



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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RE: UNHCR observations on the preliminary investigation into possible amendment needs pertaining to the nationality legislation

The UNHCR Representation for Northern Europe (UNHCR) is grateful for the invitation to provide observations on the preliminary investigation into possible amendment needs in relation to the nationality legislation (Esiselvitys kansalaisuutta koskevien säännösten muutostarpeista).

UNHCR offers the following observations in its capacity as the Agency entrusted by the UN General Assembly with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness. The General Assembly has specifically requested UNHCR "to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States". It has also entrusted UNHCR with the specific role foreseen in Article 11 of the 1961 Convention on the Reduction of Statelessness. UNHCR thus has a direct interest in national legislation of countries impacting on the prevention or reduction of statelessness and protection of stateless persons, including implementation of safeguards contained in international human rights treaties, as well as those set out in the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention).

Finland has a long tradition of providing sanctuary to persons in need of international protection and is a strong supporter of the international protection regime and the work of UNHCR, including its #IBelong Campaign to End Statelessness by 2024. This commitment was further reiterated by the Government of Finland in its pledge to continue efforts for the general avoidance of statelessness at the High-Level Segment on Statelessness in October 2019. Therefore, UNHCR wishes to welcome this preliminary assessment of potential areas where improvement may be foreseen, and the Government's commitment to further align the Finnish legal framework with international standards. Our observations are based on the UNHCR *Mapping Statelessness in Finland*¹ (the Mapping) aimed to analyze potential gaps in the existing legislation and make recommendations to improve the statelessness related national legislation, as well as its implementation which may be considered under the current assessment.

¹ UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Finland*, November 2014, available at: <https://www.refworld.org/docid/546da8744.html> [accessed 20 August 2020],

According to the Mapping, the nationality legislation of Finland is comprehensive in terms of preventing statelessness when it comes to acquisition of Finnish nationality by descent, stateless children born in Finland and loss, renunciation and deprivation of Finnish nationality. Particularly commendable is the automatic grant of Finnish nationality for children born in Finland who would otherwise be stateless regardless of their residence status in Finland. Further, the Citizenship Status Determination Procedure (CSDP) in place is generally well functioning and provides a solid framework, in particular in light of the interpretation of the purposes of the procedure formed by the jurisprudence, within which determination of statelessness can be undertaken and further developed.²

However, certain weaknesses in determining and defining statelessness, ensuring that stateless persons can enjoy the rights they are entitled to, have been identified. The areas considered for an eventual amendment of the Nationality Act as set out in the preliminary document³ are the following: (1) establishment and assessment of identity; (2) time of residence required for naturalization; and (3) language requirements for naturalisation. In an attempt to contribute to the preliminary preparation of a possible nationality law amendment, UNHCR wishes to provide the following observations reflecting solely on issues related to the establishment and assessment of identity of potentially stateless persons based on the standards set out in the 1954 and 1961 Statelessness Conventions. The UNHCR observations and recommendations aim at improving the current framework, rather than making any suggestions for fundamental changes.

UNHCR's Observations

In Finland there were 2,801 persons reported under UNHCR statelessness mandate in 2019.⁴ As revealed by the Mapping, among these individuals there is a relatively large number of persons whose nationality is registered as „unknown” in the Finnish Population Information System; in fact this population is bigger than those registered as stateless.⁵ This category of persons is thus likely to include many individuals who in fact are stateless.⁶ This seems to be a challenge which may be attributed to difficulties in establishing a person's nationality, to a high burden and standard of proof in establishing statelessness⁷ (primary focus on documentary evidence) and the absence of a full-fledged statelessness determination procedure which would help to reduce the number of persons registered as of „unknown nationality”.

Assessing and establishing identity in the context of Section 6 of the Nationality Act in the case of stateless persons and persons with „unknown nationality”

The reliable establishment of a person's identity is a complex exercise, especially in the case of stateless applicants who often lack any form of document, many of them not having been registered at birth in their country of origin. Section 6 of the Nationality Act regulates the establishment of identity in the context of acquisition of Finnish citizenship. According to Section 6 a person's identity can be established by means of documents or by providing other information which is considered reliable on the person's name, date of birth, family relations, and other personal data necessary to decide on the

² UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Finland*, November 2014, available at: <https://www.refworld.org/docid/546da8744.html> [accessed 20 August 2020], p. 56.

³ Preliminary investigation into possible amendment needs pertaining to the nationality legislation (Esiselvitys kansalaisuutta koskevien säännösten muutostarpeista).

⁴ UN High Commissioner for Refugees (UNHCR) *Global Trends 2019*, July 2020, available at: <https://www.unhcr.org/5ee200e37.pdf>. [accessed 20 August 2020] p. 73.

⁵ UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Finland*, November 2014, available at: <https://www.refworld.org/docid/546da8744.html> [accessed 20 August 2020], p. 8.

⁶ Ibid.

