

Questions and answers on Stateless Determination Procedures (SDP) in Ukraine

Why shall Ukraine do SDP?

- Establishing of SDP and granting a legal status to stateless persons allows Ukraine to meet its obligations under the 1954 Convention and international human rights law.
- An SDP contributes to efforts to assess the size and the situation of the stateless population amongst migrant populations on the territory.
- Identifying and documenting stateless persons allows their regularization. Granting them basic rights allows beneficiaries to fully participate in and contribute to Ukrainian society. This in turn reduces costs and security risks related to the marginalization of stateless persons.
- Identification of statelessness reduces the risk that stateless persons will be arbitrarily detained or spend prolonged periods in detention (**18** months detention at MCCs costs **8,5 K USD** to the tax payers. For irregular stateless it could be reduced to at least **6** months). The current fine for irregular stay in Ukraine is **68 USD** equivalent for foreigners and stateless persons.
- The identification of stateless persons can reveal the causes of statelessness and new trends.

What are the main features of SDP?

- The applicant having reach the age of 18 shall personally apply to SMS territorial **body (24) / unit (650)** at the place of his / her residence in Ukraine. The application shall be generated by the SMS staff in Ukrainian. If the applicant is immobile due to a long-term health problem, confirmed by a medical report, upon his / her or its representative written request, the SMS officer shall pay a visit to a place of person's residence or place of its treatment and conclude the respective act on it/assist in filing out *the application*. (items 4, 17,18 of the SDP Resolution No [317](#)).
- The applicant shall submit his / her documents to the SMS: (an ID or a TD (travel document), issued by a foreign state (if any), a document confirming the absence of any foreign citizenship whose validity period has expired (if any), or other document confirming the information, stated in *the application* (documents confirming the fact of birth, marriage, having children, studying in an educational institution of Ukraine or other state, *USSR citizen passport* of a 1974 standard, documents regarding work, receiving medical care in Ukraine, place of residence, ownership of housing or other real estate in Ukraine, certificates issued by local governments or state bodies, certificates from embassies of foreign states or places of previous permanent and long-term residence of the person, as well as from the State of citizenship of his/her family members, etc. (item 20).
- If the applicant does not have documents with a photo, upon his / her written consent, the SMS shall interview relatives, neighbors or other persons (at least three) in order to confirm the facts stated in the application and / or identify the applicant by photo. The applicant shall provide the SMS with **a list of such witnesses (only lawfully staying in Ukraine)**, otherwise they would be established by the SMS officer. SMS territorial body/unit shall conduct interviews with the witnesses within **14 working days** from the date of the application submission.

- Based on the results of each witness statements, the SMS officer shall draft *an act of the applicant line up on the basis of a photo* which shall be signed by the applicant and the witnesses.
- *The applicant* shall be interviewed by SMS, including via **video conference** to clarify the information specified in *the application*, to discuss the information obtained during verification of the documents provided by the person, to obtain information from the applicant about new facts that became known after *the application* submission.
- *The interview* may be appointed by the SMS territorial body / unit or the SMS HQ structural unit officer in case it is needed. *The applicant* shall be notified of its time and conditions no later than **three working days** before by all available means (including electronic or by phone). *The interview* with an **unaccompanied child** is conducted in presence of his/her legal representative. If *the applicant* is not able to come to *the interview* for good reasons, it shall notify the SMS in writing about such reasons. Failure to come to *the interview* without good reason is regarded as refusal to cooperate with the SMS (item 22).
- If during the SDP, *the applicant* acquired new documents or information that is essential for *recognition as a stateless person*, including clarification of his/her personal data, s/he must submit it to the SMS territorial body /unit at the place of application within **10 days** from the moment of acquiring such documents (item 23).
- If the applicant does not submit a certificate confirming the absence of foreign citizenship of the state of its previous permanent and long-term residence and/or from the state of citizenship of its family members, the SMS would send a request to the diplomatic mission or consulate of such states. Failure by the foreign mission to respond to the SMS's third request would mean that the applicant is not considered as a citizen of such a state (a total waiting period for a response would last for 6 months).
- The SMS consideration of the applications shall last from 6 to 12 months.

Which rights would have an SDP applicant?

