permanent legal residence in Ukraine or if they were granted international protection or equivalent national protection in Ukraine.

Under the Ukrainian law on statelessness determination, a recognized stateless person receives a temporary residence permit in Ukraine. According to the Operational guidelines for the implementation of Council implementing Decision 2022/382<sup>24</sup> the Commission considers that „equivalent national protection” in Ukraine is an alternative to international protection and covers other forms of protection granted by Ukrainian authorities such as temporary protection or humanitarian protection.

The Operational guidelines list a „travel document for persons granted complementary protection”, a „stateless person's travel document”, and a „certificate for persons granted complementary protection” among the documents indicating that the person is to be assumed to be enjoying „equivalent protection” and thus being eligible for temporary protection in the EU.

Considering that fact that the statelessness determination procedure has only been opened for applications in Ukraine in 2021, and the fact that those recognized as stateless first receive temporary residence permit, only later to be able to apply for permanent residence, one can assume that stateless persons from Ukraine holding travel documents issued in this procedure are only able to submit a temporary residence permit. Even though they do not qualify for protection under Article 2.2 of the Council Implementing Decision (EU) 2022/382, they do qualify under Article 2.1.(b) (as stateless persons benefiting from „equivalent protection”). This distinction may be critical in assessment of applicants for protection submitted by stateless persons to the Office for Foreigners.

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<sup>24</sup> Operational guidelines for the implementation of Council implementing Decision 2022/382 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274>

## **1.5. Evidentiary difficulties**

In Poland there is no statelessness determination procedure in place, therefore a stateless person may face difficulties in proving their status. Although statelessness may be established in the course of various migration procedures as a legally relevant fact, no dedicated procedure exists. At the same time, the BG's interpretation applied to persons coming to Poland from Ukraine is restricting the assessment of statelessness to those already recognized as such and holding 1954 Convention documents. Those without a prior recognition of statelessness coming to Poland, may therefore fall in a protection gap, their access to temporary protection being elusive.

Due to the nature of statelessness, most people affected by it are unable to prove their citizenship, place of birth or residence. Proving the negative - the lack of citizenship - is a challenge in the legal process and without a dedicated procedure in place, such efforts are often likely to be unsuccessful. Moreover, many stateless persons coming from Ukraine may be undocumented and belong to marginalized minorities, such as Roma. The requirement to prove their identity, the fact that they stayed legally in Ukraine may therefore be difficult to meet, let alone proving permanent legal residence in that country, as in many cases statelessness coincides with irregular stay. Even though Ukraine has taken steps to identify and provide documentation to its stateless population, the procedure for determining statelessness was introduced only recently, and many stateless persons and persons at risk of statelessness remain unidentified or left prior to identification.

## **1.6. Difficulties with return to Ukraine**

As it was indicated above a small number of stateless undocumented persons were denied entry at the Polish border, which effectively barred them from accessing protection. Current legal practice indicated however, that undocumented stateless or persons at risk of statelessness lacking adequate documentation may experience similar difficulties while travelling in the opposite direction. Cases where stateless persons previously residing in Ukraine have been denied entry back to Ukraine were reported to HNLAC and so far no legal procedures were adopted by Ukraine to remedy this protection gap.

## **2. The number of stateless persons from Ukraine seeking protection in Poland**

As of June 2023, more than 1.6 million refugees from Ukraine had registered for a national identity number (PESEL) in Poland.

According to the UNHCR data there is 958 120 active registrations for temporary protection (PESEL UKR) as of 12 September 2023. The cumulative number of registrations in September 2023 has reached 1 681 930 (this number includes refugees from Ukraine who registered for temporary protection as well as those whose records were inactivated due to leaving Poland for more than 30 days).

There are no official numbers indicating how many of those arriving have been undocumented, at risk of statelessness or stateless.

The statistical sources are thus only partially helpful in assessing the numbers of stateless persons fleeing to Poland due to war in Ukraine.

According to the Office for Foreigners as of June 30, 2023, there were 29 stateless persons and 23 persons with undetermined citizenship holding valid documents entitling them to temporary protection in Poland.

Considering the problematic issues restricting access to protection for the stateless from Ukraine it can be assumed that the low number of stateless persons applying for temporary protection in Poland may be assigned to the fact that many of them would be unable to fulfil the statutory requirements even though Ukraine was the country of their former habitual residence, they cannot safely return to Ukraine and they have no other state that would take them back.

### **3. Other legal venues for stateless from Ukraine in Poland**

In the current legal context, and considering the practical and evidentiary difficulties faced by stateless persons from Ukraine coming to Poland in pursuit of temporary protection, it is important to underline other existing legal venues that are available to them.