⁷ Ibid.

matter. The establishment of identity has been also addressed by the Finnish Supreme Administrative Court (SAC) proclaiming that the assessment with regards to establishing identity in Section 6 needs to be holistic but focusing primarily on available documentation. This position is reflected in Migri's practice in stateless cases as revealed by the Mapping suggesting that in the vast majority of cases individuals who are not able to provide documentary evidence of their nationality are automatically placed in the category of persons with "unknown nationality." This approach, however, appears problematic; the assumption seems to be that the main reason why a person would not be providing documentary evidence regarding her or his statelessness claim is that the person is simply unwilling to do so, and that every stateless person has access to identity and other documents from the country of (former) residence.

Further, the practice of putting individuals in the category of „unknown nationality” based on the fact that their identity has not been established because of the lack of documentation leads to a problematic restriction of the Citizenship Status Determination Procedure (CSDP) for persons with 'unknown citizenship'. While Section 36 of the Nationality Act sets out an obligation to make efforts to determine the citizenship or nationality of those who's municipality of residence is in Finland, this obligation does not apply in cases where the person's identity has not been established in other respects.

With regard to stateless persons who may be refugees as well, it may be impossible to obtain identity documents which are thus often unreasonable to require during the citizenship determination. Furthermore, in some third countries documentation forgery is so widespread that relying heavily on documentation in making decisions on citizenship determination may be considered unreasonable posing practical challenges to the protection of stateless persons. Therefore, in its Handbook on Protection of Stateless Persons⁸ (para. 91) UNHCR advises States to adopt the same standard of proof as required in refugee status determination, namely, a finding of statelessness would be warranted where it is established “to a reasonable degree” that an individual is not considered as a national by any State under the operation of its law. Relying primarily on the applicant's ability to provide documents without consideration of the applicant's realistic possibilities to obtain identity documents may prevent many stateless individuals from being identified as stateless and thus from receiving international protection they would be entitled to under the 1954 Convention.

The current focus on the provision of documents in the context of establishing the identity of persons according to Section 6 in the cases of stateless persons is leading to a high number of persons with „unknown nationality” without a status and it limits the effective and consistent identification of stateless persons in the context of the Finnish Citizenship Status Determination Procedure (CSDP) according to Section 36.

Therefore, UNHCR suggest that the assessment and establishment of identity in the context of Section 6 better takes into account the challenges inherent in establishing the identity of potentially stateless persons. Standards in establishing identity should entail the equal consideration of all forms of evidence - including personal testimonies, country of origin information, enquiries to foreign authorities. Thus, UNHCR recommends to consider amending Section 6 to explicitly reflect that the establishment of identity is based on a holistic assessment of available documentation and entails the equal consideration of all forms of evidence, including personal testimonies, country of origin information, enquiries to foreign authorities. Further, it is recommended to use the category “unknown nationality” with caution and in general limit its use as far as possible in order to avoid gaps in the identification of statelessness and ensure that stateless persons can enjoy the rights to which they are entitled. When “unknown nationality” is the initial assessment of the situation, further efforts should be made to

⁸ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html> [accessed 20 August 2020].

assess the individual's identity and resolve it as quickly as possible. UNHCR recommends also to consider removing the second sentence in Section 36(2) to ensure that the citizenship status of all individuals who are registered as persons with "unknown nationality" is established which would support efforts to reduce the number of persons with "unknown nationality".

Citizenship Status Determination Procedure (CSDP) according to Section 36 of the Nationality Act

Nationality is an essential part of one's identity, creates a legal bond between an individual and a state and is a predicament to the enjoyment of basic rights. Not having a nationality puts people in limbo facing insurmountable practical difficulties in their everyday life. Although stateless people would be eligible to enjoy basic rights under the 1954 Convention, they are often not identified as stateless in the absence of dedicated statelessness determination procedures (SDP). Also, they are often expected to prove their statelessness (proving the negative) on their own which in the vast majority of cases is very difficult as stateless persons often lack any form of documentation (many were not even registered at birth in their country of origin).

In Finland, there is no specific statelessness determination procedure. Determination of statelessness takes place through and as part of other procedures, in particular the asylum procedure and the determination of citizenship status procedure provided for in Section 36 of the Nationality Act. While the Citizenship Status Determination Procedure (CSDP) can accurately identify statelessness, the procedure presents some weaknesses that can limit effective and consistent identification of stateless persons.

