

Joint Submission to the Human Rights Council at the 39th Session of the Universal Periodic Review

HUNGARY

Introduction

1. The Hungarian Helsinki Committee, the European Network on Statelessness 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 Hungary.
2. Much remains to be done to ensure the complete and effective fulfilment of Hungary's international obligations to guarantee the right to a nationality and protect the rights of stateless persons on the territory. This submission focuses on the most significant gaps in Hungarian law and practice, which result in increased risks of new cases of statelessness in Hungary, undermine the human right to a nationality, and result in violations of stateless persons' rights in the country. In particular, this submission focuses on:
 - I. The right of every child to acquire a nationality and the prevention of statelessness at birth;
 - II. Identifying and determining statelessness to ensure stateless persons' access to economic and social rights; and
 - III. The right of stateless persons to acquire a nationality through facilitated naturalisation.
3. The Hungarian Helsinki Committee (HHC) is a leading human rights organisation in Central Europe, focusing primarily on the rule of law, justice and refugee rights. Since its foundation in 1989, the HHC has provided free legal assistance to tens of thousands of asylum-seekers, refugees, detainees and victims of human rights violations committed by law enforcement agencies. The HHC was one of the first organisations in the world to start addressing the then largely unknown human rights issue of statelessness in the migratory context in 2006. Since then, it has published several pioneering research studies on this issue and has trained over a thousand

professionals on this issue on three continents. The HHC's outstanding work as a human rights champion has been awarded with nine prestigious human rights prizes since 2017.

4. The European Network on Statelessness (ENS)¹ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe, with over 160 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.
5. The Institute on Statelessness and Inclusion is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. 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 over 70 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 37th UPR Sessions.²
6. In addressing the main human rights challenges related to nationality and statelessness, this submission draws on information and analysis from the Statelessness Index on Hungary,³ maintained and developed by ENS and its members. The Index is an online comparative tool that assesses European countries' law, policy, and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. Information on Hungary was also gathered through HHC's practice and is included in the submission after consideration by the submitting organisations. This submission draws on the extensive work and research carried out by co-submitting organisations, including in previous joint submissions to the Universal Periodic Review.⁴

Previous UPR of Hungary under the First and Second Cycle

First Cycle

7. During the first cycle, Ecuador recommended that Hungary “recognise and guarantee the human rights of all foreigners, independent and regardless of their migratory status.”⁵ While the recommendation is not directly relevant to addressing the issue of statelessness, Hungary incorrectly used the establishment of a formal stateless status in national legislation in its response to the recommendation and stated that it already protects the human rights of all. Hungary replied that it is “one of those few Member States of the European Union that provides protection in the form of a separate,

¹ For more information about the European Network on Statelessness, see: www.statelessness.eu.

² For more information, see <https://www.institutesi.org/core-activities/human-rights-advocacy>.

³ See <https://index.statelessness.eu/country/hungary>

⁴ Hungarian Helsinki Committee, European Network on Statelessness and Institute on Statelessness and Inclusion, Joint Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review: Hungary, 21 September 2015: <https://files.institutesi.org/HungaryUPR2015.pdf>.

⁵ UN General Assembly, Report of the Working Group on the Universal Periodic Review: Hungary, 18th Session, A/HRC/18/17, 11 July 2011, para. 95.28.

autonomous legal status for [...] stateless persons [...] with this setting an example for other countries.”⁶ However, as the below sections further elaborate, Hungary has yet to fully comply with the human right to a nationality and guarantee the rights of stateless persons on its territory.

Second Cycle

8. During the second cycle, Hungary received a recommendation from Honduras to become party to, amongst others, “the Conventions on refugees and stateless persons”, which it supported.⁷

Hungary’s International obligations

9. Hungary is a State party to both the 1954 Convention on the Status of Stateless Persons (**1954 Convention**) and the 1961 Convention on the Reduction of Statelessness (**1961 Convention**). Hungary has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include the International Covenant on Civil and Political Rights (see article 24.3), the International Covenant on Economic, Social and Cultural Rights (see articles 2.2 and article 3), the Convention on the Rights of the Child (see articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (see article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii)), and the Convention on the Rights of Persons with Disabilities (see article 18).⁸ Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights. Hungary was one of the first States in the world to operate a specific mechanism for the identification and protection of stateless persons.
10. Hungary is also a party to the 1997 European Convention on Nationality (ECN) and the 2006 European Convention on the Avoidance of Statelessness in Relation to State Succession, although it retains reservations to Article 11 and Article 12 of the ECN, maintaining the right not to apply the rule that decisions be open to administrative or judicial review and the rule that decisions contain reasons in writing, impacting on procedural safeguards relating to the acquisition of nationality (with a direct impact on stateless persons’ access to Hungarian nationality).
11. In 2020, the Committee on the Rights of the Child (CRC) urged Hungary, in light of Sustainable Development Goal 16.9, to:
 - I. Amend its citizenship laws to prevent statelessness of children of foreign parents unable to confer their nationality on children born abroad, and of children of recognised stateless persons who have no established residence in the country.

