

Joint Submission to the  
Human Rights Council

**asylkoordination**  
österreich

# Universal Periodic Review

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## Austria

Asylkoordination Österreich  
Diakonie Flüchtlingsdienst  
European Network on Statelessness  
The Institute on Statelessness and Inclusion

09 July 2020

**Diakonie**   
Flüchtlingsdienst



 **Institute on  
Statelessness and  
Inclusion**

# Joint Submission

## to the Human Rights Council

### at the 37<sup>th</sup> Session

### of the Universal Periodic Review.

## Austria

### Introduction

1. Asylkoordination Österreich, Diakonie Flüchtlingsdienst, the European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Austria.
2. **Asylkoordination Österreich**<sup>1</sup> is a registered non-profit making organisation that provides a network for all associations, initiatives and individuals supporting refugees in Austria. Since 1991, Asylkoordination Österreich implements projects, documentations and research in the area of asylum, migration and integration. By organising campaigns and doing advocacy work, the organisation raises awareness and provides information to the public, journalists and politicians. Asylkoordination Österreich has worked intensely on the situation of unaccompanied minors and access to intercultural psychotherapy for refugees as well as providing workshops and trainings for legal counselling organisations and authorities. The organisation also offers workshops on asylum issues and anti-racism work in schools.
3. **Diakonie Flüchtlingsdienst**<sup>2</sup> works in the areas of counselling, care and support, housing and accommodation, education and training, integration, and medical and psychotherapeutic treatment with asylum seekers, refugees, migrants, and Austrians alike. Diakonie Flüchtlingsdienst works with its clients as equals, in line with emancipatory and holistic principles. In addition, Diakonie Flüchtlingsdienst works actively to prevent racism and discrimination through training and projects. In its public relations and lobbying work, Diakonie Flüchtlingsdienst advocates for the legal, social, and economic equality of foreigners who are permanent residents in Austria and Austrians alike. Its approach is human rights based, particularly regarding asylum, equality, unity of the family, and for the right to a fair trial.
4. **The European Network on Statelessness (ENS)**<sup>3</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 150 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS's

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<sup>1</sup> For more information about Asylkoordination Österreich, see: <https://www.asyl.at/de/>

<sup>2</sup> For more information about Diakonie Flüchtlingsdienst, see: <https://fluechtlingsdienst.diakonie.at>

<sup>3</sup> For more information about the European Network on Statelessness, see: [www.statelessness.eu](http://www.statelessness.eu).

Statelessness Index, which covers Austria.<sup>4</sup>

5. **The Institute on Statelessness and Inclusion (ISI)**<sup>5</sup> is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made nearly 70 country specific UPR submissions on the human rights of stateless persons out of which, 19 were joint submissions with ENS, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 36<sup>th</sup> UPR Sessions.
6. This submission focuses on:
  - I. Children's right to a nationality
  - II. Statelessness determination and status
  - III. Facilitated naturalisation
  - IV. Economic and social rights of stateless persons
  - V. Risks of arbitrary detention of stateless persons
  - VI. The impact of COVID-19 on Stateless Persons in Austria.

## Previous UPR of Austria under the First and Second Cycle

7. Austria was previously reviewed during the 10th and 23rd sessions of the UPR, in 2010 and 2015 respectively. During the first cycle, Austria did not receive any recommendations relating to the right to a nationality and statelessness.<sup>6</sup> During the second cycle, Austria received one recommendation by Portugal, namely, to address the limitations for children born out of wedlock in accessing Austrian nationality and to ensure non-discrimination, which it accepted.<sup>7</sup>

## Austria's International obligations

8. Austria has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of UN and regional treaties to which it is a party. These include, the International Covenant on Civil and Political Rights (ICCPR) (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see Articles 2.2 and 3), the Convention of the Rights of the Child (CRC) (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (see Article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (CRPD) (see Article 18) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (see Article 25).
9. Austria is also party to the European Convention on Nationality and other relevant regional treaties or declarations, including, among others, the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter (ESC).

