

Statelessness Update



Through the joint efforts of UNHCR partner NEEKA, Civil Registry and State Migration Service in Zakarpatska region, Yevhenii received his first passport at the age of 32 in 2021.

Yevhenii Kanalosh an ethnic Roma was born in Mukachevo, Zakarpattia, Ukrainian SSR in 1989. He studied at Mukachevo school for 9 years. He did not apply for a passport when he reached the age of 16. In 2016, he was mobilized and served in the Armed Forces of Ukraine. He was issued a military ID. After military service he lost his birth certificate and due to death of both parents he could not obtain a duplicate by himself. Attorney of the UNHCR partner NEEKA assisted Yevhenii in obtaining his parents' death certificates and a duplicate of a birth certificate. Then the attorney assisted Yevhenii in applying for a passport and in undergoing identity setting procedure in Mukachevo City State Migration Service.

What is statelessness?

"[stateless persons are] individuals who are not considered citizens or nationals under the operation of the laws of any country."

1954 Convention relating to the Status of Stateless Persons

UNHCR reported on some 4.2 million stateless people in 76 countries in 2019, but UNHCR believes the actual number to be significantly higher. A person's citizenship and nationality may be determined based on the laws of a country where an individual is born or where her/his parents were born. A person can also lose citizenship and nationality in a number of ways, including when a country ceases to exist or a country adopts nationality laws that discriminate against certain groups. Stateless persons are often **excluded** from society, and denied basic human rights such

In 2014, UNHCR launched the **#IBelong campaign** to end statelessness by 2024 through a Global 10-Point Action Plan. To learn more, visit:
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as a legal identity at birth; access to education, health care, marriage, employment opportunities, and even a death certificate when they die.

UNHCR and statelessness in Ukraine

From the 1990's until 2013, UNHCR has had a **historic role** and has worked extensively on the prevention and reduction of statelessness in Ukraine. UNHCR supported Formerly Deported Persons (FDPs) and their descendants returning to Ukraine in the process of relinquishing their previous citizenship and acquiring Ukrainian citizenship. Those assisted were mainly **ethnic Crimean Tatars** returning to the Autonomous Republic of Crimea from forced exile in Central Asia (mostly Uzbekistan).



Legal counselling for repatriants in the office of the fund for naturalization and human rights 'Assistance'

Amendments to the Citizenship Law in 1997 led to the naturalization of some 25,000 stateless FDPs between 1997 and 2001. In addition, Uzbekistan and Ukraine concluded an agreement backed by both UNHCR and the OSCE High Commissioner on National Minorities facilitating the naturalization of a further 90,000 FDPs.¹

82,550
 persons declared themselves as stateless in Ukraine in a 2001 population census.

UNHCR estimates that as many as **35,000** persons are with undetermined nationality or stateless in Ukraine in 2021.

In 2001, following intensive advocacy by UNHCR and the Council of Europe, a new Citizenship Law introduced a simplified naturalization procedure as a result of which applicants no longer had to renounce their previous nationality (becoming stateless in the process) before applying for Ukrainian citizenship. The previous requirements for Ukrainian language proficiency and five years of lawful residence were also waived for persons with links to Ukraine, including FDPs.

In 2013, following UNHCR advocacy, Ukraine acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 2020, Ukraine adopted a law [693-IX](#) establishing a statelessness determination procedure (SDP). On 24 March 2021, the Government adopted a Resolution [317](#), aiming at implementation of the law. The SDP shall help to regularize the legal status of stateless

persons and their children who arrived in Ukraine after November 1991 and have invalid or no identity documents. It shall also help children of such stateless persons born in Ukraine. Such persons became stateless due to conflicting nationality laws or gaps in nationality legislation.

The recognized stateless persons would be able to obtain a temporary residence permit (TRP), valid for one year, as well as a travel document. After two years on TRP, they would be eligible to obtain a permanent residence permit (PRP), valid for ten years. The SMS of Ukraine shall issue those resident permits for free. In seven years after the recognition they would be eligible to apply for naturalization in Ukraine.

¹ "Agreement between Uzbekistan and Ukraine on co-operation on resolving citizenship issues for FDPs" valid from October to December 1999, and from November 2000 to December 2001.

