



CHILD STATELESSNESS IN POLAND: LEGAL ANALYSIS

Child Statelessness in Poland

Analysis of Law and Practice

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1. Statelessness and child statelessness in Poland

Statelessness in Poland is a widely overlooked problem, which is caused by the small number of persons without citizenship and lack of credible and comprehensive statistical information. There is no single prevailing ethnicity or common background for stateless people, which is another factor why they are mostly ignored and there are no systemic solutions and dedicated legal procedures for them. Cases of statelessness are scattered and isolated, often unidentified for years.

The most recent available data on stateless persons in Poland gathered through the Population Census is already outdated, as the census was carried out back in 2011. It provides a general perspective on the scope of the problem, but does not provide any meaningful additional information about this population. The census report quotes a considerably high number of over 8,000 persons of “unknown nationality” and 2,020 stateless persons.

A 2019 UNHCR and Halina Niec Legal Aid Center mapping study on statelessness in the country, resulted in a more detailed overview of the statelessness population¹. As of July 2020, statistics published by the Office for Foreigners put the total number of “stateless persons” and individuals of “unknown nationality” holding a valid residence permit at 382, of which 345 people were registered as stateless and 37 individuals were of ‘unknown nationality’. No information about the origin of these individuals is available².

Although the available statistics and other relevant sources of information (such as NGO reports and research reports) do not suggest that there is a widespread problem with child statelessness in Poland, still there are some gaps in the law and practice which may put some categories of children at risk of statelessness.

2. Rules of acquiring Polish citizenship applicable to children

Polish Citizenship Act provides for several modes of acquiring Polish citizenship. They can be divided into two general categories:

1. Ex lege (automatic granting of citizenship by virtue of fulfilling the statutory requirements) and:
2. Through application.

Polish citizenship is granted ex lege according to the *lex sanguinis* general principle. Polish citizenship in this regard may be granted at birth, based on the parentage (at least one Polish parent). The *ius soli* principle is treated as an auxiliary principle applicable in case of determining the citizenship of foundlings, children of unknown origin or whose parents are stateless.

Granting Polish citizenship through application is related to several naturalization procedures provided for in Polish law: acquisition by conferment (granting of Polish citizenship by the President of Poland which is one of the presidential prerogatives), acknowledgement (a person may be acknowledged or recognized as a Polish citizen if they fulfil the statutory criteria related to the length

¹ UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, <https://www.refworld.org/docid/5da58e7e4.html>

² Up-to-date statistical information is published on the Statelessness Index website run by the European Network on Statelessness (ENS): index.statelessness.eu

of stay in Poland, integration and language proficiency) and restitution (applies to people who lost Polish citizenship before 1 January 1999).

In the case of stateless children, acquisition of nationality can take place at birth, when they are „found” as foundlings shortly after birth or later in their life through adoption, by conferment or acknowledgment. As a general rule, the citizenship of children is directly linked to the citizenship of their parent and depends on it. The acquisition of Polish citizenship of parents through application starting the procedure for conferment, acknowledgement or restitution determines the citizenship of dependant children.

Polish law is generally compatible with the international standard marked by the 1954 and 1961 conventions on statelessness³, there are, however, notable gaps, relevant in case of children threatened by statelessness which will be discussed in detail below.

Stateless children born on the territory of Poland

The provision of article 14. 2 and article 15 of Polish Citizenship Act grants Polish nationality (ex lege) only to children born on Polish territory and foundlings (children found on Polish territory) whose parents are unknown, stateless or whose citizenship is undetermined⁴. This legal provision is the only situation in Polish law on nationality where the ius soli principle is applied. The scope of article 14.2 and 15 does not encompass, however, an important category - cases of children born/found in Poland who „would otherwise be stateless”, for example due to the fact that their parents are legally unable to transfer their nationality or in a situation where the parents are known, but there are other legal or practical obstacles to transferring their nationality. This safeguard does not fully encompass the scope of protection afforded by the 1961 Statelessness Convention. One of the examples of such problematic cases is abandoning the newborn child in a Polish hospital by a foreign mother, whose name and nationality were recorded (but not verified or documented) by the medical staff. The child in this case is registered with a birth registration act which identifies the mother, but this is not sufficient to register the child with the consulate of the stated country. The indication of the name and declared citizenship is reason enough, however, to exclude the child from availing themselves of the benefit of ius soli principle and articles 14.2 and 15. Therefore the non-inclusion of the category of „children born on the Polish territory, who would otherwise be stateless”⁵ in the provision granting Polish citizenship ex lege, remains a gap that makes the guarantees against statelessness in Polish law incomplete.