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<sup>4</sup> <https://index.statelessness.eu/country/austria>

<sup>5</sup> For more information about the Institute on Statelessness and Inclusion, see: [www.institutesi.org](http://www.institutesi.org).

<sup>6</sup> A/HRC/17/8, 18 March 2011, available at: <https://undocs.org/A/HRC/17/8>

<sup>7</sup> A/HRC/31/12, 22 December 2015, available at: <https://undocs.org/A/HRC/31/12>

10. Austria is party to the 1954 Convention on the Status of Stateless Persons (1954 Convention) and to the 1961 Convention on the Reduction of Statelessness (1961 Convention).<sup>8</sup> Austria has one reservation in respect of the 1954 Convention, namely that it shall be bound by article 27 of the Convention (concerning the issuance of identity papers) only as regards stateless persons lawfully staying in its territory.<sup>9</sup> At the same time, Austria made one declaration, namely to fulfil its obligation under article 28 by issuing specific 'Foreigners' Passports' (*Fremdenpass*) to stateless people lawfully staying on its territory.<sup>10</sup> Austria maintains two reservations to article 8 of the 1961 Convention, permitting deprivation of nationality even if it results in statelessness where a person voluntarily enters the armed forces of another State or where a person, being in the service of a foreign State, conducts herself in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria.<sup>11</sup>
  
11. Austria retains 11 reservations to the European Convention on Nationality impacting on statelessness.<sup>12</sup> More specifically, Austria allows for gender discrimination in the acquisition of nationality by descent as it declares that "*the term "parents/parents" used in Articles 6 and 7 of this Convention does not, according to the Austrian legislation on nationality, include the father of children born out of wedlock*". Moreover, Austria imposes a six-month age limit on the acquisition of nationality by foundlings as under Article 6, paragraph 1, lit (b), it declares to "*retain the right that foundlings found in the territory of the Republic are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months*". Austria also provides no facilitation of naturalisation for stateless people as under Article 6, paragraph 4, lit (g), it declares to "*retain the right not to facilitate the acquisition of its nationality for stateless persons and recognised refugees lawfully and habitually resident on its territory (i.e. main domicile) for this reason alone*". Austria also retains the right to deprive a national of their nationality even if this could result in statelessness under the circumstances specified in the Australian Nationality Act.<sup>13</sup>
  
12. In 2017, the United Nations High Commissioner for Refugees (UNHCR) made the following recommendations to Austria as part of its mapping study on statelessness in Austria:<sup>14</sup>
  - a. *'Establish an accessible, fair and efficient procedure to determine statelessness;*
  - b. *Designate a centralised authority to assess and take first instance decisions on statelessness;*
  - c. *Provide guidance to municipalities on the registration of stateless people and persons of undetermined and unknown nationality;*
  - d. *Improve the collection of statistics on the phenomenon of statelessness in Austria;*
  - e. *Ensure the early and correct identification of stateless persons and solutions for situations where the State of purported nationality refuses to cooperate;*
  - f. *Incorporate a new ground of residence for stateless persons in the Austrian Asylum Act;*
  - g. *Foresee a renewable residence permit with a validity of at least two years for each person recognised as being stateless;*
  - h. *Establish a legal basis for the automatic acquisition of the Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless; and*

<sup>8</sup> The 1954 Convention entered into force in Austria on 8 May 2008; The 1961 Convention entered into force in Austria on 13 December 1975.

<sup>9</sup> UN Treaty Collections, Status of Treaties, [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg\\_no=V-3&chapter=5&Temp=mtmsg2&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-3&chapter=5&Temp=mtmsg2&clang=en#EndDec); UNHCR, Mapping Statelessness in Austria, January 2017, available at <https://www.refworld.org/docid/58b6e5b14.html>, para 101.

<sup>10</sup> UN Treaty Collections, Status of Treaties, [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg\\_no=V-3&chapter=5&Temp=mtmsg2&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-3&chapter=5&Temp=mtmsg2&clang=en#EndDec); UNHCR, Mapping Statelessness in Austria, January 2017, para 101.

