

When You Cease to Exist: The State of Statelessness in the Former Soviet Union

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“I was born in a country that doesn’t exist anymore.”

This was something our Russian language professor said to my class on the first day of Russian 101 my freshman year of college. For Americans, this concept is foreign and hard to wrap our heads around. Our history as a country is shorter than most, but still too distant, too long ago for us to remember anything other than the country we now exist within. The idea that our citizenship could just one day disappear is hard for many of us to comprehend.

Yet, for millions, this is exactly what happened.

On the morning of December 26, 1991, some 293 million people in Eastern Europe and Central Asia woke to having new citizenships, or for many, none at all. Overnight, the third most populous country in the world, the Soviet Union, had dissolved into 15 independent countries with vastly different, and highly politicized, plans to define who, and who were not, their citizens. For many countries, citizenship became a way to develop national identity where many struggled to find it, thus excluding the rights of thousands on account of ethnicity who had lived their entire lives in the same place.

Nearly 30 years later, thousands continue to be stateless in the former Soviet Union. Stateless persons who remember being citizens of the countries they still live in, treated as foreigners in an un-foreign land.

In this brief, we look at the international tenants of statelessness and citizenship generally and how they applied in the Soviet Union before and after its dissolution, using two former republics’ policies as case studies, along with how current policies are not always viable solutions.

Statelessness Generally

The concept of citizenship is complex and intangible. Sometimes it is the representation of membership to a group of people in a marked geographic area, at other times a simple bureaucratic classification designed to benefit some while excluding others. Thus, it is difficult to arrive at a simple definition for a concept that is generally understood in a broad sense.

British sociologist T.H. Marshall, whose work shaped post-World War II thought about citizenship, gave a simple definition as the following: “citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.”¹ Citizenship in and of itself grants citizens participation rights and agency within societies along with benefits from governments.² Citizenship is mainly granted the following ways: by parental citizenship (*jus sanguinis*), by being born within a country (*jus soli*), by marriage (*jus matrimonii*), by naturalization, or by investment.³

The ways that citizenship is granted leave many stateless. Under international law, a stateless person is one “who is not considered as a national by any state under the operation of its law.”⁴ Persons may become stateless in multiple ways – by their own actions or the actions of governments. Common ways a person themselves becomes stateless include losing citizenship and failing to acquire a new one as a result of an extended stay abroad or through marriage to (and subsequent divorce from) a person of a different nationality, faulty administrative practices, failure to register births, conflicts in

nationality laws of different countries, or voluntary renouncement of citizenship and failure to acquire a new citizenship. Governments may propagate statelessness by not granting citizenship to children who are born to stateless, refugee, or unmarried parents, amending citizenship laws to denationalize whole sections of society in order to punish or marginalize them or to facilitate their exclusion from the state's territory, or refusing to grant refugees in camps citizenship. On its own, the dissolution of old and formation of new states leaves thousands or even millions of people stateless or with a disputed claim to citizenship.⁵

Those having the “wrong” citizenship, or none altogether face unique challenges. The Universal Declaration of Human Rights states that “everyone has the right to a nationality” and that “no-one shall be arbitrarily deprived of his nationality.”⁶ Despite this, 78 countries reported some 3.9 million stateless people in the first half of 2020, though the actual number is estimated to be much greater.⁷ Being stateless means lacking legal rights and access to political and economic spaces as well as to services, leaving many discriminated against and vulnerable to exploitation and abuse.⁸ Stateless persons face insecurity, movement restrictions, employment consequences, interminable warehousing in refugee camps, economic hardships, and barriers to regulating status.⁹

For example, in the United States, a recent study found that,

If not granted asylum, stateless people are often detained for months while the government attempts to deport them. If deportation cannot be accomplished, they are released under “orders of supervision.” In such cases, they must keep trying to secure travel documents while the government tries to find a country to accept them. Many interviewees said they were “living in limbo” and did not know if they would ultimately be able to settle in the United States.¹⁰