3. The loss of Polish citizenship – in relation to children

³ UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>, UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

⁴ Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

⁵ Article 1 of the 1961 Convention on the Reduction of Statelessness, states that „A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless”. Poland is not party to the 1961 Convention, but its rules provide useful reference for establishing the best standard of protection against child statelessness. A similar guarantee is included in Article 6(2) of the European Convention on Nationality.

Polish law does not allow for the deprivation of Polish nationality.⁶ There are certain situations, however, which can result in a loss of nationality, leading to a risk of statelessness. Article 34(2) of the Polish Constitution states that the only way of losing Polish nationality is by an act of renunciation. According to Polish Citizenship Act, the loss of Polish citizenship is only possible upon receiving a formal consent for renunciation from the President of the Republic of Poland. This consent may only be given if the applicant is able to submit a document confirming the possession of another nationality or a promise of such nationality together with the application to the President. This requirement is part of the formal steps of the procedure, and although it is not explicitly stated in the Citizenship Act, it operates as a de facto guarantee against statelessness. Considering the grave consequences of citizenship renunciation without a guarantee of receiving another citizenship, this requirement, should be made part of the Citizenship Act. Another problematic issue, that may put children at risk of statelessness is that there is no explicit requirement to include such documentation confirming new citizenship in relation to children included in the application for renunciation.

4. Registration of births

Birth registration in Poland is free of charge and it is open to anyone irrespective of their nationality and their legal status. A birth certificate is drawn up based on a birth chart. The child's birth chart is a document prepared and forwarded to the registry office by the hospital/maternity ward within 3 days following the childbirth. In case the child was born at home, it is the duty of the midwife to prepare the birth chart.

Birth may be registered by:

- mother or father - provided that they have full legal capacity
- mother over the age of 16 - if she has limited legal capacity
- father, if he has acknowledged paternity after the child was conceived and before it was born
- father, if he appears at the registry office to register the child together with the mother and concurrently gives a statement on acknowledgement of paternity before the registrar
- mother's statutory representative or guardian

The mother may also register the child through a representative. The authorisation must be made in writing, bear the date and specify who authorises whom to do what.

If the parents are married, the documents required for birth registration are: the ID card or passport of the person reporting birth and the marriage certificate (unless it is already in the registry).

While registering a child, foreigners who got married outside of Poland are required to present an original certified copy of the marriage certificate along with its translation into Polish by a certified translator.

If the mother is not married, the documents required for birth registration are as follows:

⁶See Art. 34(2) of the Polish Constitution and Art. 46 of the Law on Citizenship.

- 1) If the child is registered only by the mother – the ID card or passport of the mother
- 2) If the child is registered by the father, who has acknowledged paternity before the child was born – the ID card or passport of the father
- 3) If the statement on acknowledgement of paternity is given along with registration of the child – the ID cards or passports of both parents of the child
- 4) In all remaining cases – the ID card or passport of a statutory representative or of the mother's guardian, while if she has appointed a representative – the representative's identification document

If the mother is divorced:

- 1) If the child is registered by the mother only – an identification document of the mother and optionally a certified copy of the marriage certificate with an annotation on divorce
- 2) If the child is registered by a father who has acknowledged paternity before its birth – the father's identification document
- 3) If the statement on acknowledgment of paternity is given with the child's registration – the identification documents of both parents. If the child was born of a current marriage or within a period of 300 days following its dissolution, annulment or legal separation, the child is presumed to be from the mother's husband.⁷