<sup>11</sup> UN Treaty Collections, Status of Treaties, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=V-4&chapter=5&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=V-4&chapter=5&clang=en); Leonhard Call (ENS Individual Member), Country Profile: Austria, February 2020, 2.

<sup>12</sup> Reservations and Declarations for Treaty No.166 - European Convention on Nationality Declarations in force as of today Status as of 06/07/2020, available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/declarations?p\\_auth=KpTCkhdh](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/declarations?p_auth=KpTCkhdh)

<sup>13</sup> Ibid. See also: <https://index.statelessness.eu/country/austria>

<sup>14</sup> UNHCR, Mapping Statelessness in Austria, January 2017, 14 (Executive Summary).

- i. *Facilitate the naturalisation of stateless persons.'*

## Stateless Population Data

13. As the Council of the European Union has elaborated, states should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.<sup>15</sup> The last census that took place in Austria in 2011 recorded 5,289 people as 'stateless' or of 'undetermined' or 'unknown' nationality.<sup>16</sup> The Central Register of Residents recorded, as of 1 January 2019, 423 'stateless', 948 'unknown nationality' and 10,870 'undetermined nationality'.<sup>17</sup> The data in the Central Register of Residents is disaggregated by age (70% are children under 14), gender (46% are women) and place of residence (70% reside in Vienna). There are several other sources of disaggregated data on naturalisations, births, deaths and residence permits. The Ministry of Interior also reports asylum data under the category 'unknown nationality', and records the nationality of immigration detainees, but it does not publish the latter.<sup>18</sup>
14. A mapping study on Statelessness in Austria was published by UNHCR in 2017 elaborating, *inter alia*, on Austria's lack of a centralised statelessness determination procedure nor any guidance on how to apply the different nationality categories used by the authorities, which are currently applied inconsistently.<sup>19</sup> For instance, whether individuals in a particular situation are classified as 'stateless', 'unknown nationality' or 'undetermined nationality' in the Central Register of Residents may vary among municipalities.<sup>20</sup> The Ministry of Interior records the nationality of immigration detainees but it does not publish statistics on persons held in immigration detention.
15. The above numbers do not provide an accurate statistical overview of Austria's stateless population. As Austria does not have a dedicated statelessness determination procedure, official statistics tend to only cover those legally resident in Austria and persons who apply for international protection, whereas stateless persons living with irregular residence status in Austria are mainly invisible in the data.<sup>21</sup>

## National Law

16. There is a non-automatic provision in the Austrian Nationality Act that permits children born stateless in Austria to acquire Austrian nationality by application if they have been stateless from birth; lived lawfully in Austria for at least ten years (five years of continuous residence preceding the application); are between 18 and 20 years of age; and have not been convicted by a domestic court for certain offences or by a domestic or a foreign court to more than five years in prison.<sup>22</sup> Additionally, all children born in Austria, regardless of their residence status, may qualify for

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<sup>15</sup>Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

<sup>16</sup> Statistik Austria, Volkszählungen 1951 bis 2001, Registerzählung 2011, [Bevölkerung nach Staatsangehörigkeit und Geschlecht 1951 bis 2011](#)

<sup>17</sup> Statistik Austria, Statistik des Bevölkerungsstandes,

a) [Bevölkerung am 1.1.2019 nach detaillierter Staatsangehörigkeit und Geschlecht bzw. Altersgruppen](#)

b) [Bevölkerung am 1.1.2019 nach detaillierter Staatsangehörigkeit und Bundesland](#)

<sup>18</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>19</sup> See generally: UNHCR, Mapping Statelessness in Austria, January 2017, chapter 3.

<sup>20</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 80.

<sup>21</sup> UNHCR, Mapping Statelessness in Austria, January 2017, paras 3, 12, 17, 18, 80, 298 and chapter 3.