Such insecurity leads stateless persons to live isolated lives, fearful of seeking any type of assistance or attempting to change their status, even if possible. Many stateless persons work in informal, and often dangerous, sectors of the economy, leaving them vulnerable to exploitation and human trafficking.¹¹

Yet, it is not always a given that a stateless person may be able to acquire a new citizenship, despite several international treaties addressing the issue. The two most important international instruments addressing statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention provides the definition of a “stateless person” and constitutes the foundation of the international legal framework for addressing statelessness. The 1961 Convention is the leading international instrument that sets rules for the conferral and withdrawal of citizenship provided that certain conditions are met which aim to prevent and reduce statelessness. For the sake of this paper in particular, it is important to note that not all countries in Europe are signatories of these conventions.¹² Poland, for example, considers that accession would put stateless persons in a privileged position in comparison to foreigners already legally residing in Poland.¹³ Even when countries have legislation to allow stateless persons to gain citizenship, it is not so simple. Along with technical barriers, national regulations and laws make the process complicated, difficult to navigate, and expensive for stateless persons who have little access to assistance and integration in society. Thus, many remain isolated.

Case Studies: Latvia and Ukraine

With the formal dissolution of the Soviet Union on 26 December 1991, Soviet nationality ceased to exist. Consequently, all former Soviet republics have adopted their own, unique nationality laws. These laws differ greatly from one another, and many, from formal international law itself.¹⁴ It is important to note here that nationality and citizenship were two separate concepts given the structure of the Soviet

Union, and each republic had its own internal passport along with a standard union-wide external one. Soviet passports themselves were valid in most former republics until 2004 for basic services, and in Russia they still may be used for certain limited services.¹⁵ Yet, despite the extended validity deadline, many former Soviet citizens failed to exchange their passports for that of the new country. Thus, thousands were added to the number deemed by the new country as being ineligible for citizenship to the number of newly stateless persons.

Latvia

Many Baltic countries' policies regarding citizenship are based on the idea that the Soviet Union illegally occupied Estonia, Latvia, and Lithuania from 1940 until 1991, rather than the idea that these countries acceded willingly. During the Soviet period, the central government in Moscow developed and carried out a policy of forced "resettlement" of Baltic populations, deporting thousands to Siberia from Estonia, Latvia, and Lithuania, while simultaneously resettling ethnic Russians in these areas.¹⁶ Therefore, in 1991, the population was comprised of 52 per cent ethnic Latvians, 42 per cent ethnic Russians, 4.5 per cent ethnic Belarussians, and 3.5 per cent ethnic Poles.¹⁷

Upon independence, Latvia passed a law establishing automatic citizenship only to those who were Latvian residents prior to the incorporation of the country into the Soviet Union, i.e. in 1940. This meant that many of the 42 per cent ethnic Russians were rendered stateless. For others, Latvia applied the *jus sanguinis* principle under which citizenship is determined by parental citizenship, rejecting the principle of *jus solis*, where citizenship is determined by place of birth. For those excepted by the new nationality laws, the government presented a pathway to citizenship that requires the stateless person to take and pass a Latvian language, culture, and history test.¹⁸ Prior to January 2020, children born to stateless persons in Latvia had no option to gain Latvian citizenship. However, while the new law gives automatic Latvian citizenship to all

children born in the country after January 2020, it does not address those born prior to this date.¹⁹

Yet, today, around 230,000 people or approximately 12 per cent of Latvia's population are classified as stateless "non-citizens." Despite most non-citizens having lived in the territory of Latvia most or all of their lives, they are excluded from most political participation and rights, and face discrimination in the labor market and in other social arenas. While the possibility is present to become a Latvian citizen, the requirements to do so are particularly difficult for ethnic Russians, who often live segregated communities using Russian as their everyday language.²⁰

Ukraine

Similarly, but with some contrast, the motivation behind Ukraine's citizenship laws arise from historical views of aggression from Moscow. Citizenship was granted to those residing in Ukraine on November 14, 1991 who declared it and exchanged passports. Those who were ethnically Ukrainian living abroad had to claim citizenship within one year from November 14, 1991. Those, however, who failed to declare it within one year, and their subsequent children, did not automatically gain Ukrainian citizenship.²¹ Those who did not become stateless must apply for a burdensome naturalization process that requires passing a Ukrainian language test and proving residence for five years, not accounting for the fact they are long-time residents within the territory of Ukraine.²² And, until July 2020, there was no mechanism by which a stateless person could legally reside within Ukraine, nor by which they could receive any kind of basic services. Thus, stateless persons were essentially made nonexistent with few options to change their status.