⁶ UN General Assembly, Report of the Working Group on the Universal Periodic Review: Hungary, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/18/17/Add.1, 14 September 2011.

⁷ UN General Assembly, Report of the Working Group on the Universal Period Review: Hungary, 33rd Session, A/HRC/33/9, 8 July 2016.

⁸ See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

- II. Ensure that those children are able to obtain Hungarian nationality according to a clear process and rules applied uniformly throughout the country.
 - III. Increase access to counselling and social support for pregnant women in crisis situations and introduce confidential birth registration to prevent the abandonment of children and ensure their safe delivery into the child protection system, while phasing out the so-called “baby box” (incubator) programme.⁹
12. Hungary did not make any pledges at the UNHCR High-Level Segment on Statelessness in October 2019.¹⁰

Snapshot of Statelessness in Hungary

13. No comprehensive mapping has been undertaken to understand the population affected by statelessness in Hungary. Very little reliable quantitative and qualitative data exists. However, there are indications that statelessness occurs predominantly in a migratory context and impacts primarily on people with a migrant or refugee background in Hungary. According to official information received from the National Directorate-General for Alien Policing (NDGAP), 76 stateless persons were residing in Hungary on 31 December 2019 as holders of a humanitarian residence permit, refugees, beneficiaries of subsidiary protection and holders of a permanent residence permit.¹¹ This figure does not include stateless people with other forms of non-permanent residence permits, such as those based on employment, study, or family reunion. Having a better understanding of statelessness in a country through better data contributes to improved law and policy to protect the rights of stateless persons on the territory, prevent and reduce statelessness, and guarantee the right to a nationality.
14. Hungary has acceded to most relevant human rights instruments and this has translated into some positive law, policy and practice at national level, although some significant gaps remain.¹² A statelessness determination procedure is established in law, and access, assessment, procedural protections and appeal rights under the procedure are generally positive.¹³ However, the definition of a stateless person in national law is narrower than the 1954 Convention, applicants under the procedure lack adequate protection, and the law provides only limited rights to people recognised as stateless.
15. Although Hungary has established a statelessness determination procedure, it remains very difficult for stateless persons to acquire Hungarian nationality. Under Article 32 of the 1954 Convention, stateless persons should enjoy the right to facilitated naturalisation, however, one of the requirements stipulated in Hungarian law to be eligible for naturalisation is to possess a “domicile”, i.e. a specific legal status which is

⁹ Committee on the Rights of the Child, Concluding observations on the sixth period report of Hungary, CRC/C/HUN/CO/6, 3 March 2020.

¹⁰ See <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

¹¹ Responses by the National Directorate-General for Alien Policing of 16 January 2020, 17 January 2020 and 2 February 2020, to a freedom of information request submitted by the Hungarian Helsinki Committee.

¹² <https://index.statelessness.eu/country/hungary>

¹³ Ibid.

not accessible to holders of stateless status (including holders of a humanitarian residence permit or residence permit based on work, study, or family reunion) - unless they obtain a permanent residence permit. Acquisition of a residence permit can take several years, leaving stateless persons who are lawfully staying in the country unable to enjoy their right to facilitated naturalisation.

16. Hungary only partially complies with its duty to guarantee children's right to a nationality as set out in Article 7 of the Convention on the Rights of the Child. Safeguards exist in nationality law to prevent statelessness in the case of foundlings and children born abroad to Hungarian nationals.¹⁴ However, there are only partial safeguards to prevent children from being born stateless on the territory.¹⁵ Adopted stateless children remain stateless until they acquire nationality through naturalisation, and although births will be registered regardless of parents' status, officials will register a child as having 'unknown nationality' unless there is clear evidence that the child is a Hungarian national or stateless, causing significant problems for children later in life.¹⁶

ISSUE 1 – The right of every child to acquire a nationality and the prevention of statelessness at birth