Stateless persons who are not refugees recognized in Ukraine, who do not hold documents issued as a result of Ukrainian statelessness determination procedure or those who are otherwise identified as stateless by the Polish authorities but cannot prove permanent legal residence in Ukraine may still apply for protection. When fleeing war, they can apply for international protection under the Polish Act on granting protection, as in most cases they would qualify for complementary protection.

Those who come undocumented and lose the legality of their stay, can be granted a permit based on humanitarian grounds or a tolerated stay. Such permits are issued as a result of return procedure, where obliging a person to return is legally or practically impossible.

Depending on their documentation and basis of entry to Poland, they can also try to legalize their stay through one of the migration procedures.

Stateless persons or persons at risk of statelessness whose stay in Poland is irregular face apprehension and detention which, as practice shows, may often be unduly extended even if there is no reasonable prospect of return, thus amounting to arbitrary detention. Polish law does not have a safeguard against such prolonged detention that would mirror the standard of article 15 sec 4 of the EU Return Directive [*When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.*] For those stateless who have failed to regularize their stay, prolonged detention is therefore a risk.

## **Part 3: Conclusions and Recommendations**

### **Conclusions**

The break out of war in Ukraine uprooted millions of people from their homes, resulting in the largest and fastest displacement crisis in Europe since World War II. Poland has become a top host country for a wave of refugees from Ukraine and quickly adapted its law so as to implement a system of temporary protection. Although the procedure for accessing protection has been simplified in order to facilitate its application to all those with Ukrainian citizenship, stateless persons, persons at risk of statelessness and those undocumented have not been equally accommodated.

As it has been demonstrated in this report, access to protection of these vulnerable groups of refugees has been undermined by many factors. Some are legal barriers restricting their eligibility for protection, other are connected to practical difficulties in gathering necessary documentation or crossing the borders while the problematic interpretation and application of legal provisions is often creating additional risks.

The status of stateless from Ukraine in Poland thus remains highly vulnerable. The deficiencies of Polish system regarding statelessness have been highlighted during the Ukrainian crisis and bear a direct detrimental impact on their situation. Without a statelessness determination procedure, a uniform definition of statelessness and its coherent interpretation and application, a risk of unjustified exclusion from protection of those in need of it remains a constant threat. Legal and practical changes should be made in order to ensure a more protection-oriented approach.

## **Recommendations**

- Poland should accede to 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness,
- A definition of statelessness in line with 1954 Convention Relating to the Status of Stateless Persons should be adopted into the Polish Act on Foreigners and a uniform interpretation of this term should be ensured
- A dedicated statelessness identification procedure should be established in law, allowing for re-documentation of stateless persons,
- A legal pathway for regularization of status of stateless persons should be laid out in law,
- Act on Foreigners should include a clear safeguard against detention of persons in case no reasonable prospect of return exists, that would mirror the standard of article 15 sec 4 of the EU Return Directive,
- All relevant authorities (Office for Foreigners and Border Guard) should be trained on statelessness and its identification,
- Special efforts should be made to ensure regularisation of stateless persons and persons at risk of statelessness from Ukraine who are not covered by temporary protection in Poland. Such efforts should include but not be limited to identifying and reaching out to minority groups from Ukraine at risk of statelessness, encouraging them to apply for other available forms of protection and ensuring they have easy access to relevant information and legal assistance in a language they understand.
- It is recommended to ensure swift and scrupulous identification of children and other vulnerable persons from Ukraine who may have challenges with proving their nationality and thus be at risk of being stateless.

## **Cases regarding stateless persons fleeing Ukraine due to the war:**

1. **Andrii** came to Poland holding a stateless person travel document issued by Ukrainian authorities and in Poland he registered with PESEL UKR as a beneficiary of temporary protection. According to the Polish Special law on assistance provided to Ukrainian refugees fleeing armed conflict, PESEL UKR registration is only available for citizens of Ukraine and their spouses. Therefore, Andrii was registered with PESEL UKR as a mistake – possibly the official responsible for registration saw a passport-like document issued in Ukraine and presumed that Andrii was in fact a Ukrainian national. In his case this is a "lucky" mistake however, since PESEL UKR guarantees a generous scope of rights and assistance in Poland.

HNLAC lawyers explained to Andrii's his current legal situation and status, as well as possible legal remedies and pathways, and the chances and risks of undertaking them.

Andrii's situation illustrates an important protection gap – where state officials are not aware of statelessness as a legal phenomenon and falsely ascribe citizenship, without prior verification. As there is no legal procedure for stateless determination, the authorities are not equipped to make such an assessment.