The birth registration procedure is crucial in relation to the issue of child statelessness. In countries where not all children born are registered, statelessness is often a consequence, as the state is unaware of the child's existence. In other cases, states prescribe a strict deadline for child registration. Polish law in this regard is fully in line with international standards. Birth registration is free of charge and it is a simple process, where non-citizens are not required to possess and present permission for legal stay for example. There are, however two problematic issues. One is related to the procedure of transcribing foreign-issued birth certificates of children of same-sex parents. This issue is discussed in a separate section of the analysis.

The other problematic matter is the determination whether the child is born to parents who are unknown, stateless or of undetermined citizenship - in which case the child would be recognized as having Polish citizenship

The data included by hospitals into the birth chart become the source of information for drafting the birth certificate by the registry office. The formal reply from the Krakow Registry Office⁸ indicates that the registry office „has no knowledge nor power” over the criteria used by the hospitals who draft birth charts and include information about the mother of the child. It is for the hospitals, therefore to collect the information about the personal data of mother, her place of birth and place of stay in Poland. Information about the father is limited to place of stay in Poland. The birth certificate bears no information about the citizenship of the mother or father.

The role of the registry office is to carry out the procedure for issuing the birth certificate, which is a crucial document in establishing citizenship of the child. The procedure of registry of birth, as

⁷ Information and requirements stemming from Polish Vital Records Act of 28 November 2014 (consolidated text: Journal of Laws of 2014, item 1741 as amended). See also information for foreigners prepared by the City of Gdańsk: <https://www.gdansk.pl/urząd-miejski/register-of-birth,a,71003>

⁸ Email reply to an inquiry submitted by the Halina Niec Legal Aid Center, dated October 30, 2020.

indicated above can be fulfilled by the mother or father, presenting the required documentation within 21 days since the birth chart was drafted. If they fail to do so in the prescribed time, the head of the registry office issues the birth certificate without their assistance. This procedure allows for full registration of all children born in Poland. In case the birth chart includes information about the mother, but mother has not later on approached the registry office to register the child, the birth certificate will still be issued, including the mother's data from the hospital birth chart. In such a case, the mother is not „unknown” and her citizenship is often „deducted” from the place of birth she quoted at the hospital. This practice is problematic as the abandoning of child and lack of possibility to verify the personal data and citizenship of the mother should be reason enough for the registry office to treat the mother as „unknown” or of „undetermined citizenship” and then recognize the Polish citizenship of this child, so as to avoid statelessness pursuant to article 14.2 of the Act on Polish Citizenship.

5. Statelessness issues related to different categories of children

5.1. Children born to Polish parents

All children with at least one Polish parent are Polish nationals by law (*ius sanguinis*), irrelevant of their place of birth. Nevertheless, there are practical problems concerning children born abroad which may result in a risk of statelessness. These practical problems are linked to the necessary formalities that need to be fulfilled in order to register the child born abroad and receive Polish passport where a conflict of laws concerning the recognition of same-sex couples arises.

5.2. Children born to mixed couples (one parent is Polish)

As it was stated before, Article 14 of the Act on Polish Citizenship, establishes the rule that *ex lege* acquisition of Polish citizenship applies in case of children born to parents, when at least one of them is a Polish citizen. As Polish law does not explicitly prohibit dual citizenship, in such a case, depending on the rules of the other parent's citizenship law, the child may hold two citizenships and will not be forced by Polish law to choose one and renounce the other. Nevertheless, while in Poland, this child will be always treated simply as a Pole.⁹

In case one of the foreign parents is granted Polish citizenship or is recognized as a Polish citizen only after the child is born, these changes also affect the dependant minor child. Nevertheless the other, (non-Polish) parent, still has influence over the effect these changes exert on the common child's citizenship and may make a declaration to consent to the acquisition of the Polish citizenship by the minor or refuse it. In case the parents cannot agree as to the citizenship of the child, their case should be decided by family court. The same rule applies in case the Polish parent has acquired formal consent to renounce Polish citizenship - the resulting loss of Polish citizenship would take effect on the minor dependant child, unless the other parent has not agreed to it¹⁰.