17. Considering it is State party to the international and regional instruments outlined above (see Hungary's International Obligations), Hungary has the following obligations to protect every child's right to acquire a nationality and prevent statelessness in children born on its territory:
 - I. The right of every child to acquire a nationality, with particular attention to those children who would otherwise be stateless;¹⁷
 - II. The automatic acquisition of nationality by foundlings found on its territory;¹⁸
 - III. The acquisition of nationality by children born on its territory who do not acquire another nationality, either at birth or subsequently if they remain stateless;
 - IV. enabling children who remain stateless to acquire nationality upon application (with the possibility to require a maximum of five years of habitual residence before submitting the application, but no other conditions);¹⁹ and the period in which persons concerned can lodge this application shall not start later than at the age of 18 years and shall not end earlier than at the age of 21 years;²⁰ and

¹⁴ Statelessness Index, Hungary: <https://index.statelessness.eu/country/hungary>. See also Gábor Gyulai, The Black Box of Nationality – The naturalisation of refugees and stateless persons in Hungary, Hungarian Helsinki Committee, 2016: <https://www.refworld.org/docid/5792070a4.html>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ 1989 Convention on the Rights of the Child, Article 7.

¹⁸ 1997 European Convention on Nationality, Article 6(1)(b); 1961 Convention on the Reduction of Statelessness, Article 2.

¹⁹ 1997 European Convention on Nationality, Article 6(2); 1961 Convention on the Reduction of Statelessness, Article 1(2)(b).

²⁰ 1961 Convention on the Reduction of Statelessness, Article 1(2)(a).

- V. The prohibition of discrimination against any child or their parents or guardians and the obligation to ensure that the best interests of the child are a primary consideration for authorities in dealing with all the matters above.²¹

18. Under Article 1 of the 1961 Convention, Contracting States have two alternative options for granting nationality to children born on their territory who would otherwise be stateless, either through automatic acquisition at birth (Article 1(1)(a)) or acquisition of nationality upon application (Article 1(1)(b)). The State may impose certain conditions on the granting of nationality by application, which are exhaustively listed in Article 1(2). According to the 1961 Convention, a Contracting State may make the grant of its nationality conditional upon the person being *habitually* resident in the territory, which is understood as stable, factual residence and does not imply a legal or formal residence requirement.²² The 1961 Convention does not allow for the acquisition of nationality to be conditional upon lawful residence or a specific legal status.

19. Obligations deriving from the 1961 Convention require States to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.²³ Article 7(1) CRC enshrines the right of every child to acquire a nationality, a right that is 'essential for the protection of every child'.²⁴ Moreover, it follows from Articles 3 and 7 of the CRC that the child's statelessness should be determined and resolved immediately after birth or as soon as possible thereafter.²⁵ Discrimination is prohibited under Article 2 CRC, which requires State parties to respect and ensure the rights set forth in the CRC irrespective of the child's or their parent's status. The Committee on the Rights of the Child has made several recommendations for State parties to ensure that all stateless children born on their territory have access to nationality without any conditions and irrespective of their residence status,²⁶ and recalled that the outcome of an application for nationality, legal residence or similar status by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State party where the child would otherwise be stateless.²⁷

²¹ 1989 Convention on the Rights of the Child, Articles 2 and 3.

²² UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 2012: <https://www.refworld.org/docid/50d460c72.html>.

²³ UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 2012: <https://www.refworld.org/docid/50d460c72.html>.

²⁴ UNHCR (2018), Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/52206aa54.html>

²⁵ UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 2012, para. 11: <https://www.refworld.org/docid/50d460c72.html>.

²⁶ CRC/C/NLD/CO/4, Committee on the Rights of the Child, Concluding observations on the fourth periodic report of the Netherlands, 16 July 2015, paras. 32-33.

²⁷ CRC/C/CZE/CO/3-4, Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report on Czech Republic, 4 August 2011, paras 37-38.

20. While there are safeguards in Hungarian nationality law to prevent statelessness in the case of foundlings²⁸ and children born abroad to Hungarian nationals,²⁹ with regard to other children the law falls short of fully complying with Hungary's international obligations to prevent statelessness at birth.³⁰ There are only partial safeguards to prevent children from being born stateless on the territory³¹ and stateless children adopted by Hungarian nationals remain stateless until they can acquire nationality through naturalisation.³²
21. There are two partial safeguards in the nationality law to prevent statelessness in the case of children born in Hungary who would otherwise be stateless.³³ There is an automatic safeguard at birth for children born in Hungary where both parents are stateless and have a 'domicile' in Hungary (domicile – *lakóhely* in Hungarian – being a specific legal status, rather than a matter of fact),³⁴ or whose parents are unknown (foundlings).³⁵ However, this does not prevent statelessness in the case of children whose parents cannot confer a nationality to their child, or who are stateless but do not have 'domiciled' residence status in Hungary, which is only accessible after at least three years of residence with humanitarian protection status as a recognised stateless person in Hungary.³⁶ Most non-permanent residence statuses (residence permits based on gainful employment, studies, family reunification or humanitarian grounds – including statelessness) do *not* confer the right to establish a 'domicile' to its holder in Hungary, only a 'place of stay', which is a distinct category under Hungarian law.
22. There is also a non-automatic provision for children born in Hungary who do not acquire the nationality of either of their parents at birth.³⁷ For these children, there is an option to acquire Hungarian nationality by declaration prior to their 19th birthday, provided that their parents are 'domiciled' and the child has resided in Hungary for at least five years.³⁸