The majority of persons with undetermined nationality/at risk of statelessness revealed by UNHCR partners in Ukraine include:

Roma minority	Holders of Soviet passports	Children born in non-government controlled areas	Homeless persons	Persons released from prisons
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Among the holders of USSR passports might be not only *stateless persons* but those who were adult USSR citizens residing in Ukraine in August-November in 1991 and did not obtain inscription “*Citizen of Ukraine*” in their passport. Such persons are in need to apply to the court to establish that fact. Only then they became eligible to apply to SMS to establish their belonging to citizenship of Ukraine and obtain the Ukrainian passports. As per [SMS public statistics](#) 1,136 persons established belonging to the citizenship of Ukraine on the basis of court decisions (paragraphs 1, 2 of Article 3 of the Citizenship Law) during 2014-2021. UNHCR partners assisted **99** of them in obtaining such court decisions during 2017-2021. 63 such cases represented by partners are still pending at courts.

Among persons with undetermined nationality revealed by the partners were those (18+ years old) born in Ukraine (mostly Roma) whose parents violated the time limit for obtaining of *a birth certificate and/or a passport of a Ukrainian citizen* when their children reached the age of respectively 1 month and 14 years.

Birth Registration

The conflict that erupted in eastern Ukraine, as well as the occupation of the Autonomous Republic of Crimea, has resulted in an increased number of persons at risk of statelessness, notably because the Government of Ukraine does not automatically recognize the birth certificates issued in these territories. While a judicial procedure does exist in Ukraine allowing children from the non-government controlled areas (NGCA) to obtain birth certificates, the steps are cumbersome and expensive. NGCA residents must travel to the government controlled areas for several days in order to obtain the certificates, which can be burdensome, especially for vulnerable families. UNHCR has been strongly advocating for facilitation of this process. In the first half of 2018, Ukraine took the first steps towards establishing an administrative procedure for birth registration of children born in NGCA. The law providing for the blanket invalidity of all documents issued by the de facto authorities in NGCA, introduces an exception for documents certifying facts of birth or death of a person that may be attached to birth/death registration in Ukraine. UNHCR advocate for birth registration procedure that is responsive to the specific needs of families residing in NGCA. It should simplify the documentary requirements and offer registration services available close to the contact line in a single window. Information on the procedure shall be widely disseminated. Court proceeding opportunity shall remain available for examination of difficult cases, and applicants shall be exempted from court fees.

In February 2021, the Government introduced a tool for remote birth registration for babies born in NGCA (eMalyatko), but it has not been implemented yet. This requires online judicial review (e-court) and e-decision which can be used for remote applying for birth certificate.

A review of court records suggests that an estimated
35%

of children born in the non-government controlled areas of Donetsk and Luhansk regions have obtained a birth certificate issued by the Government of Ukraine from mid 2015 to 31 March 2021

10%

of children born in the Autonomous Republic of Crimea have obtained a birth certificate issued by the Government of Ukraine from mid 2015 to 31 March 2021

Achievements

In 2017 UNHCR partnered with NGOs capable of conducting outreach and providing legal services to persons with undetermined nationality in Kyiv, Odesa, and Zakarpatska regions of Ukraine. A study commissioned by UNHCR in 2016 had found that these regions have significant numbers of persons with undetermined nationality. Legal services were expanded to such persons in Kharkiv (from February 2018), Donetsk (from March 2018) and Luhansk (from September 2019) regions.

2,798

persons with undetermined nationality (45% are Roma) were identified and provided with legal aid by UNHCR partners between June 2017 and March 2021.

1,348 documents obtained in the last 46 months:
596

persons obtained **duplicates** of birth certificates due to its loss (of these are 137 foreign)

176

persons obtained **Ukrainian birth certificates**

576

persons obtained **passports** (of these 501 Ukrainian and 75 foreign passports)

Breakdown by regions

1207

persons with undetermined nationality (20% of them are Roma) in **Kyiv, Kharkiv, Donetsk and Luhansk regions** were identified and provided with legal support

806

Roma with undetermined nationality in **Zakarpatska region** were identified and provided with legal support

785

persons with undetermined nationality in **Odesa region** (1/3 of them are Roma) were identified and provided with legal support

From mid-2017, among the assisted persons UNHCR partners also have identified **308 irregular stateless persons** (majority were born in Russia, Moldova, other CIS countries; 84 of them are Roma). 9 of them have either a USSR passport or the Form

No.1 or a certificate of identity; expired residence permit; 129 have birth certificates of the former USSR republics; 52 have no documents. UNHCR assisted some of them in obtaining duplicates of their birth certificates and/or certificates on non-belonging to citizenship of country of their birth/permanent residence.