- The SMS shall explain the applicant the SDP (item 4) and provide him/her with free-of-charge interpretation to the language s/he understands, including via videoconferencing, and translation of the applicant's documents (item 11).
- The applicant has a right to be protected against an arbitrary detention as SMS on the day of receipt of the application would issues the admitted applicant with *a certificate on application for recognition as a stateless person*. The certificate confirms the applicant lawful temporary stay in Ukraine. (items 6, 43). In case of lost of *the certificate* upon its written request the SMS shall issue a duplicate of such certificate.
- The applicant has a right to *an interview* with the SMS, including via **video conference** (item 22).
- The applicant has a right for appeal to administrative court within **20** working days from the day of receiving notification on refusal in recognition as a stateless person. In case of appeal its applicant certificate shall be prolonged by SMS (item 46).
- The applicant has a right for free legal aid during appeal at Free Legal Aid Centre (item 46).

Would the SDP applicant be fined upon submission of applications to SMS?

- No.
- However, an irregular stateless person might be fined for violation of rules of stay in Ukraine in case s/he would be stopped by police on the street without a valid travel document with the Ukrainian visa or overstay of the assigned by visa period.
- The same is true for cases stopped by border guards at the BCPs or beyond during irregular border crossing or its attempt or due to lack of valid travel documents and visa or overstay of the assigned by visa period.

What are the duties of SDP applicants?

- The applicant is obliged to cooperate with SMS bodies, to come for interviews, to provide evidence for recognition as a stateless person.
- After receiving an SMS decision on recognition as a stateless person, the applicant is obliged to apply to SMS territorial body / unit within 10 days for a temporary residence permit (TRP).
- The applicant who has not applied for a TRP within 10 days period shall be considered as unlawfully staying in Ukraine.

Would SDP allow identification of asylum seekers or persons who are eligible to Ukrainian nationality?

- Yes. The SDP contain verification of the applicant eligibility to: (1) recognition as a beneficiary of international protection (item 31) and (2) citizenship of Ukraine (item 32). In such cases the SMS would suspend SDP and request the applicant to separately apply for Refugee Status Determination **or** SMS would send a request with copies of the case materials to its structural unit for citizenship. The citizenship unit could verify whether the applicant/its parents are registered at the Single State Demographic Register as Ukrainian nationals.

Shall the former USSR citizens who resided in Ukraine respectively as of 24 Aug/13Nov 1991 benefit from the SDP?

- No. They could separately apply to SMS for establishing their belonging to citizenship of Ukraine upon submission of: (a) the USSR passport **or** the relevant SMS *certificate on establishing the person's identity and that as of August/November 1991 the person was a citizen of the former USSR* in case of such passport loss; (b) a court decision on fact of residence in Ukraine in 1991. In order to obtain such court decision they need to provide evidence of their residence in Ukraine: registration of place of residence stamp in the USSR passport or a certificates from place of work, stay, place of residence in Ukraine. For those who lost the USSR passport a certified copy of the form No 1 issued by MOI/SMS or extract from the Civil Registry data on person's marriage in Ukraine or on birth of a child of such person in Ukraine which would refer to the USSR passport number; or similar extracts from the penitentiary institution or the Ministry of Defence of Ukraine shall be provided.

Who shall be excluded from recognition as a stateless person during the SDP?

The SMS shall make a decision on refusal in recognition as a stateless person, in the following cases:

- if the applicant is a citizen of Ukraine or another state, provided that his/her citizenship was recognized by the competent authority of this state and the applicant was documented according to this State's legislation;
- if the applicant knowingly submitted invalid (except for documents which became invalid due to their expiration), forged documents or provided untruthful information in regard to the circumstances that have impact on recognition as a stateless person;
- if the applicant had committed a crime against peace, war crime or a crime against humanity as defined in international acts developed with a view to prevent such crimes or committed a grievous non-political crime outside the country of his/her residence prior to his/her admission to this country or is guilty in commission of acts contrary to the purposes and principles of the United Nations.

Which documents a stateless person will get upon recognition by SMS?

- A temporary residence permit (TRP), valid for one year, as well as a travel document.
- A permanent residence permit (PRP), valid for ten years, after two years on TRP.
- The SMS shall provide the permits for free.

Which rights a stateless person would have upon recognition by SMS?

- A stateless person under TRP would be eligible to work in Ukraine (without the necessity to obtain the working permit).
- A stateless person under PRP would be eligible to medical aid and high education equally to the Ukrainian nationals.
- In 7 years upon its recognition by SMS a stateless person under PRP shall be eligible to apply for naturalization in Ukraine.

*UNHCR Representation in Ukraine,
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