²⁸ Act LV of 1993 on Hungarian nationality, Section 3(3)(b) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713; Act I of 2010 on Civil Registration Procedures, Section 61(5) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=129886.346948

²⁹ The Fundamental Law of Hungary, 25 April 2011, Section G(1): <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

³⁰ Citizenship Act, Section 3(3)(b). Since 2011, children born to an unknown father and a known mother whose identity is not proved and abandoned the child in the hospital after birth are also treated as foundlings and thus automatically acquire Hungarian nationality.

³¹ Act LV of 1993 on Hungarian nationality, Sections 3(3), 5/A(1)(a) & (b): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

³² Act LV of 1993 on Hungarian nationality, Section 4(2)(c) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

³³ Act LV of 1993 on Hungarian nationality, Sections 3(3), 5/A(1)(a) & (b): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

³⁴ The legal concept and eligibility for domicile will be discussed in more detail below. In brief, it is far more than a simple determination of where a person lives. Different rules are in force to distinguish three types of residence: domicile, place of stay, and place of accommodation, with gradually decreasing attachment to the place in question. Not all lawfully staying foreigners are permitted to register a domicile.

³⁵ Act LV of 1993 on Hungarian nationality, Section 3(3)(b) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713; Act I of 2010 on Civil Registration Procedures, Section 61(5) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=129886.346948

³⁶ See also paragraphs 25, 32 and 36.

³⁷ Act LV of 1993 on Hungarian nationality, Sections 3(3), 5/A(1)(a) & (b): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

³⁸ *Ibid.*

23. More specifically, in order to acquire Hungarian nationality by declaration, three conditions must be met. First, the parents must have a 'domicile' when the child is born,³⁹ which is contrary to international law that does not allow the imposition of conditions relating to the residence status of the parents.⁴⁰ Second, the child must have five years of residence with a 'domicile',⁴¹ whereas international law only allows acquisition of nationality to be conditional on having five years of *habitual* residence.⁴² As seen above, "habitual residence" is a matter of fact, rather than a specific legal status. Third, a child only has until their 19th birthday to exercise this right,⁴³ while international law stipulates that it should be open at least until their 21st birthday.⁴⁴
24. Four groups of children are at particular risk of statelessness, which will be further analysed below:
- children born in Hungary to stateless persons with no 'domicile';
 - children born to parents who are unable to confer their nationality to their children;
 - children born to beneficiaries of international protection; and
 - children adopted by Hungarian nationals.

Children born in Hungary to stateless persons without 'domicile'

25. For a child born in Hungary to obtain Hungarian nationality automatically at birth, both parents are required to be stateless and have 'domicile'.⁴⁵ However, the concept of 'domicile' is extremely restrictive, which hinders access to nationality. Only some groups of people are eligible for 'domicile'.⁴⁶ Refugees, beneficiaries of subsidiary protection,⁴⁷ EU citizens and third-country nationals holding a permanent residence permit are eligible.⁴⁸ Recognised stateless persons, beneficiaries of tolerated (*befogadott*) status,⁴⁹ and third-country nationals without a permanent long-term residence status cannot establish a domicile in Hungary.⁵⁰
26. As a result, children born to stateless parents who do not have a 'domicile' in Hungary will be born stateless, even if the parents are lawfully and habitually residing in Hungary at the time of the birth. The same happens to children whose stateless

³⁹ Citizenship Act, Section 5/A(1)(b).

⁴⁰ See European Convention on Nationality (1997), Article 6 (2) (b). See also Convention on the Reduction of Statelessness (1961), Article 1 (2). The Committee on the Rights of the Child has also stated that the lack of a legal status of the parents – including their residence status - is not a relevant reason to withhold nationality to children born on the territory of a country, who would otherwise be stateless.

⁴¹ Citizenship Act, Section 5/A (1) (b).

⁴² See European Convention on Nationality (1997), Article 6 (2) (b). See also Convention on the Reduction of Statelessness (1961), Article 1 (2).

⁴³ Citizenship Act, Section 5/A (1) (a).