⁹ Article 3 of the Polish Citizenship Act

¹⁰ It is important to point out, that the consent to renounce Polish citizenship may be issued by the President of the Republic of Poland only after the requesting party submits evidence of holding another citizenship or a promise to receive it after renunciation of Polish citizenship. The same requirement which is in fact a safeguard against statelessness is not explicitly stated in relation to minor children.

If a child has turned 16 years of age changes of the citizenship of the parent extend to the child only after considering the child's own declaration. The child's formal consent is a condition of these changes taking effect on their own citizenship.

5.3. Children adopted by Polish parents

According to the Polish Citizenship Act, a minor child adopted by a Polish national acquires Polish citizenship if the full adoption has been completed before the child turns 16. In this case, the child is considered as possessing Polish citizenship from birth. This provision has therefore a retroactive effect. There are no identified gaps that would lead to statelessness as the adoption leads to obtaining Polish citizenship by virtue of the law.¹¹ Polish law establishes an important guarantee ensuring that the child cannot lose their citizenship due to annulment of the adoption.¹² Polish citizenship is also not lost due to foreign adoption.

If the child has turned 16 at the time of adoption, they may obtain Polish citizenship through a process of 'acknowledgment' of Polish citizenship.¹³ According to this procedure, the minor foreigner is acknowledged as a Polish citizen if they are in the parental custody of a Polish citizen (including by way of adoption) and have resided uninterruptedly within the territory of the Republic of Poland legally under a permit to settle, a long term resident's EC residence permit, or a right of permanent residence, whereas the other custodial parent is not a Polish citizen and has duly declared consent to the acknowledgment of Polish citizenship of the minor. Children over 16 need to consent for the acknowledgement to take effect. Another option for adopted children over 16 is the 'conferral' of Polish citizenship.¹⁴ Conferral is carried out by the President of Poland at their discretion and there are no specific conditions that need to be fulfilled.

5.4. Children of same-sex couples

Even though Polish nationality at birth is acquired *ex lege* (meaning that registration is not a condition for a child to acquire Polish nationality at birth), in practice, registration in Poland (or transcription of the birth certificate) is a condition for receiving a passport at the Polish embassy. This practical requirement means that in order for a child to avail themselves of nationality registration in Poland is also required. In several similar cases of children raised by same sex parents abroad (where at least one parent was Polish) have resulted in Polish authorities denying the possibility of allowing them for a „transcript” of the foreign act of birth, where same-sex parents were indicated. Poland does not recognize same sex partnerships and the transcription of a birth certificate where two persons of the same-sex are named as parents has been repeatedly denied.¹⁵

¹¹ Pursuant to article 16 of the Citizenship Act.

¹² There is no explicit provision in the law but there is no legal ground for such loss of nationality.

¹³ Article 30 of the Citizenship Act.

¹⁴ Article 18 of the Citizenship Act.

¹⁵ III SA/Kr 1400/1 -Wyrok WSA w Krakowie, Judgment of the Regional Administrative Court in Krakow: <http://orzeczenia.nsa.gov.pl/doc/431B8D990DC> Case concerns the denial of transcription of the birth certificate of the child of a same-sex Polish couple in the UK. The issue of access to a Polish identity document confirming Polish nationality is discussed. Read more: European Network on Statelessness, Ending Childhood Statelessness: A Study on Poland, June 2015, Working Paper 03/15, available at: <https://www.refworld.org/docid/582328444.html>

5.5. Foundlings and children of stateless parents

The provision of article 14. 2 and article 15 of Polish Citizenship Act grants Polish nationality (ex lege) to children born on Polish territory and foundlings (children found on Polish territory) whose parents are unknown, stateless or whose citizenship is undetermined¹⁶. This legal provision is the only situation in Polish law on nationality where the ius soli principle is applied.

