



**UKRAINE'S STATELESSNESS  
DETERMINATION  
PROCEDURE**

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# UKRAINE'S STATELESSNESS DETERMINATION PROCEDURE

On June 16, 2020, the Verkhovna Rada of Ukraine (Ukrainian Parliament) adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Recognition as a Stateless Person". The document entered into force on July 18th, 2020, a few days after President Zelensky signed the bill, and after its contents were published in official media sources (the Voice of Ukraine and the Gazette of the Verkhovna Rada of Ukraine). State organs had three months from the entry into force of the law to ensure procedural compliance with the law.

The purpose of the Law is to establish a statelessness determination procedure for the country. In 2013, Ukraine acceded to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and consequently it undertook international obligations to regulate and improve the status of stateless persons residing on the territory of Ukraine.

## Contents of the Law

The law brings the legal definition of statelessness in Ukraine into compliance with the international definition as provided by the 1954 Convention Relating to the Status of Stateless Persons (hereinafter – "the 1954 Convention").

*This definition states that "A stateless person is a person who is not considered as a national by any State under the operation of its law."*

This definition which slightly broadens the scope of statelessness as compared with Ukraine's previous legal definition. This clarification aims to prevent the exclusion of persons who may, in theory, have a right to Ukrainian citizenship or other, but who, in practice, have no way to demonstrate that right or to access that citizenship.

The law further introduces the statelessness determination procedure. This means it provides for the possibility of applying to be legally recognized as a stateless person, in particular by persons present – but not legally so – in the territory of Ukraine; it sets the period for consideration of an application at 6 months, and no longer than 12 months; it foresees provision of a certificate to an applicant identifying them as someone legally present in Ukraine throughout the duration of their application; it entitles applicants to all types of free legal aid until a final decision is made; it identifies an exhaustive list of grounds for refusing to grant the status of statelessness, and it provides a procedure for appeal in case of refusal.

The statelessness determination procedure will enable thousands of stateless persons who have lived in Ukraine for many years the right to obtain an identity document and proof of their legal presence in Ukraine. This will allow them to become full members of society with access to rights like medical care and social services and other rights guaranteed to all without exception by the

Constitution of Ukraine. After obtaining the status of statelessness, individuals may even apply for Ukrainian citizenship.

Usually individuals who apply for free legal aid with an organization like Right to Protection are some of the most vulnerable people in society: they are single elderly people, they are ethnic minorities like Roma people, they are individuals who have been released from prison, and they are internally displaced people like those who fled their homes as a result of the conflict. Many of them have not had access to education throughout their lives, and so understanding the laws and procedures can be insurmountable, and they often don't have the money or social connections to overcome these obstacles without free legal aid.

# GLOBAL STATELESSNESS DETERMINATION PROCEDURES

Only about twenty States worldwide have introduced a statelessness determination procedure. The first two countries to introduce a statelessness determination procedure were France and Italy between 1950 and 1970, Hungary, Latvia and Spain joined later, with most countries introducing the procedure after 2011: Moldova, Georgia, the Philippines, Costa Rica, Brazil, Uruguay, the United Kingdom of Great Britain and Northern Ireland, Kosovo, Turkey, Bulgaria, Ecuador, Montenegro and Argentina.

Current procedures are divided into [three different categories](#): those procedures which are regulated by specific laws in a clear or relatively clear manner; those which are aimed at protection but are not clearly regulated by law, but the mechanism generally works; and finally, those which guarantee both protection and have a clearly defined procedure. However, legal analysts believe the only meaningful way to assess the effectiveness of each statelessness determination procedure is to assess its compliance with the provisions of the 1954 Convention.

The 1954 Convention does not detail how States will design their own statelessness determination procedures, but only that they provide [for a minimum standard](#) of access to rights. This means that a State must provide stateless individuals with reasonable access to the right to work or to run one's own business, the right to buy or rent housing, the right to receive an education, the right to receive social security, and the right to freedom of movement, among others.