⁴⁴ Convention on the Reduction of Statelessness (1961), Article 1 (2) (a).

⁴⁵ Citizenship Act, Section 3 (3) (a). Law Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 9 (7), as inserted by Section 1 (4) of Act XLIX of 2011 and amended by Section 78 (3) of Act XCII of 2011. Note that Section 61 (5) of Act I of 2010 on Civil Registration Procedures contains an identical provision.

⁴⁶ Citizenship Act, Section 23 (1). Act LXVI of 1992 on the Registration of Citizens' Personal Data and Residence, Section 4 (1).

⁴⁷ Cf. Act LXXX of 2007 on Asylum, Section 17(1).

⁴⁸ Cf. Id., Section 32 (1).

⁴⁹ See Act II of 2007 on the Entry and Stay of Third-Country Nationals, Sections 29 (1) (a)-(b). 52/A (1).

⁵⁰ See Id., Sections 13-29.

parents have a residence permit based on employment or studies, or who hold a tolerated status. The right to a nationality of a child born to stateless parents who have been living in Hungary for several years with a stateless status (and therefore *without* a 'domicile') is no different from that of another child whose parents have been living in the country for exactly the same period of time, but with a permanent residence permit or refugee status (and therefore *with* a 'domicile'). Consequently, the restrictive and discriminatory use of the 'domicile' concept as a condition for the avoidance of statelessness at birth does not only undermine the overall purpose of avoiding statelessness, but also leads to further discrimination.

27. The ability to obtain Hungarian nationality through declaration was created to fulfil Hungary's international obligations and prevent statelessness at birth.⁵¹ However, this provision is conditional on the parents having 'domicile' when the child was born, thus permanently excluding children born to stateless parents without a 'domicile' from obtaining Hungarian nationality.

Children whose parents cannot confer nationality

28. Hungarian law does not prevent statelessness in situations where the parents have a nationality but are unable to pass their nationality on to their children. Parents may not be able to confer their nationality to their children for several reasons, including gender discriminatory nationality laws, which do not allow the mother to pass on her nationality under the same conditions as the father.⁵² In these instances, where the father is stateless, unknown or unwilling to cooperate, the child will be born stateless without any safeguard applying to them. Another reason is the application of the *jus soli* principle, where certain countries require children born abroad to reside in the country for a certain amount of time before their nationality is recognised.
29. In some cases, obtaining nationality through the process of declaration (*nyilatkozat*) can provide a solution. However, the restrictive application of the concept of 'domicile' means that parents will only be able to establish a domicile in Hungary if they have already obtained a permanent residence status, or if they are refugees or beneficiaries of subsidiary protection.⁵³ These restrictive conditions mean that children in need of this safeguard are excluded and remain stateless.

Children born to beneficiaries of international protection

30. Children born to beneficiaries of international protection in Hungary also risk being stateless at birth.⁵⁴ Hungarian civil registry authorities are obliged to examine a new-

⁵¹ Act LV of 1993 on Hungarian nationality, Sections 3(3), 5/A(1)(a) & (b): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713.

⁵² Nationality laws in 25 countries worldwide prevent women from passing their nationality to their children on an equal basis with men, including, Syria, Lebanon, Iran, Iraq and Somalia. For a list of countries with gender discriminatory nationality laws see <https://equalnationalityrights.org/countries/global-overview>.

⁵³ See also paragraphs 25, 32 and 36.

⁵⁴ Gábor Gyulai, Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary, Hungarian Helsinki Committee, January 2014, p. 14: <https://www.refworld.org/docid/5310640b4.html>.

born child's nationality,⁵⁵ and if the child's nationality or statelessness is not proven, they will be registered as having 'unknown nationality'.⁵⁶ The rule assumes that parents will be able to obtain evidence about the child's foreign nationality in due course, meaning unknown nationality will only be a temporary entry in the civil registry and the risk of statelessness eliminated. However, this disregards cases where it is not possible for parents to take the necessary steps to establish and register the nationality of their children after birth.⁵⁷ Parents who are beneficiaries of international protection may have a well-founded reason for not contacting the authorities of their country of origin to establish and register the nationality of their children after birth. For example, such contact may expose them to a risk of persecution or serious harm and even lead to the cancellation of their protection status. Hungarian laws to prevent statelessness at birth do not sufficiently take into consideration the situation of children born to beneficiaries of international protection.