Capacity Building and Advocacy

- In 2017, UNHCR organized a study visit to Serbia for key government stakeholders (Ministries of Justice, Social Policy and Interior, as well as the State Migration Service) to learn good practices related to documentation of IDPs and issuance of birth certificates.
- In 2017, UNHCR assisted the Austrian OSCE Chairmanship in organizing a practical seminar in Vienna on exchanging good practices on the prevention of statelessness in OSCE states.
- UNHCR also organized five outreach visits of state officials to Roma settlements in Odesa and Zakarpatska regions in 2017-19. The visits were followed by inter-agency meetings, which addressed the identified problems of undocumented individuals and provided recommendations to the authorities.
- Together with OHCHR and UNICEF, UNHCR advocated for the establishment of an administrative procedure for birth registration that is flexible and responsive to the circumstances of families living in the NGCAs, by simplifying documentary requirements, offering registration services close to the line of contact, and disseminating information about the procedure.
- In February 2019, UNHCR organized a meeting with stakeholders to discuss preparations for the 7 October High Level Segment on Statelessness in Geneva and possible pledges from Ukraine. No commitments were done by Ukraine during the event, while [252](#) countries (including 8 by former USSR countries) made [pledges](#).
- In July and November 2019, UNHCR, its partner R2P jointly with respectively Chief Directorate of SMS in Donetsk and Luhansk regions/ MoJ Civil Registries organized meetings to discuss documentation problems of the Ukrainian citizens registered in NGCA, stateless persons and persons with undetermined nationality.
- In January 2020, UNHCR shared with SMS the proposed amendments to the CoM Resolution No 302 *on issuance of the national passport*, that *i.a.* envisaged that one relative or two neighbours would be a sufficient number of witnesses during the identity setting procedures of an undocumented citizen.
- In August and September 2020, UNHCR provided its expertise to SMS during drafting the SDP by-law. It included best practices of EU countries and Moldova.



Meet **Oleksandr Sadovnikov** born in Russian Soviet Federative Socialist Republic. In 1988 he came to Ukrainian SSR, Luhansk region with the USSR passport. Due to the lack of residence registration he could not exchange his passport for the Ukrainian when Ukraine became an independent state in 1991. Since 2005 (when Ukraine stopped recognition of validity of the USSR passports) he had no possibility to work officially, had no place for residency. He had medical problems with his eyes but could not get any treatment due to the absence of Ukrainian passport. After UNHCR partner provided legal assistance on establishing in court a fact of his residence in

Ukraine in 1991, Oleksandr obtained the Ukrainian passport at State Migration Service in 2020. After that he managed to find a job, a place in the dormitory and will soon get his eyes treatment.

Challenges

Birth registration:

- The absence of a birth certificate, late registration of birth are among the main problems in obtaining passports by Roma minority. Children, whose parents have died are particularly vulnerable as they cannot confirm their lawful residence in Ukraine and their legal links with the parents. Many Roma parents do not know the date and place of birth of their children. Its even more problematic, if children were born abroad and MoJ assistance is needed to verify that. However, the MoJ can not process parents undocumented by passport.
- Correction of mistakes (letters in names and family names) in the birth acts record is another challenge. The MOJ Civil Registry open a file on introduction of amendments to the birth acts record. If mistakes were committed in the CIS countries, the MoJ submits it to the relevant authorities within the Minsk Convention on legal aid in civil and criminal cases.

Identification/confirmation of belonging to Ukrainian citizenship:

- Non-inclusion of poor persons with undetermined nationality into the scope of Free Legal Aid beneficiaries in particularly affects undocumented Roma minority and the convicted persons.
- Non-issuance by SMS of temporary certificates containing the person's photo to undocumented applicants is a key problem. This could enable a person to apply to various state bodies, obtain free legal aid and collect the necessary information.
- Absence of a provision on identity setting procedures in the Civil Procedural Code of Ukraine, charges of court fees for consideration of such cases, cases on confirming facts of birth/residence in Ukraine – complicate finding durable solutions for poor applicants.
- The lack of simplified procedures for issuing/renewing/replacing internal passports for persons who have residence registration in NGCA. It is important for human rights and social cohesion that all Ukrainian citizens can access their identity documents without undue burden and discrimination.

Recommendations

In order to achieve the goals established by:

- (1) The UNHCR Action Plan to End Statelessness in the world #IBelong campaign 2014-2024;
- (2) The UN Sustainable Development Goals 2016-2030. Goal 16.9 provides for opportunity for all people in Ukraine to have legal IDs, including birth certificates.

Birth registration:

- To amend legislation by allowing submission of documents for a child birth registration to Civil Registry regardless of the place of residence/registration of its parents - MOJ is currently preparing a draft law on this subject.