As elaborated in the Mapping, UNHCR finds that the CSDP applies a considerably higher standard and burden of proof than „to a reasonable degree“ as advised by UNHCR - relying heavily on the applicant without consideration to the applicant's realistic possibilities to obtain identity documents. The stateless person definition in Article 1(1) of the 1954 Convention requires proof of a negative – that an individual is not considered as a national by any State under the operation of its law. This presents significant challenges to applicants and given the nature of statelessness, stateless applicants for international protection are often unable to substantiate the claim with much, if any, documentary evidence. Therefore, UNHCR considers that an unduly high standard of proof should not be imposed in the procedure, as it may prevent statelessness from being recognized and may thus frustrate the object and purpose of the 1954 Convention. Specific and widely used forms of evidence that could help establish if someone is stateless are set out in detail in the UNHCR Handbook on Protection of Stateless Persons, including testimony of the applicant (e.g. written application, interview), response(s) from a foreign authority to an enquiry regarding nationality status of an individual and country of origin information gathered by Migri. Further, UNHCR recommends that the Citizenship Status Determination Procedure adopts an approach which better takes into account the challenges inherent in establishing statelessness. In particular, the burden of proof should be shared between the applicant and Migri, by providing Migri with an active role in collecting information to establish one's nationality, bearing in mind that the 1954 Convention only requires a negative to be proven, i.e. that the person is not considered as a national by any State under the operation of its law. Persons concerned have a responsibility to cooperate in establishing the facts but may face challenges accessing relevant documents and other evidence needed to prove the absence of their nationality. Further, while statelessness may be accurately identified in the CSDP, the status of a stateless person as a form of international protection does not exist in the Finnish legislation.

Therefore, UNHCR recommends Finland to consider introducing improvements to the legislation with a view to develop the CSDP into a dedicated statelessness determination procedure to better identify and protect beneficiaries of the 1954

Convention, including through introducing a statelessness-specific residence permit for those stateless persons who, due to their statelessness, are unable to return their country of previous habitual residence.⁹

Definition of a stateless person in Section 2 of the Nationality Act

Looking at the definition set out in the Nationality Act, Section 2, subsections 2(3) and 2(4) provide the definition of a stateless person. The definition has been divided into two parts: subsection 2(3) defines a person who is “involuntarily stateless” and subsection 2(4) defines a person who is “voluntarily stateless”.

As explained in the Mapping, the statelessness definition of Section 2 of the Nationality Act differs from the definition in the 1954 Convention Relating to the Status of a Stateless Person (1954 Convention), which only defines a stateless person without making a distinction between voluntary and involuntary statelessness. Thus, UNHCR RNE recommends Finland to consider incorporating one statelessness definition in line with the definition of a stateless person set out in Article 1(1) of the 1954 Convention.

Children acquiring Finnish citizenship according to Section 9 Nationality

Finally, UNHCR wishes to note that Section 9 of the Nationality Act Law setting out that a child acquires Finnish citizenship by birth if: 1) the mother is a Finnish citizen (by operation of law); 2) the father is a Finnish citizen; and a) is married to the child’s mother; or b) the child is born in Finland and the man’s paternity of the child is established (by declaration) – may constitute a gender-discrimination in the Nationality Law entailing that men are not allowed to pass on their nationality to their children on equal terms as mothers.

To provide good practices, UNHCR suggest to rephrase this section by setting out that a child acquires Finnish citizenship by birth (automatically by operation of law) if: 1) the mother, the father or the co-mother is a Finnish citizen.

UNHCR recommendations

Based on the above, UNHCR invites Finland to consider potential amendments to the Nationality Act in a way to:

- (1) Amend Section 6 (2) to elaborate on the means of establishing identity (in addition to documents), especially on “other information which is considered reliable on the person’s name, date of birth, family relations and other personal data necessary to decide on the matter” to explicitly reflect that the establishment of identity is based on a holistic assessment of available documentation and should entail the equal consideration of all forms of evidence, including personal testimonies, country of origin information, etc. to better take into account the challenges inherent in establishing the identity of potentially stateless persons.
- (2) Limit the use of the category of person with “unknown nationality” to avoid gaps in the identification of statelessness and ensure that stateless persons can enjoy the rights to which they are entitled under the 1954 Convention.
- (3) Remove the second sentence in Section 36(2) to ensure that the citizenship status of all individuals who are registered as persons with “unknown nationality” is determined which would support efforts to reduce the number of persons with “unknown nationality.”

⁹ <https://www.unhcr.org/neu/25107-unhcr-recommendations-to-finland.html>

- (4) Introduce the evidentiary requirement to “a reasonable degree” in the Citizenship Status Determination Procedure (CSPD) in Section 36 to adopt a standard which better takes into account the challenges inherent in establishing statelessness. In particular, the burden of proof should be shared between the applicant and Migri, bearing in mind that the 1954 Convention only requires a negative to be proven, i.e. that the person is not considered as a national by any State under the operation of its law.
- (5) Consider the further development of the CSPD in Section 36 into a dedicated statelessness determination procedure to better identify and protect beneficiaries of the 1954 Convention, including through introducing a statelessness-specific residence permit for those stateless persons who, due to their statelessness, are unable to return their country of previous habitual residence.
- (6) Incorporate one definition of a stateless person in Section 2 in line with Article 1(1) of the 1954 Convention, removing the distinction between “voluntary” and “involuntary” statelessness.
- (7) Rephrase Section 9 to eliminate gender-discrimination from the Nationality Law when children acquire Finnish citizenship.

UNHCR appreciates the constructive dialogue with the Finnish Government, and we thank you for your considerations of this important matter.

We remain at your disposal for any clarification required.

Yours sincerely,



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Deputy Representative