31. This situation can apply both where the conferral of nationality to children born abroad is not automatic and in cases where it is automatic. In cases where conferral is not automatic but requires contact with the authorities of the country of origin, the child will not be able to acquire their parents' nationality and will consequently be stateless.⁵⁸ Where conferral is automatic, children will in principle acquire their parents' nationality at birth, but this will not translate to documentation of nationality due to the impossibility of contacting the authorities.⁵⁹ The authorities may not recognise the nationality of children born abroad to refugees under the operation of the law.⁶⁰ Children in this scenario are at significant risk of statelessness.
32. As with the previous scenarios, acquiring nationality through declaration (*nyilatkozat*) cannot be considered a solution in line with Hungary's international obligations due to the strict conditions of the declaration process.⁶¹ If the parents have tolerated stay (*befogadott*)⁶² or are still in the asylum procedure, they are not allowed to establish a 'domicile', meaning the child cannot use the safeguard. Neither is it guaranteed that the child will have a continuing 'domicile' in Hungary for the following five years, as their refugee or subsidiary protection status (which allows for establishing a domicile) may end and the family may be granted tolerated stay, which does not allow for the establishment of a domicile.⁶³

Children adopted by Hungarian nationals

⁵⁵ Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (1); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (1).

⁵⁶ Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (4); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (4).

⁵⁷ Gábor Gyulai, Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary, Hungarian Helsinki Committee, January 2014, p.14: <https://www.refworld.org/docid/5310640b4.html>.

⁵⁸ Ibid, p. 15.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Act LV of 1993 on Hungarian nationality, Sections 3(3), 5/A(1)(a) & (b): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713.

⁶² A protection status determined by domestic law, based on a risk of torture, inhuman or degrading treatment upon an eventual return to the country of origin.

⁶³ See paragraph 25.

33. Children adopted by Hungarian nationals remain stateless until they can acquire nationality through naturalisation.⁶⁴ They can apply for Hungarian nationality after three years of residence in the country. A foreign child can apply for Hungarian nationality up to the age of 14 with the consent of the adoptive parents in the case of full adoption and will be exempted from the general requirements for naturalisation.⁶⁵ The child can apply on their own behalf if aged between 14 and 18 years.⁶⁶ There is a risk of statelessness in the procedure if the child or parents do not apply or consent to apply for naturalisation, or if there is a delay on the part of the authorities, and the child loses their former nationality or is stateless on adoption.

Issues of concern related to birth registration and determination of nationality at birth

34. The general framework of birth registration in Hungary is set by Act I of 2010 on Civil Registration Procedures,⁶⁷ which entered into force on 1 July 2014. The Hungarian birth registration system asserts that all children born in Hungary shall be registered at birth.⁶⁸ Births are entered in the registry regardless of the status of parents.

35. The births of all children born in Hungary must be notified within one day of birth to the civil registrar by the head of the hospital⁶⁹ or the respective lead medical professional assisting during the birth if born outside a hospital.⁷⁰ The civil registrar will examine the child's nationality upon registration.⁷¹ If the child's nationality or statelessness is not proven, they will be registered as 'unknown nationality' in the birth registry,⁷² which causes significant problems for the child later in life as there is no later procedure for them to establish their nationality and to rectify the record of 'unknown nationality'.⁷³ Due to these rules, children born to non-Hungarian parents are regularly registered at birth as being of 'unknown nationality'.⁷⁴ Furthermore, the UN Human Rights Committee has recently found that failure to identify statelessness and assess a child's nationality status, by registering the child as having 'unknown nationality' for a prolonged period of time, led to a violation of the right to nationality.⁷⁵

36. State authorities may not perceive most children concerned as not having obtained any nationality at birth, because it may appear from the legislation of the country of

⁶⁴Act LV of 1993 on Hungarian nationality, Section 4(2)(c) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=19290.348713

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Act I of 2010 on Civil Registration Procedures, Section 1(3)(a) (HU): http://njt.hu/cgi_bin/njt_doc.cgi?docid=129886.346948

⁶⁸ Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 1 (2) (a); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 1 (3) (a)

⁶⁹ Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 9 (2); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 61 (3)

⁷⁰ Government Decree 35/2011 of 21 March on the rules, conditions of and exclusion grounds from birth outside a medical institution, Section 12 (6)

⁷¹ Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (1); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (1)

⁷² Law-Decree 17 of 1982 on Civil Registration, Marriage and Names, Section 13 (4); Act I of 2010 on Civil Registration Procedures (in force as of 1 July 2014), Section 16 (4)

⁷³ <https://index.statelessness.eu/country/hungary>

⁷⁴ Gábor Gyulai, Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary, Hungarian Helsinki Committee, January 2014, p. 8: <https://www.refworld.org/docid/5310640b4.html>.