<sup>22</sup> Articles 8 and 14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

discretionary naturalisation after six years of residence subject to the other standard requirements for naturalisation.<sup>23</sup>

17. A new-born child of unknown parentage found on Austrian territory is regarded as a national by descent, until proven to the contrary. Austrian nationality may not be withdrawn from foundlings if this would lead to statelessness. There is an explicit age-limit of six months, meaning that the safeguard does not apply to all young children not yet able to communicate the identity of their parents or place of birth.<sup>24</sup>
18. Under the Austrian Nationality Act, a child national adopted by foreign parents does not lose their Austrian nationality before a new nationality is acquired. However, they do lose their Austrian nationality automatically if they acquire another one during the adoption through an explicit declaration of intent. A child under the age of 14 residing in Austria and adopted by Austrian national parents is entitled to apply for nationality subject to certain conditions. Nationality will be granted within six weeks of the application and the residence requirement may be waived if the adoptive parents' centre of interest and continuous lawful residence have been abroad for more than 12 months.<sup>25</sup>
19. There are facilitated naturalisation procedures for people born stateless in Austria (subject to the conditions referred to in para. 16) but there is no facilitated procedure for stateless people (including children) who were not born in Austria.<sup>26</sup> Like other foreign nationals, stateless people may qualify for discretionary naturalisation after ten years of legal residence, or, at the earliest six years if additional integration requirements can be met. In addition to residence, applicants must have a regular income, must not be dependent on social assistance (with some exceptions e.g. disability), must not have a criminal record, must have 'a positive attitude towards the Republic of Austria', pass a citizenship test, and pay a fee of approximately 1200-2500 EUR (reduced for minors) depending on the province and grounds for naturalisation). There are no fee waivers or exemptions for stateless people, except for the possibility to be exempt from providing documents that are normally required for naturalisation but are not available to them, such as passports and birth certificates.<sup>27</sup>

## ISSUE 1 – Children's Right to a Nationality

20. Every child has a right to a legal identity and nationality. This is a core principle of international law, which if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.<sup>28</sup> There are several gaps in the prevention and reduction of statelessness in Austrian law and practice.
21. Children born stateless in Austria must meet requirements that go beyond the 1961 Convention before acquiring Austrian nationality. Nationality is not granted automatically and may only be applied for by children born stateless in Austria, who have lived lawfully in Austria for at least ten

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<sup>23</sup> Article 11a(4)(3) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>24</sup> Article 8 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>25</sup> Articles 27 and 28 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018); Article 11b Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>26</sup> Articles 8, 10-11, 11a(4)(3) and 19(8)(3) Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>27</sup> ENS Statelessness Index Austria, Country Survey 2019, SDS15a, available here:

<https://index.statelessness.eu/sites/default/files/Index%20Survey%202019%20-%20Austria.pdf>

<sup>28</sup> See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

years (with five years continuous residence preceding the application), are between 18 and 20 years of age and have not been convicted for certain offences or for a certain period. Foundlings are considered Austrian until proven to the contrary, but this rule only applies to infants up to six months old.<sup>29</sup>

22. In adoption proceedings, there are gaps in safeguards that result in some risk of statelessness as the acquisition of Austrian nationality applies only to children under 14, is not automatic and is subject to some discretion on the part of the authorities. The provisions for the acquisition of Austrian nationality by children born to Austrian nationals abroad are discriminatory.<sup>30</sup>
23. Birth registration law and practice in Austria is generally good and thus does not create a risk of statelessness. Parents must submit documents confirming their nationality and civil status, but this is facilitated when they are unable to present the documents and particularly in the asylum context. However, legal and practical barriers exist for stateless people to access late birth registration after the seven-day deadline.<sup>31</sup>

## ISSUE 2 – Statelessness Determination and Status

24. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although statelessness may be identified in the context of other administrative procedures in Austria,<sup>32</sup> the co-submitting organisations recommend that this is best fulfilled through a dedicated statelessness determination procedure, in line with UNHCR's recommendation.<sup>33</sup>
25. Currently, there are three possibilities for stateless people to regularise their stay in Austria: through an application for international protection,<sup>34</sup> naturalisation,<sup>35</sup> or a residence permit.<sup>36</sup> Statelessness may also be identified in administrative procedures such as an application for a 'Foreigners' Passport' (*Fremdenpass*) for legally residing stateless people (or those with undetermined nationality) without a valid travel document,<sup>37</sup> a 'Tolerated Stay Card' (*Duldungskarte*) in cases of non-removability,<sup>38</sup> or by civil registration offices in the context of birth registration, marriage or any other civil status case.<sup>39</sup>