2. **Maria** was born in the Donetsk region. In 2014, due to the armed conflict in Donetsk region she was forced to leave home and registered as an internally displaced person in Irpin. While leaving home in 2014, Maria was unable to gather all her documents (including her expired travel document issued by Ukraine). Therefore, she applied for new ID document but was denied them as according to the authorities she was not confirmed as a citizen of Ukraine.

Maria presented her birth certificate confirming that she was born in Ukraine. She was assisted by the lawyers from a Ukrainian NGO, Right 2 Protection, as well as UNHCR Representation in Ukraine. Lawyers from R2P helped her to initiate the process of confirmation of her identity through court. However, the court hearing did not take place, as the war started and the city of Irpin was seized by the Russian forces. In March 2022, Maria fled to Poland, where she tried to contact Ukrainian consulate and Ukrainian embassy but was unable to reach them due to the long queues.

Maria contacted Halina Niec Legal Aid Center at the time when the law regarding temporary protection in Poland was still in the making. HNLAC lawyers advised her on the regulations provided by the EU Directive with regards to stateless persons. Maria later informed us that she took the decision to go to Germany and apply for temporary protection there.

3. **Olena** was born in Russia. In the early 90-s woman arrived to Ukraine, married a Ukrainian citizen and decided to stay in Ukraine. Her document issued by the USSR authorities soon expired. After trying to receive an ID from the Ukrainian authorities, she was denied, as she failed to present the valid ID document from her country of origin. After filing a request to the Russian authorities for a new ID, Olena was not confirmed however as a citizen of Russian Federation. Due to the lack of the document from Russia, she was unable to receive any document in Ukraine. In 2020, after Ukraine implemented the procedure for determining a stateless person, Olena was able to receive a document confirming her status as a stateless person. In April 2022, Olena had to escape Ukraine due to the war. Upon arriving to Poland, she faced issues with the access to the temporary protection available to persons fleeing Ukraine. Authorities in Poland did not accept the document confirming her stateless status.

Olena contacted HNLAC office in April, 2022 seeking information on the possibilities to legalize her stay in Poland. HNLAC lawyers provided her with the necessary information regarding the implementation of the Temporary Protection Directive in Poland. In the situation of Olena

there was a possibility to either apply as a spouse of Ukrainian citizen or to apply as a stateless person on the basis of Law on the granting international protection in Poland.

Olena informed the HNLAC lawyers that due to the fact that she already faced problems with recognizing her document from Ukraine identifying her as a stateless person she took the decision to relocate from Poland.

**4. Mohamed** arrived to Ukraine from Sudan 13 years ago. In Ukraine, he applied for international protection while the Ukrainian NGO Right 2 Protection was assisting him in the process. UNHCR representation in Ukraine issued a document identifying Mohamed as a stateless person. Mohamed resided in Irpin and had to escape due to the start of the war. Upon arriving to Poland, he applied for international protection. He was placed in the detention center for foreigners in Przemysl. During the interview with Border Guards Mohamed indicated that was diagnosed with a mental condition in Ukraine and is suffering from several serious health issues. The court in Poland did not take into consideration the mentioned circumstances deciding to place him in detention given the lack of identity documents and the risk of absconding.

Mohamed contacted HNLAC office seeking legal assistance. HNLAC lawyers prepared a request to the Commander of the detention center indicating that the detention is illegal given his health condition and the fact that the decision on the obligation to return can't be implemented in the view of Mohamed's stateless status. The case was also communicated to the Ombudsman's Office. The Commander denied the request underlining that the Embassy of Sudan in Berlin "confirmed the citizenship but not the identity" of the foreigner. Another request was sent to the Commander, case is pending.

**5. A family** from Ukraine consisting of 7 adults and 2 children approached the HNLAC office shortly after the war in Ukraine broke out. They have been staying in Poland without a legal basis for more than 8 months since they do not have Ukrainian passports. Several members of the family had birth certificates and passports issued in the Soviet Union but they didn't renew them after the USSR's dissolution. The family sent numerous inquiries to the Migration Service of Ukraine to confirm their identities. Their attempts were not successful and while in Poland they have been denied the issuance of the „white passport” necessary to cross the border back to Ukraine to complete their procedure with the Migration Service. The „white passport” is a type of temporary travel document issued to Ukrainian citizens and foreigners who have the right to reside in Ukraine, who are outside the country and do not have documents allowing them to enter Ukrainian territory. As the family in question was never registered with Ukrainian documents, they were denied, however the issuance of „white passports”, which in turned disabled them from returning to Ukraine in order to present their case before the Migration Service.

HNLAC lawyers approached the Ukrainian Embassy several times as well requesting assistance, but to no avail. Their identity and status in Ukraine was not confirmed, neither is their statelessness status.