⁷⁵ *Zhao v. the Netherlands* (2020) CCPR/C/130/D/2918/2016 (UN Human Rights Committee, 28 December 2020).

origin that they inherit their parents' – or at least their father's – nationality.⁷⁶ As a result, these children cannot benefit from the declaration safeguard of the Citizenship Act, even if it later occurs that the state of presumed nationality does not consider them as nationals under the operation of its law.⁷⁷ There are no specific rights or forms of protection attached to the condition of 'unknown nationality',⁷⁸ impacting on the enjoyment of other rights enshrined in the CRC.

ISSUE 2 – Identifying and determining statelessness in order to ensure stateless persons' access to economic and social rights

37. Identifying stateless people in the country is the first step to providing them adequate protection and rights in line with international law. The object and purpose of a statelessness determination procedure (SDP) is to identify and determine statelessness and prevent human rights violations against stateless people, whilst reducing statelessness through facilitated naturalisation within a reasonable timeframe and providing a clear pathway to acquiring a nationality. Although Hungary has an SDP in place there are certain shortcomings regarding access to rights for stateless persons and it remains very difficult for stateless persons to acquire Hungarian nationality due to the requirements for naturalisation addressed in the following section.
38. Under its international obligations Hungary shall accord to stateless persons the right to employment, housing, healthcare, and public education as favourable as possible and, in any event, not less favourable than that accorded to foreigners generally in the same circumstances.⁷⁹ These obligations under the 1954 Convention are further strengthened by Hungary's obligations under the International Covenant on Economic, Social and Cultural Rights.
39. Recognised stateless persons have only limited access to the labour market as they must obtain a work permit, but the procedures and conditions to receive such permits are particularly burdensome. A work permit can only be issued to stateless persons if there is no suitable Hungarian or EEA-citizen applicant for the same post.⁸⁰ This highly bureaucratic "labour market assessment" procedure may discourage potential employers from hiring a stateless person. Moreover, the validity of a work permit cannot exceed the validity of the residence permit, which is now three years at first issuance, and must be renewed on a yearly basis after the first three years have expired.⁸¹

⁷⁶ Gábor Gyulai, Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary, Hungarian Helsinki Committee, January 2014, p. 17: <https://www.refworld.org/docid/5310640b4.html>.

⁷⁷ Ibid.

⁷⁸ Ibid, p. 18.

⁷⁹ 1954 Convention Relating to the Status of Stateless Persons, Articles 17-24.

⁸⁰ Decree 8/1999 (XI. 10.) of the Ministry of Social and Family Affairs on the Employment of Foreigners in Hungary, Section 3 (1)-(2).

⁸¹ Act CXXXV of 2010 on the Amendment of Certain Acts Related to Migration, Section 41.

40. It is unclear what the justification is to differentiate between the validity periods of three years at first issuance of the residence permit and one year upon renewal, and such a distinction is unique to stateless status in Hungarian law (in all other cases the prolongation periods are similar to the initial one). While stateless persons can apply for permanent residence after three years, to do so they must fulfil several difficult material conditions. Given the limited validity of the humanitarian residence permit and the usual procedural delays of at least several months, employers may refrain from the lengthy and cumbersome procedure of applying for work permits for recognised stateless persons (or other foreigners with a similar type of residence permit) until they have been able to acquire a permanent residence permit, thereby creating obstacles to stateless persons' enjoyment of socio-economic rights in Hungary.⁸²
41. Access to social security and healthcare is linked to employment contributions, so a person recognised as stateless does not have an automatic right to social security and public healthcare, only to basic emergency public healthcare services. With respect to healthcare, stateless persons are also discriminated against compared to other beneficiaries of international protection, as they usually lack access to gainful employment that would allow them to become eligible for social security and public healthcare, or to pay for private healthcare insurance or services. Without employment, they can only benefit from basic public healthcare services, the scope of which is very limited. This does not include maternity care, for example, which is only available to those who can establish domicile i.e., usually after three years' legal residence and/or on acquiring permanent residence.⁸³

ISSUE 3 – The right of stateless persons to acquire a nationality through facilitated naturalisation

42. Under its international obligations, Hungary “shall as far as possible facilitate the assimilation and naturalisation of stateless persons. In particular, it shall make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings”.⁸⁴
43. Stateless persons can apply for facilitated naturalisation after continuously residing in Hungary with a ‘domicile’ for a minimum of three years, compared to the required five or eight years of ‘domicile’ for other groups.⁸⁵ However, stateless persons face barriers to acquiring ‘domiciled’ residence in Hungary, which can only be requested after a minimum of three years’ residence with humanitarian protection status.