At independence in 1991, the country was comprised of 72.7 per cent ethnic Ukrainians and 22.1 per cent ethnic Russians.²³ Yet, in contrast to Latvia, the Russian language is far more integrated in the native population. Even today, Russian is the primary

language in most cities in central and eastern Ukraine while Ukrainian is the primary language in the western parts of the country. As a result, Ukraine has struggled to create a synthesized post-Soviet identity that includes both groups of language speakers. Thus, upon independence, the Ukrainian government declared Ukrainian the only official language, making the use of Russian in everything from advertisements and television illegal. For the majority of Ukrainians who lived in the Soviet period, the change was difficult. For those rendered stateless, citizenship based on a language test was out of reach. Further, those who had been deported from Ukraine in the Soviet period to Siberia, most notably the 200,000 Muslim Crimean Tatars deported by Josef Stalin in 1944, were unable to receive citizenship upon their return to their homes.²⁴

Today, an estimated 1.27 million undocumented persons live in Ukraine. The situation continues to become more complicated due to the annexation of Crimea by Russia in 2014 and the state of armed conflict of the disputed eastern parts of the country of Luhansk and Donetsk. Many persons with already limited documentation have been forced to flee their homes, losing familial connections and identity documents. Further, less than 50 per cent of children born in disputed territories over the past six years have been issued with birth certificates by the Ukrainian government, which puts them at risk of statelessness as well.²⁵

In July 2020, the government of Ukraine passed a law to allow stateless persons to have a viable path to citizenship. Under Law 2335, persons may apply to be recognized as stateless and obtain a temporary residence permit, valid for one year, allowing them freedom of movement, and access to work, education, and health care. After two years of continuous residence, they will be able to apply for permanent residence. After five years of permanent residence in Ukraine, stateless people are eligible to apply for naturalization.²⁶ However, the language test is still a requirement.

Realities of Tackling Statelessness in the Former Soviet Union

While countries have made incremental improvements towards allowing stateless persons to receive services and a path to citizenship, not all solutions are viable.

First, many policies, such as Ukraine's, that allow stateless persons to gain citizenship after a number of years of residence, do not take into account the number of years a stateless person has already lived within the territory. Thus, consequently, those who have already lived a long time, up to 30 years, without status and services must endure longer without a permanent solution.

Second, Latvia and Ukraine are not alone in restricting citizenship based on language. Yet, these policies fail to acknowledge the unique history, even if controversial, of the former republics. Even where a path to citizenship exists, such language restrictions place burdens on those otherwise contributing members of society. While language restrictions may be viable for new residents of a country, for stateless persons who once were citizens of the territory, they are discriminatory.

Third, due to the nature of statelessness itself, implementing a law is not enough; there must be an action plan behind it. Otherwise, the laws are little more than a symbol of bringing a country into a state of international legal cooperation. Stateless persons often live in fear and isolation. In the former Soviet Union in particular, many stateless persons are elderly or living in isolated areas. Thus, there must be an action plan for implementation of policy changes. This was particularly effective in Kyrgyzstan over a ten-year period. In 2009, Kyrgyzstan had around 20,000 stateless residents out of a population of 5 million. Over the next ten years, the government instituted a national campaign of deploying mobile units equipped with printers, scanners, laptops and cameras, knocking on doors around the country and helping people apply for new documents, even in the most rural areas. In July of

2019, Kyrgyzstan became the first country in the world to eradicate statelessness.²⁷

Countries in the former Soviet Union have made steps towards providing stateless persons with the support they need. However, without plans to implement the new policies, many will continue to fall through the cracks and be at risk for exploitation.