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<sup>29</sup> Articles 8 and 14 Staatsbürgerschaftsgesetz 1985, [BGBl No. 311/1985 as amended by BGBl I No. 61/2018](#) (DE), [Unofficial English translation](#) (amended version as of BGBl I No. 56/2018).

<sup>30</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>31</sup> Articles 9(1) and (2), 35(1), 36, 40(1) and 53(3)(1) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), [BGBl I No. 16/2013 as amended by BGBl I No. 104/2018](#); Articles 2(2) and 11(1)(1) Verordnung der Bundesministerin für Inneres über die Durchführung des Personenstandsgesetzes 2013 (Personenstandsgesetz-Durchführungsverordnung 2013), [BGBl II No. 324/2013 as amended by BGBl II No. 59/2019](#); Article 29(1)(11) 22a BFA-Verfahrensgesetz, [BGBl I 2012/87 idF BGBl I 2019/53](#) (DE), [Unofficial English translation](#) (amended version as of BGBl I No. 56/2018).

<sup>32</sup> ENS Statelessness Index Austria, Country Survey 2019, SDS10a, available here: <https://index.statelessness.eu/sites/default/files/Index%20Survey%202019%20-%20Austria.pdf>

<sup>33</sup> UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>34</sup> Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005), BGBl I No. 100/2005 as amended by BGBl I No. 53/2019 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>35</sup> Articles 8 and 10-14 Staatsbürgerschaftsgesetz 1985, BGBl No. 311/1985 as amended by BGBl I No. 61/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>36</sup> Article 19(8)(3) Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz), BGBl I No. 100/2004 as amended by BGBl I No. 25/2019 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>37</sup> Articles 46a and 88(2) Fremdenpolizeigesetz 2005, BGBl I No. 100/2005 as amended by BGBl I No. 56/2018 (DE), Unofficial English translation (amended version as of BGBl I No. 56/2018)

<sup>38</sup> *Ibid.*

<sup>39</sup> Article 35(2)(2) Bundesgesetz über die Regelung des Personenstandswesens (Personenstandsgesetz 2013), BGBl I No. 16/2013 as amended by BGBl I No. 105/2018

26. However, none of these procedures provide for a right of residence simply by virtue of being stateless. There is no obligation in law to consider a claim of statelessness within another procedure, no instructions on how to make a claim for statelessness, and no specific training or guidelines for authorities on how to identify or assess statelessness.<sup>40</sup> The burden of proof in statelessness determination and the standard of proof in applications for a 'Foreigners' Passport' and a 'Tolerated Stay Card' are not established in law, however, jurisprudence has determined that the threshold of substantiation should not be too high when statelessness is indicated in the proceedings.<sup>41</sup> Procedural safeguards, such as access to legal aid, interviews and interpreting also vary depending on the procedure.<sup>42</sup>
27. Without legal residence on another basis, stateless people have access only to emergency medical care and primary education, and may be dismissed from any basic social assistance they were receiving as an asylum seeker if they are refused asylum.<sup>43</sup> There is no legal basis for granting a residence permit by virtue of statelessness. Rather, the enjoyment of rights by stateless persons is subject to the same requirements that apply to other foreigners, including conditions relating to legal stay or residence status. Stateless persons are only exempted from the requirement to produce identification documents yet remain subject to all other requirements.<sup>44</sup>
28. Stateless asylum seekers are – until determination of their claims – entitled to remain in Austria, benefit from basic social assistance and have access to a range of other rights. If their asylum claim is refused, they lose the right to reside in Austria as well as access to most other rights. They may also be fined for unlawful residence. If the authorities determine that they cannot be removed, they have access to basic welfare support, but are not permitted to engage in wage-earning employment. Stateless persons who do not have the legal possibility to return to their country of origin or receive protection from another State might hence be trapped in a legal limbo for months.<sup>45</sup>
29. Tolerated Stay procedures are usually lengthy and have a high threshold of substantiation to prove that the person cannot be removed from Austria due to no fault of their own.<sup>46</sup> If a 'tolerated stay' is granted, when removal is considered impossible for practical reasons not attributable to them, stateless persons can apply for a 'special protection', after one year of 'tolerated stay', if they have a clean criminal record and do not pose a threat to public security.<sup>47</sup> Individuals meeting these conditions are issued a 'special protection' residence permit valid for one year, which can be renewed, provided the qualifying conditions continue to be met. An individual may be able to acquire a one-year residence permit with access to the labour market - a 'Red-White-Red-Card Plus' - after holding 'special protection' for one year if they can fulfil certain conditions including a minimum income, health insurance, housing and a specified level of German language skills.<sup>48</sup>