⁸² In general, see Gábor Gyulai, *Statelessness in Hungary: The Protection of Stateless Persons and the Prevention and Reduction of Statelessness*, Hungarian Helsinki Committee, December 2010, p. 32: <http://www.refworld.org/docid/4d6d26972.html>.

⁸³ Act CLIV of 1997 on Health, Section 142 (3).

⁸⁴ 1954 Convention Relating to the Status of Stateless Persons, Article 32.

⁸⁵ Citizenship Act, Section 4 (2) (e).

44. Naturalisation procedures set very difficult material conditions and lack even the most basic fair procedural safeguards. There are no clear thresholds for the material conditions set by the law (livelihood and accommodation). Stateless people must meet all other general requirements for naturalisation such as passing a constitutional exam, income and language requirements, and costly translation and certification of documents. People refused naturalisation have no right to be informed about the reasons for the refusal, nor are they entitled to appeal the decision.⁸⁶ These shortcomings are partly related to significant reservations made by Hungary upon its accession to the European Convention on Nationality.⁸⁷
45. In practice, stateless people must wait many years before they can naturalise, and then only in a completely discretionary and non-transparent procedure. There is also a general lack of detailed statistical data from the Government concerning the access to Hungarian nationality through naturalisation of beneficiaries of international protection and stateless persons. As a result, due to the lack of transparency or any judicial scrutiny, decisions on naturalisation are often taken in a questionable manner, rejecting candidates who apparently fulfil all conditions, with a specific negative impact on refugees and other beneficiaries of international protection, who have rarely been able to successfully naturalise in Hungary.⁸⁸ The NDGAP confirmed that between 2016 and 2019, not a single stateless person managed to obtain a permanent residence permit in Hungary.⁸⁹ Research by the HHC found that between 2011 and 2015 only 38 stateless persons could naturalise as Hungarian nationals.⁹⁰ Only 33% of stateless persons applying for naturalisation were granted Hungarian nationality, compared to 57% of other applicants with no Hungarian ancestry.⁹¹ This suggests that naturalisation is not facilitated for stateless persons in Hungary, but is in fact rendered more difficult, contrary to Hungary's 1954 Convention obligations and its obligations to ensure everyone's right to a nationality.

Recommendations

46. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Hungary:

⁸⁶ Citizenship Act, Section 6 (2); Government Decree 125/1993 (IX.22.) on the implementation of Act LV of 1993. on the Hungarian Citizenship, Sections 4 (2) and 12 (1).

⁸⁷ Upon accession, Hungary made reservations with regard to the relevant Articles 11 and 12 of the European Convention on Nationality (1997).

⁸⁸ See relevant statistics and a demonstrative case study in Gábor Gyulai, Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary, Hungarian Helsinki Committee, January 2014, pp. 16-17: <http://www.refworld.org/docid/5310640b4.html>.

⁸⁹ Responses by the National Directorate-General for Alien Policing of 16 January 2020, 17 January 2020 and 2 February 2020, to a freedom of information request submitted by the Hungarian Helsinki Committee.

⁹⁰ Gábor Gyulai, The Black Box of Nationality – The naturalisation of refugees and stateless persons in Hungary, Hungarian Helsinki Committee, 2016: <https://www.refworld.org/docid/5792070a4.html>.

⁹¹ Persons of Hungarian ancestry can apply for 'simplified naturalisation', under a different legal regime and significantly facilitated conditions.

- I. Ensure full compliance with Article 7 of the Convention on the Rights of the Child by providing for the automatic granting of nationality to all children born in Hungary who would otherwise be stateless, regardless of their domicile or any other factor.
- II. Amend its legislation to ensure that acquisition of Hungarian nationality through declaration takes place without age restriction, or at least until the 21st birthday of the applicant.
- III. Remove the requirement for parents to have a domicile at the time of a child's birth and for the child to have domicile for at least five years, and take all necessary measures to ensure full compliance with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child.
- IV. Ensure that recognised stateless persons have unrestricted access to the labour market, healthcare, and social security.
- V. Extend the validity of residence permits granted to stateless people after the first three years, to further three-year periods.
- VI. Ensure that stateless persons have a clear and facilitated pathway to acquiring a nationality, including by automatically establishing domicile and receiving a residence permit upon recognition of their statelessness.
- VII. Introduce procedural safeguards in the legal framework relating to acquisition of Hungarian nationality, including by ensuring transparency in (facilitated) naturalisation procedures, that grounds for rejection are provided in writing, and applicants have a right of appeal.
- VIII. Improve data collection on stateless persons and those at risk of statelessness in Hungary, with a particular emphasis on children born in Hungary, and publish reliable disaggregated data on the stateless population in the country.
- IX. Withdraw reservations to the European Convention on Nationality.