A child is ex lege granted Polish citizenship in this case in the following situations:

1. The child is „a foundling” - found on the territory of Poland and their parents are unknown.

This is a clear cut situation in case of children abandoned without any trace of their parentage. Treating them as Polish children is a simple and effective protection clause.

2. The child was born on Polish territory and their parents are:

a) unknown (as in the category of children described in the first point above, this is a clear cut situation that does not cause any doubts as to its application)

b) stateless (as Polish law does not include a definition of statelessness this case may be subject to varying interpretations by the authority determining the case. It is important to note that for example the possession of some documentation by the parents is not tantamount to holding a given citizenship and the question of statelessness is a mixed question of fact and law, requiring careful determination)

c) their citizenship is undetermined (this case allows for the widest margin of doubt. The situation of „undetermined” citizenship may be merely a temporary stage for the parents who, at the time of birth of their child, are for example undergoing identification procedure. There might be also cases where this failure to determine the citizenship should be simply qualified as statelessness, pursuant to the 1954 Statelessness Convention. As this is a separate clause, however, it is justified to expect that the lawmakers’ intention was to include here parents who are not stateless, and possess a nationality, it is impossible, however to unequivocally determine what it is.

It should be added here, that pursuant to article 6.1 of the Citizenship Act, any changes in determining the person or the citizenship of one or both parents are taken into account in determining the citizenship of a minor if they occurred within one year from the date of birth of the minor. Therefore, it follows, that if the child is registered at birth as a child of parents whose nationality is undetermined due to the fact that the procedures determining the nationality are pending, and they have not been concluded during 12 months since birth, the child will retain Polish nationality, even if the final determination leads to a confirmation of a foreign nationality of the parents.

The intention of the lawmakers including the ius soli provision, as an auxiliary rule, supplementing the ius sanguinis has been clearly to protect children against statelessness. The analysis of the wording of the article leads to the conclusion that this protection is not complete. The scope of article 14.2 and 15 does not encompass, however, an important category - cases of children born/found in Poland who „would otherwise be stateless”, for example due to the fact that their parents are legally unable to transfer their nationality or in a situation where the parents are known,

¹⁶ Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

but there are other legal or practical obstacles to transferring their nationality. This safeguard does not fully encompass the scope of protection afforded by the 1961 Statelessness Convention. One of the examples of such problematic cases is abandoning the newborn child in a Polish hospital by a foreign mother, whose name and nationality were recorded (but not verified or documented) by the medical staff. The child in this case is registered with a birth registration act which identifies the mother, but this is not sufficient to register the child with the consulate of the stated country. The indication of the name is reason enough, however to exclude the child from availing themselves of the benefit of *ius soli* principle and articles 14.2 and 15. Therefore the non-inclusion of the category of „children born on the Polish territory, who would otherwise be stateless“¹⁷ in the provision granting Polish citizenship *ex lege*, remains a gap that makes the guarantees against childhood statelessness in Polish law incomplete.

5.6. Unaccompanied Migrant children

Unaccompanied migrant children is a vulnerable category of children that is used in international migration law and refugee law. According to the definition used by UNHCR, unaccompanied children (or unaccompanied minors) are children who have been separated from both parents and relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so¹⁸.

Unaccompanied children may find themselves in Poland often during their transit, on the way to other EU states, sometimes travelling with groups organized by smugglers, or simply disconnected with their relatives at some stage of their travel. Special caution should be made as to determining the status of such children, especially when they arrive without any documentation. The clause concerning foundlings is generally used in relation to newborn children up until 12 months of age (although no specific time-limit is prescribed by the law). In case of other children, the authorities determining their status and identity would rely on the declarations made by the child and the context of their arrival, as well as other factors (such as appearance, language used etc). It should be pointed out however, that all such additional factors are not sufficient in order to determine the citizenship of the child. If the inquiry made with the relevant diplomatic mission provides no official confirmation of citizenship within a reasonable time, it is in the best interest of the child to determine the child as stateless and look to available protection tools.

