



No passport. Nowhere? Political, legal and administrative approaches in dealing with statelessness

At a glance

- The recognition of statelessness results in certain rights that are defined in international conventions. In contrast, undetermined nationality is only a working concept for provisional categorisation by the authorities, which is usually accompanied by limited mobility and participation possibilities.
- Foreigners authorities play a significant role in clarifying identity and nationality, especially when someone applies for a passport for stateless persons. Both can also be important in other contexts, such as naturalisation or marriage.
- This clarification is legally and procedurally complex and there is a lack of an established and proven determination procedure. This often leads to uncertainty on the side of those affected as well as the administrative staff.
- As a result, administrative practice is heterogeneous: Authorities have different requirements for the cooperation of those affected and define the limits of reasonableness inconsistently. In addition, there are various hurdles such as a lack of cooperation from potential countries of origin or capacity bottlenecks in the authorities. In many cases, statelessness cannot be definitively established - the precarious status of "undetermined" remains a permanent condition.
- In order to improve the situation of persons without nationality in Germany, legal and administrative regulations should be adjusted. It is also a matter of priority to develop a standardised procedure for determining statelessness that is carried out as centrally as possible (e.g. at federal or state level).

Summary

The term "statelessness" is defined under international law: People are stateless if they are not considered as a national by any State under the operation of its law (Art. 1 Paragraph 1 of the Convention relating to the Status of Stateless Persons - Stateless Convention). People whose statelessness has not been proven or who are potentially nationals of another state are sometimes classified by the German authorities as having an undetermined nationality. **Unlike officially recognised statelessness (de jure), an undetermined nationality is not a legally defined term from which certain legal consequences arise. Rather, it is a working concept; the categorisation "undetermined nationality" (*ungeklärte Staatsangehörigkeit*), which is intended to be temporary,**

means that the process of clarifying nationality is not yet complete. However, many people remain in this precarious status for years and decades.

In principle, statelessness can be determined in any (administrative) procedure in which the identity and nationality of a person is examined. In practice, the foreigners authority in particular are confronted with this complex task, as they are responsible for processing applications for a travel document for stateless persons. **However, there are no systematic findings to date on the decision-making practice of German foreigners authority in the context of statelessness. The present study addresses this issue:** Using qualitative interviews with employees of the foreigners authority, it analyses how the issue of statelessness is dealt with in German administrative practice. It sheds light on the specific approaches and practices used to determine statelessness and analyses the various challenges that arise.

The interviews show: The determination of statelessness is very complex in legal and procedural matters. This often leads to great uncertainty, both on the side of those affected and the employees of the authorities involved. Additionally, there is a lack of clear regulations and information on how to determine statelessness.

However, there are certain steps that are undertaken by each of the interviewed authorities. For example, an initial interview is held to clarify the file situation and the facts of the case. In addition, applicants are often asked to obtain certificates confirming the lack of a citizenship (*Negativbescheinigung*) or to re-register in order to (re-)obtain a potential citizenship. However, the process is handled very differently in detail. This mainly concerns the question of which obligations to cooperate and burdens of proof are imposed on those affected and when reasonable limits are considered to be reached. One challenge from the perspective of the foreigners authorities is the sometimes lack of cooperation on the part of those affected as well as the (presumed) countries of origin in clarifying a possible nationality. This is compounded by the general overburdening of the German foreigners authorities, which is currently the subject of many reports. All of this often means that a person's nationality or statelessness cannot be (clearly) established. As a result, such cases are either not processed at all or only after a long waiting period, and the decisions are also inconsistent and prone to error.



There is therefore an urgent need for concepts for dealing with undetermined nationality and statelessness in order to better structure and standardise official practice, support the overburdened authorities and provide those affected with better access to their rights. A key step in this direction is the introduction of a formalised statelessness determination procedure (SDP) in Germany. This requires, among other things, a clear definition of responsibilities, obligations to cooperate and limits of reasonableness; legally regulated decision-making time limits could prevent the process from taking years or even a lifetime. In addition, following the determination of statelessness, a right of residence should be granted that is enshrined in the German Residence Act (AufenthG) in order to fulfil the aim and purpose of the Statelessness Convention.

Another important step is to centralise the process in order to bundle knowledge and measures. On the one hand, this saves resources. On the other hand, it avoids errors and uncertainties if such cases are dealt with by specially trained staff. In Germany, centralisation can take place either at federal or state level due to the federal structure. For example, a centralised department could be established in a subordinate federal or state authority that is solely responsible for determining statelessness. Its decision would then be binding for all further official processes, e.g. for the issuing of travel documents, the naturalisation process or civil marriages. If the political will to set up such an office is lacking, a central contact or information service centre could also be created, which collects information and makes it available to the relevant authorities in a bundled form, but has no decision-making authority itself.

However, a determination procedure is not sensible for all groups. This is particularly true for people who were born and raised in Germany and whose family may have been living in Germany without citizenship for several generations. They should be actively informed about the possibilities of naturalisation and their access to German citizenship should be simplified as much as possible. If recognised stateless persons have been living in Germany for at least five years, their children, for example, should automatically receive German citizenship at birth. People born in Germany with undetermined identities should be able to deviate from the rule that their identity and nationalities must be fully clarified for naturalisation when they turn 18 – because any omissions by the parents' generation should not be at the expense of the children born or raised in Germany.