## MODELS FOR UKRAINE

The experience of the Kyrgyz Republic in overcoming statelessness is the most impressive to date. Kyrgyzstan began meaningfully addressing the challenge as far back as 2009, and then ramped up their efforts in 2014 as part of UNHCR's [#IBelong campaign](#). The government, international actors, local civil society actors, and experts and academics got together to set up a National Action Plan addressing both gaps in the laws as well as practical steps needed to be taken to eliminate statelessness. These practical steps included assembling at least 68 mobile units across the country whose job it was to identify instances of statelessness and under-documentation by conducting interviews, collecting documents, and then appropriately addressing each case as needed. The mobile units consisted of non-profit lawyers, passport desk officials, and representatives of local municipalities, and they were equipped with portable printers, scanners, laptops and cameras. They went door-to-door throughout much of the mountainous country, often traveling on horseback, and when they encountered stateless individuals or individuals at-risk of statelessness, they would file them for either a citizenship determination, an application for citizenship, or a retroactive birth registration.

Through this intensive process, in the summer of 2019 UNHCR announced that Kyrgyzstan had become the world's first nation [to eliminate statelessness](#). Between 2014 and 2019, the mobile units had identified and addressed some 13,700 cases of statelessness, including more than 2,000 children.

It should be noted that Kyrgyzstan [has not yet joined](#) the 1954 Convention on Statelessness, nor has it adopted a separate de jure statelessness determination procedure (as opposed to the de facto procedure described above) like the one recently adopted in Ukraine. Nonetheless, its statelessness elimination process clearly puts Kyrgyzstan largely in compliance with the provisions of the Convention, and the country's [stated aim](#) is to implement a new statelessness determination procedure by the end of 2020.

Other useful models for Ukraine's path toward addressing statelessness include the country's neighbors – Moldova and Georgia. Moldova and Georgia both have legal mechanisms for determining and addressing statelessness much like Ukraine's new law.

Moldova's law is more expansive in its plan to eliminate statelessness because it grants authority to state institutions to initiate a statelessness determination procedure; in the newly adopted Ukrainian law, only the individual can initiate the process. This grants Moldovan authorities the power to address the societal issue of statelessness even when an individual may not understand the reasoning or need. In Georgia, the statelessness determination procedure is handled by the Ministry of Justice, as opposed to the Ministry of the Interior as it is in Ukraine (this comparison is simply offered for consideration as each ministry offers different advantages as the implementor of the procedure).

*In both Moldova and Georgia, the term for consideration of an application is 6 months with the possibility of extension for 1-3 months. In the Ukrainian law, there is a more ample consideration period of up-to 12 months.*

Moreover, the list of grounds for not granting statelessness status to an applicant [is broader](#) in both Moldova and Georgia than in the new Ukrainian law. The Ukrainian law does, in some ways, offer more flexibility than the Moldovan or Georgian legislation.

## Legislative Process

While the statelessness determination procedure in Ukraine may not yet equal the substance of the statelessness elimination processes undertaken in Kyrgyzstan, and though it may differ in the legal text from the undertakings in Moldova and Georgia, Ukraine's procedure still offers a meaningful step toward compliance with the 1954 Statelessness Convention and broader international human rights law.

### The statelessness determination procedure:

- creates the possibility of applying for the statelessness determination procedure regardless of legal presence in Ukraine.
- puts the burden of establishing that an individual is not a citizen of another country on the State, not on the individual, which is impossible for stateless individuals in most cases.
- provides, if necessary and as needed, the applicant with a translator and / or translation services.
- determines that if, during consideration of an application, the circumstances of the case indicate that the applicant may have a right to Ukrainian citizenship, the statelessness determination procedure will be halted and a verification of Ukrainian citizenship will commence. If Ukrainian citizenship is not established, the statelessness determination procedure will re-commence. If citizenship is established, the applicant will be issued the passport of a citizen of Ukraine.
- determines that if, during consideration of an application, the circumstances of the case indicate that the applicant may have a right to be recognized as a refugee or as a person in need of complementary protection, the statelessness determination procedure will be halted until an examination of those grounds has been completed. If refugee status or status of a person in need of complementary protection is not established, the statelessness determination procedure will re-commence.