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<sup>40</sup> See <https://index.statelessness.eu/country/austria>

<sup>41</sup> Szymanski, W. (2015), '§ 88 FPG 2005, Ausstellung von Fremden-pässen', in: Schrefler-König/Szymanski, Fremdenpolizei- und Asylrecht, Manz, Wien. Case Law: VwGH 31.8.2017, Ra 2017/21/0024; VwGH 20.12.2013, 2013/21/0111; VwGH 3.12.1997, 96/01/0511.

<sup>42</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>43</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>44</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 139.

<sup>45</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 140.

<sup>46</sup> UNHCR, [Mapping Statelessness in Austria](#), January 2017, para 147.

<sup>47</sup> Austrian Asylum Act, section 57(1); UNHCR, Mapping Statelessness in Austria, January 2017, para 151.

<sup>48</sup> UNHCR, Mapping Statelessness in Austria, January 2017, paras. 151-155.

### ISSUE 3 - Facilitated Naturalisation

30. There are facilitated naturalisation procedures for people born stateless in Austria but there is no facilitated procedure for stateless people who were not born in Austria. As applicable to foreign nationals, stateless people may qualify for discretionary naturalisation after a lengthy period of ten years of legal residence and in addition to several other conditions (including, e.g., posing no danger to public order, having a regular income, no dependency on welfare or other social assistance, German language skills and basic knowledge of the democratic system and history of Austria) and the payment of a high fee (approximately 1200-2500 EUR depending on the province and grounds for naturalisation). There are no fee waivers or exemptions for stateless people, except for the possibility to be exempt from providing documents that are normally required for naturalisation but are not available to them.<sup>49</sup>
31. Austria has not implemented any other measures specifically aimed at reducing statelessness and gaps in the legal framework on loss and deprivation of nationality may result in statelessness. This includes cases in which a person intentionally acquires a foreign nationality without having been granted the right to retain their Austrian nationality, and the withdrawal of nationality of a dependant spouse or child if the nationality of their family member is withdrawn.<sup>50</sup>

### ISSUE 4 – Economic and Social Rights of Stateless Persons

32. Austria has not specifically addressed the question of employment for stateless persons. Unlike recognised refugees, there is no explicit provision permitting stateless persons per se the right to seek employment. The ability of stateless persons to engage in lawful employment hence largely depends on factors unrelated to their statelessness, such as the type of residence permit they have (persons with certain permits are permitted to seek employment) or their family situation (spouses of Austrian nationals have full access to the labour market). The issuance of a work permit depends largely on whether or not a person who has a stronger legal status in Austria (e.g. an Austrian or EU national or a person with an unlimited residence permit) is available for the job.<sup>51</sup>
33. Regarding the right to education, every child living in Austria – irrespective of legal status and nationality – is obliged to attend nine years of schooling after their sixth birthday. While public schools are in principle free of charge, coverage of travel expenses and the costs of buying school requisites may be an issue for parents without (sufficient) income or social assistance. Following completion of their ninth year of schooling, young people generally have the option of entering the workforce by completing an apprenticeship or continuing their education at a secondary school. However, for stateless children with no residence permit or a limited residence status, access to an apprenticeship or a regular job will in practice often not be an option.<sup>52</sup> At the university level, the Austrian Ombudsperson's Board recommended to facilitate equal treatment of stateless persons with Austrian nationals in respect of access to student allowances.<sup>53</sup> Thus far, this recommendation has not been implemented.<sup>54</sup>
34. Housing and accommodation for stateless people and other groups in situations of vulnerability