¹ T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS* (1950) at 28.

² Emma Jones and John Gaventa, *Concepts of Citizenship: A Review*, 19 *INSTITUTE OF DEVELOPMENT STUDIES* 1 (2002).

³ Kristin A. Collins, *Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation*, 123 *THE YALE LAW JOURNAL* 2134.

⁴ Convention relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

⁵ United Nations High Commissioner for Refugees (UNHCR), *The State of The World's Refugees 1997: A Humanitarian Agenda*, UNHCR (1997) at 6:3.

⁶ Universal Declaration of Human Rights art. 15, Dec. 10, 1948, A/RES/3/217.

⁷ Shabia Mantoo, *UNHCR warns stateless people risk being left behind in coronavirus response*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) (11 May 2020), www.unhcr.org/en-us/news/press/2020/5/5eb95222ec/unhcr-warns-stateless-people-risk-behind-coronavirus-response.html.

⁸ *Id.*

⁹ Donald Kerwin, et. al., *Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population*, CENTER FOR MIGRATION STUDIES (2020).

¹⁰ *Id.* at 70.

¹¹ Conny Rijken, et. al., *The Nexus between Statelessness and Human Trafficking in Thailand*, WOLF LEGAL PUBLISHING THAILAND REPORT (2015).

¹² European Migration Network, *Statelessness in the European Union*, EMN INFORM (2020), www.ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_inform_statelessness_en.pdf.

¹³ *Id.*

¹⁴ UN High Commissioner for Refugees (UNHCR), *Nationality Laws of the Former Soviet Republics*, UNHCR (1993), www.refworld.org/docid/3ae6b31db3.html.

¹⁵ Sofia Svensson, *30 years of statelessness in the former Soviet Union*, INTERNATIONAL OBSERVATORY OF HUMAN RIGHTS (13 September 2019), www.observatoryihr.org/blog/30-years-of-statelessness-in-the-former-soviet-union/.

¹⁶ Pēteris Zvidriņš, *Direct Demographic Losses Suffered by Latvia as a Result of Soviet Campaigns*, DAMAGE CAUSED BY THE SOVIET UNION IN THE BALTIC STATES (2011) at 65.

¹⁷ UNHCR, *supra* note 14.

¹⁸ Ivars Ījabs, *Soviet Occupation Legacy: Latvian Citizenship Policy*, THE MUSEUM OF THE OCCUPATION OF LATVIA (2020), www.okupacijasmuzejs.lv/en/history/independent-latvia/soviet-occupation-legacy-latvian-citizenship-policy.

¹⁹ Baltic Monitor, *Latvia Softens Its Naturalisation Policy: Children of Stateless Persons to Receive Passports*, WARSAW INSTITUTE (5 November 2019), www.warsawinstitute.org/latvia-softens-naturalisation-policy-children-stateless-persons-receive-passports/.

²⁰ Jo Venkov, *Not just a simple twist of fate: statelessness in Lithuania and Latvia*, EUROPEAN NETWORK ON STATELESSNESS (4 October 2018),

www.statelessness.eu/blog/not-just-simple-twist-fate-statelessness-lithuania-and-latvia#:~:text=Latvia%20did%20create%20a%20special,as%20non%20citizens'.

²¹ UNHCR, *supra* note 14.

²² State Migration Service of Ukraine, *Acquisition of Ukrainian Citizenship*, STATE MIGRATION SERVICE OF UKRAINE (2020), www.dmsu.gov.ua/en-home/services/acquisition-of-ukrainian-citizenship.html.

²³ *Id.*

²⁴ Rupert Colville, *Press briefing notes on Crimean Tatars*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (17 May 2016), www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19970&LangID=E.

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www.atlanticcouncil.org/blogs/ukrainealert/statelessness-in-ukraine-new-law-offers-fresh-hope/.

²⁶ Victoria Andrievska, *'With this law, I will finally get a sense of how it is to exist'*, UNHCR (27 July 2020), www.unhcr.org/ua/en/24467-with-this-law-i-will-finally-get-a-sense-of-how-it-is-to-exist.html.

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