- states that throughout the duration of the statelessness determination procedure or any subsequent appeal, an applicant will be legally present in Ukraine and will have access to the corresponding rights.
- states that throughout the duration of the statelessness determination procedure or any subsequent appeal, an applicant will be legally allowed to work in Ukraine upon receiving permission from the JobCenter.
- provides for a clear procedure for filing an appeal against a refusal of a statelessness application, or against the reversal of a previous positive decision.
- mandates that the State Migration Service of Ukraine will keep records of all of:
  - A. persons who have applied for the statelessness determination procedure; and
  - B. persons, recognized as stateless and persons refused in recognition as stateless; and
  - C. persons for whom permanent residence certificates have been issued; and
  - D. persons for whom temporary residence certificates have been issued; and
  - E. persons for whom a travel document has been issued.

## Filing an Application

The procedure for applications for the statelessness determination procedure have not yet been fully determined. The Government must approve the order of application consideration by November 2020. The table on the following page briefly describes how a person can apply for formal recognition as a stateless person.

## Funding

Implementation of the law will not require additional funding from the State Budget, except that the issuance of temporary or permanent residence permits for stateless persons will come at the expense of the State. However, after successful completion of the procedure, stateless persons will be able to legally work in Ukraine and thus become taxpayers. Overall the process, at least as it stands now, is likely to be a net contributor into the State Budget of Ukraine.

<b>WHO CAN APPLY FOR STATELESS PERSON STATUS?</b>	<b>HOW IS THE PROCESS OF RECOGNITION OF STATELESS PERSON STATUS CARRIED OUT?</b>
<p>A person who does not consider himself / herself a citizen of any country may apply. Ukraine's State Migration Service (hereafter - the SMS) has a preliminary position on groups meeting criteria.</p>	<p>An individual may approach the SMS with an application for recognition of Stateless Person Status. Someone who is not legally present in Ukraine also has the right to apply.</p>
<b>WHEN WILL THE NEW PROCEDURE BEGIN?</b>	<b>WHAT DOES OFFICIAL STATUS MEAN TO A STATELESS PERSON?</b>
<p>The law had to be enforced within 3 months of the day of its entry into force or by October 18, 2020. During this interim period, the government had to update their regulations and processes to be in-line with the new law and the delay now breaks the term, established by law..</p>	<p>A person who receives Stateless Status may:</p> <ul style="list-style-type: none"> <li>• work legally without a work permit;</li> <li>• receive public social and medical services according to laws of Ukraine;</li> <li>• legally marry, make contracts, and conduct other legal actions.</li> </ul>
<b>WHAT DOCUMENTS MUST BE PROVIDED, IF AVAILABLE?</b>	<b>WHAT ARE THE RIGHTS &amp; OBLIGATIONS OF THE APPLICANT?</b>
<ul style="list-style-type: none"> <li>• an identity or travel document;</li> <li>• a document confirming not belonging to a foreign nationality;</li> <li>• another document which confirms the applicant's information.</li> </ul> <p>In case the individual does not possess said documents, the SMS will interview at least 3 witnesses.</p> <p><b>The absence of documents confirming the applicant's claim is not reason alone to reject the application.</b></p>	<ul style="list-style-type: none"> <li>• The applicant has the right to an interview with the processing authority;</li> <li>• The applicant has the right to legal assistance;</li> <li>• The applicant is obliged to cooperate with the SMS (appear at interviews, provide available evidence).</li> </ul>
<b>WHAT DOCUMENTS WILL A RECOGNIZED STATELESS PERSON RECEIVE AFTER THE APPLICATION?</b>	<b>CAN THE APPLICATION BE REFUSED?</b>
<p>Certificate confirming temporary legal presence in Ukraine while the application is considered.</p> <p>Residence permit <b>if the application is approved; administrative fees for processing are waived.</b></p> <p>Immigration permit <b>provided within 2 years of application approval. This ensures the right to obtain citizenship of Ukraine after 5 years of uninterrupted residing in Ukraine</b></p>	<p>Yes, if the applicant:</p> <ul style="list-style-type: none"> <li>• is already a citizen of Ukraine or another country;</li> <li>• submitted invalid or fraudulent documents or provided false information;</li> <li>• committed a crime against peace, a war crime or a crime against humanity.</li> </ul>
<p style="text-align: center;"><b>The decision-making period is BETWEEN 6 months and 12 months.</b></p>	