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<sup>49</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>50</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>51</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 182.

<sup>52</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 204.

<sup>53</sup> Volksanwaltschaft (Austrian Ombudsman Board), Bericht über die Tätigkeit der Volksanwaltschaft im Jahr 2001 an den Nationalrat und den Bundesrat, May 2002, available (in German) at <https://volksanwaltschaft.gv.at/downloads/Selqn/pb25.pdf.239>, 50-51; UNHCR, Mapping Statelessness in Austria, January 2017, para 205.

<sup>54</sup> UNHCR, Mapping Statelessness in Austria, January 2017, para 205.

seeking international protection has been reported as inadequate and lacking basic conditions.<sup>55</sup> Reception conditions for asylum-seekers should be improved, including in relation to reception centres, interpretation services and legal assistance.<sup>56</sup>

## ISSUE 5 – Risks of Arbitrary Detention of Stateless Persons

35. Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>57</sup> Such arbitrary detention would be in violation of Article 9 of the ICCPR. Austria is bound by the EU Returns Directive,<sup>58</sup> which requires particular attention to be paid to the situation of vulnerable persons, and the revised EU Returns Handbook also requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal prior to detaining or prolonging a person's detention.<sup>59</sup> Article 5 of the European Convention on Human Rights, to which Austria is also a party, establishes limits to the deprivation of liberty of individuals.
36. There are gaps in Austrian law and practice with regard to safeguards against arbitrary detention of stateless people. Statelessness is not considered juridically relevant in decisions to detain, and more than one proposed country of removal (or indeed none if the detained person cannot identify one) may be identified before detention. Since an amendment to the Immigration Police Act ('Aliens Police Act') entered into force in 2018, the purposes allowed go beyond Article 5(1)(f) ECHR, permitting coercive detention for up to four weeks if the person does not cooperate with their removal, and coercive detention may be imposed repeatedly without access to legal aid nor to an effective remedy.<sup>60</sup>
37. Detention should only be used as a measure of last resort, but OHCHR and NGOs have reported that less coercive measures are often not considered with due diligence and their use has diminished in recent years.<sup>61</sup> Vulnerability assessments should be carried out as part of the proportionality test when ordering immigration detention, but this is in practice often limited to a police doctor establishing whether a person is (still) fit for detention. Statelessness is not considered by law, practice, or jurisprudence to be a relevant factor in this assessment.
38. Law and policy establish various procedural safeguards including a time limit for detention, legal aid, decisions in writing, periodic judicial review and remedies, but practical barriers to accessing these have been reported.<sup>62</sup>

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<sup>55</sup> Christoph Riedl, *Wie Flüchtlingsquartiere sein sollten*, 19 June 2020 at <https://blog.diakonie.at/wie-fluechtlingsquartiere-sein-sollten>.

<sup>56</sup> Asylum Information Database, Country Report: Austria 2019 Update, at [https://www.asylumineurope.org/sites/default/files/report-download/aida\\_at\\_2019update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2019update.pdf); ECRE, *Reforming Legal Assistance In Austria: An End To Independent Provision?*, 2019, at <https://www.ecre.org/wp-content/uploads/2019/07/Legal-Note-5.pdf>.

<sup>57</sup> ENS (2017) *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockInLimbo_Detention_Agenda_online.pdf).

<sup>58</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>.

<sup>59</sup> European Commission (2017) ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927\\_recommendation\\_on\\_establishing\\_a\\_common\\_return\\_handbook\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf).