**4. Rima** was born in Ukraine and holds a stateless document. She has a birth certificate issued in Ukraine, however, no details of her parentage is included in this document. Rima wants to go to Kryvyi Rih, where the whole family comes from in order to apply for a Ukrainian passport. But in order to cross the Ukrainian border she needs to get a „white passport” from the Ukrainian embassy. Her children are also left without documentation. The embassy rejected her application because she does not have



citizenship. Without the passport she cannot go back to Ukraine to approach the Migration Service.

5. **Oksana** has a problem regarding identity documentation. She was residing in Ukraine for the past 20 years, however, due to the war situation in Ukraine, together with her sister, she decided to flee to Poland. However, due to a lack of documents that confirm her identity, she resides in Poland without international temporary protection. Hence, she doesn't have the right to social benefits, employment, medical assistance, or any support under national or international law. Due to the above-mentioned reasons, she wants to move to live with her family in Russia together with her caregiver. Oksana needs constant supervision and care due to her mental disability. She has medical issues, such as epilepsy and mental retardation, which have caused her inability to obtain an identity passport previously, after the collapse of the Soviet Union. Currently, Oksana holds only a birth certificate issued by the Soviet Union. The main concern is that Oksana will not be able to confirm her identity and without a passport she will not be able to reach her family in Russian Federation. In case she wouldn't be able to cross the border will remain without any support from her relatives and without protection.

6. **Rymma** is an undocumented Roma woman, who gave birth to a child in Ukraine. In 2021 she applied for recognition as a stateless person in Ukraine, but her procedure was never completed. While in hospital care, she was afraid of the consequences of her lack of ID, and so she provided a wrong surname to be stated in the medical certificate of birth. She never received a birth certificate but proceeded to Poland only with the hospital documents in hand. In order to regularize her status in Poland she had to first gather proof that she is the mother of the child, and a DNA test was necessary.

7. **Anastasia** had a child with a Ukrainian citizen. She is stateless but her child is a Ukrainian citizen. After the war broke out she decided to leave Ukraine. She wanted to cross the Polish border and go to Germany to receive temporary protection there. The Border Guards refused to let her enter Poland, however, even though she had a Ukrainian certificate of statelessness. The child was allowed to enter.

8. **Darya** with DPR (Donetsk People's Republic) passport, together with her child, visited the HNLAC's legal info point requesting legal assistance. Darya entered Poland via the Polish - Russian border. The child had only birth certificate issued in the DPR. Currently they are trying to obtain Ukrainian passports through Ukrainian lawyers.

9. **Nadya** of Roma origin approached the HNLAC asking for legal assistance. She holds a birth certificate from the Russian Soviet Republic and a 2020 UNHCR certificate from Ukraine confirming that she is a person without citizenship. She entered Poland through the Polish-Ukrainian border, then went to Germany but later returned to Poland. She wanted to go back to Ukraine, but the Polish Border Guards did not let her through because she did not have any valid ID documents or a passport.

10. **Yelena** of Armenian nationality with an expired Russian foreign passport approached the HNLAC asking for legal assistance. She came to Poland as the wife of a Ukrainian citizen. She turned to the Russian consulate to obtain a new passport, but she received a written response that, according to the consulate, she was not a Russian citizen. She is undocumented.

11. **Natasha**, a mother with three children visited the HNLAC's legal info point for persons from Ukraine located in Krakow. Natasha was born in Russia, she had no documents except a Russian birth certificate. She was refused to confirm her identity both at the Ukrainian and Russian consulates. She turned to Polish Border Guard and received a temporary foreigner's identity certificate, which will allow her to leave Poland.

12. The HNLAC receives regular inquiries and requests for legal assistance from persons who have only a passport issued in the USSR and after the collapse of the USSR, they did not confirm their citizenship of either Russia or Ukraine.

The second, most frequent issue is the plight of persons from occupied territories, e.g. DPR (Donetsk People's Republic). In most cases, they only have birth certificates issued by the Ukrainian authorities, and they hold DPR passports. They manage to get out of the occupied areas travelling through Russia and then reach Poland via the Baltic countries. Once in Poland they encounter problems with legalizing their stay and accessing protection, specifically:

- there are cases of refusal of PESEL UKR registration - the officials question the fulfilment of the requirement of „legal entry” to Poland, since the applicants left Ukraine through Russia

- secondly, they struggle with obtaining Ukrainian documents from Ukrainian consulates in Poland - the Ukrainian consulate in most cases is not able to confirm the identity of such persons. They are directed to contact the Ukrainian Migration Service so that it can confirm their identity, on the basis of which, in theory, they should apply for a Ukrainian passport. However, the Ukrainian Migration Service does not confirm persons from the occupied territories at the time of martial law) and many persons are anyway afraid to travel back to Ukraine considering their dubious status.