- To remove from the Civil Registry requirements for registration of a child older than one year only on the basis of the form 103-1/o confirming the child's stay under medical supervision.
- MoH could have issue an internal guidance to maternity hospitals on their duty to issue medical birth certificates to children, born in such institutions regardless of whether their mother/father/third party possess or not (at the moment of birth) a passport/residence permit/refugee certificate, complementary protection certificate, asylum seekers certificate, SDP applicant certificate.
- E-court together with e-malyatko should be available for confirmation of the fact of birth of NGCA residents' children.
- The Parliament of Ukraine could adopt the draft law No [3635](#) that exempts parents from the obligation to pay court fees for judicial confirmation of their child's birth.

Identification/confirmation of belonging to Ukrainian citizenship:

- The State Statistics Service of Ukraine could include stateless proxy questions (on absence of citizenship/undetermined citizenship) and availability of birth certificates into the 2023 Ukrainian national census.
- To amend the CoM Resolution 302 ruling that for the Ukrainian passport issuance, the applicant submits a birth certificate, if available. If it is not available, the SMS staff shall get the birth data from the Civil Registry database.
- The Ministry of Interior could unify identity setting procedures for Ukrainian citizens, foreign citizens and stateless persons across the country - to have similar approach to the number of witnesses and enlarge its scope to any person who can assist in identity setting of the individual.
- SMS shall appeal a court decision in favour of the applicant on its residence in Ukraine as of 1991 only if they have evidence that such person did not reside in Ukraine in August/November 1991. SMS shall refrain from appealing such decisions with violation of a 30-day appeal time limit established by the Civil Procedural Code. The SMS could amend the legislation to issue the applicant with a temporary certificate with a photo during the appeal process.
- The Government shall ensure a sufficient number of judges and appropriate material and technical support to the courts for consideration of cases within a reasonable term - 1 month established by the Civil Procedural Code (in cases on establishing of facts of residence or birth; parenthood) and 2 months established by the Code of Administrative Justice (in cases of SDP appeals and appealing SMS' refusals to establish belonging to citizenship of Ukraine). Currently consideration of cases of such categories under the Civil Procedural Code is lasting 2 years.
- The SMS shall ensure compliance with established terms for: identity setting procedures (2 months); establishing/processing belonging to the citizenship of Ukraine (5 weeks); acquiring Ukrainian citizenship via simplified procedures - due to territorial link to Ukraine (3 months and 3 weeks); naturalization in Ukraine (by SMS and Presidential Commission -12 months).
- The Government could amend the Statute on the State Migration Service of Ukraine introducing the obligation of SMS to register all undocumented persons in Ukraine, facilitate their documenting and provide them with temporary identity certificates.

- The Ministry of Justice could include establishing of a referral mechanism for undocumented citizens to be directed to the SMS and Civil Registry by the police, Administrative Service Centres and municipal authorities to the Action Plan to the National Human Rights Strategy.

Stateless determination procedure:

- The SMS could assign all its district units with a competence to accept the SDP applications as otherwise it might create logistic burden and queues of the applicants at the limited number of units.
- SMS should avoid recognition as a stateless person and issuing of a temporary residence permit to undocumented nationals from NGCA and Crimea and their children or those who are eligible to acquire or establish belonging to the citizenship of Ukraine but due to the lack of evidence would not be able to confirm it at the moment of the SDP decision making process.

Facilitation in naturalization of stateless persons

- The Parliament of Ukraine could adopt the draft law No [5630](#) that would allow stateless persons to be naturalized after three years upon their recognition.

Providing secondary free legal aid to persons with undetermined nationality

- The government could draft and Parliament could adopt amendments to the Law on Free Legal Aid to include as beneficiaries of secondary free legal aid the following categories:
 - persons who have been denied a passport due to the impossibility of establishing a person by SMS - for all types of legal services provided for in part two of Article 13 of this Law in the framework of preparation and consideration by the court of an application for identification;
 - the former USSR nationals who (permanently) resided on the territory of Ukraine as of August 24 / November 13, 1991 and did not obtain the inscription "citizen of Ukraine" in their passport from the Ministry of Internal Affairs - for all types of legal services provided for in part two of Article 13 of this Law until the establishment of affiliation or registration of citizenship of Ukraine;
 - persons who do not have a passport of a citizen of Ukraine and apply for a birth certificate;
 - persons whose information on birth is absent in the State Register of Civil Status Acts in order to ensure the possibility of applying to the court to establish the fact of birth.

Working in partnership

UNHCR cooperates with the Ministry of Interior, the SMS, the Parliamentary Human Rights Committee, the Parliamentary Commissioner for Human Rights, courts, the Coordination Center for Legal Aid Provision, and civil society organizations on establishing statelessness determination procedures and working towards the eradication of statelessness in Ukraine. UNHCR works with partner NGOs NEEKA, Right to Protection (R2P), and Tenth of April in the field of statelessness in Ukraine, providing support to persons of concern, conducting advocacy, and policy development.



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