<sup>60</sup> Article 46(2)(a) *Fremdenpolizeigesetz 2005*, BGBl I No. 100/2005 as amended by BGBl I No. 56/2018 (DE), [Unofficial English translation](#) (amended version as of BGBl I No. 56/2018).

<sup>61</sup> OHCHR, [Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return](#), 15-18 October 2018, para 47.

<sup>62</sup> See: <https://index.statelessness.eu/country/austria>.

39. There is little protection on release as identification documents are not routinely provided. If removal cannot be carried out for factual reasons outside the control of the individual, the person may apply for 'tolerated stay', which is not regarded as legal stay under domestic law and does not entail the right to work.<sup>63</sup>

## ISSUE 6 – The Impact of COVID-19 on Stateless Persons in Austria

40. Stateless people may also be affected by issues that have been recently reported in Austria in the context of the COVID-19 pandemic. These include concerns around the lack of accessible and accurate information relating to COVID-19,<sup>64</sup> and reports that people are being forced to stay in Austria's largest camp for asylum-seekers in the village of "Traiskirchen" due to entry and exit bans imposed by local authorities, thus facing a higher risk of infection.<sup>65</sup> Stateless communities have also reported impacts on their access to rights (healthcare, shelter, work, food, education, etc.), increased discrimination and impact on their ability to access legal support and initiate or progress with legal proceedings.<sup>66</sup>

## Recommendations

41. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Austria:
- I. Establish a legal basis for the automatic acquisition of Austrian nationality at birth by children born on Austrian territory who would otherwise be stateless.
  - II. Remove gender discrimination in the regulations governing the acquisition of Austrian nationality by descent.
  - III. Introduce a legal definition of a stateless person into Austrian legislation in accordance with article 1 of the 1954 Convention.
  - IV. Withdraw reservations to the 1954 Convention Relating to the Status of Stateless Persons and the European Convention on Nationality.
  - V. Establish a fair and accessible statelessness determination procedure in line with UNHCR guidance and good practice, which provides a legal basis for granting residence and rights to people determined to be stateless.
  - VI. Consider statelessness as a juridically relevant fact in return and detention decisions, in order to prevent arbitrary (immigration) detention of stateless people.
  - VII. Not discriminate in COVID-19 responses on any grounds including nationality, documentation, or migration/residence status.
  - VIII. Ensure that the right to a nationality and other rights of stateless people are not undermined as a result of disruptions during the COVID-19 pandemic or for any other reason, and that stateless people have adequate access to information.

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<sup>63</sup> See: <https://index.statelessness.eu/country/austria>.

<sup>64</sup> DerStandard, Auch Innenressort informiert Geflüchtete unvollständig über Corona-Maßnahmen, 17 April 2020, at <https://www.derstandard.at/story/2000116939500/auch-innenressort-informiert-gefluechtete-unvollstaendig-ueber-corona-massnahmen>.

<sup>65</sup> DerStandard, Wie Quarantäne von Polizei und Behörden kontrolliert wird, 21 May 2020, at <https://www.derstandard.at/story/2000117612917/wie-quarantaene-von-polizei-und-behoerden-kontrolliert-wird>; DerStandard, Geflüchtete wehren sich gegen Ausgangsverbot in Traiskirchen, 30 April 2020, at <https://www.derstandard.at/story/2000117219054/gefluechtete-wehren-sich-gegen-ausgangsverbot-in-traiskirchen>.

<sup>66</sup> European Network on Statelessness, "Even before the pandemic, statelessness has been invisible" – Involving stateless people in Europe's COVID-19 response, at [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness\\_position%20paper\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness_position%20paper_final.pdf); In Solidarity with the Stateless – An urgent call to states, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses, at [https://files.institutesi.org/Joint\\_Statement\\_in\\_Solidarity\\_with\\_the\\_Stateless.pdf](https://files.institutesi.org/Joint_Statement_in_Solidarity_with_the_Stateless.pdf).