5.7. Refugee children

The legal status and uncertainty as to the citizenship held is problematic in relation to refugee children. Asylum seeking children arriving without legal guardians may find themselves in a situation of the authorities erroneously determining their citizenship, which is especially important in case of unsuccessful asylum claims and the consequent return proceedings. Even those refugee children who are staying in the host country accompanied by their parents may be in a precarious situation

¹⁷ Article 1 of the 1961 Convention on the Reduction of Statelessness, states that „A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless“. Poland is not party to the 1961 Convention, but its rules provide useful reference for establishing the best standard of protection against child statelessness. A similar guarantee is included in Article 6(2) of the European Convention on Nationality.

¹⁸ United Nations High Commissioner for Refugees, UNHCR Guidelines on Formal Determination of the Best Interests of the Child, 2006.

however, especially if they were born in the host country and not properly registered with the diplomatic mission of their country, thus securing their citizenship.

According to ECRE, refugee children born in exile are particularly exposed to the risk of statelessness. While most of them, in principle, inherit their parents' nationality according to the *ius sanguinis* principle, many of them do not, for example due to gender-based discrimination in the nationality law of the parents' country of origin. Even children whose citizenship should be granted automatically, according to the law of their state, without registration at the embassy, are not regarded as a citizen by that state (which is unaware of their existence). As the registration may not be completed due to the well founded fear of persecution and refugee status, even though there is a theoretical possibility of enjoying the citizenship, it remains an option not viable in this particular context.

ECRE underlines that ensuring that refugee children born in exile in the EU acquire a 'real' nationality within a reasonable time is a demanding endeavour.¹⁹ Such children should be able to benefit from facilitated access to naturalization procedures. Polish Citizenship Act envisages a shorter (2 instead of standard 3 years) time of uninterrupted stay in Poland, on the basis of the permission to settle, for persons holding refugee status or stateless, a requirement for recognition as Polish citizen. This is only a very modest attempt at facilitating access to naturalization. More proactive steps are called for in order to ensure full protection of refugee children rights.

6. Summary and Recommendations

The risk of statelessness for children in the Polish context concerns primarily the case of children abandoned after birth, by parents/mother whose personal data have been recorded in the act of birth. As the premise of „unknown parents” cannot be applied in this situation, such a child could be recognized as a Polish citizen only in case the relevant authority would decide that the parents' citizenship cannot be determined or that both parents are stateless. Practice shows, however, that the sole fact of declaring a given country as the country of origin by the parents/mother is usually seen as sufficient to regard the child as being at least entitled to the citizenship of that country. This reasoning is lacking in understanding the meaning of the notion of „citizenship” as well as the legal gravity of determining a child as a foreign national without any guarantees of that country acknowledging the child and guarding the rights of the child as the citizen.

It is recommended that the Act on Polish Citizenship be amended and aligned with the requirements in the 1961 Convention and the Convention on the Rights of the Child, to prevent children from being born into statelessness. The necessary change concerns the introduction of a safeguard that all children born or found in Poland are granted Polish citizenship if they would otherwise be stateless.

¹⁹ See: European Network on Statelessness, Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices, April 2014, available at: <http://bit.ly/2IRGBRF>, The Right to a Nationality of Refugee Children Born in the EU and the Relevance of the EU Charter of Fundamental Rights (ECRE, Feb. 2017), available at: <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>

As it has been repeatedly flagged by the HNLAC²⁰, adequate securing of rights of persons without citizenship including children requires the introduction of a stateless determination procedure and establishing a status for those without citizenship.

Stateless children and children at risk of statelessness, including migrant and refugee children should have facilitated access to naturalization procedures. In all procedures determining their citizenship and status, due caution should be made to consider whether the child may enjoy the given citizenship or is it merely a fictitious one.

Children of same-sex couples should be recognized as Polish citizens if any of their parents is Polish, without discrimination as to the homosexual nature of their union.

²⁰ UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, available at: <https://www.refworld.org/docid/5da58e7e4.html>